

to hear the above appeal. Dated at the city of Berlin this 23rd day of November, A.D. 1912. D. Chisholm, County Judge."

The motion for prohibition was then launched, and an alternative application was made under the provision of 10 Edw. VII. ch. 26, sec. 16, which provides that where any person or the occupant of any office is empowered to do or perform an act, and such person is disqualified by interest from acting, and no other person is empowered to do or perform such act, then he or any interested person may apply upon summary motion to a Judge of the High Court in Chambers, who shall have power to appoint some disinterested person to do or perform the act in question.

Wm. Davidson, K.C., for the city of Berlin.

R. McKay, K.C., for Chisholm.

HON. MR. JUSTICE MIDDLETON:—On the return of the motion it is not contended on behalf of the County Judge that he had the right to hear the appeal himself; and it was not his intention, when he issued the appointment, to attempt himself to deal with his own case; but the position is taken that the Judge, although disqualified, should have the privilege of requesting some other County Judge to sit for him and hear the case. The learned Judge desires to act under 9 Edw. VII. ch. 29, sec. 15; and he proposes to request the Judge of some other county to sit for him upon the hearing of this appeal.

This course is objected to by the city, upon the ground that the Judge proposed to be asked to sit, is himself interested in the very question; one of the Judges named having already successfully appealed from the assessment of his salary, and another name suggested being that of a Judge who now has an appeal pending. It is also objected that in selecting any other Judge to act for him the Judge is really performing a judicial act in connection with his own case.

The appeal authorised by the Assessment Act is to the County Judge of Waterloo; and it is manifest that the County Judge is disqualified by reason of interest. I think that the jurisdiction of a Judge in Chambers immediately arises, and that I have the power to appoint some person under 10 Edw. VII. ch. 26. Moreover, I think the contention of the city is well-founded, that the disqualification by