

BETWEEN

CATLEY

Appellant

A N D

MINISTRY OF TRANSPORT

Respondent

Hearing: 16th July, 1984.

Counsel: A. L. Hassall for Appellant.
C.Q.M. Almao for Respondent.

Judgment: 16th July, 1984.

ORAL JUDGMENT OF GALLEN, J.

The Appellant was convicted of a charge of driving a motor vehicle on Hamilton Road, Cambridge, State Highway 1, at a speed which, having regard to all the circumstances of the case, might have been dangerous to the public. In arriving at his conclusion it is clear that the learned District Court Judge relied heavily on the view which he took as to the respective credibility of the traffic officer and the Appellant, and on that basis, having accepted the credibility of the traffic officer and preferred his evidence, he convicted the Appellant. It is clear from the decision that the learned District Court Judge was concerned over the evidence which suggested, and indeed he found established, that the Appellant had travelled through more than one intersection at a speed of 110 kilometres per hour. He was also impressed with evidence

which suggested that the distance between the traffic officer and the Appellant had been increasing and that the acceleration of the Appellant's car was such as to outdo the acceleration of that driven by the traffic officer. If that were all that were available then it is clear I should be obliged to follow the normal course and hold that this appeal, being a matter depending pre-eminently upon conclusions as to credibility and fact, could not succeed. However, the Appellant obtained leave to call additional evidence and evidence has been heard to-day from a Mr. Weir who was responsible for the maintenance of the Appellant's vehicle. He gave detailed evidence to the effect that at the time in question the vehicle was in a deteriorated mechanical state and, specifically, would have been incapable of acceleration to 110 kilometres per hour, certainly by the first and possibly more of the intersections under consideration. He also considered it would not have been capable of accelerating at a greater rate than the vehicle driven by the traffic officer.

In my view this evidence is sufficient to justify re-considering the conclusions arrived at by the learned District Court Judge because if there were any real chance that the Appellant's vehicle had not reached the speed of 110 kilometres per hour at all of the intersections, then the question of danger would have had to be re-considered. I accept what Mr. Almaso says that danger is not necessarily a matter of speed. Indeed it may be possible in some circumstance that a speed of 20 or 30 kilometres per hour would be sufficiently dangerous to meet the requirements of the section. But in this case it is the combination of the speed and the intersections

which appears from the decision of the learned District Court Judge to have resulted in the conclusion to which he came. Under normal circumstances I should have considered this enough to justify the matter being dealt with by way of re-hearing. I am in no position to come to any conclusions contrary to that of the learned District Court Judge as to credibility, although Mr. Hassall has made strong submissions that a finding to the contrary on the question of speed and acceleration throws into doubt the whole conclusion as to credibility. There are a considerable number of areas where the learned District Court Judge was entitled to come to conclusions which I am in no position to re-consider, both as to credibility and as to danger.

The factual material is also quite unsatisfactory in order to come to any adequate conclusion. It is not clear exactly where the intersections were, the distances that the intersections were from the left hand corner, the distances to the 50 miles per hour sign, or the distances to the open road. None of these matters were necessarily of concern to the learned District Court Judge because of the conclusion to which he came on the basis of the evidence before him that the vehicle had reached a speed at the intersection concerned which, having regard to the circumstances, he considered dangerous and which, on the evidence before him, he was entitled to conclude. I, however, have additional evidence available which he did not have. I consider that evidence means that the whole conclusion needs to be re-considered. Mr. Almao very fairly said that, bearing in mind the circumstances of the alleged offence, the

penalty which was imposed, but, most significantly, the very long delay since the occurrence of the facts out of which the charge arose, a re-hearing might involve unfairness as far as the Appellant is concerned. While, therefore, I would normally have considered this an appropriate case to invoke the provisions of the Summary Proceedings Act and require a re-hearing, I will not do so.

In all the circumstances the appeal is allowed.
There will be no order for costs.

A handwritten signature in dark ink, appearing to read 'R. R. Thomas', is written over the printed name of the appellant's solicitor.

Solicitors:

A. R. Thomas, Hamilton, for Appellant.

Crown Solicitor, Hamilton, for Respondent.