

BETWEEN: BURNS  
of Cambridge, Driver  
Appellant

A N D: MINISTRY OF TRANSPORT  
Respondent

Offence: Carelessly Using a Motor Vehicle  
Dealt With: 11 July 1983 At: Hamilton By: J.P.'s  
Sentence: Fined \$150, Court costs \$20.

Appeal Hearing: 30th April 1984

Oral Judgment: 30th April 1984

Counsel: Appellant in person  
C Q M Almaso for respondent

Decision: APPEAL ALLOWED , IN PART. FINE REDUCED TO \$60.

(ORAL) JUDGMENT OF GALLEN, J.

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The appellant was convicted on a charge of careless driving and was fine d\$150.00 and Court costs \$20.00. His appeal was initially against both conviction and sentence but, having consulted counsel, he withdrew the appeal against conviction and proceeded solely on the appeal against sentence.

The circumstances as set out in the Summary indicate that this was a very minor incident which occurred on the 15th April 1983 when the appellant, having got into his car, began to back out of a parking-space he having been angle-parked. At the time the rear window of his vehicle is said to have been fogged-up, thus preventing visibility

through that. The appellant wound down his side-window and checked himself behind the vehicle, and arranged for his son to do likewise on the other side of the car. Neither saw that there was another vehicle waiting to turn in the vicinity and as a result the left rear mudguard of the other vehicle was struck, causing some panel damage. I understand that the appellant has been faced with a claim in respect of this. It seems clear that the night was dark, it was raining at the time, and the driving conditions must have been exceedingly bad. This imposes an additional responsibility on drivers and it is, of course, the responsibility of a driver to ensure that he has sufficient visibility before making a driving manoeuvre of the kind involved. Nevertheless, it is clear that this was a minor matter of its kind, where there seems to have been a greater degree of misfortune than carelessness. The appellant has been driving professionally for many years. He has never had his licence interfered with, and I am informed he had only previously had one offence involving the loss of a load of timber which he rightly says must be regarded as a comparatively serious matter but which resulted in the imposition of a fine of \$60.00. If the Justices who heard this matter had had available to them the additional information which has been given to this Court, it may well be that they would have come to some other conclusion.

I think it is appropriate that a fine should be imposed, bearing in mind the responsibilities which exist to ensure that the way is clear before operating a motor vehicle and bearing in mind that it does seem that in any

way the other vehicle contributed to this. Nevertheless it was minor. Clearly enough the appellant has been concerned over the comparison between the fine which was imposed on the other occasion and that which was imposed on this. I think it is proper that the fine which was imposed should be reduced.

The appeal against sentence is allowed to the extent that the fine is reduced to the sum of \$60.00 in respect of the original fine of \$150.00. The Court costs will remain as originally imposed. In the circumstances, I make no order as to costs.

*R. J. Gallen*

Solicitors:

Crown Solicitor, Hamilton, for respondent