27/8

NZLR

(3) 547 X

IN THE HIGH COURT OF NEW ZEALAND
GISBORNE REGISTRY

M.25/84

980

IN THE MATTER of an appeal against a determination of Justice of the Peace

BETWEEN: D TAYLOR
of Gisborne, Shearer

Appellant

A N D: THE POLICE

Respondent

Offence: Careless use of a motor vehicle
Dealt With: 6 July 1984 At: Gisborne By: J.P's
Sentence: Convicted and Fined $250.00

Appeal Hearing: 14 August 1984
Oral Judgment: 14 August 1984

Counsel: N Weatherhead for appellant
C Browne for respondent

Decision: APPEAL ALLOWED
Remitted to District Court for Re-Hearing

(ORAL) JUDGMENT OF HENRY, J.

This is an appeal against a conviction entered by Justices of the Peace in the District Court at Gisborne on 6 July 1984, in respect of one charge of careless use of a motor vehicle.

At the conclusion of the evidence for the prosecution, counsel for the appellant made a submission of no prima facie case. In response to that, the Justices, after very

briefly reviewing the evidence which up to that time had been placed before them, stated :

> "We therefore find Mr Taylor guilty of causing the accident."

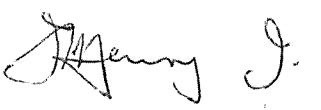
In that finding there was a clear determination of guilt made at a stage of the proceedings when that was not an issue for the Court then to decide. It is apparent to me from reading the transcript that the Justices did not appreciate the nature and effect of the submission made to them, which required them to consider whether there was at that stage of the trial sufficient evidence, if accepted by the Court, which could justify a conviction.

Mr Browne has drawn my attention to some three unreported authorities and has also referred to a judgment of Speight J. in Auckland City Council v Jenkins (1981) 2 NZLR 363, dealing with this aspect of procedure and all of which authorities, as I read them, support what I have just said. The question of guilt could not, at that stage, be decided by the Justices. It is my view therefore that in doing so they erred in law, and that brought about two consequences - the first is that the submission of no prima facie case was never in fact ruled upon, and the second is that the error in not ruling upon it, and in making the finding of guilty, there was a pre-judging of the very issue which they finally had to determine by an application of the onus of proof to the facts as finally found by them on the whole of the evidence.

I have given careful consideration to what Mr Weatherhead has submitted to me as to the appropriate course

now to adopt. In my view, it would not be proper for this Court now to make any definitive comment on whether or not the submission of no prima facie case should have been accepted by the Justices. That is a matter which properly falls for determination by the District Court. Neither do I think it in the circumstances appropriate merely to allow the appeal and quash the conviction. The interests of justice, which include the interests not only of the appellant but of the public and of the Crown, in my view require this matter to be determined in the proper manner according to accepted procedural principles.

The conviction is, in my view, unsatisfactory. It will be quashed and the matter will be remitted to the District Court, and I direct that the information there be re-heard.



Solicitors:

Wilson Barber & Co., Gisborne, for appellant

Crown Solicitor, Gisborne, for respondent