

"The question is not alone whether the Attorney-General can sign a fiat for a writ of error by proxy; but whether his duties in Court can be performed by proxy. In fact, the same question may be raised as to signing an information, and has been raised as to signing a *nolle prosequi*. It seems difficult to suppose that the one can be done by proxy and not the other; and yet it has been held in the case of a *nolle prosequi* that it may be done by proxy. When the thing was questioned I shewed, by a tabular statement which I then drew up, that the right to enter a *nolle prosequi* had been exercised nearly a hundred times in Montreal within the fifteen years preceding, and that in not a single instance had it been signed by the Attorney-General in person; but always, save in two or three instances, by the Solicitor-General, by the Clerk of the Crown, or by the usual proxy. I shewed, moreover, that this had been done by the tacit assent of every judge of the Queen's Bench and by several other judges, and most frequently when Mr. Justice AYLWIN was presiding. Mr. Justice AYLWIN explains this by saying it was done without his knowledge; but this explanation is hardly satisfactory. The truth is, the judges never thought of questioning it till they perceived that it could be used by the Executive as a check upon them.

The question of the fiat for a writ of error is exactly parallel. It has been said that there was this distinction, that the power exercised by the Attorney-General, being judicial, could not be delegated. This is sheer nonsense. His power is prerogative, and he exercises it under an implied proxy from the Crown. Formerly it was granted under the sign manual, but that became disused by one or two Attorney-Generals singly signing the fiats, and I never heard of any jealous judge in England quashing a writ upon this ground. Is the step taken here greater? The Attorney-General never prosecutes in person, and yet some one must sign these things who knows something of the facts. If the Attorney-General is to sign personally, he must sign on faith of what his representative puts before him. Judge AYLWIN says, I understand, that formerly, here, the representative of the Attorney-General

had a lot of blanks signed by the Attorney-General in his despatch, and ready to be applied in case of need, and that this avoids the difficulty. And what then becomes of the intransmissible judicial power of the Attorney-General?

In matters of information, in the only Courts where they are used, they have constantly been signed by proxy. Indeed, this idea of the Attorney-General being unable to grant a proxy is a novelty. Once before it was questioned whether he had granted it, but never whether he could if he wished. The case is a curious one, and, as we have the advantage of the opinion of the law officers of the Crown on the point (Mr. AYLWIN being the Solicitor-General, L. C.), I shall briefly resume it. The Attorney-General, Mr. OGDEN, being absent in England, Mr. PRIMROSE signed for him several suits which could only be brought "in the name of some superior officer of the Customs or navy, or by Her Majesty's Advocate or Attorney-General. No one questioned the right of the Attorney-General to give his proxy, but the fact of his having given it was doubted, and Mr. PRIMROSE was called upon to produce it. This he failed to do, and the suits were dismissed. Of this proceeding Mr. PRIMROSE complained to the Governor-General, who referred the matter to the law officers for Upper and Lower Canada; and they reported that by the peculiar nature of the Admiralty Court the proxy could be demanded, and incidentally they stated their opinion "as to the conduct of Crown cases generally by the Queen's Counsel in the absence of the Attorney-General." "With reference, however, to the Crown cases generally, both in the Vice-Admiralty and other Courts, the question raised in the case of the Master of the Dumfriesshire is no doubt of great practical importance, as the personal attendance of Her Majesty's Attorney-General for Lower Canada, in all the Courts, is rendered impracticable by the judicial organization of these Courts into distinct and separate tribunals, possessed of equal powers and of the same jurisdiction, which they exercise at the same time in different and distinct districts." * * * "There is no rule of law by which one attorney may not delegate to another the power of