

CORPORAL WILSON v. GAULT.

1898.

February 4.

P. C., Colombo, 50,608.

Criminal trespass—Entry by prostitute for purposes of open prostitution—Barracks—Public place—Intent to commit nuisance—Penal Code, ss. 427 and 261.

A barrack or barrack square is not a public place, but a prostitute who enters a barrack square with intent to commit fornication in view of and to the annoyance of the non-commissioned officers and soldiers who occupy the barrack in the vicinity of the square, is guilty of "criminal trespass" under section 427 of the Penal Code.

THE complaint in this case presented by Corporal Wilson of the North Lancashire Regiment was that the accused, being a prostitute, unlawfully entered the Colombo military barracks and committed criminal trespass under section 427 of the Penal Code, and that by remaining on the premises for purposes of prostitution she caused annoyance to persons in the neighbourhood, and so committed a public nuisance under section 283.

The Police Magistrate, after hearing Corporal Wilson, declined to issue process "because the accused entered the barracks, not "with the object of committing any offence or of annoying the "occupants of the barracks, but with the object of allowing the "occupants of the barracks to gratify their animal desires."

On a motion for a *mandamus*, LAWRIE, A.C.J., recommended the Police Magistrate to investigate the matter fully, as it seemed to him expedient "that it should be decided whether our criminal "law interferes in such a matter as that disclosed in the plaint, "whether it is an offence or whether the law leaves to officers in "command the task of so regulating the buildings and the grounds "that prostitutes cannot get into the barracks and barrack yard."

Thereupon the Magistrate heard witnesses. It appeared that the accused entered the military buildings repeatedly and had connection with the soldiers, notwithstanding that she was turned out often by the military police on duty. It was also proved that no particular orders had been issued to the military about the visits of prostitutes into the barracks, and that the general rule was that no civilian was to be admitted into the barracks without a pass.

The Magistrate acquitted the accused, as he found himself unable to alter the opinion he had already formed that "prostitutes "in entering or remaining in the barracks for the purpose "of the gratification of the animal desires of the soldiers "who occupy the barracks commit no criminal offence."

The Attorney-General appealed against the order of acquittal.

Dornhorst, for appellant.

1898. 4th February, 1898. LAWRIE, A.C.J.—
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A barrack or a barrack square is not a public place, for it is in possession of the commanding officer, and to it the public as such have no right of access.

It has been held in India that a person going into cavalry lines with a trooper of the regiment, but without the permission of the commanding officer, is not guilty of house trespass (*Starling, 531*).

The entry into a barrack square is a criminal trespass only if the intention be to commit an offence. The particular offence with which the accused is charged is having intended to commit fornication in view of and to the annoyance of the non-commissioned officers and soldiers who occupy the barrack in the vicinity of the square.

It has been decided in India that the fact that a prostitute visited a dâk bungalow, after being warned by the person in charge not to do so, is not indictable as a public nuisance under section 290, when she was not shown to have annoyed any one or committed any impropriety beyond what was involved in her attending upon a traveller at his request (*Mayne, 531*).

But here it is proved that the accused is a prostitute, and that she at least on two occasions on clear moonlight nights allowed men of the regiment to have connection with her in the open barrack square at places visible from the barracks.

The complainant, a corporal attached to the military police, saw this, and others could have done so and probably did.

Of course she was welcomed by some of the soldiers, but not by all of them, and in doing what she intended to do and what she did, I hold she committed the offence of criminal trespass on the barrack square with intent to commit a public nuisance, viz., fornication in sight of and to the annoyance of those who dwell in the vicinity. This holding is consistent with English Common Law. Russell (vol. 1, page 434) says: "In general all open lewdness is punishable by indictment of the common law, and it appears to be an established principle that whatever openly outrages decency and is injurious to public morals is a misdemeanour."

I therefore set aside the acquittal and find her guilty of criminal trespass with intent to commit a public nuisance, punishable under sections 427 and 261, and sentence her to pay a fine of Rs. 50, or in default of payment to fourteen days' rigorous imprisonment.