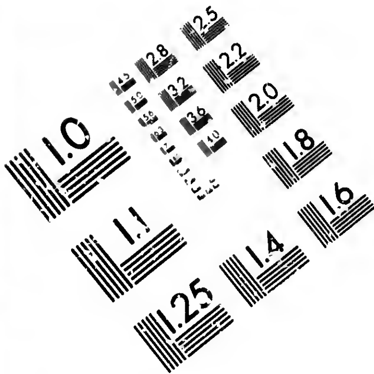
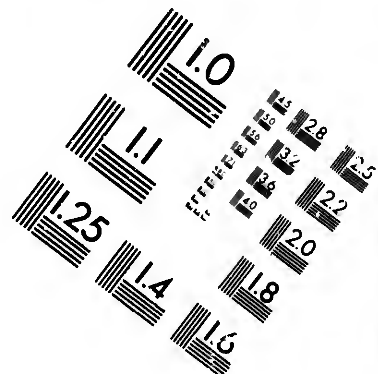

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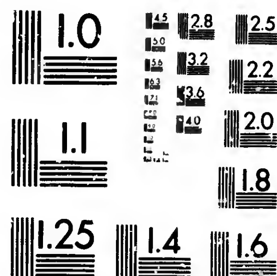
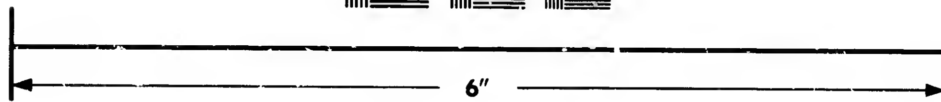
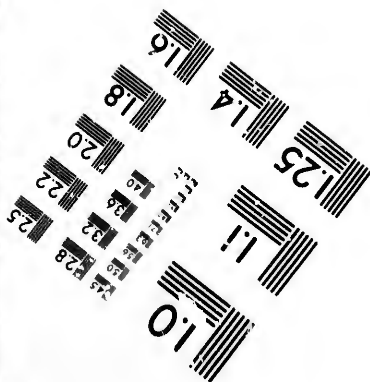
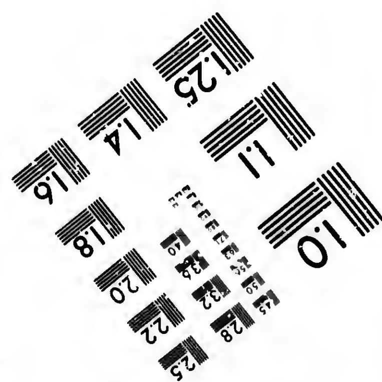

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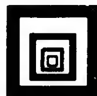

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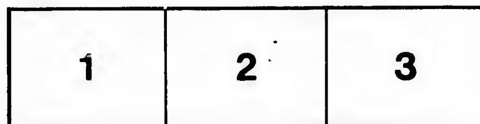

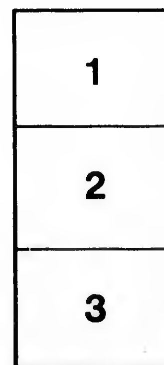

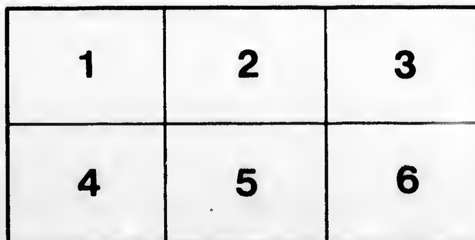

P 230-13

THE INFERIOR MAGISTRATES;

OR,

Legal Pluralism in Ontario,

—BY—

R. J. WICKSTEED,

BARRISTER, &C.

"The dearest issue of his practice and of his old experience."—*Shak.*

1886

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THE

INFERIOR MAGISTRATES

—OR—

LEGAL PLURALISM IN ONTARIO.

Previous to the 25th March, 1886, by the Statute Law of Ontario, no person could be *a Police Magistrate*, or Justice of the Peace, during the time he continued to practice as an Attorney or Solicitor, in any Court whatever; except such practising Attorney or Solicitor was at the same time a member of Her Majesty's Executive Council, or a Judge of any of the Supreme Courts of Law or Equity, or a County Judge, or Her Majesty's Attorney General, or one of Her Majesty's Counsel in the Law, or a Mayor, Alderman, Reeve, or Deputy-Reeve of any Municipality. [R. S. O. c. 71, s. s. 5, 22 and c. 72, s. 4.]

In *The Law Journal*, of September 1st, 1885, appeared a letter by the author, on the disqualifications of Police Magistrates and Justices of the Peace, followed in the succeeding number by further correspondence from other lawyers.

On the 22nd March appeared the first edition of this essay.

The Toronto *Globe*, of the 27th March, says, referring to this open essay:—"Almost simultaneously with the appearance "of Mr. Wicksteed's letter, the grievance, of which he justly "complained, ceased in a great measure to exist. By a clause "in Mr. Mowat's bill for further improving the law, passed at "the late session of the Legislature, it is provided that no

"Police Magistrate, and no partner or clerk of any Police
"Magistrate, shall act as Agent, Solicitor or Counsel in any
"cause, matter, prosecution or proceeding of a criminal nature,
"or in any case which may be investigated or tried before a
"Magistrate or Justice of the Peace."

But the *Globe* did not tell its subscribers that the principle of which I complained does still exist, and that in an aggravated form,—thanks to *An Act for Further Improving the Law*, (1886). What I complained of was that in Ontario, while generally speaking, no Attorney or Solicitor could be a Justice of the Peace: yet there were exceptions to this rule, whereas there ought to be none. Now, to further *improve* the law on this point, Mr. Mowat, expressly enacts, 49 V., c. 16, s. 18, that any Attorney or Solicitor who is a Police Magistrate, shall be an exception to the wholesome rule I want to make universal.

A Police Magistrate, in the eyes of the law is nothing but two Justices of the Peace rolled into one, who is paid to see, among other things, that the by-laws of his city or town are kept inviolate.

This absurdity now exists, therefore, under the Ontario Statutes, viz., that a practising Attorney or Solicitor cannot be a Justice of the Peace, but he may hold the office and do the duties of two Justices of the Peace. Ontario says it would be *inconvenient*, (using the euphonious expression of an English Chancellor speaking on this point) to allow a practising Attorney to act as a Justice of the Peace, who, in most cases, would be coupled with a layman who would counteract the obvious *inconvenience.* But it is *an improvement in the law* to appoint a practising Attorney to be a Police Magistrate, who is a Corporation sole, representing and having the powers of a Bench of Justices, whose *inconvenient* tendencies to benefit his own practice at the expense of the blind goddess whose servant he ought to be, are uncontrolled by partnership with a man or men not so tempted.

It is all the more important to preserve, without exception, the Golden Rule, that no practising Attorney shall be a Justice of the Peace or Police Magistrate, in view of "the dangerous increase of summary jurisdiction," as Samuel Warren calls it.

We ask is there any reason for these exceptions? Why strongly bar the gate, and yet remove some of the palings from the fence connected with it? Why allow a wolf to enter the fold of the Judiciary, because he can clothe himself in the sheepskin of any one of several offices? The rule is a good one, the reason for it is good; why defeat its object by exceptions directly opposed to the law of the leading countries in the world? Why does Ontario alone retain this unjust and impolitic plurality of employments under the guise of exceptions? Let us examine: 1st—The laws and jurisprudence of various countries on the subject of the qualifications of Judges and Justices of the Peace: and 2nd—Consider the reasons which actuated their Legislators, Judges and Jurisconsults in framing such enactments, rendering such decisions, or holding such opinions.

In England or Wales no person shall be capable of becoming or being a Justice of the Peace for any county in which he shall practice and carry on the profession or business of an Attorney, Solicitor, etc. (34-35 Vict., 1871, c. 18). The same disqualification for stipendiary magistrates (see 26 and 27 Vict., c. 97). It is true that by 18 Geo, 2, c. 20 (Imp.) there are persons excepted from the general rule of 5 Geo. 2, c. 18, by which latter Act Attorneys in England are incapacitated from being Justices of the Peace so long as they continue in the business and practice of an Attorney—but the persons are either those who could not by any possibility be Attorneys, or if Attorneys, could not find time or opportunity to act as Justices of the Peace. In Scotland, under 19 and 20 Vict., c. 48, sec. 4: "Any Writer, Attorney, Procurator or Solicitor who may be elected to the office of Magistrate or Dean of Guild of

any Burgh, the Magistrates or Dean of Guild of which are *ex officiis* Justices of the Peace by virtue of their election to such offices, shall, so long as he holds any such office, be entitled to act as a Justice of the Peace, provided he intimates to the Clerk of the Peace for the County, in which any such Burgh is situated, that he and any partner or partners in business with him cease to practise before any Justice of the Peace Court in such county, so long as he continues to hold such office as aforesaid ; and it shall not be lawful for him or them thereafter, and during his continuance in office so to practise.

By the laws of France, the functions of a Justice of the Peace are incompatible with those of a Mayor, Prefect and Sub-Prefect, Councillor of the Prefecture, Councillor at the Royal Court, Bailiff, any employee in the Customs, Post Office, Public Accountant, Ecclesiastic, Notary, Advocate, and paid Teacher. If the person who has been appointed a Justice of the Peace is engaged in incompatible employment, or duties, he is obliged to give up such employment or duties within ten days from notice of his appointment, under pain of having his appointment revoked. It is true that in France these Justices are salaried—but so are our Police Magistrates—and it might be better to increase the fees of the Justices of the Peace if they were deprived of holding incompatible offices as they are in France. (See Bioche, Dictionnaire vol. 4.)"

In the United States of America, Justices of the Peace are elected by the people for four years, and they may be removed in due manner by those who elected them. In this way all malversations of office or other irregularities are easily cured and remedied. This four years' probation in office is a very useful provision, for "we must not, upon supposition only, admit judges deficient in their office, for so they would never do right : nor on the other side, must we admit them unerring in their judgment, for so they would never do anything wrong." (See Coventry & Hughes' Digest, p. 832.)

Let us now consider the reasons which actuated the framers of the foregoing enactments. Why is the cumulation of employment forbidden under all free governments? The general reason against the plurality of employments in the hands of a single person is that this monopoly is unjust and impolitic. By heaping upon a small number of persons the objects of general desire, you deprive so many individuals of a portion of enjoyment, and you take away from public competition so many rewards which might be applicable to the encouragement of true merit. Heap three portions upon a privileged favorite, you do not triple the enjoyment which each portion separately would have given him; and above all you are very far from producing the same amount of satisfaction as if you had admitted three persons to a share in the division. But there are more conclusive reasons against uniting any other employment with that of the Judge. 1st—The good of the public service. The obligation to attend daily at the Court or Chambers is incompatible with any other public duty. If he is not always engaged as a Judge, it is necessary that he should always be ready so to act. Give him other duties, the parties are exposed to delays, and justice to the frittering away of evidence. If your Judges have plenty of time for other business, they are too numerous or their jurisdiction is too limited; you may learn from this that your judicial establishment is on too extravagant a scale. When the cumulation of two employments is permitted, of which either is sufficient to occupy the time of a single individual, the law ought to explain and set forth which of the two does it intend that the duties shall be neglected. 2nd—The danger to uprightness or the reputation for uprightness. All employments entail a diversity of social relations and combinations of interests: all connections are sources of partiality. It is possible that the probity of a Judge might not suffer from these things, but his reputation might

suffer and the confidence in his judgments will be weakened. (See Bentham, Organisation Judiciaire.)

"In jure non debet fieri acceptio personarum," and "A good judge should do nothing from his own arbitrary will, or from the dictates of his private wishes; but he should pronounce according to law and justice."—(*Coke.*) "Le devoir d'un juge consiste a rendre la justice sans avoir egard a aucune recommandation, &c."—(Ferriere Dict. vo. Juge.)

Plato writes:—"A Judge sits in the Judgment Seat, not to administer laws by favor, but to decide by fairness; and he has taken an oath that he will not gratify his friends, but determine with a strict regard to law."

Dryden sings:—

"My secret wishes would my choice decide:
But open justice bends to neither side."

Samuel Warren, in his law studies, very truly observes:—"Justices of the Peace, in almost all cases, are clothed with power to hear and determine—combining in themselves the several powers of a Judge, a Jury and Court of Equity: and the manner in which their arduous duties are discharged, is watched by the public with unfaltering vigilance—supplying a powerful stimulus to a zealous and able exercise of their important functions."

Would it not be well if the Provincial Government were to exercise more discretion in the selection of men to fill this important office, whose jurisdiction has, in late years, been extended very far beyond the bounds originally assigned to it. and adhered to for centuries?

Would it not be well also if the persons nominated to this office were to examine themselves, before accepting, in order to ascertain if they are acquainted with the duties of a Judge, and if they are prepared to carry them out in the high minded manner advocated by the old Jurisconsult Pigeau in his Procédure Civile? [Vol. 1 p. 361]:—

"The Judges are the mouthpieces of the laws; like them, they ought to punish and pardon, without loving or hating: like them they ought to be inaccessible to every feeling not in accord with those of rigid justice.

"Such are in short the duties of Magistrates; but they are men, and, consequently, subject to all the weaknesses of humanity; and to how many dangerous rocks do they not expose themselves?

"In order to steer clear of them, the Judge ought to consider himself as formed of two persons, the Judge and the man. The latter he ought to look upon as a dangerous enemy, who, by a thousand wiles, seeks to take the former by surprise, by persuading him that they are but one, in that way confounding his motions with those of the Judge: and endeavouring to make him see and decide through the eyes and feelings of the man what ought to be seen and decided through the eyes and sentiments of the law.

"The Magistrate, convinced of the necessity for making this distinction, examines, on the one side, what are his duties, what ought he to do to be permeated by rule, to be indentified with it, and to be in some sort, infallible as it is. He examines, on the other hand, what are the frailties of man; and constantly keeping this double image before his eyes, when he puts on the person of the Judge, he makes a complete subtraction of that of the man, or if he pays any attention to it, it is only to repress by means of the consideration of the duties of the former, the attempts which would be made upon it by the pride and corruption of the second.

"But it is not sufficient thus to know the proper bounds for these two persons, and to intend to keep them within such bounds; the Magistrate will not be able to prevent the man from endeavouring to overleap them, and mingle his influence with that of the law. The love of justice, knowledge, firmness,

attention and greatness of soul, are the guards which we ought to place between these, so conflicting, powers, in order to oppose to that of the man a force which will hinder him from making an attack upon the domain of the law.

"Imbued with a love of justice as well as of law, the true Magistrate sees nothing but through its agency: consults only the genius of the Legislation: and not only does he put aside all the suggestions coming from blood relationship, interest, self-love and pride, but he even makes an entire sacrifice of his own opinions when they are opposed to this love of justice. He looks upon justice as so much property entrusted to him, which he ought in consequence to distribute to each person in the proportion indicated by the Legislator. He knows that he cannot inflict upon justice the slightest injury without committing sacrilege; and it never enters his mind to compromise with the rule of right, to seek a mean between vice and virtue, to make an unholy alliance with this rule, and grant favors when he has only the power to render justice.

"Acknowledging without difficulty that the intellect of man is limited, that his own personal experience, however extensive it may be, is infinitely inferior to the united experience of those men who have preceded him, he consults that knowledge which results from the latter. This knowledge causes him to find in the spirit of the law a decision conformable to the immutable rules of justice, and by this means causes him to avoid the deceits of the senses, the illusions of the imagination, the error of prejudice, and the seductive influence of example, all reefs upon which he might be dashed if he only relied upon himself.

"Firm as the law itself, he decides always as she does; and favour, the prejudices of family ties, of interest, and those which spring from disposition and temperament, have no influence on his soul. On account of a continual mistrust of these forces, and the greatest vigilance over himself, reason

ever dominates his mind and his heart. She examines such promptings at their birth, unravels their nature, follows them in their progress, and keeps them within their proper bounds. Attentive as the law itself he gives his decision when she herself would have done so ; he gives to the examination of the matter that degree of attention below which it would have been dangerous to have passed judgment, and beyond which to defer to give justice would have been to refuse it. By her assistance he sees the matter grow, follows its growth, in order to cut it short when it has reached the real point of maturity ; and by this course avoids presenting to the parties the premature and bitter fruit of a blameworthy haste, or the backward and juiceless fruit of indolence.

" It is by the practice and union of all these precautions that the Magistrate opposes to the haughty and intractable spirit of man, the ever sure and infallible rule of the law. Strengthened by these virtues, the Magistrate, like a frowning rock which throws far back the waves which the irritated floods have hurled against it, remains firm and immoveable in the midst of the shock of passions which hem him in, and which desire to bury him beneath their efforts.

"Such is the conduct of Magistrates who are animated by a sense of their duties."

See also Guyot (Repertoire vo. Juge), who thus writes: " One of the most necessary qualifications for a Judge is impartiality. Before giving an opinion in any matter whatsoever, he ought to assure himself that there does not exist in the recesses of his heart either passion or private affection for either of the parties. The ancients, in representing Themis with a bandage over her eyes and a balance in her hand, have given us a just idea of the true character of a Judge. It is in order to avoid the effects of hatred or friendship, which would not fail to incline this balance, that the Act called Recusation takes place. A righteous Judge will not wait until he is threat-

ened with Recusation before signifying his determination to abstain from pronouncing judgment in any case whatsoever, because there may be grounds for Recusation unknown to the parties interested. Nobody knows as well as he does if he is in his mind more disposed towards one of the parties than the other—if he does not still cherish some old grudge. One is so inclined to find good the cause of the person one esteems ; one is so greatly disposed to believe that he is unjust or guilty for whom one has an aversion, that in undertaking to judge between them a man often runs the risk of committing an act of injustice without intending it. The Judge should, for these reasons, be very cautious, and probe his heart to its depths before giving his opinion in a matter in which the parties are known to him."

A writer in the *North American Review* (vol. 57), thus ably expresses the same idea: "The breath of an imputation cannot obscure the mirror of justice. And this immunity is essential to the working of the system, and to the preservation of that public confidence in the judicial tribunals, which is the surest guarantee of public order. The judges must not only be, but seem just. The character which they bear is a thing of quite as much importance for the common weal as the intrinsic equity of their proceedings. It is little for me that a man at a distance, of whom I never heard before, is defrauded of his due in the Courts. But it is much for me to feel the assurance, that, if my person or property is ever wrongfully attacked, I shall find a just and powerful protector in the Law. Such an assurance conduces much to the security and happiness of life, though one may never have occasion to invoke the aid of this strong champion. We say that all temptations are removed as far as practicable ; for it cannot be denied that, even in this independent and honorable station, an avaricious judge may, if he chooses, contaminate his fingers with base bribes, and sell the judgment and his own integrity. But those who lay stress

upon this danger show that they have little knowledge of human nature. The gross temptation of a bribe may not allure a man to a flagrant violation of his oath, though the secret promptings of self-interest, the desire of pleasing a powerful friend, the hope of obtaining a re-appointment to a lucrative office, may bias his reason by insensible degrees, and finally lead to a judgment as iniquitous as if it had been purchased in Court. Virtue is usually sapped and mined, not taken by storm. Put a man out of reach of these insidious temptations, who do not call upon him to sacrifice his honor and integrity at once and with a full consciousness of what he is doing, but which beset and perplex the mind with the prospect of great ultimate good to be obtained by trifling and gradual deviations from the straight path—put him away, we say, from these cunning enticements, and he will angrily repel the shameless rogue who comes in the broad light of day to buy his conscience. When passion, or avarice, or ambition is tugging at the heart strings a man becomes a sophist to himself, and will try all the wiles of casuistry in order to varnish over the crime, and give it the poor semblance of virtue. Anyone can resist Apollyon, when he comes in his proper shape, with horns and hoof, or as a grovelling snake; but the cunning Devil appears as a beautiful woman, or a judicious friend, and the poor dupe clasps him to his bosom and is entangled in the snare. Now the practice of the Courts abounds with dangers of the very class which we have here described. Perplexed and difficult cases are continually arising, in which the rights of the respective parties are separated by the difference of a hair. So evenly does the matter lie between them, so doubtful is the rule of law to be applied to such an obscure and intricate question, that all the acumen of a sharp and vigorous intellect can hardly determine on which side equity and legal authority incline. Let self-interest, in the mind of the judge, put a feather into the balance, and it will turn the scale. He must be a poor sophist, in

so nice a case, who cannot blind himself so far as to believe that justice actually requires that decision which is most accordant with his own feelings and ulterior views."

Shakespeare, tradition says from personal experience, puts the following into the mouth of one of his characters ;—

"You are mine enemy, I make my challenge,—
You shall not be my Judge."

In "a discourse on the past history, present state, and future prospects of the law," by Judge Joseph Story, it is written ;—"Men, for the most part, are willing to submit to the laws when faithfully and impartially administered. If they are satisfied that the Judges are incorruptible, they acquiesce in their decisions, even when they suspect them to be erroneous, as the necessary homage by which their own rights and liberties are permanently secured."

The duties of the Magistrates were laid down in no ambiguous language by the ancient Roman law : "Rationibus non precibus, judices vinci debent." "Judex non debet clementior esse lege." "Nemo debet esse judex in propriâ suâ causâ." "Ne quis in suâ causâ judicet, vel jus sibi dicat." "Nemo sibi jus dicere debet, in re enim propriâ iniquum est judicare." "Judex non potest injuriam sibi datam punire," etc.

Under the old English statute, 18 Edward 3, stat. 4, the following was the oath of the Justices of the Peace—which it would be well to revive in the present day : "Ye shall swear that well and lawfully ye shall serve our lord the King and his people in the office of justice ; and that ye shall do equal law and execution of right to all his subjects, rich and poor, without having regard to any person ; and that ye take not, by yourself or by other, privily nor apertly, gift nor reward of gold nor silver, nor of any other thing which may turn to your profit, unless it be meat or drink, and that of small value, of any man that shall have plea or process hanging before you, as long as the same process shall be so hanging, nor after for the

same cause; and that ye take no fee as long as ye shall be justice, nor robes of any man great or small, but of the King himself; and that ye shall give none advice nor counsel to no man great or small, in no case where the King is party. And that ye, by yourself, nor by other, privily nor apertly, maintain any plea or quarrel hanging in the King's Court or elsewhere in the country. And that ye deny to no man common right, by the King's letters, nor none other man's, nor for none other cause; and in case any letters come to you contrary to law, that ye do nothing by such letters but certify the King thereof, and proceed to execute the law notwithstanding the same letters. And that ye shall do and procure the profit of the King and of his crown, with all things where ye may reasonably do the same. And in case ye be from henceforth found in default in any of the faults aforesaid, ye shall be at the King's will of body, lands and goods, thereof to be done as shall please him. As God help you and all saints."

In more modern times we find Couchot writing in the following manner in his "Praticien Universel" (Paris, 1747): "When you are fully confirmed as a Judge, you must shew respect unto decency in your habits, and be assiduous and ever ready to render justice in the places and at the times customary, receive no presents, judge according to the laws, and never act apart from them in order to give your private opinion, supply the deficiences due to the ignorance of the attorneys and the parties, and never abuse your authority, listen with patience to the barristers, read their writings, and punish with severity those who speak falsely."

In the CANADA LAW JOURNAL, of the 15th September, 1885, there appeared a letter containing the following sentence:—"If there be any evil in permitting barristers and solicitors to act as police or stipendiary magistrates the general public seem not to have found it out as they have not complained of it."

But the force of this statement and remonstrance is completely deadened by the (almost) certainty that it was written by the partner-in-law of a police magistrate, penned by a lawyer who openly practises with the "beak" in civil cases. and who, no doubt, advises their clients to appeal for justice to the petty criminal court over which his partner presides. Opposed to this interested letter I have the honest and direct testimony of many lawyers and laymen who state that the simultaneous holding by one person of the two offices of lawyer and judge is incompatible with decency, and they ought to be separated. Besides, *the general public* referred to most largely consists of the poor and laboring classes who have not the time or money to complain, but bow in compulsory silence to the decisions of *Janus-Magistratus.* Should this my pamphlet fail to move the Provincial Government, I shall forward a petition to the Legislature praying for what I do herein,—and I am certain that it will be found to be signed, if not by the general public, at least by the public in general.

It might appear that an honest magistrate was fully protected by the law from the violence of disappointed suitors; and that honest people were protected from the giving of unrighteous judgments by partial justices of the peace. For Lord Mansfield, C. J. said: "No justice of the peace ought to suffer for ignorance where the heart is right: on the other hand, where magistrates act from undue, corrupt or indirect motives they are always punished by this court. (Queen's Bench)." And Abbott C. J. declared: "In all cases of an application for a criminal information against a magistrate, for anything done by him in the exercise of the duties of his office, the question has always been, not whether the act done might, upon a full and mature investigation, be found strictly right, but from what motive it had proceeded; whether from a dishonest, oppressive or corrupt motive (under which description, fear and favor may generally be included), or from mistake

or error: in the former case alone they have become the objects of punishment. To punish as a criminal a person who in the gratuitous exercise of a public trust, may have fallen into error or mistake, belongs only to the despotic ruler of an enslaved people, and is wholly abhorrent from the jurisprudence of this kingdom."

And in Fisher's Digest, Vol. 4, page 1182, we find a decision that "Any direct pecuniary interest, however small, in the matter of enquiry, disqualifies a magistrate."

Now the temptation to "act from undue, corrupt, or indirect motives" is very feeble in the case of the single-barrelled J. P., but very strong, in fact irresistible, in the case of the double-barrelled magistrate. The latter is a man who is obsequiousness itself towards his neighbors when practising as a solicitor, but brusque, insolent and unjust when dealing from the Bench with those, or the interests of those, whose names are not in his office ledger. Besides it is very hard to prove undue, corrupt, or indirect motives or malice, or pecuniary interest,—the badly-treated defendant, in most cases, is poor and wants friends and assistance to prove his charge against the J. P.

But much worse is the position of a wronged plaintiff or complainant. For if, instead of convicting the defendant, the justice refuse to convict him, and dismiss the case, there is no mode of reviewing his decision; "the court (Queen's Bench) will neither grant a *mandamus*, requiring the magistrate to re-hear the case, nor award a *certiorari* to bring up the proceedings." I never could see why the Plaintiff should not be allowed to consider himself aggrieved by the decision of the magistrate and have the privilege of appeal allowed him,—but so it is. Away with the present system of dual representation by Police Magistrates, and spare the long suffering public the sight of a P. M. adjourning a case abruptly, when numbers of unexamined witnesses had made sacrifices to appear before him. One of the said P. M's own cases was pending in a

higher court and the magistrate's duty was once more forgotten, and the terms of his commission violated. They seem to suffer as we do and have the same difficulty in France, for Mr. Dupin in his "*Opuscules de Jurisprudence*," says, with a sigh, "Our old-time magistrates were distinguished by their eminent piety; they dispensed justice influenced by conscience."

If I cannot move the appointing power at Toronto, I may succeed in persuading some J. P's. to change their hearts, manners and customs. With this consummation in view I will further quote, in translated form, a page of Ferrière, a celebrated French Jurisconsult, taken from his "Introduction à la Pratique," Vol. 2, page 100: "The character of a perfect judge is the result of the union of several virtues in the same individual.

"Every magistrate who lays claim to this glorious title, ought not only to possess a rectitude of heart and a natural integrity, but also to be armed with an immoveable firmness, and to be endowed with a universal penetration. He ought, with respect to his habits, to preserve a line of conduct which will place him above suspicion, and thereby cause to be revered, through his acts, the position with which he is honored.

"A thing which might be looked upon, in the case of a private citizen, as a mere trifle, will be very reprehensible in a judge, who ought to be always extremely circumspect in all his actions, even in those which are in themselves indifferent.

"Nothing is more powerfu lthan example, especially on the part of those who owe it to others.

"The people submit readily to the laws, of which their betters teach them the practice, obedience is complete when it is general; and whosoever wishes to preserve his authority, can only succeed in his wish by earning esteem and approval, which is only bestowed on irreproachable conduct.

"Whoever devotes himself to the administration of justice, ought to join to these qualities of the heart, those also of the

intellect, in order to acquire a complete knowledge of everything connected with his office. He ought to make use of it in performing his duties, to which he cannot devote himself with too much ardor, nor with too much assiduity."

I have now set forth the theoretical rules of conduct for Magistrates and Judges, and also the legislative enactments giving all the force of punitive law to provisions in accordance with these dicta of wisdom; forbidding certain acts and limiting the offices and employments of those holding the responsible position of Judge or Magistrate. Space forbids my enlarging further; but I may conclude by saying that these maxims, sayings and rules of wise men, these statute laws, ordinances and judicial decisions are not axioms or self-evident truths. They are the result of synthetic reasoning, or the conclusions obtained from experience. Nearly all laws are, in a sense, *ex post facto*, they are remedial or made with the intention to counteract and remove certain evils.

In Great Britain, France, and the United States, irregularities and mischiefs were found to arise after uniting any other employment with that of the Magistrate and Judge. Moralists and jurisconsults wrote against the union, and legislators adopted their suggestions and forbade the banns.

The Province of Ontario still permits Attorneys, Queen's Counsel learned in the law, and others, to practice their professions and engage in other pursuits, and at the same time exercise the grave duties of a Police Magistrate. It is to be hoped that this anomaly will cease and determine by an Act of the Legislature doing away with all exceptions—enacting that a Police Magistrate shall be a Police Magistrate and nothing more. It would be superfluous to argue that this is a consummation devoutly to be wished. Men are the same everywhere, and at all times. If abuses sprang up in Europe, and were checked by a similar Act on the part of the governing bodies—by an *argumentum ad homines*, without further enquiry, Ontario

should have such a measure passed. But we all know that the very abuses and immoralities practised in Europe, wherever a cumulation of employments was and is permitted to the Judge, exist at the present moment in Ontario. The same temptations to a Justice of the Peace to deliver a wrong judgment and deviate from the straight path abound, and we know that they are not always successfully resisted.

RICHARD JOHN WICKSTEED.

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