

*The President:* In the meantime that is the ruling of the Court. We have considered your objection, and we have ruled.

*Captain Knyvett:* Does the Court consider it is for me to prove I am guilty, not for me to prove that I am innocent?

*The President:* Up to a certain point it is for the Court to prove the guilt, but beyond that it is for the accused to prove his innocence. The accused may be literally guilty, but technically innocent under military law. It is the duty of the prosecutor to bring it under the notice of the accused.

*Captain Knyvett:* I want paragraph——

*The President:* The Court considers that the charges come under the Defence Act. It is the only one which lays it down.

*Captain Knyvett:* I take that ruling, but I object to it. I want to point out that Regulation 178 under the Defence Act gives the right of appeal, if the appeal is made through the proper channel. I would like to point out to you, sir, that the letter was sent through the proper channel.

*The President:* There is no question about that. You did appeal through the proper channel, but you are responsible for the statements you made.

*Captain Knyvett:* You rule that I am responsible for what was said in the letter, but that it was sent through the proper channel?

*The President:* Yes.

*Captain Knyvett* then quoted the following passages from page 299 of "Manual of Military Law" to show his letter was privileged:— [Not supplied.]

*The President:* The whole thing is, are you guilty or not guilty? It is for you to plead.

*Captain Knyvett:* I plead "Not guilty to having committed 'an act to the prejudice of good order and military discipline.'" I am charged with sending four paragraphs in the letter.

The charges were here read, and Captain Knyvett entered a plea of Not guilty in regard to each.

*Captain Knyvett:* I would like to ask if the offence I am charged with having committed is an "act"? What "act" is it?

*The President:* In making certain charges.

*Captain Knyvett:* The writing of the letter is the "act"?

*The President:* No; the statements you made in the letter are the "act."

*Captain Knyvett:* Do you rule that words are an "act"?

*The President:* Yes.

*Captain Knyvett:* I hold that the "act" is the sending of the letter. I respectfully submit that I should have been charged with sending the whole letter.

*The President:* The Court is not competent to give a ruling now. We will sum that up in our summary.

*Captain Knyvett:* You refuse to give a ruling now, sir? I submit that the wrong charges have been laid against me, as usual, sir.

*The President:* The Court has to sum up. The Court will note your objection.

*Captain Knyvett:* The charge says I have committed an "act." I ask you what "the act" is? You say it is not the writing of the letter. I protest against being charged with a few small lines out of a letter, which, I submit, is not "an act" at all. It must be the whole letter that I must be charged with.

*The President:* No, "the act" is as laid down. I am in a difficulty. You have evidently had legal advice, and I have not. You may write a letter, and they will charge you with the charge you make in the letter. You may write a long letter, and the whole offence be contained in a few words. These words must be quoted.

*Captain Knyvett:* I object to being charged with four passages picked out of a letter as "an act." The whole of the letter could have been taken as "an act." Even if they are charged as "an act," I can refer you to page 275 of "The Manual of Military Law."

*The President* said the Court would consider the objection, and cleared the Court. Upon resumption the President said: The Court has considered your objection, which has been disallowed.

*Captain Knyvett:* Touching on the question of proof, I want to refer you to page 58 of "The Manual of Military Law." It says that the burden of proof lies with the Court. I understood you to say that the Court has to prove, and in order to do that the Court has to call evidence. It is for the Court to prove the charges.

*The President:* The Court in the present case has only to collect evidence to prove or disprove the charges. A Court of Inquiry has not the power of punishment. The power is behind it.

*Captain Knyvett:* I take it that you will allow me all the privileges according to military law? The onus of proof is on the Court.

*The President:* Certainly. It is on the Court, but up to a certain extent the onus of proof may be transferred. It may be necessary for the other side to prove.

*Captain Knyvett:* With regard to "the act," you have ruled that it is "an act"?

*The President:* Yes.

*Captain Knyvett:* I want you to go back to page 275 of "The Manual of Military Law." It distinctly states in subsection (2) that expressions, however offensive, used in asking for a judicial inquiry are privileged, and I would like to draw the Court's attention to the fact that I have had no answer to my request. The expressions used, however offensive, in asking for an inquiry are privileged, and cannot be made the subject of criminal charges. I asked for an official inquiry, and this is the Court's ruling of that letter.

*The President:* It is a preliminary to it, but you are not exonerated from Regulation 180 by that. In giving evidence any expressions used then are privileged.