

UGANDA / JUDGMENT

Rex v Hulatt (Cr. App. .142/1932.)

[1932] EACA 26 (1 January 1932)

[1932] EACA 26**COURT**

East African Court of Appeal

BEFORE

Barth, C.J (Kenya), Law, Ag C.J. (Uganda), Sheridan, C.J. (Tanganyika)

CASE / FILE NUMBER

Cr. App. .142/1932.

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COURT OF APPEAL FOR EASTERN AFRICA.

Before SIR JACOB BARTH, C. J. (Kenya), SIR JOSEPH SHERIDAN, C. J. (Tanganyika), and LAW, Acting C. J. (Uganda).

REX

(Respondent) (Original Prosecutor)

 $\cdot_{\{\text{bm}\{\text{v}\}\}}\cdot$ **CLAUD HULATT**

(Appellant) (Original Accused).

Cr. App. 142/1932.

Penal Code, section 245 \$(2)\$ \$(e)\$, definition of theft—Misdirection -Rebuttable presumption-
Shorthand notes.

Held: - That the section must be construed strictly and that the jury were properly directed as to construction thereof.

Davies, Crown Counsel, for Crown.

Schwartz for Appellant.

Schwartz.-Referred to shorthand notes of trial and to interpretation of section \$245\$ (2) (e) to jury. The presumption is rebuttable. If that had been explained to jury when they put their question they would have again retired and verdict would not have been a foregone conclusion.

Davies.—The section is unequivocal. "Deemed" cannot be interpreted "presumed." "Although" means "even if." The fact that jury did not again retire did not in any way prejudice accused.

Schwartz replied.

JUDGMENT.—In this appeal it is sought to quash the conviction and sentence on the ground of misdirection. The appellant was tried by a jury at Nairobi on an information alleging three offences under section 258, Penal Code. He was found guilty of the first two and acquitted on the third.

The appeal does not suggest any misdirection to the jury in the course of the summing up, but after retirement and before giving their verdict the foreman of the jury asked the learned trial Judge the following question: "Are the jury required to observe a strict interpretation of paragraph (e) of section 245 (2) of the Penal Code? The reply was in the affirmative and the section was paraphrased. At this point Mr. Schwartz, who was appearing for the accused, interposed. He admitted that the learned Judge was strictly correct in his direction, but went on to suggest that it did not go far enough in that the fraudulent intention deemed to arise from acts within section 245 (2) (e) The jury gave their verdict without further retirement.

In view of the shorthand note the grounds of appeal would appear to be unsupported by the facts of the case. But, in our opinion, there is nothing in section 245 (2) (e) of the Penal Code to suggest that it deals with a rebuttable presumption. The words of the section are clear and unambiguous: fos

"A person who takes or converts anything capable of being stolen is deemed to do so fraudulently if he does so with, in the case of money, an intent to use it at the will of the person who takes and converts it although he may intend afterwards to repay the amount to the owner."

in.

The sub-section does not say that such a person may in the absence of any evidence to the contrary be presumed to act fraudulently. $\mathbf{A} = \mathbf{A}$

In our opinion the effect must be construed strictly. The appeal is dismissed.

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