Before Mr. Justice McDonell and Mr. Justice Field.

LOBURI DOMINI AND OTHERS (PETITIONERS) *v.* THE ASSAM RAILWAY AND TRADING CO, LD., AND THE SECRETARY OF STATE FOR INDIA IN COUNCIL (OPPOSITE PARTIES.)* 1884 *June* 11.

Transfer of Suits—Judge exercising executive functions, Disqualification of—Bengal Civil Court's Act (VI of 1871), *s.* 25.—*Act XIV of* 1882, *s.* 25.

An officer who exercises executive and judicial functions having himself dealt with a certain matter and formed and expressed an opinion upon its merits in his executive capacity, and having further advised and directed litigation in support of this view, is, in consequence, disqualified from dealing as a Judge with this same question when it comes into Court and has to be dealt with judicially.

THIS was an application under s. 25 of the Civil Procedure Code for the transfer of certain appeals. The petitioner had instituted a suit against the Assam Railway and Trading Company in the Munsiff's Court at Debrugurh for the recovery of certain lands. On the objection of the Railway Company, the Secretary of State was also added as a defendant in the suit. The Munsiff decreed the claim. From that decree separate appeals were preferred in the Court of the Deputy Commissioner of Luckimpore; but were rfterwards transferred for final decision to the Court of the District Judge of the Assam Valley Districts. Thereupon the plaintiff (respondent) applied to the High Court for the transfer of the appeals, on the ground that the presiding Judge, who was also Commissioner, had taken an active part in defending the suit in the Munsiff's Court. A rule was issued on the other side (notice being also given to the Judge of the Assam Valley Districts) to show cause why the application for the transfer of the appeals should not be granted.

Baboo *Bhobani Churn Dutt* in support of the rule.

The Senior Government Pleader (Baboo *Annoda Pershad Bannerjee*) to show cause against the rule.

The facts disclosed on the affidavits are sufficiently stated in the judgment of the High Court (MCDONELL and FIELD, JJ.) which was delivered by

* Civil Rules Nos. 488, 49 and 490, of 1884 for transfer of appeals from the file of Mr. Ward, the Judge of the Assam Valley Districts.

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FIELD, J.—In these three cases the Court granted a rule to show cause why certain appeals should not be transferred for hearing from the Court of the Judge of the Assam Valley Districts to some other competent tribunal. The ground upon which this application for transfer was made was, that Mr. Ward, who was the Judge of the Assam Valley Districts, had, in his executive capacity as Commissioner, taken an active part in directing and preparing the defence in these suits before the Court of first instance, and had expressed a strong opinion upon the merits of the question involved. We think that, if nothing had occurred to alter the *status* of the Assam tribunal as it existed when we granted these rules, we should now have to make them absolute. But that something has occurred to alter that *status*, appears from an affidavit which has been read before us to-day. The first paragraph of this affidavit is as follows :—

"The present Judge of the Assam Valley Districts, before whom the appeal will come in the ordinary course, is Mr. Luttman-Johnson, an officer who has been in no way connected either directly or indirectly with the preparation of the case for the appellants in his executive capacity as Commissioner. Mr. Johnson returned from furlough and assumed charge of the office of Judge and Commissioner of the Assam Valley Districts only on the 5th of May 1884, his previous service had been in the capacity of Deputy Commissioner of Sylhet, and it was impossible for him to have had any cognizance that this suit was pending until after his arrival in India in the last week of March 1884. These circumstances effectually remove any objection that might be taken to Mr. Johnson's jurisdiction on the ground of the union of executive and judicial functions in his person." This affidavit is not as exact as it might, and should have been. It does not set out, as it ought to have set out, the dates upon which Mr. Luttman-Johnson proceeded upon furlough, and returned from furlough, and it also does not set out the length of time during which Mr. Luttman-Johnson was Deputy Commissioner of Sylhet. But we think that notwithstanding these defects, there is enough in the affidavit to show, that Mr. Luttman-Johnson personally is free from any such disqualification to hear and decide these cases, as existed in the case of Mr. Ward. We think, therefore, that no cause now exists,

so far as appears from the matter before us, for removing these appeals from the Court of the Judge of the Assam Valley Districts. The affidavit further proceeds as follows: "But even apart from this consideration, I (that is, the Officiating Secretary to the Chief Commissioner of Assam), on behalf of the aforesaid opposite party, affirm and say, that it is an advantage that suits like the present suit should be heard and decided in the local Courts, where the principles of the local land law are more familiar, more easily ascertainable, and can be argued upon with greater wealth of illustration, than in the High Court, placed at a distance from the province, and among the associations of the very different land law of Bengal." We do not concur in this argument when applied to the matter before us, and to the action of an appellate tribunal. Carried to its extreme possible limits, it would be an argument for disallowing to the people of this country the right of appeal to the Privy Council—a privilege which has always been much valued by them, and which has produced the best effects upon the administration of justice in India. But this argument, in fact, overlooks the essential question in the case, which is, whether an officer, who exercises executive and judicial functions, having himself dealt with a certain matter, and formed and expressed an opinion upon its merits in his executive capacity, and having further advised and directed litigation in support of this view is, in consequence, disqualified from dealing as a Judge with this same question when it comes into Court, and has to be dealt with judicially. It may be necessary, for reasons to which we need not advert on the present occasion, that in certain parts of this country executive and judicial functions should be united in the person of the same individual; but this union of duties is an abnormal state of things, and experience of its operation is not wanting in instances to show that, in the interests of justice, the discharge of judicial duties by an officer who also exercises executive functions cannot be too carefully watched. The jealousy of the law which forbids any Judge to try a cause in which he is a party or personally interested, or to adjudicate upon any proceeding connected with or arising out of such cause (see s. 25 of Act VI of 1871, which embodies this principle) does not rightly reflect any unworthy suspicion

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upon an individual Judge, while it secures and upholds one of the great pillars of judicial purity. In *Dimes* v. *The Proprietors of the Grand Junction Canal* (1) the Lord Chancellor of England (Lord Cottenham) had affirmed on appeal an order of the Vice-Chancellor, but because Lord Cottenham had an interest as a shareholder in the Canal Company to the amount of some thousand pounds, it was held, by the House of Lords, that he was disqualified from sitting as a Judge in the cause; Lord Campbell said: "No one can suppose that Lord Cottenham could be, in the remotest degree, influenced by the interest that he had in this concern; but, my Lords, it is of the last importance, that the maxim, that no man is to be a Judge in his own cause, hould be held sacred. And that is not to be confined to a cause in which he is a party, but applies to a cause in which he has an interest. Since I have had the honor to be Chief Justice of the Court of the Queen's Bench, we have again and again set aside proceedings in inferior tribunals because an individual, who had an interest in a cause, took a part in the decision. And it will have a most salutary influence on those tribunals when it is known that this High Court of last resort, in a case in which the Lord Chancellor of *England* had an interest, considered that his decree was, on that account, a decree not according to law, and was set aside. This will be a lesson to all inferior tribunals to take care not only that in their decrees they are not influenced by their personal interest, but to avoid the appearance of labouring under such an influence."

In this case the interest was a pecuniary interest. But the same principle applies where the interest, though not a pecuniary one, is such as to create a real bias. In the case of the *Queen* v. *Rand* (2) Blackburn, J., said: "Wherever there is a real likelihood that the Judge would, from kindred or *any other cause*, have a bias in favor of one of the parties, it would be very wrong in him to act." In the case of the *Queen* v. *Meyer* (3) one *H* entered into an agreement with a Local Board of Health to receive sewage and dispose of it over his farm. *H* having had differences

(1) 3 H. L. R., 759 (793.) (2) L. R., 1 Q. B., 230 (233).
(3) L. R., 1 Q. B. D., 173.

with the Local Board, diverted the sewage into a neighbouring river, and for this he was prosecuted by the Lee Conservancy. Upon the hearing of the summons, *Meyer*, who was the Chairman of the Local Board of Health, and had taken an active part in its proceedings, sat on the Bench with three other Justices. *H* objected to Meyer sitting as a Justice, but he remained notwithstanding. It was held, that the fact of *Meyer* having taken an active part in the proceedings of the Local Board created a real bias, and that he was therefore disqualified from sitting as a Judge in a matter which arose out of those proceedings. In the case of *Queen* v. *Milledge* (1) complaint was made to the Local Board of a nuisance upon premises belonging to *B* in the borough of *W*. The Board communicated with the Town Council of *W*, who were the urban sanitary authority under the Public Health Act of 1875, and required them to abate the nuisance. The Council, having made enquiries, passed a resolution that steps should be taken to remove the nuisance and took out a summons against *B*. The fact that two Justices were present as members of the Town Council when this resolution was passed, was held to create such an interest as would give them a bias in the matters, and they were therefore held disqualified to sit to hear the summons. In *Queen* v. *Gibbon* (2) a summons, to answer an offence under a Local Act for the improvement of the borough, was issued by a Justice who was a member of the Corporation and came on for hearing before other Justices, *none of whom were connected with the Corporation*; but it was held, that such other Justices were debarred from hearing the summons, because having been issued by a Justice who was a member of the Corporation, it had been issued by one who was virtually a prosecutor. These cases are strong to show that the law will presume an interest creating a bias, when a person, in the *bonâ fide* discharge of public duties has formed an opinion upon a matter and has acted upon that opinion, or sought to give effect to it as an agent on behalf of a public body which has become a litigant party in a cause. We think there is a very strong analogy between such a person and an executive officer of Government in this country, who has had

(1) L. R., 4 Q. B. D., 332. (2) L. R., 6 Q. B. D., 168.

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to form an opinion in the course of his executive duties and to give effect to that opinion upon his own authority, though subject to control from the Local Government.

In the present case, although we shall not now make these rules absolute, yet we feel bound to say that, under the circumstances, the petitioners were justified in applying to this Court; and in this view we think they are entitled to some costs. We allow them a gold mohur in each case and discharge the rules.

Rules discharged.

Before Mr. Justice Field and Mr. Justice Beverley.

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ASSANULLAH (PLAINTIFF) *v.* BUSSARAT ALI CHOWDRY (LUNATIC) BY HIS GUARDIAN PRANKRISTO DASS (DEFENDANT.)*

Enhancement of rent, Liability of land comprised in a zemindari to—Burden of proof in respect thereof—Dependent taluq—Resumed lakhiraj—Regulation XIX of 1793.

In a suit for enhancement of rent in respect of land which the defendant claimed to hold as a dependent *taluq*; *held*, the *onus* was upon the zemindar to show that the land was included in the zemindari at the time of the permanent settlement.

A ZEMINDAR, who was a purchaser from Government, brought certain suits for enhancement and arrears of rents in respect of some land comprised in his estate. The Munsiff dismissed the suits, on the ground that as the predecessors of the defendants had held the land in question as *lakhiraj*, and Government whilst in *khas* possession had resumed the land upon the terms and under the provisions of ss. 8 and 9 of Regulation XIX of 1793, the land must be considered as a dependent *taluq* and was as such exempted from enhancement of rent. The Subordinate Judge confirmed the judgment of the first Court. The plaintiff (zemindar) then preferred an appeal to the High Court.

Baboo *Rashbehari Ghose* for the appellant, contended, *inter alia*, (*a*) that the resumption in question was in reality made

* Appeals from Appellate Decrees Nos. 479 and 1373 of 1883, against the decrees of Baboo Roma Nath Seal, Second Subordinate Judge of Tipperah, dated the 2nd of February and 14th of March respectively, affirming the decrees of Baboo Janokee Nath Dutt, Munsiff of Commillah, dated 26th of January and 19th of May 1882.