

11th. October, 1952.

Judge :

The Hon. Mr. Justice W. Harding, B.Litt., LL.D.
The Police versus George Stevens

Appeal — Extinction of Action.

An order by the Court to the effect that proceedings against the accused be stayed, whereby it appears that in the opinion of the Court proceedings should have never taken place, does not entitle the Attorney General to enter an appeal from that order on the ground of extinction of action.

Although that procedure is wrong, as the Court below should have dealt with the relative plea as a plea of waiver of the criminal action, that irregularity does not authorise the Court, on an appeal by the Prosecution, to reform and reconstruct that faulty order in such a way as to make it an appellable judgment. The Appellate Court must look at the order as it is; and, however incorrect, that order is not subject to appeal.

Defendant was brought before the Criminal Court of Magistrates for Malta to answer the charge of acts of cruelty towards cats, consisting in shooting at them with an air-gun :

At page 2 of the record there is a procès verbal to the effect that defendant set up the plea that, as he had already been warned by the Police not to commit that contravention again, proceedings should never have taken place ;

Evidence on this point was then heard ;

The Court below then disposed of the case as follows :—

"The Court — Having heard the evidence produced, accepts the plea of the accused, and orders that the proceedings be stayed";

The Attorney General has now entered an appeal against this order of the Court below, given on the 31st. July, 1952;

It is a rule of law (sect. 425 C. 12) that the Attorney General may not appeal in all cases, but only in cases falling under that section. In the present case, the Attorney General has quoted that part of the section in question which allows an appeal whenever the defendant is acquitted on the ground of extinguishment of action;

In the opinion of this Court, this case does not properly fall within the section. Defendant was not acquitted of the charge, but proceedings were stayed; that is, suspended or stopped definitely. Moreover, in point of fact the Magistrate appears to have held, not that the action was extinguished, but that there should never have been any proceedings at all. In fact, he accepted the plea of defendant, and this was "expressis verbis" to the effect that proceedings should never have taken place;

There is no doubt that the procedure of the Court below was wrong. The Magistrate should have dealt with the plea as a plea of waiver of the criminal action. So considered, it would have been, to say the least, difficult for him to come to the conclusion that the action was waived, as section 4 of the Criminal Code vests the criminal action in the Government, and therefore the Police officer cannot waive the action unless duly authorised by Government. But supposing, for the sake of argument, that, this notwithstanding, the Magistrate had actually formed that opinion, then he should have acquitted the defendant, and not merely ordered a stay, that is, a suspension or restraint of proceedings;

The whole thing was irregular; but this does not authorise the Court, on an appeal by the Prosecution, to reform and reconstruct that faulty order in such a way as to make of it an appellable judgement. This Court must now look at the order as it is; and as it is, however incorrect, it is not subject to appeal, because there is no acquittal, and the Ma-

gistrate held, not that the action was extinguished, but that there was no action at all "ab initio";

It has always been a rule of jurisprudence not to extend in any way the specific cases in which an appeal by the Prosecution is allowed;

This Court, therefore, dismisses the appeal on the ground that it does not fall within the cases in which an appeal by the Prosecution is allowed, and matters must, therefore, stand as they were, albeit irregularly, before the appeal.
