ANOMALIES.

"Regardless of the authorities?" asked counsel for the accused. "Regardless of the authorities" observed the magistrate, in refusing to accede to counsel's contention that he had no jurisdiction.

Magisterial psychology was in operation and perhaps some hydra-headed inferiority complex was clamouring into consciousness with the suggestion that important questions of law should not be decided by inferior courts. A conviction leaves it open to the accused to appeal, and at the same time provides convenient machinery for holding him to bail. An acquittal, even though an appeal is open to the Crown, does not ensure the availability of the accused in the event of reversal on appeal. The magistrate "passes the buck." If the accused is financially able to do so, he will doubtless appeal and if his legal point is sound he should win—paying legal fees to his counsel, not only for the appeal, but also for the privilege of having his case presented to a magistrate whose psychology requires that all intricate points of law must be resolved against the accused.

If on the other hand, the accused has not sufficient funds to finance an appeal, he must suffer the conviction in silence without having had his legal point judicially heard and determined.

When it is remembered that magistrates are empowered to impose substantial terms of imprisonment or heavy fines, in many cases, it becomese at once apparent that this shifting of responsibility may work serious injustice.

A misconception seems to be more or less current among laymen at any rate, that magistrates are in some sense law enforcers, as well as judges—that executive functions are somehow engrafted on judicial functions, and that the magistrate's office is to some extent an adjunct to the police department. How wrong such a view can be is well illustrated by a case in which the magistrate and police themselves seemed to share this delusion. The case referred to is *Bietel* v. *Corballis*,[1] a Saskatchewan decision. The J. P. in that case was a liveryman in private life, and the report sets out that in his unofficial capacity, he drove the police to the premises of the accused, where certain evidence was obtained. The J. P. next appears on the scene however, as one of the magistrates before whom the accused was tried—and convicted. There was no proof of actual bias, but on appeal the court thought that such a situation was "contrary to the interest of the administration of justice."

[1] 51 D.L.R. 721.

> The administration of justice must at all times be above reproach and no ground must be allowed to exist from which any suspicion could possibly arise as to the propriety of the motives of the presiding magistrates or judges.

The conviction was quashed.

Not only is it contempt of Court to communicate privately with a judge for the purpose of influencing his decision upon a pending matter, but it would seem that magistrates should avoid even the appearance of affording either side an opportunity to privately discuss the issues of a pending case. A witness who has told a judicial officer what his evidence will be, may create an unconscious bias in his favor. A defendant who observes the opposing counsel talking with the magistrate may stop to wonder if full justice is being accorded him. A community which knows that private communications between police and magistrate are common will lose respect for the administration of justice, even though in fact no nefarious influence has affected the mind of the Court.

In *King* v. *Sussex Justices*,[2] the Court quashed a conviction because a partner in a firm of solicitors indirectly interested in the prosecution, acted as clerk of Court and had at least the opportunity of discussing the matter with the justices. "His two-fold position" said the Court "was a manifest contradiction."

> It is not merely of some importance but it is of fundamental importance that justice should not only be done but should manifestly and undoubtedly be seen to be done. . . . Nothing is to be done which creates even a suspicion that there has been an improper interference with the course of justice. . . .[3]

Many practitioners have no doubt felt upon occasion that these precepts are not as carefully followed as might be hoped. An extraordinary feeling seems to prevail that magistrates are not subject to the same rules that circumscribe the conduct of higher judicial officers. Just why a magistrate should feel at liberty to disregard the authorities which bind the higher courts; or why it should be deemed less reprehensible to allow the appearance of injustice in magistrate's Courts, when similar conduct would not be tolerated in Superior Courts; or why a magistrate should not decide fully every case that comes before him to the best of his ability, though it involves law of complication to the nth degree—why such things should be so admits of no answer in logic, nor does expediency justify the sacrifice of public faith in the administration of magisterial law.

Saint John, N.B. N. B. T.

[2] [1924] 1 K.B.D. 256.
[3] See also *Mercer* v. *Reed*, 48 T.L.R. 574.