

UGANDA / JUDGMENT

Prudhomme v Rex (Cr. App. 7/1927.)

[1927] EACA 42 (1 January 1927)

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COURT

East African Court of Appeal

BEFORE

Pickering ACJ, Sheridan, J, Stephens, J

CASE / FILE NUMBER

Cr. App. 7/1927.

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COURT OF APPEAL FOR EASTERN AFRICA.

Before PICKERING, Acting C. J. (Kenya), SHERIDAN, J. (Kenya) STEPHENS, J. (Kenya).

G. PRUDHOMME (Appellant)

$\mathbf{\$1}$ REX (Respondent). Cr. App. 7/1927.

Highways Ordinance (Uganda), section 12(1)—contributory negligence

Held: —That there is no such thing as contributory negligence in crime, and that the correctness of the accused's actions is all that can be considered.

The appellant was tried and acquitted in the District Court of Kampala. Against this acquittal an appeal was preferred by the Crown under section 323 C. P. C.

The appeal was heard by GUTHRIE-SMITH, J., who delivered the following Judgment: \$-\$

This is an appeal from an acquittal by the District-Magistrate, Kampala, on a charge of driving to the public danger under section 12 (1) of the Highways Ordinance. The appeal is presented under section 323 of the C. P. C. which allows an appeal from an acquittal to be presented by direction of the Governor. This power is somewhat arbitrary and the Court will usually be chary of interfering with an acquittal on a question of fact unless there has been such a serious miscarriage of justice as to prejudice the interests of the public. An appeal from an acquittal on a question of law will be more readily entertained, and the fact that the Judgment appealed from contains an erroneous statement of law of such a nature that the Government considers it

expedient in the public interests that such erroneous statement should be corrected, will usually be sufficient ground for the Court's interference. The acquittal in the case before me is based on a view of what constitutes driving to the public danger, in which I do not coincide, and it is to the interest of the public that that view should not be allowed to stand as an authoritative statement on the law.

Section 12 \$(1)\$ under which the accused was prosecuted reads: "No person shall drive a motor car recklessly or negligently or at a speed or in a manner which is dangerous to the public having regard to all the circumstances of the case including the nature condition and use of the highway and to the amount of traffic which actually is at the time or what

might reasonably be expected to be on the highway". The undisputed residue of fact disclosed by the evidence is that accused going at forty-five miles per hour passed complainant doing thirty-three without being waved on and so closely that he grazed the latter's front bumper.

The disputed evidence is as follows:-

The complainant said he heard accused's Klaxon and immediately thereafter accused flashed past. The accused and two of his passengers said that he hooted repeatedly, but complainant obstinately refused to give way so he drove past going into the grass at the road-side in order to do so. The magistrate accepted this latter evidence, and if the correctness of his decision depended on such acceptance I should refuse to entertain the appeal. But it does not. The fact that one is being wilfully obstructed by a small car is no excuse for knocking it off the road. There is no such thing as contributory negligence in crime. All that one can consider is the correctness of accused's actions. The crux of the judgment appealed from is the following sentence: "Mr. Prudhomme so long as he did not violate any of the provisions of the Ordinance had a right to pass Mr. Leitch". That is not a correct statement of the law. The Ordinance, it is true, says nothing about passing vehicles, but it prohibits dangerous driving, and when one is asked what constitutes dangerous driving one naturally falls back on the common law of highways which contains a number of rules for the guidance of users of the road. One such rule is that when a driver undertakes to overtake another vehicle he assumes all the risks incidental to the operation and is responsible for their avoidance. In the case of cars, some of which are very noisy, the overtaking driver cannot be sure that the other has heard the horn, or is aware how near he is. The driver of the car in front can see more of the road and may possibly be of opinion that, owing to the state of the road, that precise spot is not one at which he should allow the car behind to pass. These difficulties are met by adhering to the rule that a driver ought not to pass until he is waved on, or is otherwise satisfied that the other driver is aware of what he is going to do and is prepared.

In my opinion the accused in passing the complainant so closely as to touch and at such a speed and without seeing that complainant was sufficiently warned and had given way, was guilty of driving to the public danger. His acquittal did not depend on any erroneous view of the evidence, but on a misapplication of the law, and it would be mischievous and detrimental to the interests of the public if that acquittal were allowed to stand. I therefore allow the appeal and convict the

accused. The sentence will be a fine of Sh. 100. As this is a first conviction I do not cancel his licence.

The present appeal was filed against this conviction on the following grounds:-

1. Because the learned Judge erred in entertaining an appeal from an acquittal by the District Magistrate at Kampala.

Because the learned Judge erred in holding that the $\mathbf{2}$ question as to whether the accused was driving negligently and rashly was one of law and not of fact.

Because the learned Judge erred in holding that the $\mathbf{g}_{\cdot}$ accused was guilty of driving to the public danger.

Because there is no evidence to warrant or support 4 the conviction.

5. Because the learned Judge erred in preferring the evidence of the witnesses for the prosecution to that of the witnesses for the accused.

Because the learned Judge should have agreed with 6. the learned Magistrate's decision that so long as accused did not violate any of the provisions of the Highways Ordinance he had a right to pass the complainant.

7. Because the sentence is unduly severe.

Schwartz for appellant.

JUDGMENT.-The facts of this case have been fully considered by the Court below. The appellant travelling at forty-five miles per hour passed the complainant who was doing thirtythree, without being waved on and so closely that he grazed the latter's front bumper. That a serious accident was narrowly averted is clear. The learned Magistrate appears to have considered that the complainant was responsible for the incident, stating that: "If Mr. Leitch was well to his left, as he should have been after the prolonged warning of approach, nothing But as he was not, presumably could have occurred. but apparently towards the middle, the accident, such The conduct of the complainant it is, occurred." $\mathbf{as}$ would have been relevant in a Civil Case, but in the present case which is a criminal prosecution for contravention of the Highways Ordinance it is irrelevant. Whether or not Leitch did not hear or simply refused to give way, Prudhomme was not excused by such conduct if he drove recklessly or to the danger of the public. It was in applying a principle proper in a Civil Case as a test of the appellant's criminal responsibility that the learned Magistrate erred. Had he appreciated that the application of this principle was inappropriate in a criminal charge we do not think that he could have failed to conclude that whatever the attitude of the complainant may have been the appellant in passing him at the rate and in the circumstances he did was contravening the provisions of the Highways Ordinance.

In our opinion the learned Judge was correct in all the circumstances of the case in converting an order of acquittal
into an order of conviction. We see no grounds for interfering with the sentence and would dismiss the appeal.

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Prepared on 14 October 2026 · Esheria