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IN THE HIGH COURT OF NEW ZEALAND
TIMARU REGISTRY

File
808

JUSTICE DEPT.
-6 APR 1984
TIMARU

GR.91/83

BETWEEN I MAW
Appellant
AND POLICE
Respondent

Hearing: 30th March, 1984

Counsel: Blake for Appellant
Wallace for Respondent

ORAL JUDGMENT OF SINCLAIR, J.

This Appellant was convicted in the District Court at Ashburton on a charge of careless use of a motor vehicle and was fined \$400 and his driver's licence was cancelled for a period of four months. That on the face of it is a fairly substantial penalty for a person who is described as a farmer, but the record of the evidence which is before this Court at the moment would almost certainly justify such a penalty. But I am informed that the wonders of modern science let down the judicial process on the day in question because the evidence was being taped on a new tape recorder which apparently by inadvertence was mis-managed with the result that one case was taped over the top of another and the resulting noises could not be distinguished and translated into what would normally be a record of evidence.

I have before me a record of the District Court Judge's notes of evidence and it is contended that there

was cross-examination of at least two witnesses, one a Mr Van Pelt. On the District Court Judge's notes there was no cross-examination, and in respect of Constable Wheeler there are two short comments.

An affidavit has been filed by the solicitor who appeared for the Appellant and he details certain cross-examination of Constable Wheeler which is not recorded at all in the District Court Judge's notes.

Mr Wallace quite candidly states that he is not in a position to really comment as he has no evidence available to show what exactly did occur, but on the face of the affidavit filed by Mr Blake on behalf of the Appellant it appears that there was cross-examination; whether or not any of it would affect the result I do not know because I have not heard any argument on the appeal itself.

As there appears to be some deficiency in the notes which are now before this Court and because the penalty imposed was substantial, with some reluctance I accede to the request of the Appellant and will vacate the conviction and direct that the matter be remitted to the District Court at Ashburton to be re-heard.

In the circumstances it would be quite unfair to expect the District Court Judge who heard the original prosecution to hear the second one and if possible, and in the hope that it can be done without delay, I would recommend that another Judge conduct the re-hearing. If that cannot be done with convenience at Ashburton, and while this incident happened at Rakaia and some travelling would be

involved as all of the witnesses appear to be from Rakaia, I would urge that if necessary the matter be transferred to Christchurch for the re-hearing. There will be orders in those terms.

P. P. King

SOLICITORS:

Kennedy Mee & Co., Ashburton for Appellant
Gresson, Richards, MacKenzie & Wallace, Timaru for
Respondent