

'We Would All Rejoice' If Lister Acquitted, Prosecutor Declares

By WILLIAM BOSS

Amsterdam, May 10 (CP).—Lt.-Col. Bruce McDonald, chief prosecutor at the court-martial of Brig. J. F. A. Lister, said in his closing address today that all connected with the court would "rejoice at an acquittal."

"It is most distasteful to prosecute a soldier whose war record is so glowing and whose services to the country earned such high recognition," the Windsor, Ont., prosecutor said.

Brig. Lister, 39-year-old officer from Victoria and Quebec and former chief-of-staff to Lt.-Gen. Guy Simonds of Kingston, Ont., who commanded the Canadian Army force in the Netherlands, is charged with misuse of Netherlands' property requisitioned by the Canadian Army. He was relieved of his post last January and charged after an investigation of Canadian Army affairs in the Netherlands by Lt.-Gen. C. P. Montague, retired chief-of-staff of Canadian Army Headquarters.

Asks Simonds Disregarded

Col. McDonald declared in his address: "It would pain the entire army to see one of its most distinguished members come to grief on such charges as these. We would all rejoice at an acquittal.

"However, if the court feels Brig. Lister's later conduct did not measure up to his own earlier standards then a verdict of guilty . . . must be registered."

Lt.-Col. C. H. Gage summed up for the defense. He asked the court to disregard entirely evidence given today by Gen. Simonds, who was called in as a prosecution witness after there had been repeated references to him made by the defense.

(Gen. Simonds earlier Friday criticized Brig. Lister's living arrangements in Amsterdam.)

Col. Gage said: "How can we fail to fear that a commander who groundlessly suspended two chiefs-of-staff in a fortnight—who mere-

ly discovered he had stirred up a mare's nest—sees his own prestige as dependent on the outcome of this case as that of the character and career of the accused."

(Gen. Simonds admitted under cross-examination Friday that he suspended Brig. Lister last January on the word of a Dutch Customs official, who had heard from a Dutch wine dealer that Brig. Lister had been involved in black-market liquor transactions. The black-market charges were dropped following investigation.)

Reliability Lacking

"We cannot find in Gen. Simonds' testimony concerning these particular charges the reliability we should like," the defense counsel said. "If Gen. Simonds says he knew nothing about 58 Oranjenasaulaan (Brig. Lister's address in Amsterdam), we accept that.

"There were many things going on in his command which he did not know about, including what other senior officers were doing.

"If he did not know, then he is the only one in the forces who didn't."

The defense and prosecution arguments were completed before the court adjourned at 5:30 p.m. until 9:30 a.m. Saturday, when possibly it will close its doors to the public to consider the findings.

At this afternoon's sitting, the court granted a defense application to produce rebuttal witnesses if desired on two points in Gen. Simonds' testimony:

1. Gen. Simonds' statement that an Amstel Hotel suite in Amsterdam was not permanently reserved for him before last Dec. 17.

2. His statement that Brig. Lister's proper place to live was Apeldoorn (where Gen. Simonds had his headquarters), and that the reason for Brig. Lister's Amsterdam flat was recreational.

The court refused, however, a defense application to call witnesses to rebut an "implication" in Gen. Simonds' testimony that Dutch citizens resented to any degree the retention of private homes by the Canadian Army.

Fuss Preposterous

Col. Gage's address lasted 75 minutes, and Col. McDonald's 50 minutes. Lt.-Col. William Bradin of Kelowna, B.C., required 15 minutes to instruct the court on points of law.

Col. McDonald said the "fuss" made over Gen. Simonds' Amstel

Hotel accommodation was "preposterous."

"What we are concerned with is that no general officer and no witness has yet said that it was proper for this particular officer to have this particular house in this particular way," the prosecutor said. "When Brig. Lister said he did not even consider the number of rations going into the house I wondered whether this officer, as chief-of-staff, could be considered as setting the highest example to the force."

Addressing the court on legal points, Col. Bradin pointed out the charges were laid under Section 40 of the Army Act.

"For them to stand, the court must hold that Lister's conduct was prejudicial to good order in the army as such and at the same time to its military discipline," he said. "If Lister's conduct had no effect on these, the court could register an acquittal which would not be construed as a reflection on the officer who convened the court (Lt.-Gen. John Murchie, chief-of-staff of the Canadian Military Headquarters in London.)

Matter of Background

"The case must be judged against a background of a liberating army settling down in a friendly country while waiting to go home and living at standards which the court has heard described as phenomenal.

"In view of Mrs. Brouwer's (a Dutch civilian friend of Brig. Lister) presence at his flat whenever Brig. Lister was there does anyone seriously suggest that accommodation was always available there for senior officers to move in on the chief-of-staff for the night?

"Does anyone suppose that in November and December Lister burned up the highways three hours daily simply to have a nightly chat with Lt.-Col. (Philip) Tedman? (Former head of the Amsterdam amenities control committee who several weeks ago was court-martialed for irregularities in the organization).

"Rather than Canadian army amenities he was probably more concerned with Brig. Lister's own."

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