IN THE HIGH COURT OF NEW ZEALAND
HAMILTON REGISTRY

M.424/84

BETWEEN BUTLER
Appellant

A N D MINISTRY OF TRANSPORT
Respondent

Counsel: P.R. Heath for Appellant
C.Q.M. Almao for Respondent

Hearing and Judgment: 4 December 1984

ORAL JUDGMENT OF GALLEN J.

The appellant was convicted in the District Court at Huntly on 18 September 1984 on a charge of careless driving. Counsel were good enough to submit a joint memorandum which indicated the course which the hearing took and it appears that at the close of the prosecution evidence, counsel for the appellant - then of course the defendant - submitted to the Justices of the Peace presiding that there was no prima facie case established. The Justices retired briefly at that point and returned to the Bench after an absence of 2 or 3 minutes. On their return, they stated that they preferred to believe the evidence of the Ministry of Transport and found the defendant guilty of careless use. They were immediately advised, both by the Court Clerk and by counsel for the appellant, that they had

no jurisdiction to make a finding of guilt at that stage and their attention was drawn to the fact that the defendant had a right to elect to call evidence if a prima facie case was found to exist.

It does not appear that any definite ruling was given in respect of the application, but the Justices then permitted the defendant to call evidence. He gave evidence himself and after examination and cross-examination, the defence case closed. Submissions were then made. The Justices did not leave the Bench and did not appear to confer. They stated that they found the appellant guilty and imposed a fine of $150 together with costs and witnesses expenses. No disqualification was imposed.

Under those circumstances, it is submitted that the conviction cannot stand. My attention was drawn to an unreported decision of Henry J. in the case of Taylor v. Police Gisborne Registry M.25/84, judgment delivered 14 August 1984 where, in reasonably similar circumstances, he reached such a conclusion and Mr Almao referred me to a Practise Note in the English equivalent jurisdiction where it was stated that where Justices had given an indication as to a finding of guilt at an inappropriate stage of the trial, they had no jurisdiction to continue hearing further evidence or taking the case further.

The conviction cannot stand and will be set aside. In doing so, I note that there is some difficulty occasioned in this case by the fact that the records do not indicate the submissions which were made by counsel at the appropriate time or any ruling or rulings made by the Justices.

The memorandum which counsel filed in this case has been of assistance, but it would be preferable if the record of the proceedings indicated what had occurred. In saying that, I appreciate that there are many practical difficulties and that there are times when it is simply impossible to make a complete note of what occurs.

Mr Heath then submitted that in the event of a finding that the conviction should be set aside, this was an appropriate case to bring the matter to an end by simply quashing the conviction and that it was not appropriate to remit it for re-hearing in terms of the Summary Proceedings Act. In the case referred to of Taylor v. Police, Henry J. dealing with a case of careless use of a motor vehicle, the same charge, considered that the matter should be remitted for re-hearing.

Mr Heath, in careful and detailed submissions, suggested five reasons why this was not an appropriate course in this case. The first of these was that the offence was to be regarded as comparatively minor - perhaps trivial; the

second, that the penalty which was imposed was modest which would suggest that the circumstances were not particularly serious and that a re-hearing might take the matter out of proportion to the nature of the offence. The third point was that it was a driving offence and one which is notorious for persons involved, re-constructing the way in which incidents occurred, with memory affected by lapse of time. The incident occurred on 13 April 1984 and there is no real prospect that a re-hearing could be dealt with until some time in the new year. His fourth point was that this was not a situation where there was any blame as far as either party was concerned, nor was it a case of relying on some procedural technical gap in the evidence. Finally, he submitted that it was unfair that the appellant should be put through the procedures of a further defended hearing in a case of this kind. He referred to the practise of the Court of Appeal where decisions need to be made as to whether or not a re-trial should take place and in particular to R. v. Clark 1946 N.Z.L.R. 522 where the Court of Appeal indicated that in a matter which was comparatively trivial, it was inappropriate that a re-trial should be held. He also referred to a similar decision in the Australian jurisdiction.

Mr Almao submits strongly that the matter should be submitted for re-hearing and the principle reason which he advances in support of this contention is that this case somewhat unusually originated from the complaint of a member of the public - a complaint which was taken up and prosecuted by

the Ministry of Transport. He distinguished it from that situation which normally applies in driving charges where the Ministry is the originator of the proceedings. In the end, the decision is a discretionary one and must, I think, depend upon the seriousness or otherwise of the charge which is under consideration.

Mr Heath submitted that a charge of careless driving is in the scale of traffic offences, a comparatively minor one. While I agree that it is minor compared with some traffic charges, on the whole I am inclined to think that a careless use charge must be regarded as one of some seriousness because it is the carelessness which can itself result in the accidents which may give rise to perhaps more serious charges. I think it is to be distinguished from the truly trivial charges which relate to defective equipment or some minor breach which has not involved any other person in any danger.

In the case of Taylor v. Police already referred to, Henry J. considered that it was appropriate in the interests of justice that the matter should be re-heard. That case is not wholly the same as this one, in that the fine which was imposed was more substantial and it appears that proceedings arose as a result of an accident. That is not the case here. However, in this case the incident was regarded by the complainant as sufficiently serious to justify him taking steps to identify the appellant's vehicle and to complain to the Ministry of

Transport. I am concerned that where members of the public become directly involved in the administration of justice, it should not be regarded as something which can be taken lightly. This is a matter which is not easy to determine because the points made by Mr Heath are valid and it is I think important not to allow the matter to get out of proportion, but the proportion must in the end depend upon the seriousness of the charge. I am not in any position to make or arrive at final conclusions in respect of this. I did not hear the evidence and have only notes before me.

With some hesitation therefore, I conclude that I should adopt the same conclusion as Henry J. did in the Taylor case and the conviction will be quashed and the matter directed to the District Court and I direct that the information be re-heard.

Solicitors for Appellant: Messrs Stace, Hammond, Grace and Partners, Hamilton

Solicitor for Respondent: Crown Solicitor, Hamilton