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wife was justified in resenting the presence in the flat of the other lady. Desertion is not broken if the husband does not offer to the wife a home on terms which a self-respecting wife can accept. I think in this case the wife was offered terms which she could not be expected to accept in the way of living in this flat, and therefore the return to Bombay and stay in the husband's flat did not operate to stop the desertion started in 1932. I think, therefore, there has been desertion for more than three years, and the wife is entitled to a decree *nisi* for dissolution of marriage with costs.

Attorneys for petitioner : Messrs. *Craigie, Blunt & Caroe.*

Attorneys for respondent : Messrs. *Pereira, Fazalbhoy & Co.*

Order accordingly.

N. K. A.

ORIGINAL CIVIL.

Before Sir John Beaumont, Chief Justice.

1938
April 14

P. D. SHAMDASANI, PETITIONER, *v.* THE CENTRAL BANK OF INDIA LTD., RESPONDENTS.*

Taxation of bills of costs—Taxing officer debtor of respondents—Bias—Possibility of—Practice—Review :

On an application by the petitioner to have a taxation between him and the respondents quashed on the ground that the Assistant Taxing Master who was a debtor of the respondents was not competent to entertain the taxation and ought not to have entertained the taxation.

Held, quashing the taxation, that persons exercising judicial functions must be in an entirely impartial position. They ought not to have any interest, pecuniary or otherwise, in the subject matter of the litigation, and they must not be in such a position that any bias in favour of one side or the other can be imputed to them. Actual bias need not be proved, if the relationship is such that bias may seem likely.

Frome United Breweries Co. v. *Bath Justices*, [1] followed.

In review of taxation the Judges do not lightly interfere with the discretion exercised by the Taxing Master and accordingly they are entitled to have an entirely unbiased opinion of the Taxing Master to guide them.

*Miscellaneous application of 1938.

[1] [1926] A. C. 586.

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APPLICATION to quash taxation.

The material facts appear sufficiently in the judgment.

P. D. Shamdasani (in person). A debtor to be a Judge in a matter between his creditor and another is against public policy.

Rex v. *Sussex justices. Ex parte McCarthy*,(1) *Frome United Breweries Co.* v. *Bath Justices*,(2) *Rex* v. *Essex Justices. Ex parte Perkins*,(3) *Aloo Nathu* v. *Gagubha Dipsangji*,(4) and *Parashuram Dataram* v. *Hugh Golding Cocke*,(5) referred to. (He was stopped.)

M. L. Manekshaw for the respondents. The principle is not disputed. The defect could be cured by the chamber Judge in review going into the discretionary items in the bills. There was no possibility of a real bias. The Assistant Taxing Master had no pecuniary interest in the subject matter. Even if the Bank gained he had to pay. The bias must be in relation to the litigation. *The Queen* v. *Rand*(6) and *Reg.* v. *The London County Council; Re The Empire Theatre*, (7) referred to.

BEAUMONT C. J. This is an application made to me to quash a taxation of costs between the applicant Mr. Shamdasani and the Central Bank of India, Limited, before the Assistant Taxing Master on the ground that he ought not to have entertained the taxation. Three bills were taxed by the Assistant Taxing Master, and the applicant took out summonses to review the taxations. In the course of the hearing of those applications for review the applicant discovered that the Assistant Taxing Master was a debtor of the Central Bank of India. There is no dispute about the facts. I have asked the learned Assistant Taxing Master

(1) [1924] 1 K. B. 256.
(2) [1926] A. C. 586.
(3) [1927] 2 K. B. 475.
(4) (1895) 19 Bom. 608.
(5) (1929) 53, Bom. 716.
(6) (1865) L. R. 1 Q. B. 230.
(7) (1894) 71 L. T. 638.

what the position is. He tells me that he did borrow money from the Central Bank of India in order to pay certain Government dues on property which had descended to him. The matter was entirely a business transaction, and the Bank were not pressing for payment, and I do not for a moment suggest that the Assistant Taxing Master was in any way affected in taxing the bills by the fact that he had borrowed money from the Bank. But the applicant contends that in principle the Asssistant Taxing Master was not a proper person to tax these bills. The learned Judge who was hearing the summonses to review held, no doubt rightly, that on such summonses he could only review items, and he could not go into the question whether the whole taxation was bad from the start. The present application is made to me as Chief Justice to quash a taxation by an officer of this Court, on the ground that he ought not to have entertained it. My jurisdiction has not been, and I think could not be, disputed.

The principle has been laid down over and over again that persons who are exercising judicial functions must be in an entirely impartial position. They ought not to have any interest, pecuniary or otherwise, in the subject-matter of the litigation, and they must not be in such a position that any bias in favour of one side or the other can be imputed to them. Actual bias need not be proved, if the relationship is such that bias may seem likely. The principle was stated by Lord Cave in *Forme United Breweries Co.* v. *Bath Justices*[1], where the learned Lord Chancellor says (p. 590) :—

> "My Lords, if there is one principle which forms an integral part of the English law, it is that every member of a body engaged in a judicial proceeding must be able to act judicially ; and it has been held over and over again that, if a member of such a body is subject to a bias (whether financial or other) in favour of or against either party to the dispute or is in such a position that bias must be assumed, he ought not to take part in the decision or even to sit upon the tribunal."

It seems to me impossible to say that a debtor is not, from the nature of the case, subject to a bias in favour of a creditor

[1] [1926] A. C. 586.

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who can call in his money. He naturally desires to do nothing to annoy his creditor. It is not enough for the Court to say it is satisfied that in a particular case no bias existed or was shown. It is necessary that the position be such that the general public may feel confident that justice has been done by an impartial tribunal and it is of the highest importance that the principle to which I have referred should not be encroached upon. Probably if the learned Assistant Taxing Master had remembered about this debt, and had disclosed the facts, no objection would have been taken to his dealing with the taxation. But as this did not happen, I think that he was not competent to entertain the taxation and that the applicant is entitled to take the objection that the taxation is bad *ab initio*. I do not think it is any answer to say that on the application to review, the Judge at any rate will not be biassed. It is well known that in practice Judges in review do not lightly interfere with the discretion exercised by the Taxing Master, and the mere fact that the respondents in this case have offered to consent to the Judge reviewing matters of discretion does not, to my mind, get over the difficulty. The Judge is himself entitled to have the entirely unbiassed opinion of the Taxing Master to guide him. In my opinion I must quash the taxation here and direct the bills to be taxed afresh by the Taxing Master himself.

I think the applicant must have the costs of the proceedings throughout. He must clearly have the costs of this application. I felt some doubt whether he ought to have the costs of the old taxation, because it may well be that the fresh taxation will not produce any different result, and if that happens money will merely have been wasted by these proceedings. But, at the same time, I think that technically the Bank were in possession of the material knowledge that the Assistant Taxing Master was their debtor. I do not doubt that they did not remember the fact, and did not instruct their solicitors about it. Probably the department dealing with the taxation knew nothing about the debt.

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But, at the same time, technically the Bank had the requisite knowledge, and if they had disclosed it, the whole of the costs thrown away on this abortive taxation would have been saved. I think the proper order is that the Bank pay the costs of this application and the costs of the old taxation and the costs of the applications for review.

Attorneys for respondents: Messrs. *Payne & Co.*

Proceedings quashed.

N. K. A.

APPELLATE CIVIL.

Before Mr. Justice Macklin and Mr. Justice Sen.

1938
June 22

GOPAL TRIMBAKRAO CHANWADKAR AND OTHERS (ORIGINAL DEFENDANTS), APPELLANTS *v.* CHIMABAI BHRATAR PRABHAKAR LAXMAN NAGPURKAR AND OTHERS (ORIGINAL PLAINTIFFS), RESPONDENTS.*

The Bombay Civil Courts Act (Bom. Act XIV of 1869), s. 8†—Suit for account—Plaint valued at Rs. 200—Decree for more than Rs. 5,000—Court of Second Class Subordinate Judge—Appeal against decree—Forum of appeal.

In a suit for an account in which the plaint was valued at Rs. 200 a Second Class Subordinate Judge passed in favour of plaintiffs a decree for Rs. 12,185-7-8.

The defendants having appealed to the High Court, a preliminary objection was taken at the hearing of the appeal, namely, that the High Court had no jurisdiction to hear the appeal, it being an appeal from a decision of a Subordinate Judge of the Second Class:—

Held, that by s. 8 of the Bombay Civil Courts Act, 1869, the appeal lay to the District Court and not to the High Court.

Ibrahimji Issaji v. *Bejanji Jamsedji*,[1] distinguished.

Shet Kavasji v. *Dinshaji*,[2] referred to.

FIRST APPEAL from the decision of D. B. Katpitia, Joint Subordinate Judge, Poona, in Civil Suit No. 840 of 1932.

*First Appeal No. 112 of 1935.

†The section runs as follows:—

"Except as provided in sections 16, 17 and 26, the District Court shall be the Court of Appeal from all decrees and orders passed by the subordinate Courts from which an appeal lies under any law for the time being in force."

(1) (1895) 20 Bom. 265.

(2) (1897) 22 Bom. 963.