

was not merely rejecting evidence—that is to say, evidence relating to a particular inquiry; he was, in my judgment, declining jurisdiction as to the whole inquiry, and in such a case mandamus is the proper remedy. The magistrate ought to hear evidence as to whether the expenses are in respect of matters included in the Act of Parliament, and as to whether they have been actually incurred; and as he has refused to hear evidence on these points, the mandamus must go.

C. A.

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v.

MARSHAM.

Lopes, L.J.

*Order absolute for a mandamus.*

Solicitor for applicant : *R. Kent.*

Solicitor for Lewisham Board of Works : *J. Laidman, Lewisham.*

W. J. B.

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THE QUEEN *v.* GAISFORD.

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Nov. 2, 3.

*Justices—Disqualification—Bias—Pecuniary Interest as Ratepayer.*

At a vestry meeting summoned by a district surveyor to consider (inter alia) the obstruction of a highway by the defendant, who had deposited and left a heap of earth and manure by the side of the highway, a justice of the peace moved a resolution calling upon the defendant to remove the heap. The defendant having failed to remove the heap, a summons was taken out against him by the district surveyor for depositing the heap to the obstruction and annoyance of the highway, and for failing to remove it after notice. The justice who had moved the resolution, and who was a ratepayer of the parish, sat and adjudicated with another justice upon the summons, and made an order directing the heap to be removed and sold, and the proceeds of the sale to be applied to the repair of the highway:—

*Held*, that the justice was disqualified from adjudicating upon the summons, for the part taken by him in moving the resolution afforded ground for a reasonable suspicion of bias on his part, though there might not have been bias in fact, and upon the further ground that as a ratepayer he was pecuniarily interested in the result of the summons.

RULE nisi for a certiorari to bring up and quash an order that a district surveyor should remove a heap of earth from a highway in his district and sell the same. The facts were shortly as follows:—

For many years one Sayers had been in the habit of depositing earth, seaweed, and manure upon a piece of land at the side of a highway in the parish of West Tarring, and complaints had been made that the drainage of the highway was thereby

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impeded. At a vestry meeting called by the surveyor of highways for the purpose of considering various matters concerning the highways in the parish, Mr. Thomas Gaisford, who was a ratepayer in the parish, and also a justice of the peace, proposed a resolution that Sayers be called upon to remove the heap. Sayers having failed to remove the heap, a summons was taken out against him by Gardner, the surveyor of highways, under 5 & 6 Wm. 4, c. 50, s. 73, charging him with having laid the soil on the land to the obstruction and annoyance of the highway, and with leaving it there after notice had been given him to remove it. The summons was heard before two justices, of whom Gaisford was one; and in the result an order was made that the surveyor should remove the heap and sell it, and apply the proceeds to the repair of the highway. It was admitted that at the time he appeared to the summons Sayers was aware that Mr. Gaisford had been present at the vestry meeting; but it was said that he did not know that the latter had taken such a prominent part in the matter. A rule nisi was then obtained for a certiorari to Gaisford and Gardner to bring up and quash the order on the ground (inter alia) that Gaisford was interested in the matter of the summons.

*Raven*, for the surveyor, shewed cause. There was no bias in fact on the part of the justice. The prosecution was not instituted by him, but by the surveyor of highways, nor had he such a substantial interest, pecuniary or otherwise, in the result of the summons as would make it likely, within the principle of the decision in *Reg. v. Handsley* (1), that he should be biased. [He was stopped.]

*Gore*, in support of the rule. The justice was disqualified from acting upon two grounds. First, he was pecuniarily interested as a ratepayer in the result of the summons. Such a pecuniary interest need not be substantial: *Reg. v. Recorder of Cambridge* (2); it is sufficient if such an interest in fact exists. Secondly, he was biased in fact, for he was the mover of the resolution in the vestry meeting which was really the basis of the prosecution, and without which the surveyor would not have

(1) 8 Q. B. D. 383.

(2) 8 E. & B. 637; 27 L. J. (M.C.) 160

taken out the summons; he was, in fact, both prosecutor and judge, and the case is, therefore, within the decision in *Reg. v. Milledge*. (1)

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The case of *Reg. v. Farrant* (2) is clearly distinguishable, for there the object of the justice in sitting was really to make peace between the parties. [He was stopped by the Court.]

*Raven*, in reply. The presence of the justice at the vestry meeting did not make him a prosecutor; the only prosecutor was the surveyor, for the resolution was wholly unnecessary to a prosecution. The suggested pecuniary interest is altogether too minute and could not have affected his conduct.

MATHEW, J. I am of opinion that this rule must be made absolute. Two grounds of objection have been taken to the decision of the justice: first, it is said that he has taken such a part in initiating these proceedings that he must be deemed to be within the rule disqualifying a magistrate from sitting on the ground of bias; secondly, the more technical point is taken that he had a pecuniary interest in the result. It was argued on his behalf that it was incumbent on the complainant to shew that the justice was in fact influenced; but, in my opinion, it is sufficient to shew, as was held in *Reg. v. Milledge* (1), that he might have been influenced; for in such a case it is not likely that a magistrate should knowingly be under the influence of an improper bias, although he may be placed in such a position as to be influenced, or to run the risk of being influenced, unconsciously to himself, in his decision.

The facts are simple. The magistrate was a ratepayer of the district, and attended a vestry meeting called by the district surveyor, where the question was discussed whether legal proceedings should be taken against the applicant for obstructing the highway; and the magistrate himself moved the resolution which was the foundation of the legal proceedings subsequently taken. A summons was afterwards issued against the applicant upon the information of the surveyor, and came on for hearing before the same magistrate and another. It appears that the applicant knew that the magistrate had been present at the

(1) 4 Q. B. D. 332.

(2) 20 Q. B. D. 58.

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vestry meeting, but was not aware of the prominent part which he had taken in the proceedings. An adjournment was applied for by the applicant's solicitor, but refused, and the case was heard and the order complained of made. Upon the authorities it is clear that the course adopted was wrong, and that the magistrate ought not to have adjudicated upon the summons, although he was, no doubt, unaware of the objection to his acting. All these authorities are summarized in the case of *Leeson v. General Council of Medical Registration and Education* (1); and I need only add that the decision in *Reg. v. Milledge* (2) is as nearly as possible in point in the present case.

The second objection, that the magistrate was pecuniarily interested as being a ratepayer in the parish, is a highly technical one; but we must deal with it. Under the Public Health Acts magistrates and others are in many cases relieved of this objection; but where there is no statutory relief, the objection remains. On both grounds, therefore, the objection to this order has been made out; and this rule must be made absolute with costs against the local authority.

A. L. SMITH, J. I am of the same opinion, and think that the magistrate was in this case under an incapacity to adjudicate upon the summons. It is well-known law that the same person shall not act both as accuser and judge; and also that a man shall not act as a judge in a case in the decision of which he has a pecuniary interest, unless relieved by statute; the fact that a man has even the slightest pecuniary interest operates to disqualify him from adjudicating upon a case; and there is here no statutory relief from such disqualification. On the question of bias, apart from pecuniary interest, I entirely agree with the law as laid down by Cockburn, C.J., in *Reg. v. Milledge*. (2)

*Rule absolute for a certiorari.*

Solicitors for applicant: *Snell, Son, & Greenip, for Lamb & Gates, Brighton.*

Solicitors for respondent: *Wood, Bigg & Co., for Maurice Goodman, Worthing.*

(1) 43 Ch. D. 366.

(2) 4 Q. B. D. 332.

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