

The Court was cleared, and upon resumption, the President said: The Court considered your objection, and they rule that the case of *Dawkins v. Paulet* does not apply to this.

*Captain Knyvett*: The letter—

*The President*: Is not privileged.

*Captain Knyvett*: Do you rule that I am not an officer of State?

*The President*: The Court rules that your letter was not privileged.

*Captain Knyvett*: Do they rule that I am not an officer of State?

*The President*: We are not going to rule any further.

*Captain Knyvett*: The Court then has overruled the highest legal authority on the matter. The Court has already admitted that I am an officer of State, and in spite of that the Court rules that the communication was not privileged.

*The President*: Yes.

*Captain Knyvett*: Then, I desire to notify the Court that I intend to take the matter to a higher authority. Have I understood you aright?

*The President*: The charges are that you exceeded your rights.

*Captain Knyvett*: I submit, if that is so, which I do not admit, it is the burden of the Court to prove it, and then, and not till then, am I bound to prove my innocence.

*The President*: The Court considers now that we have come to the position of paragraph 12—the trial goes on, and the burden of proof must be shifted.

*Captain Knyvett*: Does the Court consider that I committed an offence?

*The President*: The charge is that you wrote a letter to the Minister of Defence, making charges against a superior officer. You admit writing the letter. In certain circumstances charges made in a letter are privileged. You must connect each of these charges to show us that they were relevant to your desire to seek redress. They must be relevant to your claim, and you must believe them to be true.

*Captain Knyvett*: I respectfully submit that even if they are absolutely false they are still privileged.

*The President*: The charges are made under the New Zealand Defence Regulations.

*Captain Knyvett*: Under the Army Regulations.

*The President*: Our Act prescribes that the Imperial Act is to be taken as a guide where not specified to the contrary. Here it is specified. It is what you said in that communication for which you must be responsible.

*Captain Knyvett*: I have never denied responsibility, but I claim privilege. We have now come to the question of proof. Regulation — says,— [Not supplied.]

*Captain Knyvett* (continuing): It is distinctly laid down that he who alleges must prove. I ask the Court to prove whether it was “litigious, frivolous, or malicious.”

*The President*: You have admitted writing certain charges.

*Captain Knyvett*: I have admitted the letter and the paragraphs from the letter. I have done that to assist the Court, but at the same time it is set down that he who alleges must prove. You must prove that the extracts are “litigious, frivolous, or malicious.” It says here distinctly that you must prove that.

*The President*: Well, the assumption is—

*Captain Knyvett*: There must be no assumption, sir.

*The President*: It practically amounts to this: that you have made certain charges.

*Captain Knyvett*: I do not admit making any charges. I want the Court to say whether I am guilty or innocent.

*The President*: The Court cannot say that until the finish. The question at issue mainly is whether the statements you made were relevant to your claim for redress. You might seek redress for two reasons—(1) because of reports which may be made about you to a superior authority, or (2) because of the feeling of the country that you have—

*Captain Knyvett*: On that no evidence can be brought in by the Court. “The Manual of Military Law,” section 12, says the Court must prove, and I would like to ask your decision whether you intend to or not?

*The President*: We considered that before.

*Captain Knyvett*: You did not consider that before, whether you intended to prove or not.

*The President*: It is a question as to whether they were privileged. In this connection it says, under Regulation — “If they are relevant to your complaint, as you sincerely believed.”

*Captain Knyvett*: I am not saying anything about privilege, because you have already ruled that they were not privileged.

*The President* (after consulting the other members of the Court): We have decided that it is necessary to go on with the case.

*Captain Knyvett*: Well, I am just waiting to answer the first charge.

*The President*: One minute before we go on.

*Captain Knyvett*, after getting the Court's permission, proceeded to deal with the first charge, that he had committed “an act to the prejudice of good order and military discipline,” in that in his letter to the Minister of Defence, dated the 10th day of November, 1909, he made use of the following words: “Preventing any possibility of a scandal leaking out to the public of the want of tact and interference of the Chief of the General Staff.” *Captain Knyvett* said: The first charge appears to me to be absurd. It starts with a meaningless phrase. It does not say who is preventing. I would like to ask the Court if any one can make anything out of that phrase without the context. I—

*The President*: You claim that that charge is—

*Captain Knyvett*: Absurd. It starts with a meaningless phrase. I say nothing can be made out of it, and I say the Court cannot. The only way it can be read is in connection with the rest of the letter, but you have already ruled that the rest of the letter is privileged.