1893
AUG. 14.

CRIMINAL REVISION.

18 B. 440.

THE accused was prosecuted before the First Class Magistrate of Poona under s. 113 of the Indian Railway Act (IX of 1890) for travelling in a railway without a ticket.

The Magistrate ordered the accused to pay the Railway Company Rs. 2-1 on account of railway fare, and Re. 1 as excess charge, or in default to undergo three days' simple imprisonment.

The High Court in the exercise of its revisional jurisdiction sent for the record of the case.

[441] There was no appearance either for the Crown or for the accused.

JUDGMENT.

Per Curiam.—We do not think that the provision in s. 113 of the Railway Act, which directs that on failure to pay on demand excess charge and fare when due, the amount shall on application be recovered by a Magistrate as if it were a fine, authorized the Magistrate to impose imprisonment in default. Section 64 of the Indian Penal Code applies to all fines imposed for offences. And by s. 5 of the General Clauses Act (I of 1868) ss. 63 to 67 of the Indian Penal Code and 63 of the Criminal Procedure Code (now s. 386) apply to all fines imposed under the authority of any Act hereinafter to be passed. But we cannot say that the excess charge and fare referred to in s. 113 of Act IX of 1890 is a fine, though it may be recovered as such. The provisions of s. 64 of the Indian Penal Code provide imprisonment as a punishment for the offender, and not merely as a means of recovering the fine, which can be recovered under s. 386 of the Criminal Procedure Code (X of 1882). It is true that in s. 560 of the Criminal Procedure Code (as in the old s. 250) it seems to be assumed that the expression "recoverable as a fine" includes the power of imprisonment in default of payment, but the language of s. 552 suggests a contrary inference. We think, then, that we cannot safely determine the construction of s. 113 of the Railway Act by any analogy based on the wording of either s. 552 or 560 of the Criminal Procedure Code, but must be guided by the general principle that imprisonment cannot be ordered except in cases in which it is expressly prescribed.

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18 B. 442.

[442] REVISIONAL CRIMINAL.

Before Mr. Justice Candy and Mr. Justice Fulton.

QUEEN-EMPRESS *v.* PHEROZSHA PESTONJI.* [17th August, 1893.]

Judge—Disqualification of a Judge—Personal interest—Crim. Pro. Code (Act X of 1882), s. 555—Bombay District Municipal Act (VI of 1873), s. 84—Municipal offence.

The mere fact that a Magistrate is the vice-president of a district municipality and chairman of the managing committee does not disqualify him from trying a charge of an offence brought by the municipality under Bombay Act VI of 1873. But if he has taken any part in promoting the prosecution, as, for instance, by concurring in sanctioning it at a meeting of the managing committee or otherwise, he will be disqualified by reason of the existence of a personal interest over and above what may be supposed to be felt by every municipal commissioner in the affairs of the municipality.

[R., 23 C. 44 (47); U.B.R. (1897—1901) 133 Cr.]

THIS was an application under s. 435 of the Code of Criminal Procedure (Act X of 1882).

* Criminal Revision Application No. 163 of 1892.

1893
AUG. 17.

REVISIONAL CRIMINAL.

18 B. 442.

The accused was prosecuted by the Municipality of Broach for allowing sullage water from his house to flow into a public street.

The trying Magistrate was vice-president of the municipality and chairman of the managing committee. He convicted the accused and sentenced him to pay a fine of annas two under s. 54 of the Bombay District Municipal Act (VI of 1873).

Against this conviction and sentence the accused applied to the High Court under its revisional jurisdiction.

Manekshah Jehangirshah, for accused:—This was a prosecution by the Municipality of Broach. The trying Magistrate was vice-president of the municipality and chairman of the managing committee. As such, he was not competent to try the case. There was a likelihood of his being biassed against the accused. He ought not, therefore, to have taken cognizance of the case. Refers to *Nobin Krishna* v. *The Chairman of the Suburban Municipality* (1); *Kharak Chand Pal* v. *Tarak Chunder Gupta* (2).

There was no appearance for the Crown.

JUDGMENT.

[443] FULTON, J.—Having regard to s. 84 of the Bombay District Municipal Act and the explanation to s. 555 of the Criminal Procedure Code, we do not think that the mere fact that the Magistrate was vice-president of the municipality and chairman of the managing committee disqualified him from trying this case. It cannot be said that as chairman of the managing committee or as vice-president he was necessarily a party to the prosecution any more than any municipal commissioner was a party, and any disqualification on the ground of his being a municipal commissioner is removed by the sections above referred to. But if it were shown that he had taken any part in promoting the prosecution, as, for instance, by concurring in sanctioning it at a meeting of the managing committee or otherwise, he would doubtless be disqualified by reason of the existence of a personal interest over and above what may be supposed to be felt by every municipal commissioner in the affairs of the municipality. This has been ruled in England in *The Queen* v. *Lee* and others (3), in reference to a provision in the Public Health Act, 1875, which provides that "except as expressly otherwise provided, any person shall not be disqualified or disabled to act as justice of the peace, coroner, juror or otherwise in any matter arising under or in relation to this Act by reason of his being a rate-payer in the borough or liable to any payments under this Act or a member of the Council or any committee thereof." In *The Queen* v. *Handsley* (4) it was held under this section that it was not sufficient, in order to establish the disqualification of a justice, to prove that he was a member of the town council, but that it must be shown that he had a substantial interest in the results of the trial, such as to make it likely that he had a real bias in the matter.

In the present case it is not alleged that the complaint was instituted at the instance of the managing committee. Our attention has been drawn to the cases reported in I. L. R., 15 Mad., 50 and I. L. R., 10 Calc., 194 and 1030, but they do not appear in any way inconsistent with the principles above laid down.

We must dismiss the application.

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(1) 10 C. 194.
(2) 10 C. 1030.
(3) 9 Q. B. D. 394.
(4) 8 Q.B. D. 383.