APPELLATE CIVIL.

Before Sir Charles Sargent, Knight, Chief Justice, and Mr. Justice Kemball.

KA'SHINA'TH KHA'SGIVALA, APPLICANT, *v.* THE COLLECTOR OF POONA, OPPONENT.*

1884
July 8.

Land Acquisition Act X of 1870—*Assessor—Qualified assessor—Bias.*

The municipality of Poona wishing to take up the applicant's land, the Collector of Poona determined the amount of compensation, and tendered it to the applicant, who declined to accept it. The Collector thereupon referred the matter to the District Judge. Two assessors were appointed to aid him, one by the applicant and another by the Collector. The nominee of the Collector was the mámlatdár of Poona, a rate-payer and an *ex-officio* member of the municipality, who, whilst a member of the managing committee, had unsuccessfully negotiated with the applicant for the purchase of the ground. The District Judge made an award upholding the Collector's valuation.

Held, that the award was bad and must be set aside, as the Collector's nominee had under the circumstances a real bias, and was not a qualified assessor within the meaning of section 19 of the Land Acquisition Act X of 1870.

THIS was an application for the exercise of the High Court's Extraordinary Jurisdiction under section 622 of the Code of Civil Procedure (Act XIV of 1882).

The applicant, Káshináth Khásgivála, was the owner of a house and a piece of land in the city of Poona which the municipality of that place wished to acquire for the purpose of erecting a market. The Collector of Poona, with the view of acquiring the said land for and on behalf of the municipality, issued the requisite notices and proclamation under the Land Acquisition Act X of 1870 in the month of February, 1883, and took possession of it on the 14th of March, 1883. The Collector held a summary inquiry as regards the amount of compensation, and tendered to the applicant Rs. 12,880, which he declined to receive. The Collector thereupon referred the matter to the determination of the District Court under section 15 of the Act. The District Judge called upon the applicant and the Collector to appoint each an assessor to aid him. The former nominated Ráv Bahádur Krishnáji L. Nalkar, the latter Ráv Sáheb Bhagvant, mámlatdár of Poona. The applicant objected to the appointment of the mámlatdár, alleging that he was a subordinate of the Collector, an *ex-officio* member of the municipality

* Extraordinary Application, No. 9 of 1884.

1884

Káshináth Khásgivála v. The Collector of Poona.

who, whilst a member of the managing committee, had unsuccessfully negotiated with the applicant for the purchase of the land in question for the municipality, and was wholly an interested person. The Judge overruled the objection, and investigating the matter arrived at the conclusion that the amount tendered by the Collector was a liberal one, which he accordingly awarded with interest at 15 per cent.

Káshináth Khásgivála thereupon applied to the High Court.

On the 29th of January, 1884, he filed an affidavit in the High Court, which ran thus: "In the proceedings had in the District Court Ráv Sáheb Bhagvant, the mámlatdár of Poona, was appointed an assessor on behalf of the Collector. He was not a person fit to be appointed an assessor, because he was a member of the municipal committee and also a member of the managing committee, and he had a hand on behalf of the municipality in taking my ground and in taking other ground for the purpose of the market, and he used to render assistance to the municipal secretary, and was also present to conduct this matter on behalf of the municipality at the time when this compensation matter in connection with this land was going on before the Collector. And he was also subordinate to the Collector. For all these reasons the said Ráv Sáheb was not competent to do the work impartially in my matter."

On the 6th of February, 1884, a rule *nisi* was issued calling on the Collector to show cause why the award of the District Judge should not be set aside.

Hon. *C. F. Farran* (Acting Advocate General) with *Shántárám Náráyan* on behalf of the Collector showed cause.—The question is whether the mámlatdár of Poona is a qualified assessor. We submit he is. Section 19 of the Land Acquisition Act, No. X of 1870, leaves the appointment of assessors to the parties themselves. This implies that each party might appoint a partisan of his own. The Indian Act seems to be based on the English Act 8 and 9 Vic., c. 18. Section 4 of this Act gives power to the sheriff to appoint a jury, which is to consist of 24 indifferent persons duly qualified to act as common jurymen in the superior Courts. Having regard to the difference in the state of the two countries, the Indian Legislature

1884

KA'SHINA'TH KHÁSGIVA'LA v. THE COLLECTOR OF POONA.

requires the appointment of two qualified assessors. Absence of bias is not necessary in an assessor under the Indian Land Acquisition Act. The circumstance of the mámlatdár being on the Corporation and of his having sounded the applicant as to the price of his land, are not sufficient to disqualify him. Assuming that the functions of an assessor are judicial, or *quasi*-judicial, what disqualifies a Judge is direct pecuniary interest—*Dimes* v. *Grand Junction Canal Company*[1]. And the bias must be real; a mere possibility of bias in favour of one of the parties will not disqualify—*Queen* v. *Rand*[2]. In a case under the English Public Health Act, 1875 (38 and 39 Vic., c. 55), such a substantial interest in the result of the hearing as made it likely that a member of the town council of a borough had a real bias in the matter was held to disqualify him from acting as a Justice of the Peace—*The Queen* v. *Handsley*[3]; *The Queen* v. *Lee*[4].

Inverarity, with *Shámráv Vithal*, for the applicant in support of the rule.—We contend (1) that any pecuniary interest disqualifies, and (2) that any circumstance which renders it likely that a bias may exist, is sufficient to disqualify. The function of an assessor, as laid down in sections 27, 28, 29 and 30 of Act X of 1870, is judicial, or at least *quasi*-judicial. The Collector's nominee in this case was his subordinate, who took advantage of his position as mámlatdár and *ex-officio* member of the municipality and member of the managing committee and assisted the municipal secretary and the Collector from beginning to end. He was actively engaged in negotiating with the applicant, and it was his failure which led to the present proceedings. As a rate-payer and a member of the body interested in securing the lowest price for the land he was really biassed in the matter, and utterly disqualified to act as an assessor. The cases of *Queen* v. *Mayer* [5], *Queen* v. *Milledge* [6], *Queen* v. *Gibbon* [7], *Queen* v. *Justices of Great Yarmouth* [8], and *Queen* v. *Allen* [9] show that

(1) 3 H. L., 759.
(2) L. R., 1 Q. B., 230.
(3) L. R., 8 Q. B. D., 383.
(4) L. R., 9 Q. B. D., 394.
(5) L. R., 1 Q. B. D., 173.
(6) L. R., 4 Q. B. D., 332.
(7) L. R., 6 Q. B. D., 168.
(8) L. R., 8 Q. B. D., 525.
(9) 33 L. J., 98 M. C.

1884

Káshináth Khásgiväla v. The Collector of Poona.

any connection with the litigation or prosecution is sufficient to disqualify. The Indian case of *Wood* v. *Corporation of Calcutta* [1] shows the same thing. As defined in Wharton's Law Lexicon, an assessor is an 'associate in judgment'. Under the Land Acquisition Act an assessor is to form an opinion which is to be formally recorded and made the basis of the award. If it agrees with the opinion of the presiding Judge, it is to be a "final decision". The appointment of assessors undoubtedly proceeds from the litigating parties, but the appointment is to be of 'qualified' persons, and not of those interested in any way. It could never have been intended that a person should appoint his brother, or the husband his wife, or a trustee his *cestui que trust.* The award of the Judge is, therefore, bad, and the rule should be made absolute.

The judgment of the Court was delivered by

Sargent, C. J.—The question in this case arises on an application under section 622 of the Civil Procedure Code (XIV of 1882) that an award made on a reference by the Collector of Poona to the District Judge under section 15 of Act X of 1870 should be set aside on the groundthat Ráv Sáheb Bhagwant, Mámlatdár at Poona, who was appointed assessor by the Collector for the purpose of that reference, was not a fit person for the reasons mentioned in the affidavit of the applicant of the 29th January 1884. The reference in question was occasioned by the Collector being unable to agree with the applicant as to the price of a piece of land which the Municipal Corporation of Poona were anxious to take up for the purpose of a public market, and the special circumstances assigned in the affidavit as disqualifying the mámlatdár for the office are "that he was a member of the municipality and also of the managing committee; that he had a hand on behalf of the municipality in taking the land in question and in taking other ground for the same purpose; that he used to render assistance to the municipal committee's secretary, and was present to conduct this matter on behalf of the municipality at the time when the compensation matter was going on before the Collector; and, lastly, that he was a subordinate of the Collector."

(1) I. L. R., 7 Calc., 322.

1884

KÁSHINÁTH KHÁSGIVÁLA *v.* THE COLLECTOR OF POONA.

It was contended for the applicant, and we think rightly, that the office of assessor, more specially under Act X of 1870, is a *quasi*-judicial one, and that the rules laid down in *Dimes* v. *Grand Junction Canal Company*[1] and *Queen* v. *Meyer* [2]—that a person is disqualified to act as judge in a matter in which he has "a direct pecuniary interest, however small", or "a substantial interest likely to create a bias"—are equally applicable to an assessor. In Wharton's Law Dictionary an assessor is defined as "an associate in judgment", and by section 19 of Act X of 1870 the assessors are appointed "for the purpose of aiding the Judge in determining the amount of compensation." By section 21 it is provided that the Judge and assessors (as soon as appointed) shall proceed to determine the amount of compensation. Sections 24 and 25 lay down rules for the guidance of the Judge and assessors in determining the amount. Section 27 directs that the opinion of each assessor shall be delivered orally and recorded in writing by the Judge. Section 28 provides that the opinion of the Judge shall prevail in case of a difference of opinion upon "questions of law or practice or usage;" and, lastly, it is provided by sections 29 and 30 that when the Judge and one of the assessors agree as to the amount of compensation, their decision shall be final; and when the Judge differs from both the assessors, the decision of the Judge shall prevail, subject to the right of appeal by either party as given by section 35. It thus appears that the part assigned to the assessors by this Act is something even more than that of mere advisers. They not only influence the result by their opinions, but the opinion of either assessor who may be able to carry the Judge along with him determines irrevocably the amount of compensation.

But it was argued for the Collector that as the Act provides for the appointment of the assessors by the parties *themselves*, the Legislature could not have contemplated that the assessors would be unbiassed, and stress was laid on the circumstance that the Act only requires the assessors to be "duly qualified", and not "indifferent and qualified persons", as the 24 jurors are required to be whom the sheriff selects in the analogous case

(1) 3. H. L. Cases, 759. (2) 1 Q. B. D., 173.

1884

KÁSHINÁTH KHÁSGIVÁLA
v.
THE COLLECTOR OF POONA.

under Act 8 and 9 of Vic., c. 18, sec. 41. This inference from the mode of appointment appears to us to be correct so far as the supposed bias is one in the nature of favour arising out of the appointment itself, or indeed even where the previous relations, official or otherwise, between the assessor and his appointer have been such as to create a possibility of bias amounting to more than the mere suspicion of favour which was held in *Reg.* v. *Dean of Rochester*[1] and *Reg.* v. *Rand*[2] not to disqualify; but we do not think that the omission of the qualifying term "indifferent", which may be satisfactorily accounted for by the mode of appointment of the assessors provided by the Act, is sufficient reason for holding that the real bias which arises from a substantial interest in the dispute ought not to be held to disqualify persons who play so important a part as the assessors in determining the result of litigation under the Land Acquisition Act.

In the present case we think there was such a real bias. Although the Collector was the nominal litigant in the reference to the Civil Court, the persons who were financially interested in the result, and who must be regarded as the real litigants, were the Poona Municipality for whom the land was being taken up under the Act. And the evidence establishes that the mámlatdár was not only a rate-payer and an *ex-officio* member of the municipality, but that whilst acting as a member of the general committee of the municipality he had negotiated in May, 1882, with the applicant for the purchase of the land in question, and presumably it was owing to the failure of that negotiation that the municipality was finally obliged to resort to the Act.

We think that these facts, which are analogous to those which were held to disqualify in *Queen* v. *Meyer*, show that the mámlatdár had a substantial interest in the proceedings on the reference which could scarcely have failed to create in him a real bias as distinguished from a mere possibility of bias. We must, therefore, set aside the award, and direct that fresh proceedings be taken on the reference and a new award passed. The municipality to pay the applicant his costs of this application.

Rule made absolute.

(1) 17 Q. B., 1.

(2) L. R., 1. Q B., 232.