IN THE HIGH COURT OF NEW ZEALAND
AUCKLAND REGISTRY

M.931/84

BETWEEN BUTLER
of Riverhead, Builder

Appellant

A N D MINISTRY OF TRANSPORT

Respondent

Offence: Careless use of a motor vehicle
Dealt With: 31 January 1984 At: Henderson By: S Peacock JP
J Williams JP
Sentence: Fined $100.00

Hearing: 17 September 1984

Counsel: S M C Temm for appellant
D B H Jones for respondent

Oral Judgment: 17 September 1984

Decision: APPEAL ALLOWED

ORAL JUDGMENT OF HENRY J.

This is an appeal against conviction on a charge of careless use of a motor vehicle, and arises from a collision which occurred on 15 July 1983 during the hours of darkness on Station Road, Taupaki. The appellant had been travelling behind another vehicle driven by a Mr Duncan, it being common ground that both were proceeding at a speed which was not in any way excessive in the circumstances then pertaining. Mr Duncan, in the forward car, was intending to and did in fact make a right hand turn into his own driveway, and it was in the

course of that manoeuvre that the two vehicles came into contact.

There was a conflict of evidence in the District Court as to the point of time at which Mr Duncan had turned on his indicator light to show his intention to make a turn into his driveway. Mr Duncan stated that this was some appreciable distance before he commenced his turn. The appellant in his evidence contended that there was no such indication until virtually the time the manoeuvre commenced, which was as the front part of his (the appellant's) car was up to the rear of Mr Duncan's vehicle. This appears to me to be a crucial issue in respect of the charge and in respect of which the justices in their finding referred to the conflict of evidence in these terms, and I quote :

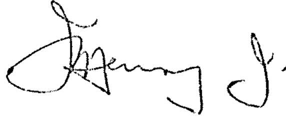
> "Mr Duncan is not really sure whether he put his indicators on, but in most cases he told us that he did it at the railway line, so we can only assume that he may have done it that night but he may have only done it as he turned in, as you have told us that you did think you saw an indication as you drew level."

It seems to me that in that passage the justices are referring in the first place not to whether the indicators were put on, but where the vehicle was at the time they were used. It also seems clear to me that there is not a positive finding by them that the indicators were used some distance prior to the commencement of the manoeuvre, but that the justices were left

in at least a state of doubt, and were saying in effect that they had to work on the basis that the indicators may have been turned on only as the turning manoeuvre commenced. I do not think that the passage to which I have just referred can be read as merely an attempt to summarize the conflict in the evidence preparatory to making any factual findings. To my mind, the justices have in that portion of the decision indicated an inability on their part to find that the indicators were turned on at an early stage, as given in evidence by Mr Duncan. The decision, I think, on a full reading of the remarks of the justices, is based on the failure by the appellant to anticipate a right turning manoeuvre on the part of Mr Duncan, and electing to pass Mr Duncan's vehicle at the time he did. In my view, having regard to the circumstances, to class that as "careless use" is placing too high a burden on a driver. There was here no question of there being any roadway intersecting with Station Road, into which Mr Duncan could have been turning, and I do not think the evidence disclosed a need for the appellant to anticipate the sort of manoeuvre which did take place. If the situation was that Mr Duncan made his right hand turn with a vehicle following behind him and without giving any indication of doing that until such time as he was either immediately about to or actually had commenced the manoeuvre, that would not have been an adequate warning to a following driver. In those circumstances I do not think the evidence, having regard to the

findings made or unable to be made by the justices, are sufficient to support a conviction.

The appeal will accordingly be allowed, and the convction quashed.



Solicitors:

Wallace McLean Bawden & Partners, Auckland, for appellant

Crown Solicitor, Auckland, for respondent.