

1909.November 12.

Simpson
A.C.J.
Pring J.
and
Sly J.

REX v. LAURA BEVERIDGE.

Criminal law.—Trial—Nolle prosequi—Entry by endorsement on indictment.

A *nolle prosequi* can only be entered by the Attorney-General or by his authority.

CROWN CASE.

At the present sittings at the Quarter Sessions at Darlinghurst the prisoner was tried upon an indictment charging her with stealing from the person, and was found guilty. The prisoner had pleaded at a previous Court, and there are the following endorsements on the indictment:—

“Cor. Alfred Paxton Backhouse, Esquire, Chairman.

“Date of Plea: 25th April, 1909.

“Plea: Not guilty.

“On the application of Mr. Harris, postponed to next Sydney Quarter Sessions or such other Court as the Attorney-General may direct. Bail allowed, self in £60 and two sureties in £30 each.

“Sureties: William Parsons, 236 Bourke Street, Sydney, Publisher, Maud Mulcahy, 245 Liverpool Street, married woman.

“(Sgd.) W. R. BEAVER, Clerk of the Peace.”

“Convicted of Conspiracy on another indictment. No further proceedings hereon.”

“The conviction for Conspiracy having been quashed on appeal to the Supreme Court, the accused was released on

bail to appear for trial on the within charge at Sydney Quarter Sessions on 31st July, 1909."

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"Cor: Charles Edward Robertson Murray, Esquire, Chairman.

"On 8th September, 1909, on application of Mr. Harris, postponed to next Sydney Quarter Sessions. Bail taken, self in £40 and one surety, Maria Dekey, 302 Palmer Street, Sydney, housekeeper, in £40.

"(Sgd.) W. R. BEAVER, Clerk of the Peace."

Nothing more than these endorsements was put before me. Mr. Abigail then asked me not to allow the case to go to trial and to discharge the prisoner. This I refused to do, and I was requested to reserve the following points of law:—(1) That the indictment on which the accused was tried had before such trial been quashed, inasmuch as a *nolle prosequi* had been entered by the Crown. (2) That on the 28th day of April, 1909, the accused was arraigned at the Court of Quarter Sessions then sitting before his Honour Judge Backhouse and pleaded "not guilty," and the Crown subsequently intimated and declared that no further proceedings would be taken on the indictment. Subsequently two Courts of Quarter Sessions were held at Darlinghurst, and the accused was not called upon or further arraigned, but that on the 8th day of October, 1909, she was again arraigned on the original indictment, was not called upon to plead, but then and there tried by the jury then empanelled and found guilty.

(Sgd.) ALF. P. BACKHOUSE,

Chairman,

Sydney Quarter Sessions.

Harris, for the Crown. The endorsement "no further proceedings hereon" was made by the Deputy Clerk of the Peace.

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Walker, for the prisoner. The Court will presume it was written by the Attorney-General or with his authority. No formality is required to enter a *nolle prosequi*, a simple memorandum is enough.

SIMPSON A.C.J. There is nothing in this point. I think it is a pity that the Judges are bound to reserve such points.

PRING and SLY JJ. concurred.

Conviction affirmed.

Attorney for the prisoner : *E. R. Abigail*.