

HON. MR. JUSTICE MIDDLETON. DECEMBER 5TH, 1912.

CHAMBERS.

RE CHISHOLM & BERLIN.

4 O. W. N. 431.

*Assessment and Taxes—Salary of County Judge—Appeal from Court of Revision—Appellant Disqualified from Interest—Prohibition—10 Edw. VII., ch. 26, sec. 16—Appointment of Disinterested Party—Duty of Judge to Avoid Suspicion of Bias.*

Motion for prohibition to the Judge of the County of Waterloo, the respondent, or in the alternative, for an order under 10 Edw. VII., ch. 26, sec. 16, appointing some disinterested person to hear an appeal from the Court of Revision of the city of Berlin, which confirmed an assessment of the respondent's salary. Under the Assessment Act an appeal lies to the County Judge from the Court of Revision, and the respondent served notice of such appeal and notice of appointment to hear the appeal before himself. On his behalf it was urged that he did not intend himself to determine the appeal, but to appoint some other Judge to hear it under the provisions of 9 Edw. VII., ch. 29, sec. 15.

MIDDLETON, J., *held*, that the respondent was disqualified by interest from taking any action whatever in respect of the appeal, and appointed the Chairman of the Ontario Rw. and Mun. Board, as a disinterested party, to hear the appeal.

"A Judge should avoid all suspicion of bias."

*Eckersley v. Mersey*, [1894] 2 Q. B. 671, referred to.

Motion by the city of Berlin for an order prohibiting the Judge of the county of Waterloo, or any deputy or acting Judge thereof, from hearing or disposing of an appeal of His Honour Judge Chisholm from the Court of Revision of the city of Berlin with respect to an assessment of his judicial salary.

His Honour Judge Chisholm, being of opinion that his salary is not subject to municipal assessment, appealed from his assessment to the Court of Revision. This Court confirmed the assessment. Under the Assessment Act an appeal lies from the Court of Revision to the County Judge; and on the 16th November His Honour appealed from the Court of Revision, "to the County Judge of the county of Waterloo, or any deputy or acting Judge thereof, or any Judge who may be sitting for and in the stead of the said County Judge;" and pursuant to this notice His Honour has served an appointment for the hearing of the appeal. "Take notice that I hereby appoint Tuesday the third day of December proximo, at the Judge's Chambers in the court house square, Berlin, at the hour of 11.30 a.m.,