IN THE HIGH COURT OF NEW ZEALAND
AUCKLAND REGISTRY

M.1216/84

	BETWEEN	AUCKLAND CITY COUNCIL Appellant
1679	AND	E QUILL Respondent

Hearing: 18 December 1984

Counsel: R.J. Katz for Appellant
D. Singh for Respondent

Judgment: 18 December 1984

(ORAL) JUDGMENT OF BARKER, J.

This is an informant's appeal by way of case stated. Mr Katz informed me that a decision from this Court was sought on the action of the Justices of the Peace in dismissing an information for careless use of a motor vehicle. The appellant wishes to have the law clarified by this Court and not to obtain a conviction on a minor charge against this particular appellant. Consequently, in the event of the appeal succeeding, Mr Katz does not ask for this Court to order a rehearing in the lower Court.

The information alleged that the appellant, on 1 April 1984, used a motor vehicle carelessly contrary to s.60 of the Transport Act 1962. He pleaded not guilty on 24 July 1984 before Justices of the Peace.

The case stated discloses that the Justices heard evidence from a traffic officer who had attended an apparent collision between two vehicles in Herne Bay, on the date in question. The first vehicle was

a station wagon which had incurred moderate damage to the right rear panel and bumper and a smashed tail light. Some 65 metres down the road, the officer found another vehicle, the left front panel, bumper and grill of which were dented and the left head light smashed. There were paint marks on this car which correspondenced with the paint marks on the other car. The following day, the officer spoke to the registered owner of the vehicle with the damage to the left front, namely, the respondent. The respondent said:

> "On the evening I was driving along Sarsfield Street when the next thing I knew I had hit something. I got out of the car and started walking. I couldn't see what I had hit. I think I had a black-out."

The respondent also stated to the officer that he did not know that he had struck a car. He had not struck his head some time that evening but he had been receiving treatment for black-outs from a doctor. There were no eye-witnesses to the accident. The appellant did not give or call evidence. According to the case stated, counsel referred in his cross-examination of the officer to "the accident that Mr Quill was involved in".

It is not clear whether the determination of the Justices in dismissing the information was one made at the conclusion of the prosecution case on a submission that there was no case to answer, or whether it was a submission made after the respondent (the defendant in the Court below) had elected not to call evidence. However, I am assuming that it was the former. The Justices state as their reason for dismissing the information that there was no evidence that the respondent had driven the vehicle; there were no eye-witnesses to the accident.

Mr Katz submits that the Justices were incorrect in dismissing the information on the basis that there was no

prima facie case made out by the prosecution. He submitted that the correct practice is that laid down by Speight, J. in Auckland City Council v. Jenkins, (1981) 2 NZLR 363 where the learned Judge followed the English practice note which is recorded thus in (1962) 1 All E.R. 448:

> "A submission that there is no case to answer may properly be made and upheld: (a) when there has been no evidence to prove an essential element in the alleged offence; (b) when the evidence adduced by the prosecution has been so discredited as a result of cross-examination or is so manifestly unreliable that no reasonable tribunal could safely convict on it.
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> Apart from these two situations a tribunal should not in general be called on to reach a decision as to conviction or acquittal until the whole of the evidence which either side wishes to tender has ben placed before it. If, however, a submission is made that there is no case to answer, the decision should depend not so much on whether the adjudicating tribunal (if compelled to do so) would at that stage convict or acquit but on whether the evidence is such that a reasonable tribunal might convict. If a reasonable tribunal might convict on the evidence so far laid before it, there is a case to answer."

There was, in my view, evidence to show a prima facie case of careless driving. It was not necessary for there to have been eye-witnesses. The prima facie case arose from the admission of the defendant to the traffic officer that he had been driving the car and he had hit another car in Street. The only reasonable inference must be that the respondent had a momentary lapse of concentration. This view is supported by an unreported decision of White, J. in Marinan v. Police (6 March 1981, Christchurch, M.354/80).

It may well have been that, if the respondent had elected to give evidence, he may have been able to raise a reasonable doubt as to this inference; or he may have been able to have shown that he had a black-out at the time in

question. However, the fact remains that there was sufficient evidence to require the respondent to be put on his election as to whether he wished to give evidence or not. The Justices were not justified in stating that there was no prima facie case.

It is important for Justices to remember the basis on which such a submission should be entertained. It is as recorded in the English practice note which I have deliberately quoted in this judgment, which has received the approbation of this Court not only in the Jenkins case but in others.

On the point of what needs to be shown by the prosecution in a case of careless use, it is true, as Mr Singh submitted, that the doctrine of res ipsa loquitur is a civil concept; the authorities discussed by White, J. in Marinan's case show that in situations such as that in the instant case, in the absence of any other evidence, a collision can give rise to an inference of careless use or momentary lapse of concentration by a driver.

Therefore, the case stated appeal must be allowed. I remit the matter to the District Court with the opinion of this Court. I expressly do not order that any further action be taken in respect of the prosecution since the appellant sought to have a decision on a test case. The appellant does not seek any resumption of the hearing against the respondent.

The appeal is accordingly allowed. R. J. Barker J.

SOLICITORS:
Butler, White & Hanna, Auckland, for Appellant.
D. Singh, Auckland, for Respondent.