

ENTRY OF NOLLE PROSEQUI—CHIEF JUSTICE COCKBURN.

other for uttering a counterfeit half crown. Both charges arose out of the one transaction. The prisoner was tried on the larceny indictment, and was convicted. He was then arraigned on the second indictment, but no evidence was offered on the part of the Crown. The jury (an Irish jury!), contrary to expectation, found the prisoner guilty on this also. It was then suggested that a *nolle prosequi* might be entered before the verdict was recorded. Mr. Baron Smith, at first doubted if this could be done, but after the matter had been mentioned to Chief Justice Bushe, who was then sitting in the Civil Court, with the concurrence of both learned judges, a *nolle prosequi* was entered. The Attorney-General was not present, nor does it appear from the report that he was applied to for his consent.

But in the case of *Regina v. Campbell*, 3 Cr. & Dix, 33; Irish Cir. R. 770, the question came up directly whether the Crown Counsel, during the course of the trial, could enter a *nolle prosequi* without the personal assent of the Attorney-General. Counsel for the prisoner contended that the Crown could not enter a *nolle prosequi*, after Counsel had gone into the case and failed. Mr. O'Hagan (now Lord Chancellor O'Hagan), as *amicus curiæ*, referred to Hayes on Criminal Law, p. 573; *Rex v. Roper*, 1 Cr. & Dix 185, *Rex v. Cranmer*, 1 Ld. Raym. 721, in order to show that the Crown, or those who represent the Attorney-General, may enter a *nolle prosequi* at any time before the verdict is recorded. The passage from Hayes reads thus: "A *nolle prosequi* cannot be entered by the Clerk of the Crown or Peace, merely at the instance of the prosecutor, without the direction of the Attorney-General, or those who represent him in the county."

The Chief Baron Brady (afterwards Lord Chancellor), who was then presiding at the Assizes, allowed the *nolle prosequi* to be entered, and said: "I have no doubt that the Attorney-General himself has a power to do so at any time; but the question is, can any one but the Attorney-General himself do so?"

The public convenience would seem to require that those who represent the Crown, should have such power. I shall therefore make an order that a *nolle prosequi* be entered in this case at the request of Sir Thomas Staples, representing the Attorney-General." This case was decided in 1843, the same year in which *Reg. v. Dunn* was decided.

Two cases in the Supreme Court of New Brunswick are to the same effect. In *Regina v. Sturges*, 5 Allen N. B. 552, the Court held that a *nolle prosequi* could be entered by the Solicitor-General without the direction of the Attorney-General. But in the case of *Regina v. Thornton*, 2 Pugs. & B. 140, a *nolle prosequi* had been entered, during the trial, by the Clerk of the Crown, who conducted the prosecution on behalf of the Attorney-General, and his act was sustained by the full Court. Chief Justice Allen, in referring to the previous case of *Regina v. Sturges*, said: "It would seem to establish that the power to terminate a proceeding instituted by the Crown is not confined to the Attorney-General in person, but may be exercised by the officer acting for the Crown in the particular proceeding." From these cases it would appear that Crown Counsel representing the Attorney-General at the Assizes may enter a *nolle prosequi* in cases where the Court thinks it is proper that the prosecution should be so terminated unless Mr. Justice Wightman's dictum in *Reg. v. Dunn* should be held to be the law. But it is doubtful whether County Crown Attorneys would have such a power, as they act under statutory powers and do not represent the Attorney-General in the same sense that Crown Counsel do, who are specially retained to act for the Attorney-General in Crown prosecutions T. H.

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One of the many great men that England has produced has passed away. Personally, a remarkable man, with many of the qualities that make men famous, he was connected with many noteworthy events that brought