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BETWEEN

ON BAKER
Appellant

A N D POLICE

Respondent

Hearing: 1 February 1984

Counsel: Carolyne M. Risk for Appellant
N.W. Williamson for Respondent

Judgment: 1 February 1984

ORAL JUDGMENT OF HOLLAND, J.

The appellant who is a single man 26 years of age was convicted in the District Court at Christchurch of driving a motor vehicle while the proportion of alcohol in his blood exceeded 80 mg per 100 ml. In fact it substantially exceeded this because the reading was 241 mg which made it a very serious charge of excessive alcohol in the blood. The appellant had also been convicted of a similar offence less than a year previously.

He was fined \$1000, ordered to pay Court costs of \$94.50 and disqualified from driving for a period of twelve months. Although it is submitted that the amount of the fine and the disqualification was excessive, in the case of a second offence with a blood alcohol level of this reading it is well within the appropriate range. The District Court Judge made an order for payment within two days and with a provision that in default the appellant was to serve one months' imprisonment. He has noted the file that the appellant has the ability to pay forthwith. There may have been some misunderstanding between counsel representing the appellant and the District Court Judge because I am told that the appellant had available only \$500 and that his only other asset was his motor car. He was employed as a farm

labourer at a relatively low wage but is employed by his parents. I do not see any grounds to interfere with the order for payment within two days. It involved the appellant either borrowing against his car or from some other source or alternatively selling his car. He was disqualified from driving for a period of twelve months and there was in my view no injustice in expecting him to sell the car to pay the fine.

The appeal will be dismissed.

A. D. Holland J