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BETWEEN ROGER ELLIOTT BOWER

Appellant

A N D COMMISSIONER OF INLAND REVENUE

Respondent

Counsel: D. McNaughton for Appellant  
C.Q.M. Almao for Respondent

Hearing and  
Judgment: 2 May 1984

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ORAL JUDGMENT OF GALLEN J.

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The appellant was convicted in the District Court at Te Awamutu on a number of charges relating to the use of tax deductions made by him from the wages of employees for his own purposes. Mr McNaughton has indicated that this was not a case where the appellant simply dishonestly misappropriated those funds but he has in fact used money which was the property of his employees which he was obliged to account for to the Department of Inland Revenue for his own purposes. That has to be regarded as serious. It was not his money, nor did he have any right to use it because his own financial circumstances were difficult at the time. There are other persons who have been charged with offences relating to somewhat smaller sums of money and whose sentences are to be considered today who have effectively had imposed upon them substantial penalties in

respect of their offence, which I accept of course are different but nevertheless, it is important to the community that the penalties which are imposed should bear some relation to the seriousness of the offence involved. It is also important to bear in mind that the Legislature considers offences of this nature serious and recognises that by the level of penalty which can be imposed as a maximum. As against that, I have the disadvantage that I do not have before me the reasons which led the learned District Court Judge to arrive at the conclusion which he did. I am also informed that at the time of sentence, there was only a comparatively small amount of the money not accounted for and that most of it has now been paid, including additional amounts which were owing by way of tax. It is important to take into account the total amount of a penalty which is imposed and in this case the total of the fines which were imposed on the number of informations has exceeded the amount which was owing to the Department and has come very close to the maximum amount which could have been imposed in respect of any one offence. I note that although there are separate offences and he has properly been charged with separate offences, effectively it involves one transaction with a series of particular transactions within it. Under those circumstances, it seems to me inappropriate that the total amount should have arrived at the figure which has been imposed in this case.

The appeal will accordingly be allowed. The fines will be changed by reducing them in respect of each information from \$200 to \$100. In all other respects, the penalties

and costs imposed will stand. In the circumstances, there will be no order for costs.

*R. L. G. J.*

Solicitors for Appellant: Messrs McCaw, Lewis Jecks, Hamilton

Solicitors for Respondent: Crown Solicitor, Hamilton

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