

APPELLATE JURISDICTION (a)

*Referred Case No. 50 of 1870.*MARWADY BEEJARAJOO *against* HAYNES.

An European Soldier, doing duty as an Army Schoolmaster, not being liable to a Court of Requests, is not exempted from liability to a Cantonment Court of Small Causes.

The fact of being a Soldier is no bar to an action and is not the basis of a valid plea to the jurisdiction.

CASE referred for the opinion of the High Court by J. Macdongall, the Acting Judge of the Cantonment Court of Small Causes at Bellary, in Suit No 284 of 1870.

1871.
January 20:
R. C. No. 50
of 1870.

The suit was brought for the recovery of money due on a bond. Defendant pleaded that he was not amenable to the jurisdiction of the Court, inasmuch as he was an European Soldier on effective strength, doing duty as Army Schoolmaster, and as much was not liable to be taken out of service by any process.

The Judge was of opinion that defendant, being a non-combatant, was liable to be sued in the Cantonment Small Cause Court, and he referred the question :—

‘Whether or not a Soldier, not doing duty as a Soldier, but in Civil employ as Schoolmaster, in the Army, is amenable to the jurisdiction of this Court.’

No counsel were instructed.

The Court delivered the following

JUDGMENT :—So far as we know the fact of being a Soldier is no bar to an action and not the basis of a valid plea to the jurisdiction.

The Mutiny Acts and the practice based upon them give Soldiers certain privileges as to the enforcement of process, but none as to liability to the jurisdiction (*Lush. 687*).

The proper answer to the question referred is, that, not being liable to a Court of Requests, there is nothing to exempt the defendant in question from liability to the Cantonment Court.

He may not be liable to be taken out of Her Majesty's service in execution ; this is quite another question (*In Re-Reilly Ir. C. L. R., Q. B. 250, cited Fisher's Dig. I. 340*).

(a) Present : Holloway, Ag. C. J. and Innes, J.