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INSTITUTE OF ADVANCED
LEGAL STUDIES

IN THE PRIVY COUNCIL No. 26 of 1960

F 0922

ON APPEAL
FROM THE COURT OF APPEAL FOR EASTERN AFRICA

BETWEEN

PETER HAROLD RICHARD POOLE ... Appellant

- and -

THE QUEEN ... ... Respondent

CASE FOR THE RESPONDENT

RECORD

1. This is an appeal by special leave from a judgment, dated the 21st March, 1960, of the Court of Appeal for Eastern Africa (O'Connor, P., Forbes, V.-P., Gould and Windham, JJ.A. and Farrell, J.) dismissing an appeal from a judgment, dated the 10th December, 1959 of the Supreme Court of Kenya, (Sinclair, C.J. and a jury) whereby the Appellant was convicted of the murder of one Kamawe s/o Musunge and was sentenced to death. pp. 12.42 p. 9

2. The following are the provisions of the Criminal Procedure Code of Kenya (Laws of Kenya, 1948, cap. 27) relevant to this appeal:

3. (1) All offences under the Penal Code shall be inquired into, tried, and otherwise dealt with according to the provisions hereinafter contained

(2) All offences under any other law shall be inquired into, tried and otherwise dealt with according to the same provisions, subject, however, to any enactment for the time being in force regulating the manner or place of inquiring into, trying or otherwise dealing with such offences

(3) Provided, however, and notwithstanding anything in this Code contained, the Supreme Court may, subject to the provisions of any law for the time being in force in the Colony, in exercising its

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criminal jurisdiction in respect of any matter or thing to which the procedure prescribed by this Code is inapplicable exercise such jurisdiction according to the course of procedure and practice observed by and before his Majesty's High Court of Justice in England at the date of the coming into operation of this Code

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28. Any police officer may, without an order from a magistrate and without a warrant, arrest -

(a) any person whom he suspects upon reasonable grounds of having committed a cognizable offence;

(b) any person who commits a breach of the peace in his presence;

(c) any person who obstructs a police officer while in the execution of his duty, or who has escaped or attempts to escape from lawful custody;

(d) any person in whose possession anything is found which may reasonably be suspected to be stolen property or who may reasonably be suspected of having committed an offence with reference to such thing;

(e) any person who he suspects upon reasonable grounds of being a deserter from His Majesty's Army or Navy or Air Force;

(f) any person whom he finds in any highway, yard or other place during the night and whom he suspects upon reasonable grounds of having committed or being about to commit a felony;

(g) any person whom he suspects upon reasonable grounds of having been concerned in any act committed at any place out of the Colony which,

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if committed in the Colony, would have been punishable as an offence, and for which he is, under the Fugitive Criminals Surrender Ordinance or the Fugitive Offenders Act, 1881, or otherwise, liable to be apprehended and detained in the Colony;

(h) any person having in his possession without lawful excuse, the burden of proving which excuse shall lie on such person, any implement of housebreaking;

(i) any released convict committing a breach of any provision prescribed by section 344 or of any rule made thereunder;

(j) any person for whom he has reasonable cause to believe a warrant of arrest has been issued

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32. A police officer making an arrest without a warrant shall, without unnecessary delay and subject to the provisions herein contained as to bail, take or send the person arrested before a magistrate having jurisdiction in the case or before an officer in charge of a police station

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66. Every court has authority to cause to be brought before it any person who is within the local limits of its jurisdiction and is charged with an offence committed within the Colony, or which according to law may be dealt with as if it had been committed within the Colony, and to deal with the accused person according to its jurisdiction

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69. The Supreme Court may inquire into and try any offence subject to its jurisdiction at any place where it has power to hold sittings:

Provided that, except under Section 84, no criminal case shall be brought under the cognizance of the Supreme Court unless the same shall have been previously investigated by a subordinate court and the accused person shall have been committed for trial before the Supreme Court

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82. (1) In any criminal case and at any stage thereof before verdict or judgment, as the case may be, the Attorney General may enter a nolle prosequi, either by stating in court or by informing the court in writing that the Crown intends that the proceedings shall not continue, and thereupon the accused shall be at once discharged in respect of the charge for which the nolle prosequi is entered, and if he has been committed to prison shall be released, or if on bail his Recognizances shall be discharged; but such discharge of an accused person shall not operate as a bar to any subsequent proceedings against him on account of the same facts

(2) If the accused shall not be before the court when such nolle prosequi is entered, the registrar or clerk of such court shall forthwith cause notice in writing of the entry of such nolle prosequi to be given to the keeper of the prison in which such accused may be detained, and also, if the accused person has been committed for trial, to the subordinate court by which he was so committed, and such subordinate court shall forthwith cause a similar notice in writing to be given to any witnesses bound over to prosecute and give evidence and to their sureties (if any) and also

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to the accused and his sureties in case he shall have been admitted to bail

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89. (1) Proceedings may be instituted either by the making of a complaint or by the bringing before a magistrate of a person who has been arrested without warrant

(2) Any person who believes from a reasonable and probable cause that an offence has been committed by any person may make a complaint thereof to a magistrate having jurisdiction

(3) A complaint may be made orally or in writing, but, if made orally, shall be reduced to writing by the magistrate, and, in either case, shall be signed by the complainant and the magistrate

(4) The magistrate, upon receiving any such complaint or where an accused person who has been arrested without a warrant is brought before him, shall, subject to the provisions of the next succeeding sub-section, draw up or cause to be drawn up and shall sign a formal charge containing a statement of the offence with which the accused is charged, unless such a charge shall be signed and presented by a police officer

(5) Where the magistrate is of opinion that any complaint or formal charge made or presented under this section does not disclose any offence, the magistrate shall make an order refusing to admit such complaint or formal charge and shall record his reasons for such order

(6) Nothing contained in this section shall be construed as affecting the powers of justices of the peace conferred on them by the Justices of the Peace Ordinance

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108. The police officer or other person executing a warrant of arrest shall (subject to the provisions of section 103 as to security) without unnecessary delay bring the person arrested before the court before which he is required by law to produce such person

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134. Every charge or information shall contain, and shall be sufficient if it contains a statement of the specific offence or offences with which the accused person is charged, together with such particulars as may be necessary for giving reasonable information as to the nature of the offence charged

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138. A person who has been once tried by a court of competent jurisdiction for an offence and convicted or acquitted of such offence shall, while such conviction or acquittal has not been reversed or set aside, not be liable to be tried again on the same facts for the same offence

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141. A person convicted or acquitted of any offence constituted by any acts may, notwithstanding such conviction or acquittal, be subsequently charged with and tried for any other offence constituted by the same acts which he may have committed, if the court by which he was first tried was not competent to try the offence with which he is subsequently charged

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168. (1) The judgment in every trial in any criminal court in the exercise of its original jurisdiction shall be pronounced, or the substance of such judgment shall be explained, in open court either

immediately after the termination of the trial or at some subsequent time of which notice shall be given to the parties and their advocates, if any:

Provided that the whole judgment shall be read out by the presiding judge or magistrate if he is requested so to do either by the prosecution or the defence

(2) The accused person shall, if in custody, be brought before the court, or, if not in custody, be required by the court to attend, to hear judgment delivered, except where his personal attendance during the trial has been dispensed with and the sentence is one of fine only or he is acquitted

(3) No judgment delivered by any court shall be deemed to be invalid by reason only of the absence of any party or his advocate, on the day or from the place notified for the delivery thereof, or of any omission to serve, or defect in serving, on the parties or their advocates, or any of them, the notice of such day and place

(4) Nothing in this section shall be construed to limit in any way the provisions of section 381

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193. Except as otherwise expressly provided, all evidence taken in any inquiry or trial under this Code shall be taken in the presence of the accused, or, when his personal attendance has been dispensed with, in the presence of his advocate (if any)

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218. Save as is hereinafter provided, every case in which a European shall appear before a subordinate court accused of an offence punishable with imprisonment which may exceed six months shall be inquired into under Part VIII as if the offence were one triable exclusively by the Supreme Court, and if there are sufficient grounds for committing the accused for trial the subordinate court shall commit him for trial by the Supreme Court

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222. Every person committed for trial to the Supreme Court under the provisions of this Part shall be tried by a jury composed of Europeans

On trial for murder, treason, or rape, the number of the jury shall be twelve; on trials for other offences the number of the jury shall be five

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226. Any magistrate empowered to hold a subordinate court of the first, second or third class may commit any person for trial to the Supreme Court:

Provided that it shall not be competent for a magistrate empowered to hold a subordinate court of the third class to commit a European for trial to the Supreme Court

227. Whenever any charge has been brought against any person of an offence not triable by a subordinate court or as to which the subordinate court is of opinion that it is not suitable to be disposed of upon summary trial, a preliminary inquiry shall be held according to the provisions hereinafter contained by a subordinate court, locally and otherwise competent

228. A Magistrate conducting a preliminary

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inquiry shall, at the commencement of such inquiry, read over and explain to the accused person the charge in respect of which the inquiry is being held, but the accused person shall not be required to make any statement in reply thereto

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236. If the Court considers the evidence sufficient to put the accused person on his trial, the court shall commit him for trial to the Supreme Court and shall, until the trial, either admit him to bail or send him to prison for safe keeping. The warrant of such first-named court shall be sufficient authority to the officer in charge of any prison appointed for the custody of prisoners committed for trial although out of the jurisdiction of such court

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238. When the accused person is commited for trial before the Supreme Court, the subordinate court committing him shall bind by recognizance, with or without surety or sureties, as it may deem requisite, the complainant and every witness to appear at the trial to give evidence, and also to appear and give evidence if required, at any further examination concerning the charge which may be held by direction of the Attorney General

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PROCEEDINGS AFTER COMMITTAL FOR TRIAL

246. In the event of a committal for trial the written charge (if any), the depositions, the statement of the accused person, the recognizances of the complainant and of the witnesses, the recognizances of bail (if any), and any documents or things which have been put in evidence, shall be transmitted without

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delay by the committing court to the Registrar of the Supreme Court, and an authenticated copy of the depositions and statement aforesaid shall be also transmitted to the Attorney General

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249. If, prior to the trial before the Supreme Court, the Attorney General is of opinion, upon the record of the committal proceedings received by him, that the case is one which may suitably be tried by a subordinate court, he may cause the depositions to be returned to the court which committed the accused, and thereupon the case shall be reopened, tried and determined in the same manner as if such person had not been committed for trial:

Provided that in every such case the accused shall be entitled to have recalled for cross-examination or further cross-examination all or any of the witnesses for the prosecution

250. (1) If, after the receipt of the authenticated copy of the depositions as aforesaid, the Attorney General shall be of the opinion that the case is one which should be tried upon information before the Supreme Court, an information shall be drawn up in accordance with the provisions of this Code, and when signed by the Attorney General shall be filed in the Registry of the Supreme Court

(2) In any such information the Attorney General may charge the accused person with any offence which, in his opinion, is disclosed by the depositions either in addition to, or in substitution for, the offence upon which the accused person has been committed for trial

251. The Registrar or his deputy shall indorse on or annex to every information

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filed as aforesaid, and to every copy thereof delivered to the officer of the court or police officer for service thereof, a notice of trial, which notice shall specify the particular sessions of the Supreme Court at which the accused person is to be tried on the said information, and shall be in the following form, or as near thereto as may be:-

"A.B.

Take notice that you will be tried on the information whereof this is a true copy at the sessions of the Supreme Court to be held at on the day of 19 ."

x x x x x x x x

255. All informations drawn up in pursuance of section 250 of this Code shall be in the name of and (subject to the provisions of section 83) signed by the Attorney General, and when so signed shall be as valid and effectual in all respects as an indictment in England which has been signed by the proper officer of the court in accordance with the Administration of Justice (Miscellaneous Provisions) Act, 1933

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257. The practice of the Supreme Court in its criminal jurisdiction shall be assimilated as nearly as circumstances will admit to the practice of His Majesty's High Court of Justice in its criminal jurisdiction and of Courts of Oyer and Terminer and General Gaol Delivery in England

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288. The jury having been sworn to give a true verdict according to the evidence upon the

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issues to be tried by them, and having elected a foreman, the proper officer of the court shall inform them of the charge set forth in the formation, and of their duty as jurors upon the trial

289. If in the course of a trial by jury, at at any time before the delivery of the verdict, any juror dies or is discharged by the court as being through illness incapable of continuing to act or for any other reason, the jury shall nevertheless, so long as the number of its members is not reduced by more than one, be considered as remaining for all the purposes of that trial properly constituted, and the trial shall proceed and a verdict may be given accordingly. Where one juror has died or has been discharged as aforesaid the verdict of eleven jurors in a trial for murder, treason or rape, or of four jurors in a trial for any other offence shall be deemed to be the unanimous verdict of the jury

290. If during a trial the accused person in the opinion of the court becomes incapable, through sickness or other sufficient cause, of remaining at the bar, the court may discharge the jury and adjourn the trial

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316. (1) (a) When the jury are unanimous in their opinion, the judge shall give judgment in accordance with that opinion

(b) If the accused person is found not guilty, the judge shall record a judgment of acquittal. If the accused person is found guilty the judge shall pass sentence on him according to law

(2) If the jury are not unanimous in in their opinion, the judge shall, after the lapse of such time as he thinks reasonable, discharge the jury

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317. Whenever the jury is discharged, the accused person shall be detained in custody or released on bail, as the case may be, and shall be tried by another jury, unless the judge considers that he should not be retried, in which case the judge shall make an entry to that effect on the information, and such entry shall operate as an acquittal

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381. Subject to the provisions hereinbefore contained, no finding, sentence or order passed by a court of competent jurisdiction shall be reversed or altered on appeal or revision on account -

(a) of any error, omission or irregularity in the complaint, summons, warrant, charge, proclamation, order, judgment or other proceedings before or during the trial or in any inquiry or other proceedings under this Code; or

(b) of the omission to revise any list of jurors or assessors in accordance with sections 264; or

(c) of any misdirection in any charge to a jury, unless such error, omission, irregularity or misdirection has in fact occasioned a failure of justice:

Provided that in determining whether any error, omission or irregularity has occasioned a failure of justice the Court shall have regard to the question whether the objection could and should have been raised at an earlier stage in the proceedings.

3. On the 11th November, 1959, at the conclusion of preliminary proceedings before a Magistrate, the Appellant was committed to the Supreme Court of Kenya for trial on the charge of murdering Kamawe. On the 18th November, 1959 an information was signed pp. 1-2

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charging him with this offence. The trial of the Appellant on this information began before Sinclair C.J. and a jury on the 30th November, 1959.

pp.14-15 4. On the 30th November, 1959 the Appellant pleaded "Not Guilty", and was given in charge of a jury. Counsel for the Crown opened the case, and was about to call the first witness when one of the jurors said he had a conscientious objection to giving a verdict of guilty on religious grounds. After a short adjournment, the Acting Senior Crown Counsel, who was appearing for the Prosecution, entered a nolle prosequi, pp. 2-3 and handed to the Deputy Registrar a fresh information, again charging the Appellant with the murder of Kamawe. The Learned Chief Justice discharged the Appellant "in respect of the charge for which the nolle prosequi is entered". The Deputy Registrar then asked the Appellant to come to the ante-room of the Court, and there served upon him the new information and executed a warrant for the detention of the Appellant pending his trial upon that information.

5. On the 7th December, 1959 the Appellant was brought before Sinclair, C.J. for his trial upon p.4,ll.1-21 the information of the 30th November, 1959. Counsel for the Appellant submitted a plea in bar, that the entering of a nolle prosequi barred the retrial of the Accused upon the same charge, though not his retrial upon another charge. The Learned Chief Justice ruled that, in view of the wording of Section 82(1) of the Criminal Procedure Code, the entry of a nolle prosequi did not constitute a bar to the filing of a fresh information of the same charge. The Appellant was then put in charge of a jury, and the trial proceeded.

pp.8, 10-11 6. For the purposes of this appeal, it is necessary to describe only one incident of the trial. This occurred at the close of the evidence of a witness name Titoro, who was an eye-witness of the killing of Kamawe by the Appellant. His evidence included estimates of certain distances, and the Learned Chief Justice wished him to demonstrate what these distances had been. The Court room was too small for this purpose, so Titoro was taken outside the building in order to

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indicate the distances by reference to points on the ground. The Chief Justice, Counsel on both sides and the Court Clerk were all present. When Court and Counsel returned to the Court Room, Crown Counsel informed the Chief Justice that he believed the Appellant had not been present outside the Court, and upon enquiry being made by the Chief Justice this was discovered to be so. The Learned Chief Justice immediately adjourned the Court again to the same place outside the building, and the witness repeated the demonstration in the presence of the Appellant. Counsel for the Appellant made no objection to this procedure. The hearing was then again resumed inside, Titoro returned to the witness box, the Learned Chief Justice asked him questions so as to record what he had demonstrated, and Counsel for the Appellant cross-examined him thereon.

7. The trial ended on the 10th December, 1959 when the jury found the Appellant guilty and he was sentenced to death. p. 9

8. The Appellant appealed to the Court of Appeal for Eastern Africa. He set out a number of grounds of appeal in a Memorandum and Supplementary Memorandum of Appeal, of which only two were taken in the petition for leave to appeal. They are -

(1) that the trial was a nullity, because, after the entry of a nolle prosequi on the 30th November, 1959 the Crown could proceed further against the Appellant for the murder of Kamawe only by way of a new preliminary enquiry and comittal for trial;

(2) that the trial was a nullity because part of it, i.e. the first demonstration given by Titoro outside the Court, took place in the absence of the Appellant.

9. The Appeal was argued on the 1st and 2nd March, 1960, before a full bench of five Judges, O'Connor, P., Forbes, V.-P., Gould and Windham, JJ.A. and Farrell, J. The judgment of the Court was delivered by Forbes, V.-P., on the 21st March, 1960.

10. The Learned Vice-President first set out the circumstances in which the nolle prosequi had been entered. He then said that, when the juror said he had a conscientious objection to giving a verdict of guilty, the Learned Chief Justice might in the exercise of his discretion have discharged the jury pp. 13-16

p. 16, l.7-
p. 18, l.20

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and ordered a retrial before another jury; but the entry of the nolle prosequi had taken the matter out of his hands, and it was necessary to consider the position thus created. In R. v. Noormahomed Kanji (1937), 4 E.A.C.A.34, the Court of Appeal had held, under a Section of the Criminal Procedure Code of Uganda indistinguishable from Section 82 of the Kenyan Code, that after the entry of a nolle prosequi a fresh information of the same charge could be filed without a fresh preliminary enquiry. Counsel for the Appellant had argued that that decision was wrong. He had also argued that Section 82 should be construed by reference to the meaning of the expression "nolle prosequi" at Common Law, and had cited a number of authorities from England and Australia. The Court did not propose to refer to those authorities, except to say that they thought it by no means clear that they established the proposition for which Counsel for the Appellant contended. The provisions of the Code dealing with nolle prosequi were comprehensive, and displaced the Common Law.

p.18,l.21-p.20,l.44

11. Forbes, V.-P., said that the charge contained in an information filed under Section 250 was clearly distinct both from the charge on which an accused person was arrested and from the charge framed by the Magistrate under Section 233. Prima facie the Court would agree with the decision in R. v. Noormahomed Kanji, that, where a nolle prosequi related to a charge in an information, only the proceedings in respect of that charge were discounted. Counsel for the Appellant had conceded that if two informations were filed against an accused person, the entry of a nolle prosequi in the trial upon one would not prevent the continuation of proceedings on the other. He had argued, however, that in this case no second information had been filed when the nolle prosequi was entered, that entry immediately effected the Appellant's release, and he could be brought back into custody only by arrest under Section 28 and, consequently fresh committal proceedings. The Court did not agree that the entry of a nolle prosequi immediately effected the release of the accused person. It required that he be discharged by the Court. The argument based upon the alleged difficulty of getting him before the Court again after he had been released ignored the provisions of Section 66 of the Criminal Procedure Code. The Learned Judges saw no

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reason why the Supreme Court should not act under that Section to compel the attendance before it of a person properly charged upon information, and should not thus order his arrest if he happened to be at liberty. If the Supreme Court had jurisdiction to try the Appellant on the second information, it had power to order his arrest and detention under Section 66. So far as Section 82 was concerned, they could find nothing in it to indicate that a nolle prosequi entered in respect of a charge in an information discharged the proceedings on the preliminary enquiry. Proceedings upon a charge in an information, though based on the proceedings in the subordinate Court, were distinct from those proceedings. Proceedings against an offender fell into distinct stages, and, in the context of Section 82, the proceedings mentioned must be those in respect of the charge in the information. The Court therefore held that the entry of a nolle prosequi in respect of a charge in an information filed under Section 250 did not preclude another information based on the facts disclosed at the preliminary enquiry. In any event, it appeared that at the moment of the Appellant's discharge under Section 82 there had been in existence a valid information charging him with the murder of Kamawe. That was the information of the 30th November, 1959, which had been handed to the Deputy Registrar at the moment the nolle prosequi was entered and before the order of discharge was made. The case was therefore indistinguishable from a case in which different informations had been filed in respect of different offences disclosed at one preliminary enquiry, and a nolle prosequi had been entered in respect of one of those informations only. Apart from the question of the moment when the second information had been filed, the critical moment when an information became effective under Section 255 was the moment of signing, and there was no doubt that the second information had been signed before the nolle prosequi had been entered. The Court agreed with the decision in R. v. Noormahomed Kanji, and the first ground of appeal failed.

p.22,l.47-p.24,l.10

p.24,l.11-p.25,l.50

12. The Learned Vice-President then referred to the incident of the demonstration given by the witness, Titoro. He set out what had happened, and said Counsel for the Appellant had argued that on a

p.26,l.1-p.27,l.41

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charge of felony, unless there was good cause, the whole trial had to take place in the presence of the prisoner, and the incident which had caused part of it to take place in his absence was an irregularity which vitiated the trial and could not be cured. There was no doubt, Forbes, V.-P. said, that the absence of the Appellant from the first demonstration had been an irregularity. The only question was whether that irregularity was

p.27,l.41-p.29,l.3 curable under Section 381 of the Criminal Procedure Code. The distinction between irregularities which were curable and those which were not had been stated by the Privy Council in Pulukuri Kotayya v. The King Emperor (1947), 74 I.A. 65. It had there been said that a trial conducted in a manner different from that prescribed by the Code was bad, but if a trial was conducted substantially in the manner prescribed by the Code, and some irregularity occurred in the course of it, the irregularity could be cured under the Section of the Indian Act equivalent to Section 381, even though the irregularity had

p.29,l.4-p.32,l.19 involved a breach of some provision of the Code. English cases about the necessity for trial at bar in cases of felony had little relevance in Kenya, where the relevant provision was Section 193 of the Code. That section made it possible for the Court to dispense with the presence of the Accused. That had not been done in the present case, but the fact that circumstances could exist in which evidence could be taken in the absence of the Accused indicated that the presence of the Accused throughout the trial was not so fundamental a requirement as the presence of the Judge. The presence of the Accused throughout was not an absolute requirement necessarily going to the root of a conviction. The trial had been conducted substantially in accordance with the provisions of the Code. An irregularity had occurred, but no suggestion had been made that the Appellant had suffered any actual prejudice as a result. The Court was therefore of the opinion that what had happened amounted to no more than an irregularity curable under Section 381.

13. The Court of Appeal thus held that the Appellant's trial had not been a nullity. The rest of their judgment dealt with matters which do not now arise.

14. The Respondent respectfully submits that the consequence of the entry of a nolle prosequi in

Kenya is that set out in Section 82(1) of the Criminal Procedure Code, viz.

> "the accused shall be at once discharged in respect of the charge for which the nolle prosequi is entered, and if he has been committed to prison shall be released, or if on bail his recognizances shall be discharged".

The charge here mentioned must be the charge upon which proceedings are being conducted at the time of the entry of the nolle prosequi. When a nolle prosequi is entered in the course of a trial in the Supreme Court, therefore, the charge mentioned in Section 82(1) is the charge in the information, and it is in respect of that charge only that the Accused is discharged. He remains a person who has been committed for trial to the Supreme Court under Section 236, and the "subsequent proceedings against him on account of the same facts" which are permitted by Section 82(1) are such proceedings as are appropriate in the case of a person so committed for trial. The Respondent therefore submits that after the entry of a nolle prosequi in a trial in the Supreme Court a new information can be signed under Section 250 and a new trial held in the Supreme Court without a new preliminary enquiry and a new committal for trial.

15. The Respondent respectfully submits that, if a trial is conducted substantially in the manner prescribed by the Criminal Procedure Code, but some irregularity occurs in the course of such conduct, that irregularity is cured by Section 381 unless it has in fact occasioned a failure of justice. The making of Titoro's demonstration in the absence of the Accused on the first occasion was an "irregularity in the .....proceedings..... during the trial" within the meaning of Section 381. The trial was conducted substantially in the manner prescribed by the Code, and Counsel for the Appellant conceded in the Court of Appeal that the irregularity had not caused any actual prejudice to the Appellant. The Respondent therefore submits that, in accordance with Section 381, the sentence of the Supreme Court should not be reversed or altered on account of this irregularity.

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16. The Respondent respectfully submits that the judgment of the Court of Appeal for Eastern Africa was right and ought to be affirmed, and this Appeal ought to be dismissed, for the following (amongst other)

R E A S O N S

1. BECAUSE after the entry of the nolle prosequi on the 30th November, 1959 the Appellant remained a person committed for trial to the Supreme Court of Kenya.

2. BECAUSE the Supreme Court had jurisdiction to try the Appellant upon the information of the 30th November, 1959.

3. BECAUSE the procedure adopted occasioned no miscarriage of justice.

4. BECAUSE Titoro's giving of a demonstration in the absence of the Appellant was an irregularity which did not in fact occasion a failure of justice.

5. BECAUSE of the other reasons given in the judgment of the Court of Appeal.

L. G. SCARMAN

J. G. Le QUESNE

No. 26 of 1960

IN THE PRIVY COUNCIL

O N A P P E A L

FROM THE COURT OF APPEAL FOR EASTERN AFRICA

B E T W E E N

PETER HAROLD RICHARD POOLE ... ... Appellant

- and -

THE QUEEN ... Respondent

C A S E FOR THE RESPONDENT

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