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IN THE HIGH COURT OF NEW ZEALAND
CHRISTCHURCH REGISTRY

No. M.476/84

1415

BETWEEN

BRYSON

Appellant

A N D

MINISTRY OF TRANSPORT

Respondent

Hearing: 26 October 1984

Counsel: No Appearance for Appellant
D.J.L. Saunders for Respondent

Judgment: 26 October 1984

ORAL JUDGMENT OF HOLLAND, J.

The appellant appeals against his conviction of parking a motor vehicle within 500 mm of a fire hydrant on 29 July 1981. The conviction was entered in the District Court on 17 July 1984. Prior to the issue of proceedings the defendant had apparently received a warning notice and wrote an explanation to the Transport Department in which he indicated that there was some confusion over the signs. Notwithstanding that explanation the prosecution was brought and an information duly laid. It was not served. It would appear that he was not served because in the intervening period the defendant changed his address from 1 Larsons Road Christchurch to 30 Pauline Street Christchurch. It must have been some surprise to him to have been served with this summons on 7 June 1984.

The Transport Act provides that a prosecution should not be brought in circumstances such as this except where an information is laid within six months. The information was laid within six months but there does seem some injustice about proceeding with a matter at this stage, particularly in the absence of any suggestion that the defendant was avoiding service. It is clear, however, on the facts before the Justices of the Peace that the offence was established and that the conviction accordingly should stand.

The appeal is against conviction and sentence. I propose to dismiss the appeal against conviction, but to allow the appeal against sentence, and in place of the fine and order for costs that was imposed to substitute an order that the defendant be convicted and discharged. The appeal against sentence is allowed, the sentence quashed and in lieu thereof is an order that he be convicted and discharged.

A D Holland J