

13 JUN 1987

'Abuse of power' by law office

By NIGEL ROSSER

A JUDGE publicly lashed out at the Attorney-General's office yesterday over a legal manoeuvre that he described as an abuse of power which could lead to the public losing confidence in the law.

Commenting after the Crown entered a *nolle prosequi* — a legal move that allows the Crown to withdraw from a case with the option of reconstituting it at any time in the future — against two men accused of triad gang involvement, Judge Brian Caird said it was an unfair move.

A defence lawyer claimed it represented "a vendetta".

"Authorities in this territory have certain prerogatives that should and must be exercised," Judge Caird said.

"But if they are exercised in this manner, public confidence will be lost in the ability to maintain standards of Anglo-Saxon jurisdiction that we have had to date.

"The defendants not only leave the dock facing the possibility of prosecution in the future on the whim of the Crown — when they haven't been able to face up to it two times already — but they also leave without the possibility

of recompense," Judge Caird said.

He said this was the first time in 25 years that he had felt it necessary to alert the press on a matter he had encountered professionally and added: "I am very concerned about the executive act in question.

"I have had some nine years in the Attorney-General's chambers in Hong-kong and some experience in prosecution in another jurisdiction.

"In my experience on behalf of the Crown, such a power has always been sparingly exercised, and those responsible were at pains to avoid abuse of the process.

"I am unable to say that the Crown exercised such pain this time.

"It is the second time where I feel this power has been abused," he said.

In entering a *nolle prosequi*, prosecutor Mr Kenneth Ho effectively left the two defendants having to pay legal costs even though no case had been proven against them, after the prosecution's principal witness failed to turn up in the District Court.

The two men, Cheung Kam-fan, 29, and Wan Yat-kwai, 31, faced a total of five charges ranging from alleged membership of the Wo Hop To triad gang to blackmail and assault.

The case came before Judge Roy on May 1 and on that occasion the prosecution's principal witness failed to appear because his summons was served to the wrong place after he apparently gave police the incorrect address.

An adjournment was applied for and granted.

Yesterday he again failed to turn up and, instead of entering no evidence against

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him, a move anticipated by the defence after an alleged bargain made prior to the case, which would have led to the defendants' acquittal, Mr Ho entered a *nolle prosequi*.

This, said Judge Caird, meant the matter was dealt with unilaterally, bringing proceedings abruptly to an end, to be reconstituted at any time in the future, with the further consequence that costs could not be awarded by the court.

A judge has no power to interfere with a *nolle prosequi*.

Last night a defence counsel involved in the case claimed that the Crown had a vendetta against the defendants because, having laid their charges, they had failed to secure them.

Miss Winnie Tam told the *South China Morning Post* the move was a blatant infringement and abuse of power deliberately aimed at putting her defendant to the "best possible inconvenience".

She claimed that before the hearing she had been offered a deal by Mr Ho in which he would offer no evidence if the defence did not press for costs.

But Mr Ho later denied this allegation, saying it had merely been an option raised at their meeting.

Miss Tam said the question of costs, which she estimated at "several thousand each", had been specifically dealt with at the last hearing and that yesterday's move had been made with "the obvious desire to pre-empt us on the question of costs".

Mr Ho, who was instructed by the Director of Public Prosecutions, justified his move last night by saying the legal department had insisted he enter a *nolle prosequi*.

He said the principal witness in the case, an alleged victim of the two men, had originally given police the wrong address when he was served with his summons and that was why he had not appeared.

After obtaining the correct address, a fresh summons was obtained which the police tried to serve on him.

He did not show up at his home, in an apparent effort to avoid the police, and his mother refused to accept the summons on his behalf.

"Hopefully," Mr Ho said last night, "his conscience will lead him to court one day."

The Legal Department refused to comment.

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