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IN THE HIGH COURT OF NEW ZEALAND
CHRISTCHURCH REGISTRY

NO. M.164/84 &
M.165/84

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BETWEEN JOHN HEYWARD RHIND and
 KEITH NORMAN RHIND

Appellants

A N D DISTRICT COMMISSIONER OF
 INLAND REVENUE

Respondent

Hearing: 11 May 1984

Counsel: H.C. Matthews for Appellants
 A.M. McIntosh for Respondent

(ORAL) JUDGMENT OF COOK J.

The appellants, Keith Norman Rhind and John Heyward Rhind, pleaded guilty in the District Court to a total of ten charges; in each case, knowingly applying a certain amount, being tax deductions from employees' wages, for a purpose other than the payment of tax deductions. It seems that of the two, Keith Norman Rhind is the father, and John Heyward Rhind is the son and they operate in partnership, a car care business. Of the two, it is the son who is substantially in charge of the business though the father is, of course, a partner, and responsible as such. It appears that they have two employees with a total wage bill of approximately \$20,000 and for five months failed to pay to the Department the amount withheld from the employees' wages for the purposes of tax deductions. There is a brief statement of facts on the file, but there are no remarks by the learned District Court Judge in relation to his sentencing so no help can be gained from anything of that

nature. My attention is drawn to one point in the statement of facts which may have influenced the District Court Judge, i.e. a statement that the total amount of tax involved, which was \$1405.71, had not then been paid, whereas I am informed it was in fact paid prior to the hearing, though possibly only a short time before.

The business, I am informed by counsel, was experiencing difficulties and, in particular, a liquidity problem. The senior partner thought the payments had been made but, unfortunately, the records were in a bad state and it took some time to discover the true situation. In addition to the payment of the deductions withheld, there was a penalty of 10% which had to be paid also. The District Court Judge imposed a fine of \$100, costs \$20 and solicitor's fees \$25 in respect of each of the ten charges and it is submitted to me that he did not look at the totality of the offending or the fact that, prior to sentencing, the deductions had been paid.

I have been referred to two decision in this Court, each arising from an appeal by the Department, and given some information as to the amounts then involved, the fines imposed and the total penalty thereby resulting. In addition, a list has been submitted giving the penalties imposed in each of seven or eight cases with some brief indication of the facts. I understand that none of this information was put before the District Court Judge.

It has been stressed by Mr McIntosh that the moneys which should be paid over each month are trust moneys and that it is customary in the case of a company for not only the company itself to be charged, but the officer responsible as well. Looking at the figures given in the various cases, one is very conscious that the facts must vary substantially one from another; that in some cases the total amount involved is very substantial, in others it is not. In some cases the taxes have been paid following prosecution but prior to rehearing and in other cases it has not, but the general

impression I take from the figures submitted is that the penalties imposed in this case were high considering the circumstances, the overall amount which resulted, and the fact that two partners were each charged with the same offences. The total amount comes to the sum of \$1450 I am informed. I consider that had the total sum, that is of fines, Court costs and solicitor's fees totalled \$600, that would have been appropriate.

Accordingly, I allow the appeal by quashing the penalties imposed in the District Court and substitute in the case of each of the charges a fine of \$25, costs on each I understand to be \$20 and there will be a solicitor's fee on each of \$15.

H Cook J.

Solicitors:

Fraser, Venning & Crerar, Rangiora, for Appellants
Crown Solicitor's Office, Christchurch, for Respondent.