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IN THE HIGH COURT OF NEW ZEALAND
AUCKLAND REGISTRY

M.No.96/84

522

BETWEEN GILLANDERS

Appellant

AND MINISTRY OF TRANSPORT

Respondent

Hearing: 2 April, 1984.

Counsel: Appellant in Person.
M.J. Ruffin for Respondent.

Judgment: 2 April, 1984.

(ORAL) JUDGMENT OF VAUTIER, J.

The appellant in this case was given notice of the allegation of the commission of a minor traffic offence, that is to say that he drove a motor vehicle on the road at a speed exceeding 50 kph in a restricted area and thereby acted contrary to s.52(1) of the Transport Act 1962. He gave notice that he wished to plead not guilty to the charge and that he denied the allegation and accordingly the matter was heard in the ordinary way as an information to be disposed of in accordance with the provisions of the Summary Proceedings Act. The hearing was before Justices and the appellant appeared in the District Court in person as he has done in support of the present appeal. In the notice of appeal lodged by him the grounds of his appeal are stated to be:-

1. A 70 kph sign was placed in a position that was misleading as to its intention.
2. It was not placed in accordance with the requirements of

the Transport Act, its amendments and its regulations.

3. The alleged offence was not a criminal one.

The basis of the defence advanced by this appellant to the charge thus brought against him was that he was proceeding along the road in question, Prince Regent Drive, after approaching from the direction of Butley Drive which caused him to be in the situation where he made a left turn out of Butley Drive into Prince Regent Drive where the traffic officer made the check which gave rise to the charge. Proceeding in this way, the appellant's evidence was that he saw on his right a sign indicating that the road leading to his right, namely Fortunes Road, was subject to a 70 kph speed limit. He further advances the point that a driver proceeding as he did had his attention drawn to the sign in question because of the "Give Way" sign positioned at this particular intersection governing traffic proceeding out of Butley Drive and the consequent necessity for him to look to his right before proceeding with his left hand turn into Prince Regent Drive. The street in question, that is to say Prince Regent Drive, being positioned opposite Fortunes Road at this intersection, he was led, he says, to assume that there was a 70 kph restriction only applicable in Prince Regent Drive whereas in fact, of course, as the evidence before the Justices showed, this street is within a borough and consequently subject to the ordinary 50 kph restriction. The appellant on the hearing of this appeal has stated without objection on behalf of the respondent that since this matter was determined in the District Court the 70 kph sign to which I have referred has been moved back from the intersection some 130 feet along Fortunes Road.

The offence in question is one brought, as I have mentioned, pursuant to s.52(1) of the Transport Act and that provision, it has to be noted, reads simply thus:

> "No person shall drive any motor vehicle at a speed exceeding 50 kph on any road in any city, borough or town district ..."

There are exceptions to that provision which have no application of course here referring to vehicles such as fire engines, ambulances and the like. The offence thus created by s.52(1) is quite clearly in my view one of the absolute offences created under the provisions of our Transport Act. The matter is dealt with in terms of the Summary Proceedings Act as a matter of convenience as with numerous other statutory penalties imposed in respect of actions or conduct considered to be contrary to the public interest. Our law thus makes provision for the imposition of penalties in respect of a large number of classes of action which are not criminal in any real sense at all but which are in the public interest made the subject of penalties. Obviously penalties for exceeding speed limits fall into this category. Now, with such absolute offences the prosecution does not have to prove any guilty intent or guilty mind or anything of that kind and the matters which the appellant put forward before the Justices in this case are clearly in that category. There is no question on the evidence which was presented to the Justices that an offence against s.52(1) of the Act was committed. The traffic officer's evidence was that a speed of 79 kph was shown, as checked by a microwave device and in these circumstances the Justices had no alternative open to them but to impose a conviction. The appeal against conviction must accordingly be dismissed and it is

The notice of appeal was directed against the penalty imposed also but this question has not been pursued before me. In any event, it seems clear that the penalty was a reasonable and proper one. As the Justices said, it was in fact the same amount as would have been payable had the matter been dealt with in the alternative way available to the appellant had he not sought to dispute the matter in any way. In the circumstances I do not propose to allow any costs against the appellant because it seems to me that it was perhaps a little unfortunate that the Justices rather indicated in their remarks to the appellant at the time that the question of the placing of the signs on the other road might in some way constitute a defence which, in my view, it clearly did not.

SOLICITORS:

Meredith Connell Gray & Co. Auckland for Respondent.