

IN THE SUPREME COURT OF THE NORTHWEST TERRITORIES

BETWEEN:

HER MAJESTY THE QUEEN, upon the
information of Steven Martens,
sworn the 9th day of November,
A.D. 1976, the Informant,

Respondent

- and -

MILO ROSENBRIER, Defendant

Appellant

Appeal from Justice of the Peace G. R. Carter
Appeal heard January 25, 1977 at Yellowknife, N. W. T.
Judgment of the Court filed February 22, 1977.
Appeal allowed

Reasons for Judgment of:

The Honourable Mr. Justice C. F. Tallis

Counsel on the Hearing:

Mr. B. Fontaine, for the Crown (Respondent)

Mr. R. S. Kimmerly for the Appellant

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REASONS FOR JUDGMENT OF THE HONOURABLE
MR. JUSTICE C. F. TALLIS

The accused, Milo Rosenbrier, was convicted before
Justice of the Peace G. R. Carter on a charge under Section 124
of the Vehicles Ordinance which read as follows:

"that Milo Rosenbrier on or about
the 5th day of November, A.D.
1976 at Yellowknife in the North-
west Territories being the driver
of a vehicle did unlawfully over-
take and pass upon the right of
another vehicle, contrary to
section 124(1) of the Vehilces
Ordinance."

This matter came before me by way of trial de novo
and I reserved judgment to fully consider the arguments that

were advanced before me.

Section 124(1) of the Vehicles Ordinance provides as follows:

"124. (1) No driver shall overtake and pass upon the right of another vehicle, except

- (a) when the vehicle overtaken is making a left turn or its driver has signalled his intention to make a left turn;
- (b) upon a laned roadway where there is more than one unobstructed lane available to traffic moving in the direction of travel of the vehicle; or
- (c) upon a one-way roadway where where the roadway is of sufficient width for two or more lines of moving vehicles and is free from obstructions."

Learned Counsel for the Appellant took the position that the roadway in question was a laned roadway where there is more than one unobstructed lane available to traffic moving in the direction of travel of the vehicle. On the evidence I reject this contention because on the date of the alleged offence Franklin Avenue was not a laned roadway where there was more than one unobstructed lane available to traffic moving in the direction of the Appellant's vehicle.

I turn now to a consideration of the other point taken on this appeal. Learned Counsel for the Appellant contended

that the Appellant came within the exceptions contained in Section 124(1)(a) or, alternatively, had at the very least raised a reasonable doubt.

The law is very clear that this offence must be proved beyond a reasonable doubt. The Ordinance does not contain any reverse onus provision that is applicable to a charge under this section.

In this particular case Constable Martens gave evidence for the prosecution and his evidence was not shaken in cross-examination. His evidence established a prima facie case with respect to an offence under Section 124(1) of the Vehicles Ordinance.

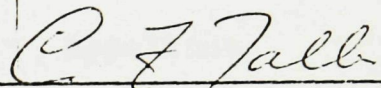
On the other hand the Appellant gave evidence and indicated under oath that he was overtaking and passing to the right of other vehicles because one of the vehicles overtaken was stopped with a view to making a left turn. The Appellant's evidence was not in any way shaken on cross-examination.

Under the circumstances I am in a position where I have a reasonable doubt as to the guilt of the Appellant and under the circumstances I must give the benefit of that doubt to the Appellant.

I accordingly allow the appeal and acquit the Appellant on the charge under Section 124(1) of the Vehicles Ordinance.

There will be no order as to costs and if the Appellant has already paid the fine imposed in the Court below I direct that the same be returned to him by the Clerk of the Court.

Dated at Yellowknife Northwest Territories this 22nd day of February, 1977.



C. F. Tallis, J.S.C.