1942 *Present :* **Wijeyewardene J.**

AMEER NOOR AMITH *v.* MAJOR KUMARANAYAGAM *et al.*

In re Application for a Writ of Prohibition against the Members of a District Court Martial.

Court Martial—Jurisdiction to try member of Defence Force—Member of Defence Force called out for active service—Subject to Military Law—Defence Force Ordinance (Cap. 258), sec. 13 (3) and 19 (2).

A member of the Ceylon Defence Force called out by the Governor for active service in conjunction with a part of His Majesty's Regular Forces is subject to Military Law and is liable to be tried by a District Court Martial for having committed certain offences against two girls.

The Supreme Court has no power to issue a Writ of Prohibition against a District Court Martial.

THIS was an application for a Writ of Prohibition against a District Court Martial.

M. T. de S. Ameresekere, K.C., (with him *H. V. Perera, K.C., Barr Kumarakulasingam* and *H. W. Jayawardene*), for the petitioner.

M. W. H. de Silva, Solicitor-General (with him *Marshall Pulle, C.C.*), as *amicus curiae.*

Cur. adv. vult.

February 11, 1942. WIJEYEWARDENE J.—

This is an application for the grant of a mandate in the nature of a Writ of Prohibition under section 42 of the Courts Ordinance.

The petitioner is a soldier of the Defence Force stationed at Trincomalee. He was charged before a District Court Martial with having committed certain offences against two girls in November, 1941. The petitioner objected to the Court Martial trying him, on the ground that neither he nor the members of the Court Martial were persons subject to Military Law and that the Army Act did not apply to them. The Court Martial over-ruled the objection and decided to proceed with the trial. Thereupon, the petitioner submitted the present application to this Court for a Writ of Prohibition to be issued to the District Court Martial.

It is admitted that the petitioner and the officers concerned are members of the Defence Force Corps called out for active service by His Excellency the Governor under a Proclamation of September 1,, 1939, issued by virtue

of the powers vested in him by section 13 (1) of the Ordinance. It is further admitted that these Defence Force Corps are on duty in conjunction with a part of His Majesty's Regular Forces. Now section 19 (2) of the Ordinance enacts that if any part of the Defence Force is "on active service" with a part of His Majesty's Regular Forces, "the Army Act . . . . shall apply to the officers and soldiers of such force in like manner as they apply to the officers and men of the Regular Forces". The words "on active service" in that sub-section have to be interpreted in the light of section 13 (3), which states that every officer and soldier of a Defence Force Corps called out by the Governor under section 13 (1) "shall be deemed on active service" for the purposes of the Ordinance. The words "on active service" in section 19 (2) of the Ordinance would therefore appear to be used in a different sense from the words "on active service" in section 189 (1) of the Army Act. The joint effect of Sections 19 (2) and 13 (3) of the Ordinance would be to make the petitioner and the members of the Court Martial subject to Military Law. The petitioner has thus become liable to be tried on the present charge by the District Court Martial under the provisions of section 41 (5) of the Army Act (*44 and 45 Vict. c. 58*) which governs the persons subject to Military Law and not on active service within the meaning of section 189 (1) of the Army Act.

There is another reason why the Writ asked for cannot be granted. It was held by a Bench of Three Judges in *re* Writ of Prohibition[1] against Field General Court Martial that the Supreme Court had no power to issue a Writ of Prohibition to a Court Martial. That decision is binding on me.

The application is refused.

Application refused.