

1880
August 26.

CRIMINAL JURISDICTION.

Before Mr. Justice Oldfield and Mr. Justice Straight.

EMPRESS OF INDIA *v.* DOSABHOY FRAMJI AND ANOTHER.

Act III of 1880 (Cantonments Act), s. 14—"Soldier"—Sub-conductor—Sale of spirituous liquor.

A Sub-Conductor in the Commissariat Department is not a "soldier" within the meaning of s. 14 of Act III of 1880; and consequently the sale of spirituous liquor to the wife of such a person without the license required by that section is not an offence against that section.

THIS was a reference to the High Court, under s. 296, Act X of 1872, by Mr. W. Young, Sessions Judge of Bareilly. It appeared from the Sessions Judge's referring letter that on the 12th June, 1880, the Cantonment Magistrate of Bareilly had convicted and punished with fines one Dosabhoy Framji and one Ghulam Husain for offences against s. 14 of Act III of 1880, in that they had sold liquor to the wife of a European Sub-Conductor of the Commissariat Department, without the written license required by that section. The Sessions Judge was of opinion that these convictions were contrary to law, inasmuch as the term "European soldier" in s. 14 of Act III of 1880 did not include a Sub-Conductor of the Commissariat Department. The Sessions Judge observed in his referring letter as follows:—"There is no definition of the term 'European soldier' in the said Act III of 1880, and we have to search elsewhere for illustration. In common parlance the word 'soldier' is used to denote every person in the army from the Commander-in-Chief to the latest recruit, and also comprehends many who have long ago either definitively or conditionally renounced military life for civil pursuits. It is I think obvious that *this* is not the meaning contemplated by the use of the words 'European soldier' in s. 14, Act III of 1880, but they bear some less comprehensive meaning. By (e), Interpretation Clause of Act V of 1869, 'The Indian Articles of War,' it is laid down that 'soldier and soldiers include non-commissioned officers and all armed persons doing duty in the ranks of the army.' But it is to be observed that this definition does not include 'warrant-officers,' and Mr. Little is a

warrant-officer. This omission cannot be accidental, for only a few lines previously the same Act (V of 1869) contains a specification of persons to whom certain articles shall apply, and therein (*vide* Part I (*d*) of the said Act) warrant-officers are distinctly named as a class by themselves separate from non-commissioned officers, whose place in the list follows directly after them. Warrant-officers are of a grade as distinct from non-commissioned officers as are commissioned officers. Their duties, privileges, responsibilities are all distinct from those of non-commissioned officers, and Mr. Little is not an armed person, doing duty in the ranks. He wears no uniform, does not live in barracks, does not attend muster. To continue,—if the provisions of the ‘Mutiny Act’ (41 Vic., c. 10) are considered, we find that there is a general clause declaring that in its interpretation ‘all powers and provisions relating to soldiers shall be construed to extend to non-commissioned officers unless when otherwise provided.’—*Vide* s. 67, Mutiny Act. Here again the scope of the Act is *not* extended as far as warrant-officers, but only to non-commissioned officers. As far as the facts before me go, I do not think that there is good warranty for the extension of the term ‘European soldier’ in s. 14, Act III of 1880, so as to include by it ‘warrant-officers,’ as has been done by the Cantonment Magistrate. If the view then which I take is correct, the fines imposed by the lower Court were illegal.”

Mr. *Chatterji*, for Dosabhoy Framji.

The *Junior Government Pleader* (Babu *Dwarika Nath Banarji*), for the Crown.

The judgment of the Court (OLDFIELD, J., and STRAIGHT, J.,) was delivered by

STRAIGHT, J.—We are of opinion that the views expressed by the Sessions Judge in his referring letter are correct, and that a Sub-Conductor in the Commissariat Department is not a “soldier” within the meaning of s. 14, Act III of 1880. The two orders passed by Mr. Petre on the 12th of June last must therefore be quashed, and the fines, if they have been paid, returned.