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sons of the parties—and they have many—might claim a share, not only in the family share, but in the devasthan share and office also, and this process might go on with each generation, frittering away the income, and making the service wholly ineffective. The lower Court appears to have assumed, without any such evidence as is suggested in *Mohunt Rumun Dass v. Mohunt Ashbul Dass*⁽¹⁾, that the office is partible with the income. The practice of many generations of the parties must be considered in settling the questions of impartibility, and that practice is in this case against partition with the one single exception of what took place in 1838. It is, however, not necessary to discuss this question further in this place. The relief by way of injunction was plainly one which the lower Court was not in a position to grant effectively, and the right to share in the devasthan income naturally follows the devolution of the office.

We accordingly confirm the decree of the lower Court, and reject the appeal, with costs on appellant.

The appellant should pay the Court-fees which he would have had to pay if he had not been permitted to appeal as a pauper.

Decree confirmed.

⁽¹⁾ 1 Cal. W. R., 160.

CRIMINAL REVISION.

Before Mr. Justice Candy and Mr. Justice Ranade.

IN RE P. A. RODRIGUES.*

Criminal Procedure Code (Act X of 1882), Sec. 555—Disqualification of a Judge—Pecuniary interest.

The accused was a compounder in the employ of Treacher & Co. He was tried and convicted by the Presidency Magistrate of criminal breach of trust as a servant in respect of certain goods belonging to the company. It appeared that the Magistrate was a shareholder in the company which prosecuted the accused.

Held, that the Magistrate was disqualified from trying the case. As a shareholder of the company he had a pecuniary interest, however small, in the result of the accusation, and was, therefore, "personally interested" in the case within the meaning of section 555 of the Code of Criminal Procedure (Act X of 1882).

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The words "personally interested" in the section are not intended to exclude pecuniary as distinguished from a personal interest.

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

The accused was a compounder in the service of Messrs. Treacher & Co.

He was charged with having sold certain goods belonging to the company of the value of Rs. 20, and dishonestly appropriated the money to his own use.

The accused was convicted by Mr. Hamilton, Presidency Magistrate, of criminal breach of trust as a servant, and sentenced to one month's rigorous imprisonment under section 408 of the Indian Penal Code (Act XLV of 1860).

The accused thereupon moved the High Court under its revisional jurisdiction to set aside the conviction and sentence, chiefly on the ground that the Magistrate, being a large shareholder in Treacher & Co., had a substantial interest in the prosecution, and was, therefore, disqualified from trying the case.

The High Court sent for the record and proceedings of the case.

The accused appeared in person.

Inverarity for the complainant.

CANDY, J. :—P. A. Rodrigues, a compounder in the employ of Messrs. Treacher & Co. at Bombay, was on 2nd March, 1895, convicted by Mr. Hamilton, Presidency Magistrate, of theft or criminal breach of trust as a servant in respect of Rs. 19-12 and sentenced to suffer one month's rigorous imprisonment. Rodrigues applied to this Court in its revisional jurisdiction, alleging among several grounds that the Magistrate, being a large shareholder in Treacher & Co., was disqualified from sitting in judgment in the case. The record and proceedings were called for, and the accused was released on his personal recognizance in the sum of Rs. 100 and one surety in a like amount. We understand that the learned Judges, who called for the records and proceedings, did so simply on the ground above stated, no notice being then taken of the other allegations made in the petition. We

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have, therefore, confined ourselves for the present to the point above noted. Mr. Inverarity has argued the question on behalf of the complainant in the case, *i.e.*, H. R. Hoyles, an assistant of Messrs. Treacher & Co. No one has appeared for the accused person.

The Magistrate has informed the Court that he was a shareholder in Treacher & Co. when he passed sentence on Rodrigues. Section 555 of the Criminal Procedure Code provides that "no Magistrate shall * * * try any case to or in which he is a party or personally interested." This is simply an enactment of the rule of common law, that no one can be a judge in a case in which he has a pecuniary or personal interest. The words in the section "personally interested" are not intended to exclude a pecuniary as distinguished from a personal interest. For it is evident that a pecuniary must be a personal interest, though there may be a personal interest which is not pecuniary. And the distinction in common law between these interests is well settled. To quote the language of Mr. Justice Stephen in the *Queen v. Farrant* ⁽¹⁾: "It is a leading principle of English law that no one is allowed to be a judge in his own case; that means that the least pecuniary interest in the subject-matter of the litigation will disqualify any person from acting as a judge. * * * But the law does not stop there, for there may be an interest which has substantially the same effect as a pecuniary interest, though it is not of the same nature." This distinction was dwelt upon by the Court of Appeal in the recent case of *Allinson v. General Council of Medical Education and Registration* ⁽²⁾, which explained and followed the decision of the same Court in *Leeson v. General Council of Medical Education and Registration* ⁽³⁾. In *Allinson's* case the Master of the Rolls (Lord Esher) said, p. 758: "Where a person who has taken part in the judicial proceedings or, you might say, has sat in judgment on the case has any pecuniary interest in the result, however small, the Court will not inquire whether he was really biased or likely to be biased. The Court will say at once, it is

(1) 20 Q. B. D., 58 at p. 60.

(2) (1894) 1 Q. B., 751.

(3) 43 Ch. D., 366.

against public policy that a person who has any monetary interest, however small, in the result of judicial proceedings should take part in them as a judge. The Court will inquire no further, but will say at once that he is disqualified. But *Ieeson's Case* also decides that there are other relations to the matter of a person who is to be one of the judges which may incapacitate him from acting as a judge, and the crucial question is whether in substance and in fact one of the judges has also been an accuser. The question is not whether in fact he was or was not biased. The Court cannot inquire into that. But he must bear such a relation to the matter that he cannot reasonably be suspected of being biased." So, too, Lopes, L. J., p. 762: "A person who has a pecuniary interest in the result of an accusation cannot adjudicate on it. The inference at once arises that he is interested. But when no pecuniary interest exists, or is even suggested, it is a question of substance and fact whether one of the judges has in truth also been an accuser. * * * In such cases the proper question to be asked is this: Whether there is any reasonable—any real or substantial—ground for suspecting bias."

Now it is clear from these authorities that if in the present case the Presidency Magistrate, Mr. Hamilton, had a pecuniary interest, however small, in the result of the accusation, then he was at once disqualified from adjudicating on the case, and it would be unnecessary for us to inquire whether there was any real or substantial ground for suspecting bias. In our opinion Mr. Hamilton had a pecuniary interest. For he was and is a shareholder in Treacher & Co., Limited. The complainant before him was one of the assistants of that company. The accused before him was a compounder in the employment of that company. The accusation was that the compounder had stolen or committed criminal breach of trust in respect of about Rs. 20, the property of the said company. If the position had been reversed, if the complainant had been the accused, charged with having embezzled about twenty thousand rupees of the company's money, it could hardly have been contended that a shareholder in Treacher & Co. would not have been pecuniarily interested in the result of the accusation. But the Court cannot

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measure the pecuniary interest. As was said by Mr. Justice A. L. Smith in the *Queen v. Gaisford* ⁽¹⁾, "the fact that a man has even the slightest pecuniary interest operates to disqualify him from adjudicating upon a case." To the remark that in this case the accused was in a certain sense an employé of the Magistrate, and the money alleged to have been stolen may be said to have been partly the property of the Magistrate, Mr. Inverarity objected and mentioned a recent case in which it was held that individual members of a company are not the corporation. He was no doubt referring to the case of *George Newman & Co., Limited* ⁽²⁾, in which Lindley, L. J., in delivering the judgment of the Court of Appeal remarked that "an incorporated company's assets are its property and not the property of the shareholders for the time being." But that remark must be taken in connection with its context: George Newman & Co. was a private company consisting of George Newman and a few relatives and subordinates. The directors were George Newman and his brothers and one Wright, and they gave to George Newman out of the company's assets two sums of £3,000 and £3,500 with the consent of the other shareholders, who were of age. On the winding up of the company, the liquidator sought to recover these sums from George Newman. To the argument that the whole body of shareholders really assented to what the directors had done, the Lord Justice replied by showing that the corporate capacity of the company could not be ignored, and that, even if the shareholders in general meeting could have sanctioned the making of these presents, no general meeting to consider the subject was ever held, and so the liquidator, as representing the company in its corporate capacity, was entitled to insist upon and to have the benefit of the fact that, even if a general meeting could have sanctioned what was done, such sanction was never obtained. The Lord Justice could never have meant to say that the shareholders of an incorporated company are not directly interested in the assets of the company, but what he held was that when a company is registered, then the right to deal with the assets of the company is regulated by statute: "A registered company cannot do anything which all its members

(1) [1892] 1 Q. B., 381, at p. 384. (2) Times L. R., 15th March 1895.

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think expedient, and which, apart from the law relating to Incorporated Companies, they might lawfully do. An Incorporated Company's assets are its property, and not the property of the shareholders for the time being—that is, the assets can only be dealt with according to the rules regulating incorporated companies. “Individual assent given separately may preclude those who give them from complaining of what they have sanctioned, but for the purpose of binding a company in its corporate capacity individual assents given separately are not equivalent to the assent of a meeting.” It is unnecessary to pursue this line of argument further. The leading case of *Dimes v. Proprietors of Grand Junction Canal* ⁽¹⁾ shows that a Judge may be disqualified simply by having shares in the incorporated company which is a party in the case before him. Here it is possible that the pecuniary interest which Mr. Hamilton has in the subject of the inquiry is very small, though it may be pointed out that every shareholder in Treacher & Co. has a direct interest in stopping alleged petty defalcations or embezzlements among the members of the establishment. But, as said before, the Court will not measure the interest (see, in addition to the recent authorities quoted above, the dicta of Mr. Justice Blackburn in the *Queen v. Rand* ⁽²⁾, reiterated in the *Reg. v. Meyer* ⁽³⁾, and the remarks of Mr. Justice Lush in *Sergeant v. Dale* ⁽⁴⁾.)

For these reasons we must set aside all the proceedings held in this case before Mr. Hamilton, including the conviction and sentence, and direct that the complaint be disposed of by a duly qualified Magistrate.

Proceedings set aside.

(1) 3 H. L. Ca., 759.

(2) L. R., 1 Q. B., 230, 233.

(3) 1 Q. B. D., 173, 177.

(4) 2 Q. B. D., 558, 567.