

Law 333 Criminal Procedure Case Notes Set 1 (Topics 1- 3)

Types of Prosecution

Public Prosecution

The State v. Ngwako Segai

After a State witness had given evidence, the Prosecutor applied to withdraw the case in terms of Section 159(4) of the C.P. & E Proclamation. The Magistrate acquitted the accused in terms of the Section 10(1) of the Botswana Constitution.

Held: (i) that Section 10(1) of the Botswana Constitution had no application;

(ii) that the Magistrate's powers under Section 159(4) of the C.P. & E. Proclamation were either to grant or refuse the application to withdraw but did not entitle him to acquit before the close of the State Case.

State v. Seeletso

The accused was charged with murder before the High Court. When the accused was called upon to plead and before he could, counsel for the State drew the court's attention to the fact that the Attorney General had filed a *nolle prosequi* in the case and consequently applied for the accused to be discharged but not on the merits of the case. In defence of the accused, counsel for the accused, relying on the provisions of section 150 (4) of the Criminal Procedure and Evidence Act (Cap. 08:02), demanded that his client be acquitted or be found guilty.

Held, overruling the submission: (1) that since the accused had not pleaded to the indictment, he fell outside the contemplation of the provisions of section 150 (4) of the Criminal Procedure and Evidence Act.

(2) Since the accused had not been tried, he could not lay claim to an acquittal based on the merits.

(3) Proceedings upon an indictment or summons pending in any court may be stayed by entry of a *nolle prosequi* by the Attorney-General at any time after presentation of an indictment or summons before the High Court or a magistrate's court, as the case may be, and in any case before judgment is delivered in the case. The exercise of the power of entering *nolle prosequi* by the Attorney General is not subject to any control, direction or enquiry by any other person or authority including the courts. A *nolle prosequi* puts an end to the prosecution. But it does not operate as a bar or discharge or an acquittal on the merits and the party remains to be re-indicted or tried. *R. v. Dunn* (1843) 1 C. & K. 730; *R. v. Colling* (1847) 2 Cox C.C. 184 and *R. v. Comptroller-General of Patents* and *R. v. Ridpath* cited.

State Constitutional Criminal Procedure Case And Materials

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