CASES

DECIDED BY

THE SUPREME COURT OF CYPRUS

IN ITS ORIGINAL JURISDICTION AND ON APPEAL FROM THE ASSIZE COURTS, DIVISIONAL COURTS AND DISTRICT COURTS.

[BELCHER, C.J., SERTSIOS AND FUAD, JJ.]

1929.
Nov. 12.

REX

v.

CHRISTODOULOS PITTARIDES.

REX
v.
PITTARIDES.

Criminal Law—Evidence—Persons jointly charged—One defendant called as Crown witness after nolle prosequi—Effect on his evidence if nolle prosequi not properly entered—C.C.J.O., 1927, *Clauses* 157 *and* 204.

At the Limassol Assizes A. and B. were jointly charged with theft. When the case was opened it was stated by prosecuting counsel that a *nolle prosequi* had been entered against A., and after a plea of not guilty by B. had been taken, A. was called as a witness for the Crown against B. B. was convicted. On an application to the Supreme Court for leave to appeal it was alleged that the Attorney-General had not himself entered the *nolle prosequi* either verbally or in writing as required by C.C.J.O., 1927, Clause 157, and it was argued that in those circumstances A.'s evidence was improperly admitted.

Held, that even assuming the *nolle prosequi* had not been properly entered, A.'s evidence was admissible as not being excluded by Clause 204 (which makes all persons competent witnesses with certain specified exceptions) and that the position being in fact that A. was not being tried, the reception of his evidence was in accordance with the principle underlying English practice.

Application for leave to appeal against conviction and sentence.

Triantafyllides for the applicant.

Paschalis, Acting Attorney-General, for the Crown.

The Court refused the application on other grounds.

JUDGMENT :—

BELCHER, C.J., said on the point referred to in the head-note (on which alone the case is now reported) :—

We do not decide whether or not a *nolle prosequi* was in fact entered according to law, because in either event it seems to us not to affect the admissibility of the evidence

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of the co-defendant. Clause 204 of the 1927 Order-in-Council does not exclude such evidence. It is stated in Archbold (Criminal Pleading and Practice, 26th ed., 1922), p. 459, that a defendant may give evidence for the Crown against his co-defendant (*a*) where a *nolle prosequi* has been entered, (*b*) where a verdict of acquittal has been given, (*c*) where the proposed witness has pleaded guilty on arraignment or during trial, and (*d*) where though jointly indicted he is not being tried with the defendant against whom he gives evidence. This is a case under class (*d*) for which the authority is *Winsor* v. *R.* (1). The underlying principle plainly is that there is no objection to the co-defendant giving evidence when the question of his own guilt is for one reason or another not in issue. In the present case the record states, after noting the *nolle prosequi*, "2nd accused discharged," so that even if he might be tried thereafter he was not being tried then.

Application refused.

(1) L.R. 1 Q.B. 390.