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the only reasonable conclusion to come to is that it was a fair partition and, therefore, binding on the plaintiff.

Under these circumstances there is no necessity to go into the question arising as to the validity of the alleged adoption by Dánává.

Decree confirmed.

APPELLATE CIVIL.

Before Mr. Justice Bayley, Acting Chief Justice, and Mr. Justice Fulton.

1894. *July 6.*

ALOO NATHU AND OTHERS (ORIGINAL DEFENDANTS), APPLICANTS, *v.* GAGUBHA DIPSANGJI, A MINOR, BY THE ADMINISTRATOR OF HIS ESTATE THE COLLECTOR OF AHMEDABAD (ORIGINAL PLAINTIFF), OPPONENT.*

Judge—Bias—Possessory suit in a Mámlatdár's Court—Mámlatdár acting in the management of the property under the orders of the Tálukdári Settlement Officer—Disqualification of the Mámlatdár as a Judge.

No Judge can act in any matter in which he has any pecuniary interest, nor where he has any interest, though not a pecuniary one, sufficient to create a real bias.

A Mámlatdár who under the orders of the Tálukdári Settlement Officer had acted in the management of the property in dispute in a possessory suit before him, was held to have such an interest as to disqualify him from trying the case.

Where an officer of Government has in the course of his executive duties 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 in a cause, the law will presume an interest creating a bias sufficient to disqualify him as a Judge.

APPLICATION under the extraordinary jurisdiction (section 622 of the Civil Procedure Code, Act XIV of 1882) against the decision of Ráo Sáheb G. G. Desái, Mámlatdár of Dhandhuka in the Ahmedabad District, passed in a possessory suit.

The Collector of Ahmedabad as the administrator of the estate of one Gagubha Dipsangii, a minor, instituted a suit against the defendants in the Court of the Mámlatdár of Dhandhuka to recover possession of certain fields under the Mamlatdars Act (Bombay Act III of 1876). The defendants claimed to be permanent tenants.

* Application No. 20 of 1894 under the extraordinary jurisdiction.

The estate of the plaintiff was managed by the Collector of Ahmedabad, and the Mámlatdár had taken part in the management under the orders of the Tálukdári Settlement Officer.

During the progress of the suit the defendants applied to the Mámlatdár for the transfer of the case from his Court to some other Court on the ground that he was interested in the subject-matter of the suit, but the application was rejected.

The Mámlatdár awarded the claim.

The defendants then presented an application to the High Court under its extraordinary jurisdiction and obtained a rule *nisi* calling upon the plaintiff to show cause why the decision of the Mámlatdár should not be set aside on the ground (*inter alia*) that as the Collector carried on the management of the minor's estate through the Tálukdári Settlement Officer and the Mámlatdár, the Mámlatdár was wrong in hearing and deciding the suit.

Nagindás Tulsidás Márphatia, for the applicants (defendants): —The Mámlatdár of Dhandhuka was not competent to decide the suit. He manages the estate under the orders of the Collector and Tálukdári Settlement Officer. As a Judge he would uphold the action of his superior officers.

Ráo Sáheb *Vásudeo J. Kirtikar*, Government Pleader, for the opponent (plaintiff):—The Mámlatdár simply acts as an executive and ministerial officer under the orders of the Collector and the Tálukdári Settlement Officer in connection with the subject-matter of the suit, and that being so he cannot have any bias as a judicial officer—*Queen* v. *Rand*[1]. It has been held that a Magistrate who is a witness in a case is not disqualified from disposing of it—*Queen* v. *Farrant*[2]. These authorities show that even supposing that the Mámlatdár may have held a consultation with the Collector and the Tálukdári Settlement Officer with respect to the lands in suit, and may have expressed his opinion to those officers, still these circumstances would not disqualify him from disposing of the case. The question to be considered is, whether the Mámlatdár has shown any bias in recording and appreciating the evidence, and we submit that he has not shown any such bias.

(1) L. R., 1 Q. B., 230. (2) L. R., 20 Q. B., 58.

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The Mámlatdár rejected the application for the transfer of the case because it was made at the last stage.

FULTON, J.:—The plaintiff is a minor under the guardianship of the Collector of Ahmedabad, who manages the estate through the Tálukdári Settlement Officer, and the question which we have to determine is, whether the Mámlatdár, who acts in the management of the property under the orders of the Tálukdári Settlement Officer, has such an interest in the plaintiff's affairs as to disqualify him from trying this case.

The subject is fully discussed in the case of *Loburi Domini* v. *The Assam Railway and Trading Company, Ld.*[1], which shows that where an officer of Government has in the course of his executive duties "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," the law will presume an interest creating a bias sufficient to disqualify him as a Judge. This principle, as remarked by Mr. Justice Field, does not rightly reflect any unworthy suspicion upon an individual Judge, while it secures and upholds one of the great pillars of judicial purity. No Judge can act in any matter in which he has any pecuniary interest—*Dimes* v. *The Proprietors of the Grand Junction Canal*[2], nor where he has an interest, though not a pecuniary one, sufficient to create a real bias. "Whenever there is a real likelihood that the Judge would, from kindred or any other cause, have a bias in favour of one of the parties, it would be very wrong in him to act"—*Queen* v. *Rand*[3].

The circumstances constituting an interest from which a bias may be presumed, vary in each case. In the present case the Collector in his affidavit has stated that the Mámlatdár was simply a ministerial officer carrying out the orders of the Tálukdári Settlement Officer who has been managing the minor's estate on behalf of the Collector, and that he was not connected with the management otherwise than as acting under the orders of the Tálukdári Settlement Officer. But this affidavit is not sufficiently full to enable us to determine whether or not the Mám-

(1) I. L. R., 10 Calc., 915. (2) 3 H. L., 759. (3) L. R., 1 Q. B., 230.

latdár was interested in the management of this estate in such a way as to render it probable that he would have a bias in favour of the plaintiff; and before deciding this question we should like to know whether in his correspondence with the Tálukdári Settlement Officer he was in the habit of expressing his opinion and advising generally on the management of the estate, and whether in this particular case he had made any recommendation as to the desirability or otherwise of taking proceedings against the defendants or against other tenants similarly situated. From the affidavit it appears that the suit was suggested by the mother of the minor and the taláti of Rojka, but we desire to be informed whether or not the Mámlatdár was consulted on the subject, and must call on the Government Pleader to obtain a further affidavit on this point from the Collector or Tálukdári Settlement Officer.

It was urged that this suit must be brought in this Mámlatdár's Court, as there was none other competent to entertain it. But the Subordinate Judge's Court had concurrent jurisdiction, and the mere fact that its procedure may not be so expeditious as the Mámlatdár's, does not justfy any argument founded on necessity.

With these remarks we must now adjourn the further hearing of this application for a month, in order to enable the Government Pleader to procure the necessary affidavit.

1894, *August* 28. FULTON, J.:—The Government Pleader states that the Collector is unable to make the affidavit called for, as he is not prepared to state that the Mámlatdár was on no occasion consulted about the management of this estate, and that it is quite possible and likely that he was consulted previous to the institution of the proceedings. The rule must, therefore, be made absolute and the decree must be set aside with costs in this Court.

Rule made absolute.