

3

X

IN THE HIGH COURT OF NEW ZEALAND
TIMARU REGISTRY

GR.105/83

1620

IN THE MATTER of the Summary
Proceedings Act 1957
Section 144

BETWEEN JAMES WILLIAM STEWART
RICHMOND

Appellant

A N D THE COMMISSIONER OF
INLAND REVENUE

Respondent

Hearing: 19 November 1984

Counsel: I.G. Mill for Appellant
N.J. Scott for Respondent

Judgment: 19 December 1984

JUDGMENT OF HARDIE BOYS J

Following a defended hearing on 28 June 1983 Mr Richmond was convicted on four charges of failing to furnish returns of income: for the years ended 31 March 1979 to 1982 inclusive. The imposition of penalty was deferred until 26 July, to enable the appellant to complete the returns, and this having been done, he was then fined \$75 on each charge.

His defence was that he could not complete his returns because he had been unable to finalise the affairs of a partnership in which he had been involved; and also that he was in the hands of his accountant and his lawyer, one of whom

let him down, whilst the other could make no better progress with his returns than he had been able to manage himself.

The Judge held that these matters did not afford a defence. He pointed out that a provisional or estimated return can be submitted, and he said: "He didn't return them, and that is all there is about it". Mr Richmond appealed, and his appeal came before Sinclair J on 29 March 1984. He was not represented by counsel. The learned Judge did not call on counsel for the Crown to address him and in a brief oral judgment said:

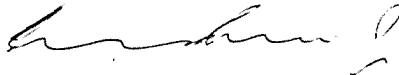
" Mr Richmond complains that he has been let down by solicitors and accountants, but that cannot enable him to avoid his plain liability the same as every other taxpayer under the Inland Revenue laws, namely to file his return in accordance with the law. If he does not, then he runs the risk of being prosecuted as he was in this case."

Mr Richmond has now moved for leave to appeal to the Court of Appeal on the grounds that the matter involves three questions of law, which it is said are of general or public importance, as of course they must be before leave may be given (s 144 of the Summary Proceedings Act 1957):

- "1. Both the learned District Court Judge and the learned High Court Judge treated the offences as ones of strict liability.
2. Neither Judge was prepared to accept submissions or evidence that the Appellant was unable to comply with Section 416 of the Income Tax Act 1976 due to circumstances beyond his control. Such evidence and submissions ought to have been received and considered.
3. The defence of impossibility applies."

Questions such as these may well be of great importance, but leave to appeal cannot be given unless they fairly arise on the facts of the case. I do not think they do in this case. Mr Richmond had made the Commissioner aware of his problems and had received several extensions of time, and warnings. The prosecutions were finally commenced on 24 January 1983. The Inspector who gave evidence at the hearing stated that on 19 May 1982 Mr Richmond was advised that he could file provisional returns, but he did not even do that. He continued - and still continues - to maintain the position that he could not do anything until the exact figures could be established. It is clear that the Commissioner did not require this, and that is where Mr Richmond made his mistake. He should have filed provisional returns. The evidence does not disclose any reasonable excuse for his failure to do that once he had been advised to do it. Therefore in my view the facts would not support the defences which Mr Richmond seeks to advance, even if they were available to these particular charges.

Accordingly I must refuse leave to appeal.



Solicitors:

Clark & Mill, TIMARU, for Appellant
Crown Solicitor, TIMARU, for Respondent.