

THE RIGHT OF CROWN COUNSEL TO ENTER A NOLLE PROSEQUI.

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The practice of entering a *nolle prosequi* is not of very frequent occurrence, but occasions may, and do, arise, when it is expedient that such a pleading should be filed, especially when in the course of a criminal prosecution a new indictment should be preferred, or where the Crown is desirous of calling one of several defendants as a witness against the others.

A *nolle prosequi* stays proceedings upon an indictment, or criminal information, and may be entered at any time before the verdict is recorded: *Rex v. Roper*, 1 Cr. & Dix (Irish) 185, or perhaps before judgment has been given: *Rex v. Hampstead*, Russ. & Ry. 344. The effect of the entry is not to discharge the crime, but to put the defendant without day: *Rex v. Redpath*, 10 Mod. 152.

All criminal proceedings being taken in the name of the Crown and for the public benefit, the Attorney-General may at any stage of the prosecution, either by indictment or criminal information, interpose his authority and stay the proceedings by the entry of a *nolle prosequi*: *Reg. v. Teal*, 11 East 307, *Reg. v. Redpath*, 10 Mod. 152, *Stretton's case*, 1 Leon. 119). Thus if he sees clearly that the indictment is not sustainable: *Rex v. Pond*, 1 Comyns 312; or that the prosecutor is using the name of the Crown as an engine of oppression, by suing and prosecuting at the same time, for the same offence: *Rex v. Fielding*, 2 Burr, 720; or by frequently and vexatiously preferring defective indictments: *Hayes' Criminal Law*, 573, or that the verdict is repugnant: *Rex v. Hampstead*, Russ & Ry. 344, or that the defendant has been convicted without evidence when he was given in charge of a jury without evidence: *Rex v. Roper*, Cr. & Dix 185. A *nolle prosequi* may be entered to one or more of several defendants: *Rex v. Teal* 11 East 307, *Walsh v. Bishop*, Cro. Car. 239, 243), or it may be entered as to one of several counts in the indictment or information: *Miliken v. Cox*, 1 B. & P. 157, *Bertram v. Gor-*

don, 6 Taunt. 414. And the Attorney-General on the *ex parte* application of the defendant, and without calling the prosecutor before him, may enter a *nolle prosequi*; *Reg. Allen*, 1 B. & S. 850.

In Archbold's Criminal Pleading it is said that a *nolle prosequi* cannot be entered either in the Queen's Bench, or at the Assizes, or Quarter Sessions, without the authority of the Attorney-General, or perhaps, in the vacancy of that office, of the Solicitor-General. And this would seem to indicate that the personal assent of one of the law officers of the Crown must be obtained before the *nolle prosequi* can be properly entered.

Of the authorities cited in support of this view of the practice, only one, *Reg. v. Dunn*, 1 C. & K. 730, sustains it. Then Mr. Archibold, for the prosecution, proposed to enter a *nolle prosequi* to a defective indictment, but Mr. Justice Wightman held that it could only be entered by the authority of the Attorney-General. An order was then obtained quashing the indictment. In *Rex v. Cranmer*, 1 Ld. Raym. 721, a *nolle prosequi* entered by the Clerk of the Crown, without the leave of the Attorney-General, was set aside.

The case of *Rex v. Colling*, 2 Cox C. C. 184, also given in Archbold as an authority for his opinion, does not sustain it. In that case Alderson, B., suggested that the record should be withdrawn, and the counsel for the Crown then stated he would enter a *nolle prosequi*. It was objected that, as the indictment had been removed by *certiorari*, a *nolle prosequi* could not be entered without the leave of the Attorney-General. Alderson, B., without apparently deciding the point, said: "It is nonsense going on, when it is quite certain what the result must be. You had better let a verdict be taken against you at once," and thereupon a verdict of not guilty was recorded.

In an Irish case, *Rex v. Roper*, *supra*, the prisoner was arraigned on two indictments, one for stealing a half crown piece, and the