PERSONA DESIGNATA.*

I have chosen this subject for these reasons: (1) it is not treated by any text-book, (2) it is a mystery to the average solicitor who has not met it in actual practice, (3) it is a comparatively modern conception which is being steadily developed.

It is a difficult subject to exhaust, because the digest makers have not yet learned to treat it as a separate head of law, and cases must be gleaned from many heterogeneous topics, such as "Railways," "Costs," "Appeals," etc. In fact, one has to stumble on them to a large extent.

I purpose dealing with the subject under three general heads, (I) definition and general nature, (II) history and development, (III) practical effect and workings.

I.

First, a definition. Our topic is really a rule of construction—a rule for interpreting statutes and legal instruments. Its application is where a person is indicated in a statute or such instrument, not by name, but by his name of office or as one of a class. Then question arises whether he is meant in his official or class capacity, or whether the intention is to single him out as a *persona designata*, that is, as an individual, the reference to his office or class being merely a descriptive means of identifying him.

I first point out that this question has two general applications, only one of which will here be dealt with. It has been applied to wills and deeds in this way—a will may devise land to John Smith and his children so as to raise a doubt whether it means to give the land to Smith and his heirs, which will give him the fee simple and his children nothing, or whether Smith and his children Tom, Dick and Harry are all to take shares, that is, the children are regarded as individuals. The other application is to the conferring of judicial jurisdiction, and I confine myself to this.

Our subject, when thus restricted, becomes for all practical purposes a rule for the construction of statutes. There are instances of its application to an award, *Chapman* v. *Lansdown*,[1] and to a

* Address delivered before the Victoria Bar Association.

[1] (1792) 1 Anstr. 273.

Judge's order, *Hoare* v. *Morshead*,[2] but these are rare. Our chief concern is with statutes.

These generalities may be a little hard to follow. An illustration may clear the air. We take a statute which gives a new remedy and find it empowers an application to "a Judge of the Supreme Court." Those with experience will at once ask themselves: "Will the Judge hear the application as a Judge of the Supreme Court or merely as a person designated by the statute, i.e., as a sort of statutory arbitrator?" And probably anyone who had never heard of a *persona designata* would answer: "Why of course he acts as a Judge of the Court. Isn't that the way the statute describes him? The only reason he can act at all is that he is a Judge." But this reply, though natural, is not as conclusive as it sounds. Suppose, for example, the statute had said the party aggrieved might apply "to Mr. Justice Smith of the Supreme Court." Then it seems clear that the legislature would intend that person to act as an individual only. So when the legislature appoints a Judge to hold a public inquiry. In the last two cases a certain man is given power probably because he is a Judge, but not as a Judge. May not the same apply when jurisdiction is given to the Judges as a body? They may be chosen because they are Judges, because their training as such specially qualifies them, and yet it need not follow that they are to act as Judges.

To meet this it will probably be said: "Admitting that is a possible interpretation of the legislature's intentions, why should it be adopted when there is the more convenient and natural and equally plausible construction that the statute means the Judge to act as Judge?"

It cannot be denied that some of the Courts, the Canadian more than the English, have shown an undue subtlety in finding that a statute does not mean a Judge or officer of Court to act as such. But this rule of construction has been to a certain extent invited by the vagaries of the legislature. When we remember that many Courts have only one Judge and that in others the Judges never sit but singly, and we find nevertheless that the legislature insists on giving powers to "a Judge" or "the Judges" of those Courts, the inference is plausible that the intention is not to give that power to the Court, and that some other interpretation must be found. And what are we to make of statutes which direct some applications to be made to a Court, and others to a Judge thereof?

Again, a Court or even a Judge sitting as such in Chambers is presumed to be restricted to the ordinary machinery of that Court.

[2] [1903] 2 K.B. 359.

When statute empowers a Judge to follow some unusual course to which this machinery is not adapted, i.e., *extra cursum curiae,* it furnishes some indication that the Judge is not to represent the Court, but to act as a special tribunal.[3] On the other hand, one must not forget that the legislature can give a Court or a Judge acting as such the power to proceed in any way at all. The question is whether it has done so.

Another likely question to be put is: "How can you say that when I have the right by statute to apply to 'any Judge of the Supreme Court' he acts as a person designated, when there is no person indicated, but only a class?"

Here I may remind you that we are concerned a *persona designata* not *nominata,* and the answer given to this riddle is found in the judgment of Bramwell, B., in *Re Sheffield Waterworks Act,* 1864[4] where answering the same objection about "a master of a superior court of law at Westminster," he explains: "The parties, then, are at liberty to go to any one of the masters. The masters are merely twelve designated persons, not acting as officers of any court." So if a statute gives power to Judges of a Court, but not *quâ* Judges, they are each *persona designata.* But we shall see that when a party has chosen one by making his application to him, the others have no concern with the proceedings, for each is a distinct and separate tribunal. Then it is the same as if only one were designated.

Now for the practical difference between applying to a Judge as an individual and as a Judge. Most of us learn this when we find we are deprived of an appeal we contemplated. For as you know our Court of Appeal Act gives a general right of appeal from any judgment or order, final or interlocutory, of the Supreme Court or its Judges, and from most of the judgments and orders of the County Courts and their Judges. But we have no Act giving a general right of appeal from *personæ designatæ.* And as appeal from court to court was unknown to the common law (the writ of error being quite distinct, and more resembling a certiorari) there is never any right to review decisions of a *persona designata* unless some Act expressly gives it.

There are other important consequences when once it is established that a judicial officer is not to act as such, but as a statutory tribunal. For all courts have inherent powers which need not be expressly given, but a *persona designata* has none of these, and must

[3] *C.P.R.* v. *Ste. Therese,* [1889] 16 S.C.R. 606; *Canadian Northern Ontario Ry. Co.* v. *Smith,* [1914] 50 S.C.R. 476.

[4] (1865) L.R. 1 Ex. 54.

look to the statute which makes him such for the bounds of his jurisdiction.

Other important results will be dealt with under Part III hereof.

II.

The *persona designata* question is a modern one in the sense that it is only within the last three-quarters of a century that any body of case law on it can be found and probably it was not till 1849 that the phrase was ever used (*Ross* v. *York, Newcastle & Berwick Ry. Co.*),[5] in relation to the judicial powers. Yet so far back as 1626 there is a case where the rule seems to be applied, *Windsor* v. *Farnham.*[6] In this case the Chancellor asked the Judges' opinion on the following point: under the Statute of Charitable Uses an appeal lies from the Charity Commissioners to the Chancellor; he had heard such an appeal, and a bill was filed to have him review his decision. This is the opinion of the Judges, as reported by Croke, who was one of them:

"And it was advised by all of us that this bill of review is not allowable, but the decree in Chancery is conclusive and not to be further examined, because it takes its authority from Act of Parliament: and the Act doth mention but one examination: and it is not to be resembled to the case where a decree is made by the Chancellor by his ordinary authority."

As an ordinary decree of the Court of Chancery was always reviewable for cause, the reasoning of the Judges may well imply that under the statute the Chancellor did not hear the appeal as the Court of Chancery, but as *persona designata.* On the other hand, it is possible that the Judges merely meant that the legislature had by implication taken away that right of review in the particular case.

What seems to be the next case in point of time is one in 1792, *Chapman* v. *Lansdown* (*supra*). An arbitrator's award referred the taxation of costs to a Master of the Court of Exchequer, and that Court held it could not review his taxation. These are its views:

"The taxation of the costs was very properly referred to the Master, being the person best acquainted with the costs of a suit in this Court, but the reference was not made by the Court, he did not act as an officer of the Court in it, and we have no jurisdiction over him."

These two are isolated instances, and it is not until 1847, starting with *Tennant* v. *Belfast,*[7] that a regular line of authority begins.

[5] (1849) 18 L.J.Q.B. 199.
[6] 4 Cro. 2 Car. 1, p. 40.
[7] (1848-49) 11 Ir. L.R. 290.

The sudden increase of cases from then on is due to the building of railways, and the consequent creation of new statutory tribunals to deal with compensation claims.

To understand the cases of the middle nineteenth century, it must be borne in mind that though the common law knew nothing of appeal from court to court, on the other hand it recognized an inherent right of appeal from a court officer or Judge to his own Court. This right was said by some to rest upon the fact that at common law all power of a single Judge or other officer was delegated by his Court, by others to depend on the mere official relationship to the Court. It has never been settled which view is right, and Judges often waiver between the two theories. The conflict does not now affect Judges' orders, for by sec. 6 of our Appeal Court Act all appellate powers of the Supreme Court en banc are transferred to the Court of Appeal. But both these theories have influenced the development of the *persona designata* conception.

The conflict has operated thus: it has often been decided that a court has appellate jurisdiction over its officer only because his power came from it, and hence it cannot interfere when he is not a delegate, but acting under power given to him directly, e.g., by statute. Whether this is sound or not, it is clear and intelligible theory. And to arrive at this result, there is no need to drag in the *persona designata* idea at all, or to consider in what capacity the officer acts. But many Judges could not let it go at this and felt constrained to also negative any right to appeal arising from the mere relationship of officer to court, not seeing that relationship is irrelevant if the fact of delegation is the sole test of power to review. These Judges then reason thus: no court officer can have jurisdiction as such except by delegation from his court, hence when he exercises powers not delegated by the court, but given directly, e.g., by statute, he does not act as officer, but as *persona designata.* Thus two inconsistent theories are brought into the same chain of reasoning: for examples see *Re Sheffield Waterworks Act* (*supra*), per Bramwell, B.; *Chapman* v. *Lansdown* (*supra*), *Owen* v. *L. & N.W. Ry. Co.*,[8] *Sandback Charity Trustees* v. *North Staffordshire Ry. Co.*[9]

The postulate that no court officer can have jurisdiction as such except by delegation from his court is anything but self-evident. While it is true at common law, the legislature is omnipotent and can, if it sees fit, undoubtedly give power to an officer as such without the intervention of his court. It is only a question if it has done

[8] (1867) L.R. 3 Q.B. 54, per Lush, J.
[9] (1877) 3 Q.B.D. 1, per Brett, L.J.

so. The reasoning criticised therefore begs the question. And it goes past the points requiring decision to bring in the *persona designata* point, for it is not only a tribunal of this special kind which can give decisions that are final, nor does it follow that because a decision is made final, the person making it must be *persona designata.*

Both in England and in Canada it has been held repeatedly that when a statute authorizes taxation by a Master of a proceeding not in court, he taxes not as Master but as *persona designata.*[10]

The contrary doctrine, which might well have prevailed, but did not, is perhaps set out best in *Metropolitan Ry. Co.* v. *Turnham,*[11] where Byles, J., says:

"Unless the legislature expressly enact the contrary, whenever a matter is referred to one of the masters, it is so referred subject to the control of the Court of which he is an officer."

And it is interesting that Erle, C.J., agreed with him, though he had held otherwise in the case of *Ross* v. *York &c. Ry. Co.* (*supra*). But the *Turnham* case must probably be regarded as overruled. (Compare the views of the Alberta Court of Appeal in *Calgary & Edmonton Ry. Co.* v. *Saskatchewan Land & Homestead Co.*[12])

Logically if a master or registrar acts as *persona designata* whenever his powers are not delegated by the Court, the same principle should apply to a single Judge who takes his jurisdiction directly from the legislature. But the English courts have shrunk from holding this, and there are numerous decisions that when his power comes from statute this is subject to his Court's inherent power of review, unless the contrary appears.[13] This was also held by the Supreme Court of Canada in *Re Sproule.*[14] This view necessarily implies that the Judge exercises his jurisdiction *quâ* Judge, although it is not delegated.

There are decisions against this right of review, but they do not lay down any general principle. Except as it indicates capacity, the inherent right of appeal is no longer of importance, for once you have a Judge deciding *quâ* Judge, the right to appeal is now express.

[10] *Tennant* v. *Belfast* (*supra*); *Ross* v. *York, Newcastle & Berwick Ry. Co.*, (*supra*); *Sandback Charity Trustees* v. *North Staffordshire Ry. Co.*, (*supra*); *Re Sheffield Waterworks Act*, (*supra*); *Owen* v. *L. & N. W. Ry. Co.*, (*supra*); *Re Cannings, Ltd., and The County Council of Middlesex*, [1907] 1 K.B. 51; *Re Distress Act* (1917-20) 27 B.C.R. 446.

[11] (1863) 14 C.B.N.S. 212, p. 223.

[12] (1919) 2 W.W.R. 297, reversed at [1919] 59 S.C.R. 567.

[13] *Brown* v. *Bamford*, (1841) 9 M. & W. 42; *Fowler* v. *Churchill*, (1842) 2 Dowl. N.S. 562; *Teggin* v. *Langford*, (1842) 10 M. & W. 556; *Robinson* v. *Burbidge*, (1850) 9 C.B. 289; *Beaufort* v. *Crawshay*, (1866) L.R. 1 C.P. 699.

[14] (1886) 12 S.C.R. 140.

I have not found in English case law, except perhaps the case in 1626, a single clear instance in which a Judge has been held to act as *persona designata,* in spite of the numerous statutes there which give power to single Judges. There are indeed many cases, such as *Lench* v. *Pargiter,*[15] *Witham* v. *Lynch,*[16] *Kilkenny and Great Southern and Western Ry. Co.* v. *Feilden,*[17] which decide that a decision by a Judge taking his power directly from a statute, is not subject to an appeal to this Court, but they turn merely on the finding that the legislature must have meant his decision to be final, and it is not suggested that he is *persona designata.* So it is safe to say that in England there is a strong presumption that the legislature means a Judge to act as Judge. (Consider, for example, such a case as *Re Humphrey & Humphrey.*[18])

In Canada the presumption seems all the other way, and there are many cases where single Judges given authority by statute have been held to act as *personae designatae,* in general because their Court has not delegated their power.[19]

The growth of our case law has been unsatisfactory, because cases on one statute have been applied to other statutes where the wording is not identical, and anomalies which are trivial to start with have been extended till they are serious. Compare, for example. *Doyle* v. *Dufferin, (supra); Chandler* v. *City of Vancouver, (supra), and Spencer* v. *City of Vancouver.*[20]

The first Canadian case holding a Judge *persona designata* seems to be *R.* v. *McIntosh (supra),* though there the phrase is not used.

A decision which has had great influence in Canada is *C.P.R.* v. *St. Therese (supra),* a case upon the Dominion Railway Act, where the Court held there was no appeal from the order of a superior court Judge, chiefly on the ground that he was empowered to do several things which a Judge does not ordinarily do, and there was an indication that the procedure was to be very summary. But the usual

[15] (1779) 1 Doug. 68.
[16] (1847) 1 Exch. 391.
[17] (1851) 6 Exch. 81.
[18] [1917] 2 K.B. 72.
[19] *R.* v. *McIntosh,* (1869) 12 N.B.R. 372; *Re Allan,* (1871) 31 U.C.Q.B. 458; *Re Pacquette,* (1886) 11 Ont. P.R. 463; *Re Young,* (1891) 14 P.C. 303; *Doyle* v. *Dufferin,* (1892) 8 Man. R. 294; *Re King,* (1899) 18 P.R. 365; *Re Simpson & Clafferty,* (1899) Ont. P.R. 402; *Re Toronto Ry. Co. & Hendrie,* (1896) 17 P.R. 199; *Birely* v. *Toronto Ry. Co.,* (1898) 25 O.A.R. 88; *Re Vancouver Incorporation Act & Rogers,* (1902) 9 B.C.R. 373; *Slocan* v. *C.P.R.,* (1908) 14 B.C.R. 112; *St. Hildaire* v. *Lambert,* [1909] 42 S.C.R. 264; *Re Chambers & C.P.R.,* (1910) 20 Man. R. 277; *Canadian Northern Ontario Ry. Co., (supra); Chandler* v. *City of Vancouver,* (1919) 26 B.C.R. 465; *R.* v. *Barry, Ex p. Lindsay,* (1922) 50 N.B.R. 33.
[20] (1921) 30 B.C.R. 382.

ratio decidendi, as in the typical case of *Doyle* v. *Dufferin* (*supra*), is that the Judge is not the delegate of his Court And we have the inconsistency that it has never been doubted, either in England or Canada, that a statute giving jurisdiction to a Court "or a Judge thereof" gives it to the latter *quâ* Judge, although he takes his power from the Act and not by delegation.[21]

III.

I shall now consider more fully practical effects and workings. As has been mentioned, appeal is not the only right affected. There are many powers inherent in a Court and in a Judge sitting as Judge; while a mere *persona designata* has none of them without express provision. Thus he cannot, without this:

(1) act by deputy, but only personally: *Richards* v. *Wood*[22] (note the *persona designata* idea is needlessly brought in here; the case really turns on the rule that a particular statute overrides a general);

(2) act by substitute, e.g., one County Court Judge by another: *Re Vancouver Incorporation Act & Rogers* (*supra*);

(3) award costs *Re Young* (*supra*); *Matte* v. *City of Vancouver*.[23]

(4) re-open his order: *Re Chambers & C.P.R.* (*supra*);

(5) commit for contempt: *Re Pacquette* (*supra*);

(6) hear proceedings commenced before another *persona designata*, even though both are Judges of the same Court;[24]

(7) relieve against forfeiture; *Re Jackson Ltd.* v. *Gettas*.[25]

And it seems obvious that he cannot summon or swear a witness, or award execution. There are other peculiar results. The proceedings must not be headed in the court to which the Judge or officer belongs, or they are wholly void, according to some authorities: *Spencer* v. *City of Vancouver* (*supra*). Law stamps cannot be charged, and it is difficult to see what right there is to make use of the Registry and Court officials at all.

From this it will readily appear that to apply the *persona designata* construction may often cause great inconvenience. For instance,

[21] *Re Vancouver Incorporation Act & Rogers*, (*supra*); *Halifax* v. *Reeves*, [1894] 23 S.C.R. 340; *Re Waldie & Burlington*, (1886) 13 O.A.R. 104; *Stokes* v. *Grissell*, (1854) 14 C.B. 678 at 686.

[22] (1906) 12 B.C.R. 182.

[23] (1917) 2 W.W.R. 53.

[24] *Doyle* v. *Dufferin*, (*supra*); *Chandler* v. *City of Vancouver*, (*supra*); *Re Municipal Act & Brokenhead*, (1922) 1 W.W.R. 687.

[25] (1926) 58 O.L.R. 564.

in this Province, where the Judge in Chambers usually varies every month, it is extremely awkward to find that an application which is simply adjourned by him cannot be heard before his successor, but must follow him around the Province. Also, that an action or some other proceeding may be necessary to enforce his order.

Whatever presumptions may prevail in England or in Canada as to the capacity of a Judge given power by statute, without further indication of the legislature's intentions, it is clear that in either country this intention is the first consideraton, and it can rebut the *prima facie* rule. We must then consider how this intention may be shown.

If the express powers given by the statute are so scanty that to regard the Judge as *persona designata* would make his jurisdiction practically unworkable, this seems to be ground for holding he is meant to act as Judge. Silence as to any right of appeal is probably equivocal, as appeal is a mere privilege, and there is no presumption that the legislature meant either to give or withhold it. If, on the other hand, an Act, after giving a Judge certain powers, also expressly gives him certain other powers already his if acting as a Judge, by operation of law, this may well indicate that he is meant to act as *persona designata,* since otherwise the additional powers are wholly unnecessary. Thus provision that a Judge's orders under a statute may be enforced in the same way as his other orders, seems to indicate that he makes the former as *persona designata.* However, this test must not be pushed too far, owing to the habit legislators have of inserting clauses merely from excess of caution. (See also *Re Humphrey & Humphrey* (*supra*), which suggests that this test has little weight in England).

This test, as applied to one section, may also be offset by some paramount principle of construction indicated by the statute as a whole. Thus in *Re Grunder,*[26] it was held that a Supreme Court Judge, hearing an application under s. 34 of the Succession Duty Act acted *quâ* Judge, although that section contained the following provisions:

"The procedure applicable to such an application, including the enforcement of any order made, shall be the procedure of the Court governing applications to and orders made by Judges in Chambers," and s. 43 gives the Judge powers of appraisal, etc., which are quite foreign to his ordinary jurisdiction. The ground of this decision was that other sections of the same Act, *e.g.,* s. 40, gave somewhat similar powers to the Supreme Court, and it was considered unlikely

[26] (1923) 33 B.C.R. 181 (reversed on other grounds [1924] S.C.R. 406).

that the Legislature meant to create two distinct tribunals for administering the same Act, and more probable that it had merely expressed itself badly.

This seems also to have been the *ratio decidendi* in *Andrews* v. *Pacific Coast Coal Mines Ltd.*,[27] where it was held the County Court Judge under the Mechanics' Lien Act is not *persona designata,* but acts as Judge. This Act is curiously worded, many sections giving powers to the Court, others to the judge.

If authority, even though special or unusual, given to "a Judge" or other officer, has relation to some matter already in some way before the Court, this is probably as good an indication as any that he is meant to represent the court. This seems to be the ground on which *Caudwell* v. *George*[28] was decided, though the report is obscure.

Slight indications of the Legislature's intentions ought to be sufficient, and one would expect to find that the use of phraseology and the reference to machinery particularly applicable to a Court should be decisive to show that a judge acts as Judge. But it has been held that the following circumstances are not sufficient to show this:

(1) Reference to a Judge being "in Chambers": *Doyle* v. *Dufferin* (*supra*); *C. P. R.* v. *St. Therese* (*supra*).

(2) Provision that application to a Judge is to be made by "summons": *Doyle* v. *Dufferin* (*supra*).

(3) Provision that application to a judge is to be made by "originating summons": *St. Hilaire* v. *Lambert* (*supra*).

(4) Provision that application shall be made to the judge for "a rule to show cause": *Doyle* v. *Dufferin* (*supra*), *Chandler* v. *City of Vancouver* (*supra*).

These decisions seem had to justify, and the dissenting reasons of Martin, J.A., in the *Chandler* case seem unanswerable. He there pointed out that the expression "rule to show cause" is one peculiarly applicable to Courts, and that it is absurd to hold that this process can be issued by a mere *persona designata.*

IV.

To summarize such principles as can be asserted with certainty, we may say:

(a) A statute giving judicial power to a Court officer or judge must be construed according to the intentions of the legislature.

[27] (1922) 31 B.C.R. 537.
[28] (1925) 35 B.C.R. 134.

(b) A statute giving such authority "to a Court or a Judge thereof" gives it to the judge as a Judge.

(c) Where statute gives authority to another officer, the *prima facie* rule both in England and in Canada is that the officer is *persona designata.*

(d) Where such authority is given simply "to a Judge," the *Prima facie* rule in England is that the judge acts as Judge, in Canada that he is *persona designata.*

It may be pointed out that when you find yourself without appeal from a *persona designata,* it does not follow that you have no means of review, for the remedy by *certiorari* may be available. While appeal must be given by statute, *certiorari* is a common law remedy which lies unless taken away by statute; and it lies not only to a Court proper, but also to any inferior tribunal exercising judicial functions. And seemingly even a superior court judge acting as *persona designata* is an inferior tribunal.[29]

There are several cases to show that *certorari* lies to a *persona designata.*[30]

The difficulty however is that *certiorari* is a very narrow remedy, in no way comparable to appeal, and it is often useless for that reason. Fraud or want of jurisdiction is seldom the cause of complaint, and unless one of them is, evidence extrinsic to the record cannot be introduced. Error in law cannot be relieved against unless it appears by the record, and it seldom does, although it did in *R.* v. *Barton* (*supra*), where the Registrar recorded his decision so as to embody his reasons.

I can feel little doubt that most men's verdict, after experience with the *persona designata* idea, is that however plausible it may be, it is little better than a trap for the unwary. While a few ways of determining the intentions of the Legislature are settled, the want of tests in any way conclusive creates deplorable uncertainty. And the limits to which principles now established will be extended is not yet realized. There are a hundred sections in our statutes, not yet construed which invite attempts to apply the *persona designata* construction, and in most cases it would puzzle Solomon to predict the view which will prevail. As a wrong guess will render all proceedings void, the hardship to litigants is obvious.

[29] *Re Allan, (supra); R.* v. *Barry, Ex p. Lindsay, (supra).*

[30] *R.* v. *Barton,* (1909) 27 B.C.R. 485; *Shrewsbury* v. *Wirral Railways Committee,* [1895] 2 Ch. 812; *Owen* v. *L. & N. W. Ry. Co., (supra); Re Pacquette, (supra);* even though he is a superior court judge: *Re Allan, (supra); R.* v. *Barry, (supra).*

Nor do I think that many will dispute that the whole *persona designata* conception could be scrapped without the slightest inconvenience or the least distortion of legal principles. And I venture to think the intentions of the Legislature would be best carried out if this were done. It is too late to hope for this in Canada without the aid of legislation or the Privy Council, but all that is required is a section in our Interpretation Act to something like this effect:

"Whenever by any statute judicial or quasi-judicial powers are given to a judge or officer of any Court, in the absence of express provision to the contrary, such judge or officer shall be deemed to exercise such powers in his official capacity, and as representing the Court to which he is attached."

Victoria, B.C. D. M. GORDON.

WHAT ELSE COULD THE MAGISTRATE DO?—A subscriber has sent us a clipping from a newspaper commenting on a curious case that was tried in the County Police Court at Toronto recently. The name of the newspaper did not appear on the clipping and therefore we are not able to assign the story to its proper source. However, this is the story of the trial as communicated to us:—

"It appears that a cat was pounced upon by a dog which began doing its best to kill it. A man interfered, freed the cat and began beating the dog. Another man came along, saw the dog being abused, and interfered. Another man, carrying a crow-bar, who had seen the whole thing, stepped forward and threatened the man who interfered with the man who was beating the dog that had attacked the cat. Then a policeman appeared on the scene and nabbed the man who threatened the man who interfered with the man who was beating the dog that had worried the cat.

They were in court. That is to say two men and a policeman were in court. The cat had escaped, the dog had escaped, the man who had rescued the cat and beaten the dog was not there, and the man with the crow-bar would not tell the policeman the name of the man who had been beating the dog."

The Magistrate dismissed the case.