

MINISTRY OF TRANSPORT

V

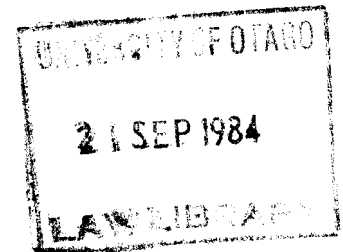
ANDREW HIKA

Coram Woodhouse P
McMullin J
Greig J

Hearing 18 June 1984

Counsel M.E. Bowen for respondent
P.J. Kaye for Crown

Judgment 4 July 1984



JUDGMENT OF THE COURT DELIVERED BY McMULLIN J

This appeal by leave of the High Court arises from the conviction of the respondent in the District Court on one charge of driving a motor vehicle on 9 February 1982 while disqualified from driving (s.35(1)(a) and s.35(2) Transport Act 1962) and another of driving the same vehicle while having an excess breath alcohol level (s.58(1)(a) Transport Act 1962). Both informations allege that the offences took place "on a road namely south motorway off ramp, south lane".

The respondent appealed to the High Court against his

conviction on these charges. He contended, inter alia, that before he could be convicted the prosecution had to show that the place where it was alleged the two offences had been committed was a "road" as defined by s.2 of the Transport Act 1962; that in fact the relevant driving took place on a motorway, not a road; and that s.2(2) of the Transport Act 1962 defines a road as not including a motorway within the meaning of the Public Works Amendment Act 1947.

In the High Court evidence was given on the status of the particular off ramp where the respondent had been apprehended. Ongley J held that the place where the alleged offences took place was part of the motorway works and therefore part of the motorway. But, because the informations alleged offences on a "road" and not a "motorway", he allowed the respondent's appeal against conviction on the two charges. On that view the Judge did not find it necessary to go on to consider a further argument advanced on behalf of the prosecution that even if the place where the alleged offences were committed was a motorway nonetheless the respondent must be convicted by reason of the Motorway Regulations 1950 (S.No.1950/230).

The Ministry of Transport then sought the leave of the High Court to appeal to this Court on the following questions of law:

- (a) "Whether the off-ramp to the motorway is included within the term 'a structure or work forming part of any motorway so declared' (this being a quotation from the definition of 'motorway' in s.2 of the Public Works Act 1981);

- (b) Whether the Motorways Regulations 1950, which were not saved by express provisions in the Public Works Act 1981, continued to be in force by reason of the fact that the Public Works Act 1981 is a consolidating statute and therefore the Regulations are preserved by s.20A of the Acts Interpretation Act 1924."

In this Court, both counsel were agreed that if the second of these questions was to be answered in the affirmative there was no need to consider the first. For this reason we pass immediately to a consideration of the Motorway Regulations 1950 which were made pursuant to s.12 of the Public Works Amendment Act 1947.

Reg.4 of the 1950 Regulations provided that the enactments and laws specified in the schedule to the regulations should apply to every motorway except insofar as those enactments or laws conflicted with any of the provisions of the Public Works Amendment Act 1947 or with any regulations made thereunder or with any enactment relating specifically to motorways. The enactments and laws specified in the schedule included:

- (a) The Transport Act 1949 and all regulations made or deemed to be made thereunder.
- (b) All laws relating to crimes and offences on roads or streets.

The 1950 Regulations were revoked in direct terms by the Motorways Regulations Revocation Order 1983 (S.No.1983/292) made on 19 December 1983 - that is well after the alleged offences were committed. But it was submitted by Mr Bowen that they had already been repealed for present purposes by the Public Works Act 1981 which was passed on 3 October 1981 and came into force on 1 February 1982, that is before the alleged offences were committed. He claimed this had happened when their parent statute, the Public Works Amendment Act 1947, was repealed by the Public Works Act 1981. Hence, he said, the 1950 Regulations had no application to the present case. On the other hand Mr Kaye submitted that the Public Works Act 1981 was a consolidating statute within the meaning of s.20(d) of the Acts Interpretation Act 1924; and that because its regulation making powers substantially correspond with those of the 1947 Act the Regulations continued in force by virtue of s.20(d) of the Acts Interpretation Act 1924.

S.20(d) of the Acts Interpretation Act provides:

Where an Act consolidating the law on any subject repeals any Act relating to that subject, and contains provisions substantially corresponding to those of the repealed Act for the constitution of districts or offices, the appointment of officers, the making or issuing of proclamations, orders, warrants, certificates, rules, regulations, bylaws, or for other similar exercise of statutory powers, all such powers duly exercised under the repealed Acts and in force at the time of the repeal shall, in so far as they are not inconsistent with the repealing Act, continue with the like operation and effect as if they had been exercised under the corresponding provisions of the repealing Act: (emphasis added).

According to its long title, the Public Works Act 1981 is an Act "to consolidate and amend the law relating to public works"; but Mr Kay submitted that it did not lose its consolidating characteristic for the purposes of s.20(d) merely because it was also an amending Act. The question then that lies at the heart of this case is what is the ambit and effect of s.20(d) in the present case. Does it embrace a consolidating statute which in some respects also amended the law?

The Public Works Act 1928 was a lengthy statute which between its enactment and its ultimate repeal by the Public Works Act 1981 was amended many times by amendment enactments which repealed or amended various sections or enacted new sections. One of these was the Public Works Amendment Act 1947, which related solely to motorways. S.12 of the amendment provided for the making of regulations for, inter alia, the following purposes:

- (a) Classifying traffic and motorways, and permitting and regulating, or prohibiting, the use of motorways by any class or classes of traffic:
- (b) Applying to motorways any Act, regulation, or bylaw that applies to any State highway, road, or street, including an enactment imposing penalties; and modifying any such enactment in its application to motorways:
- (c) Generally providing for the control, protection, and proper use of motorways:
- (d) Prescribing respects in which a motorway shall be deemed to be a road or street.
- (e) Prescribing fines of amounts not in any case exceeding \$100 for offences against the Regulations.

As indicated the Motorway Regulations 1950 were made pursuant to the provisions of the 1947 amendment a. 1 in particular s.12.

Mr Kaye submitted that the Motorway Regulations 1950 were not repealed by the passing of the 1981 enactment but were saved by the substantial correspondence of its regulation making power with the earlier statute because that Act was a consolidating Act. Therefore, he said, the Regulations remained in force at the time that the alleged offences were committed. In summary, his contention was that the 1981 Act was a consolidating Act for the purposes of s.20(d) notwithstanding that it also amended the law as well as consolidating it; and that although it effected changes to the law in a number of respects, it was clear that Part XI of the 1981 Act had gathered up the provisions

of the Public Works Amendment Act 1947 in regard to motorways.

Mr Bowen referred us to the approach taken in England by the House of Lords in Farrell v Alexander [1977] AC.59, particularly at p.82 where Lord Simon of Glaisdale classified and distinguished the various kinds of consolidating Acts in that country.

However, that system of categorising consolidating statutes has no parallel in this country. For example, we have no enactment similar to the Consolidation of Enactments (Procedure) Act 1949 (U.K.) or consolidation "with Law Commission amendments" under a procedure adopted by the English Parliament in 1965. And in our different statutory environment we think it would be inappropriate to be inhibited by what was said in Farrell v Alexander, from adopting a view which enables us to examine whether the consolidating Act, even though in some areas it also amends the law, contains provisions, in terms of s.20(d) of the Acts Interpretation Act, "substantially corresponding to those of the repealed Act".

Applying this view we think that when the relevant provisions of the Public Works Act 1981 are examined and compared with the provisions of the Public Works Act 1928 and its amendments, the 1981 Act can truly be said to correspond substantially with the repealed Act, particularly

in regard to the provisions relating to motorways.

The regulation making provision of the Public Works Act 1981 (similar to s.12 of the Public Works Amendment Act 1947) is contained in s.243(1). Mr Bowen has pointed out some differences between that provision and s.12 of the Public Works Amendment Act 1947. One is that s.243(1) contains no provisions for the making of regulations prescribing maximum fines for offences against the Regulations. Provision for fines is contained in s.242. However, we note that the first four purposes for which regulations may be made under s.243(1), namely (a), (b), (c) and (d), are almost word for word with the first four purposes for which regulations could be made under s.12. Paras. (f), (g) and (h) are of much wider application. None of the differences between s.12 and s.243 to which Mr Bowen drew our attention affect our view that the 1981 Act contains substantially the same provisions as the 1947 Act and its amendments.

For these reasons we think that the answer to be given to the second question asked of us is "Yes". That being the case there is no need for us to answer the first question.

If the matter rested there it would follow that the respondent's appeal to the High Court against his conviction would normally be dismissed with the consequence that the

conviction entered against him in the District Court should be restored. We note, however, that in the High Court Mr Bowen raised two points which are still outstanding: one relating to the jurisdiction of a traffic officer in respect of offences on a motorway and the other to the provisions of s.58(4) of the Transport Act 1962. Thus the case would have to be remitted to the High Court for the Judge there to consider the two further points raised by Mr Bowen so that if he were to determine these against the respondent he should remit the case to the District Court with the direction that the convictions be reinstated. But this is an unusual case. The alleged offences were committed as long ago as 9 February 1982, the prosecution took place in the District Court on 9 July 1982 and the decision of the District Court Judge was delivered on 19 October 1982. Ongley J dealt with the respondent's appeal to the High Court on 1 June 1983 and delivered his judgment on 8 November 1983. But for the Ministry of Transport's appeal on the points of law, the respondent would long since have served the sentence of periodic detention imposed upon him. Very fairly Mr Kaye acknowledged that the present appeal was brought by the Ministry of Transport in order to obtain a determination on questions of general importance to the Ministry of Transport, and not so much to secure the conviction of the respondent. Mr Bowen said that his client has had the matter hanging over his head for some considerable time, and has incurred considerable costs in litigating the case to date. As the Ministry has now

obtained a favourable answer on the general questions submitted to this Court, and the law in relation to offences of this kind has been clarified, we think that no useful purpose is served by remitting the case to the High Court for determination of the further two submissions raised by Mr Bowen with the possibility that, if that were determined against the respondent, the matter would then have to be remitted back to the District Court at some indefinite time in the future. For that reason we think the interests of justice will be served if we answer question (b) in the affirmative, and allow the appeal to that extent. But the respondent's acquittal in the High Court will stand.

William J. G. G. G.

Solicitors:

Crown Solicitor, Auckland, for appellant

Bowen, Roche & Hill, Auckland, for respondent