IN THE HIGH COURT OF NEW ZEALAND
AUCKLAND REGISTRY

M.No.625/84

BETWEEN DROUGHT

Appellant

A N D AUCKLAND CITY COUNCIL

Respondent

Hearing: 17 August, 1984.

Counsel: Appellant in Person.
R.J. Katz for Respondent.

Judgment: 17 August, 1984.

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(ORAL) JUDGMENT OF VAUTIER, J.

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The appellant in this case was proceeded against in the District Court for a minor traffic offence the procedure adopted being that provided for by s.21 of the Summary Proceedings Act 1957. The notice of traffic prosecution alleged an offence against the Traffic Regulations 1976, Reg. 18(1) and 3(d)(i) and 136(e) relating to failure to comply with traffic signals. The appellant has appeared in person to support his appeal and all the matters advanced relate to matters of fact and not matters of law. In this situation this Court is of course limited in dealing with the appeal to what material appears in the record of the District Court. In this situation it is necessary to bear in mind the position in which this Court stands as was referred to in the often-quoted decision of our Court of Appeal in Kenny v. Fenton [1971] NZLR 1 where, at p.11 reference was made to the necessity for a Court acting on appeal

to be aware of the danger of preferring the view formed on a reading of the record to the opinion of the Judge who heard and saw the case develop and had the opportunity denied to it of judging the worth of the oral evidence given by the witnesses. It was further pointed out that in order to reverse the decision appealed from it was necessary that the Court on appeal should be convinced that it was wrong.

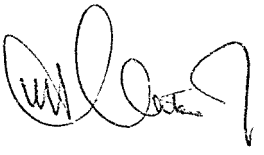
The appellant here has advanced criticism against the evidence of the traffic officer in relation to the various distances to which he referred in estimating the position which he had taken up to watch the intersection in question governed by traffic lights for the purposes of detecting infringements or non-observation of the light signals. He also adverted to other matters which he suggested showed some conflict in the statements of the traffic officer.

The simple situation here, however, is that the appellant himself gave evidence and estimated that his vehicle was 25 metres back from the intersection at the time when the light governing his passage turned to amber and further said that although he slowed down he decided that it was too close to the intersection to stop and consequently he proceeded on. The finding of the Justices was that the appellant was in a position where there was ample time when the lights were observed to be amber for the driver of any vehicle to come to a stop and that the appellant should have stopped. It is suggested that the stopping distances referred to in the road code would indicate that this is not so. Those distances were not, however, put in evidence before the District Court nor indeed,

even if they had been, would it, I think, have been likely to have been accepted that they indicated that the appellant in the circumstances here disclosed by him could not safely have brought his vehicle to a stop as the signals given by the lights required him to do unless he was too close to the intersection to do so here with safety.

On the evidence here presented I could not for one moment conclude that the Justices reached an erroneous conclusion and the appeal must accordingly be dismissed largely on the basis of the fact of the appellant's own evidence supplying the grounds upon which the finding against him was amply justified.

The appeal accordingly is dismissed.



SOLICITORS:

Butler White & Hanna for Respondent.