

IN THE HIGH COURT OF NEW ZEALAND
AUCKLAND REGISTRY

M.1594/83

NRIR

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BETWEEN S NATTRASS
Appellant
AND MINISTRY OF TRANSPORT
Respondent

Hearing: 17th May, 1984

Counsel: Appellant in person
Jones for Respondent

ORAL JUDGMENT OF SINCLAIR, J.

This Appellant was convicted on a charge of careless use of a motor vehicle on 2nd August, 1983 and was fined \$100 and ordered to attend a defensive driving course.

The facts are simple and yet the Court misdirected itself.

On the day in question the Appellant, Mr Nattrass, was proceeding along Ridge Road, Howick, towards Auckland city, and came to the intersection with Bleakhouse Road where he wished to turn right. He stopped as is established by the evidence and has been found by the Court, in the right hand lane, indicating that he intended to turn right. In the middle of Bleakhouse Road, or about the middle of the entrance, is an island which effectively separates the traffic going into Bleakhouse Road whether it be turning right or left from Ridge Road, and the traffic coming out of Bleakhouse Road whether it be turning right or left. While stationary, three vehicles travelling in the right hand lane towards Howick went past the Appellant and he

was then confronted with a vehicle which was in the left hand lane. At page two of the notes of evidence in answer to the prosecutor the driver of the other vehicle, Mrs Cullen, stated quite clearly that she was in the left hand lane. She was asked when she changed lanes and she said it was about 20 or 30 feet from the intersection. At that point, according to the photographs and the plan, she was in a lane which was marked for traffic which was required at that point to turn left. She had no right whatever at that time to proceed straight through the intersection. She was controlled by Regulation 6 of the Traffic Regulations which is absolutely mandatory in its terms and it says as follows:

"Where lane usage arrows are marked to designate specific lanes for specific manoeuvres at the approaches to an intersection no driver shall use any lane except for the manoeuvre appropriate to its marking."

The wording is plain, deliberate and, as I have said, mandatory. If she found herself to be in the wrong lane she had but one course to take, namely to turn left into Bleakhouse Road and at an appropriate time to do a 'U' turn, come back to the intersection and turn left into Ridge Road and carry on into Howick. She had absolutely no right whatever to put in jeopardy other traffic on the roadway which was lawfully there and carrying out its lawful purpose of turning right into Bleakhouse Road, having indicated that turn and being in a lane which was plainly marked for that manoeuvre and that turn only.

When one examines the decision of the Court one finds firstly, rather strangely, a finding that Mrs Cullen who

was driving a in the opposite direction to the Appellant, indicated her change 70 odd yards before the intersection. That is not her evidence; her evidence is 20' to 30'. The Court then goes on to say in one portion, or seems to indicate, that Mrs Cullen had the right of way because she was proceeding straight through the intersection. Counsel for the Department today attempted to suggest that that was a correct finding. I plainly state it was not. One must remember that Regulation 9 dealing with right hand turns is later in the Traffic Regulations than Regulation 6 dealing with marked lanes, so that in that situation the Appellant had an expectation that other users of the roadway would abide by the Traffic Regulations and the markings on the road. What did the Court say on that? It said this:

"Now unfortunately in this day and age there are still a lot of drivers who indicate a left turn and still go straight ahead. Likewise there are still many drivers who make a left turn and fail to indicate turning left."

Those comments may be justified, but anybody who acts in that way does so at his or her own peril and the Courts ought to be quick to enforce the Regulations so that there will not be disorganised chaos on the road.

There is another aspect of this case which leaves me very disturbed. There was plain evidence from the Appellant and his sister that Mrs Cullen's indicator showed a left hand turn; she maintained it showed a right hand turn as she was shifting at a very short distance from the intersection from the left lane to the right lane. No attempt was made by the Court to resolve that conflict. In fact it plainly ducked the issue holding that the responsibility was on the Appellant

to give way to the vehicle which was going straight through the intersection when he was making a right hand turn.

This conviction should never have occurred. The wrong person was prosecuted and accordingly the appeal will be allowed and the conviction will be quashed.

I find what I have seen in this case so disturbing that in the circumstances I am going to direct that a copy of the decision of this Court be sent to the Justices of the Peace Association so that it can take cognisance of the concern this Court feels with regard to the ability of certain Justices of the Peace not only to evaluate evidence, but to appreciate what is involved in plain simple language in the Traffic Regulations.

There has been criticism of the activities of Justices of the Peace and it is right that in this case I bring to the attention of the Association one case which shows that the Justices do not, in the circumstances, appreciate either the evidence or the law.

As I have already said, the appeal is allowed and the conviction is quashed.

P. R. J. G.

SOLICITORS:

Appellant in person
Meredith Connell & Co., Auckland for Respondent