Privy Council Appeal No. 26 of 1960

Peter Harold Richard Poole - - - - - - - - *Appellant*

v.

The Queen - - - - - - - - - - - *Respondent*

FROM

THE COURT OF APPEAL FOR EASTERN AFRICA AT NAIROBI

REASONS FOR REPORT OF THE LORDS OF THE JUDICIAL COMMITTEE OF THE PRIVY COUNCIL, DELIVERED THE 28TH JULY, 1960

Present at the Hearing:

LORD TUCKER
LORD DENNING
LORD MORRIS OF BORTH-Y-GEST

[*Delivered by* LORD TUCKER]

On 10th December, 1959, the appellant was convicted of murder after a trial before Sinclair C.J. and a jury in the Supreme Court of Kenya. His appeal to the Court of Appeal for Eastern Africa was dismissed on 21st March, 1960. From this decision he appealed to Her Majesty in Council by special leave and the appeal was heard by the Board on 25th, 26th and 27th July, 1960. On 28th July their Lordships announced that they would humbly advise Her Majesty that the appeal be dismissed. They now give their reasons.

Except for one incident in the course of the trial (which will be dealt with at once) no complaint was made before the Board on behalf of the appellant with regard to the evidence, the summing up or the conduct of the trial. The exception was the following incident. At the conclusion of the evidence of a witness for the prosecution named Titoro, who had said that he saw the appellant shoot the deceased man named Kamawe, the Chief Justice asked the witness to indicate certain positions and distances which he had described, but this could not conveniently be done in the Court room as it was too small. He accordingly proceeded with the witness and counsel for the prosecution and defence to the steps outside the Judges' entrance where the witness indicated the positions and distances of which he had spoken. The distances indicated were all agreed with counsel, sometimes after having been paced out. On returning to Court counsel for the prosecution stated that he did not know whether the appellant had been present at the demonstration. It was ascertained that he had not been present. The Court was then adjourned to the same place and the demonstration repeated in the presence of the appellant. The second demonstration took about half the time occupied by the first which had taken from 15 to 20 minutes. There was no material variation in the positions or distances indicated on each occasion. Section 193 of the Criminal Procedure Code of Kenya provides :—

> "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)."

It was contended on behalf of the appellant that this being a felony the whole trial must take place in the presence of the prisoner and that no action taken by the trial Judge could cure the irregularity which had occurred and which vitiated the whole trial.

It will be observed that section 193 draws no distinction between felonies and misdemeanours. Moreover, section 381 of the Code provides:—

"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*) . . . . . 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."

The Court of Appeal for Eastern Africa after considering certain English authorities and some Indian decisions under section 537 of the Indian Code of Criminal Procedure, which is in similar terms to section 381 of the Kenya Code set out above, were of opinion that although an irregularity had occurred and it could not be said that the accused's presence had been dispensed with, his presence throughout a trial was not an absolute requirement necessarily going to the root of a conviction, and that in the circumstances of this case the appellant had been in no way prejudiced by the incident which was curable under section 381. Their Lordships are in agreement with this reasoning and would only observe that the decision in such cases must always be a matter of degree. The consequences of accepting to the full the submission of counsel for the appellant would result (to take an extreme case) in vitiating a trial because a formal witness had given his name and address in the witness box after an adjournment and it had not been noticed that the prisoner had not yet been brought up from the cells. On the other hand it is not difficult to envisage many instances in which his absence would be fatal.

Their Lordships should, perhaps, add that whatever be the proper interpretation of the relevant provisions of the Kenya Code the circumstances of the present irregularity are not of such a nature as would bring the case within the principles upon which the Board intervenes in the exercise of its criminal jurisdiction.

Their Lordships accordingly pass to the important ground of appeal upon which special leave was granted and which was the reason for the appeal before the Court of Appeal for Eastern Africa having been heard by a full Court of five Judges (O'Connor, P., Forbes, V.P., Gould and Windham, JJ.A. and Farrell, J.), viz. that the trial was a nullity by reason of the fact that the Attorney-General had entered a nolle prosequi in respect of a previous information charging the same offence as that upon which the appellant was subsequently convicted without a fresh committal after investigation by a subordinate Court.

Before recounting the circumstances in which the nolle prosequi was entered it will be convenient at this stage to set out the relevant sections of the Criminal Procedure Code of Kenya (Laws of Kenya 1948, Cap. 27).

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

(2) . . . . . .

(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 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."

"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."

"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."

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

"83. The Attorney-General may order in writing that all or any of the powers vested in him by the two last preceding sections and by Part VIII of this Code be vested for the time being in the Solicitor General or a Crown Counsel, and the exercise of these powers by the Solicitor General or a Crown Counsel shall then operate as if they had been exercised by the Attorney General :

Provided that the Attorney-General may in writing revoke any order made by him under this section."

"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.

. . . . . .

(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 subsection, 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."

" 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."

" 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 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."

" 233.—(1) If, after examination of the witnesses called on behalf of the prosecution, the court considers that on the evidence as it stands there are sufficient grounds for committing the accused for trial, the magistrate shall frame a charge under his hand declaring with what offence or offences the accused is charged and shall read the charge to the accused person . . . ."

" 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 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."

" 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 theupon 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 commited for trial."

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

"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."

"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."

"272. If any information does not state, and cannot by any amendment authorized by the last preceding section be made to state, any offence of which the accused has had notice, it shall be quashed either on a motion made before the accused pleads or on a motion made in arrest of judgment.

A written statement of every such motion shall be delivered to the Registrar or other officer of the court by or on behalf of the accused and shall be entered upon the record."

"275. Any accused person against whom an information is filed may plead—

(*a*) that he has been previously convicted or acquitted, as the case may be, of the same offence, or

(*b*) that he has obtained the King's pardon for his offence.

If either of such pleas are pleaded in any case and denied to be true in fact, the court shall try whether such plea is true in fact or not.

If the court holds that the facts alleged by the accused do not prove the plea, or if it finds that it is false in fact, the accused shall be required to plead to the information."

On 11th November, 1959, the Resident Magistrate at Nairobi having heard the witnesses adduced on behalf of the prosecution whose evidence was recorded in the form of depositions directed that a charge be drawn up against the appellant of the murder of Kamawe on 12th October, 1959, contrary to section 199 of the Penal Code and that he be committed to the Supreme Court for trial.

On 18th November, 1959, an information was signed by the Deputy Public Prosecutor for the Attorney-General which recited as follows :— "At the sessions holden at Nairobi on the 30th November, 1959, the Court is informed by the Attorney-General on behalf of Our Lady the Queen that Peter Harold Richard Poole is charged with the following offence:— " then followed the charge of murder of Kamawe on 12th October, 1959.

On this information the appellant was arraigned on 30th November, 1959, and pleaded not guilty. He was given in charge of the jury and the case for the Crown was opened by Crown counsel. Before the first witness was called one of the jury stated that he had a conscientious objection on religious grounds to giving a verdict of guilty in this case. After a short adjournment counsel for the appellant submitted that the juror's statement did not incapacitate him from sitting, but that if the court held otherwise the case should proceed with eleven

jurors. It being then 11.20 a.m. Crown counsel asked for an adjournment and the court adjourned until 2.15 p.m. It appears that during the adjournment the acting senior Crown counsel on behalf of the Attorney-General signed a fresh information dated 30th November charging the appellant with the offence of murder in the same terms as the first information dated 18th November. On the resumption of the Court after the adjournment Crown counsel submitted there was no power to discharge the juror as he was not incapable. He said that the Court might have inherent power to discharge the jury but he thought it safer to enter a nolle prosequi which he then did and at the same time handed in the fresh information dated 30th November. Counsel for the appellant contended that there was no inherent power to discharge the jury in the circumstances and that it was not a case in which a nolle prosequi could be entered. The learned Chief Justice thereupon ruled as follows :—

> " In view of the entry of a nolle prosequi the accused is discharged in respect of the charge for which the nolle prosequi is entered."

After the appellant had been discharged and left the dock he was asked by the Deputy Registrar to accompany him to the ante-room of the Court where he served him with the new information of that date and executed a warrant as authority for the prison officers to detain him pending his trial upon the new information. It was not contested that the acting senior Crown counsel was duly authorised under section 83 to enter a nolle prosequi and sign an information. Thereafter the appellant was duly tried on the new information at the December Sessions of the Supreme Court holden at Nairobi and convicted on 10th December. It was contended by counsel for the appellant that on the true construction of section 82 of the Code the entry of the nolle prosequi brought the prosecution to an end subject always to the right of the Crown to start another prosecution against the accused de novo by re-arresting him and taking him again before a subordinate Court with a view to a fresh committal for trial. He submitted that the words the " proceedings shall not continue " in section 82 (1) referred to the " proceedings " which had been instituted under section 89 (1) and that the words " discharged in respect of the charge " refers to the charge drawn up and signed under section 89 (4), and that the words " subsequent proceedings " in the penultimate line of section 82 (1) similarly implies proceedings which could only be initiated in accordance with section 89 (1). He sought to re-inforce his submission on the ground of certain procedural difficulties which he suggested would necessarily follow from the construction relied upon by the Crown.

Their Lordships will return later to the procedural consequences and will for the present content themselves with the construction of the language of section 82 in the context in which they appear in relation to a nolle prosequi entered at the stage at which it was entered in this case. Unlike the procedure with regard to nolle prosequi in England, where it cannot be used until an indictment has been found (see the observations of Darling J. in *R.* v. *Wylie and others* [1919] 83 J.P. 295) the words " in any criminal case and at any stage thereof before verdict or judgment " in sub-section (1) and the provisions of sub-section (2) make it clear that in Kenya a nolle prosequi may be entered at different stages and before an information has been signed. It follows from this that the words " the charge " must necessarily have a different meaning according to the stage at which it is entered. If entered before committal it must necessarily refer to the charge drawn up and signed under section 89 (4) and if entered after committal and before an information has been signed it will have reference to the charge drawn up under section 233. Where an information has been duly signed under section 250 and the accused has been arraigned and pleaded to it it contains the only effective charge and that is the charge and the only charge in respect of which the accused is discharged and it is the proceedings on that information which shall not continue.

Reverting to the consequences said to follow from the construction contended for by the Crown. It is said that a person may remain committed for trial for an indefinite period and it is asked what is to happen to the exhibits which have been remitted to the Registrar of the Supreme Court under section 246, similarly it is asked what is to happen to the recognizances of the witnesses bound over to give evidence at the trial having regard to the provisions of section 82 (2). Finally it is said that grave injustice may be done to an accused under the provisions of section 299 of the Code which provides for the circumstances in which the depositions of a witness may be read at the trial when he is absent from the colony.

Their Lordships do not consider these consequences necessarily follow. The exhibits are in the custody of the Court and the Court on application made and notice given would clearly have jurisdiction to make such order as seemed proper with regard to the exhibits.

As to the recognizances of the witnesses it appears that they are merely bound over to attend and give evidence in the Supreme Court and subsequently they receive notice of the time and place of trial. There is nothing in section 82 (2), as pointed out in the judgment of the Court of Appeal, which operates to discharge the witnesses from attendance at any subsequent trial of which they may receive notice.

With regard to the reading of the depositions of absent witnesses it is not to be assumed that the Court will not be alert to ensure that the provisions of that section shall not be allowed to operate so as to cause injustice to an accused person as a consequence of the use of the nolle prosequi procedure by the Crown. It must also be remembered that all prosecutions in Kenya are in the hands of the Attorney-General. There are no private prosecutions. The provisions of the Code should not be interpreted on the assumption that the wide powers vested in the Attorney-General may be abused by the indefinite postponement of trials by means of the use of the nolle prosequi procedure for which he would be answerable as a minister of the Crown. In any event there is in their Lordships' opinion nothing in the difficulties envisaged above sufficient to compel a construction of section 82 different to that which it would otherwise seem to bear. It should perhaps be noted that a further difficulty was much relied upon on the hearing before the Court of Appeal viz. as to the procedural difficulty of bringing an accused person before the Supreme Court again after he had been released upon entry of a nolle prosequi. This objection was disposed of in the judgment of the Court of Appeal by reference to section 66 of the Code which had not been cited in argument and was not relied upon in the present appeal.

Their Lordships have so far confined their observations to the proper construction of section 82 of the Code without reference to previous authority or, except for passing references, to the careful and detailed reasoning of the judgment of the Court of Appeal for Eastern Africa delivered by the Vice-President. The interpretation now placed upon the section is, however, in accord with the previous decision of the Court of Appeal for Eastern Africa in the case of *Rex* v. *Noormahomed Kanji* [1937] 4 E.A.C.A. 34 decided on a similar provision in the Criminal Procedure Code of Uganda, and of the West African Court of Appeal in the case of *Sey* v. *The King* [1950] 13 W.A.C.A. 128 upon the corresponding provisions of the Criminal Procedure Code of the Gold Coast as it then was. In the present case the Court of Appeal for Eastern Africa have followed their previous judgment in the case of *Noormahomed Kanji* (supra) for substantially the reasons which their Lordships have endeavoured to express.

It is necessary, however, to deal with a further and independent submission of counsel for the appellant to the effect that whatever be the proper construction of section 82 there were in the present case two separate informations in existence at the same time for the same offence against the same person which he contended was a situation which the

law would not recognise as legally possible. He agreed that there could be two or more separate informations for different offences based on the same facts in existence at the same time and that a nolle prosequi entered in respect of one such information would not preclude a trial or trials on the others but he submitted that there could not be in existence at the same time two informations against the same man for the same offence on the same facts.

There is nothing in the Criminal Procedure Code which expressly prohibits or authorises such a course, but section 275 provides for pleas of autrefois acquit and convict and no such plea as autrefois arraign is recognised. Furthermore there is no limit to the number of informations which the Attorney-General may sign.

It was, however, argued that the situation was so alien to the practice at common law that it must be regarded as inherently bad in the absence of express statutory authorisation. The researches of counsel for the Crown, however, reveal that so far from being inherently bad there is ancient authority to the contrary effect though the Court will not allow an accused to be tried upon both indictments. In the case of *R.* v. *John Swan and Elizabeth Jefferys* in 1751 reported in Foster's Crown Cases at p. 104 the prisoners were indicted for murder. They pleaded not guilty at the Chelmsford summer assizes and their trial was postponed to the next assizes. In the meantime the Attorney-General preferred another bill against them charging Swan with petty treason and Jefferys with murder and at the next assize a true bill was found and the prisoners arraigned upon it. The prisoners pleaded in abatement ore tenus that another indictment was depending for the same offence and pleaded over to the treason and felony. Counsel for the prisoners contended they should not have been arraigned on the new bill pending the former indictment on which issue had been joined. They asked that the trial on the first indictment should proceed before the prisoners were called upon to plead to the second. The Court (Mr. Justice Wright with whom Mr. Justice Foster was sitting at the request of the former) was of opinion that the charge in the bill last found must be answered notwithstanding the pendency of the former, for autrefois arraign was no plea in the case, but that the Court must take care that the prisoners be not exposed to the inconvenience of undergoing two trials for one and the same fact. The Court proposed that the first indictment should be quashed by consent to which counsel agreed and the trial on the second indictment proceeded.

In *R.* v. *Stratton and others* 1 Doug. 239 the Solicitor General in support of a motion to quash an information filed ex officio by the Attorney-General to which the defendants had pleaded in order that another which stated the offence more particularly might be filed stated that the defendants could suffer no injury by quashing the indictment because the Crown might go to trial and judgment on the new one notwithstanding the pendency of the other; for that on indictments or informations for crimes the pendency of another prosecution for the same offence cannot be pleaded as it might to informations for penalties. Lord Mansfield observed that if it was proper to stop the information he did not see why the Attorney-General might not do it by entering a nolle prosequi without the interference of the Court. Mr. Justice Bullen said that what the Solicitor General had stated viz. that the pendency of the first information would be no plea to the second was decisive against the motion. The Court accordingly refused to quash the information. In *R.* v. *Dunn* 1 C. & K. 730 a true bill for perjury was found by the grand jury against the defendant at the Durham spring assizes in 1843 and the case remitted to the next summer assizes. Before the summer assizes it was discovered that there were defects in the indictment and accordingly a fresh bill was prepared and found by the grand jury in July, 1843. Counsel for the prisoner submitted he was entitled to be tried on the first indictment before the second. Mr. Justice Wightman held the defendant was entitled to have the first indictment disposed of before he could be tried on the second. Mr. Archbold for the Crown

then proposed to enter a nolle prosequi on the first indictment, but Mr. Justice Wightman held that this could only be done with the authority of the Attorney-General. Mr. Archbold then moved to quash the first indictment upon the ground of defects apparent on its face, which application was granted upon terms as to costs.

R. v. *Mitchell* 3 Cox's Criminal Cases 93 was a decision of the Court of Queen's Bench in Ireland in 1848. At page 118 of the report C. J. Blackburne posed the question :—Is the plea of an indictment pending a bar to this information for the same matter? And proceeded as follows :—" In support of the affirmative, that it is, there is neither precedent, the authority of any case, the dictum of any judge, or even the opinion of any text writer : but on the other hand there are authorities that such a plea is utterly invalid ". He went on to examine the authorities, some of which have been referred to above and to quote from Hale's Pleas of the Crown, Vol. 2, 221 and 222 and Ch. 34 of Hawkins' on Pleas in Abatement. At page 119 he said, " I have only further to add on this part of the case that even if the plea of a former prosecution depending could be pleaded, the entering of the nolle prosequi would be an answer to it, and this appears to have been plainly decided by the *King* v. *Stratton* in Douglas's Rep.".

In Roscoe's Criminal Evidence (16th Edition) at page 233 it is stated " where there are two indictments (sic) for the same act (e.g. by coroner's inquisition and the justices) defendant ought to be tried on both at once ".

In the light of the authorities cited above the statement by Mr. Justice Crompton in *R.* v. *Allen* (1862) 1 B. & S. 850 at page 856 to the effect that there cannot be two prosecutions against a man for the same offence at the same time cannot have been intended to mean that there cannot be two indictments in existence for the same offence against the same person on the same facts.

Their Lordships are therefore satisfied that a second indictment or information is not inherently bad by reason of the pendency of an earlier one for the same offence against the same person on the same facts.

In the present case whether or not there were at any moment of time two such informations in existence depends upon the proper construction of sections 250 and 255 of the Penal Code. Section 255 provides that the indictment " 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 provisions of the Administration of Justice (Miscellaneous Provisions) Act, 1933 ". Is the word " when " used temporarily or is it equivalent to " if " with the result that the information takes effect on being filed in accordance with section 250? Counsel for the appellant contended that it took effect at the moment of signature and this was the view of the Court of Appeal. On the other hand counsel for the Crown before the Board submitted that on a proper construction of the two sections read together the word " when " should not be given a temporal meaning.

Their Lordships' decision in the present case does not depend upon the preference of one interpretation to the other as in their view on the proper construction of section 82 of the Criminal Procedure Code the only proceedings which were discontinued as a result of the entering of the nolle prosequi were the proceedings under the information in respect of which it was entered and that if the second information took effect from the date of signature it was not rendered invalid by the existence at that moment of the former information. If on the other hand the second information only took effect when filed it was valid from that moment and unaffected by the entry of the nolle prosequi in respect of the first information. This being the position their Lordships do not consider it necessary in this case to determine whether under sections 250 and 255 an information signed by the Attorney-General becomes valid and effectual on signature before being filed or on filing after signature.

For the reasons set out above their Lordships have humbly advised Her Majesty that the appeal should be dismissed.

(39288) Wt. 8109—53 100 10/60 D.L.

In the Privy Council

PETER HAROLD RICHARD POOLE

v.

THE QUEEN

DELIVERED BY LORD TUCKER

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