

49. Permitting escape of person in custody.—Any person subject to this Act who commits any of the following offences, that is to say, —

(a) when in command of a guard, piquet, patrol or post, releases without proper authority, whether wilfully or without reasonable excuse, any person committed to his charge, or refuses to receive any prisoner or person so committed; or

(b) wilfully or without reasonable excuse allows to escape any person who is committed to his charge, or whom it is his duty to keep or guard;
shall, on conviction by court-martial, be liable, if he has acted wilfully to suffer imprisonment for a term which may extend to fourteen years or such less punishment as is in this Act mentioned; and if he has not acted wilfully to suffer imprisonment for a term which may extend to two years or such less punishment as is in this Act mentioned.

NOTES

1. *Where the offence is wilful, the charge should not be dealt with summarily under [AA.s.80, 83](#) or [84](#).*

2. (a) *Where a doubt exists as to the accused having acted wilfully, he should be charged with having acted without reasonable excuse.*

(b) *An act or omission is wilful if it is done or made by a person with the intention of allowing the escape of a person committed to his charge or whom it is his duty to guard or keep.*

(c) *If the charge is one of wilfully committing the offence, the court may, if it is not satisfied that the act was wilful, make a special finding under [AA.s.139\(7\)](#) that the accused acted without reasonable excuse.*

3. *'Without proper authority's —(a) These words are in the nature of an exception and it will rest on the accused to show that he had the proper authority.*

(b) *The court may use their military knowledge ([AA.s.134](#)) with respect to whether any authority alleged by the accused to, exist was or was not sufficient.*

4. *'Any person'. —The person improperly released or allowed to escape need not be a person subject to AA.*

5. *A deserter or absentee without leave who surrenders himself, and who is being conducted by a NCO to rejoin his unit, is not "committed to the charge" of the NCO conducting him within the meaning of this section, but it may well be the NCO's duty to "keep or guard him". It will be noticed that, for the purpose of clause (a), the person released must have been committed to the charge of the accused, while for the purpose of clause (b) the person allowed to escape need only have been a person whom the accused was under a duty to keep or guard. The offender under clause (a) must be in the command of the guard, piquet, patrol or post, and previously have had the released person committed to his charge; while under clause (b) the offender who allows a person to escape need not have any such command.*