

IN THE HIGH COURT OF NEW ZEALAND  
NEW PLYMOUTH REGISTRY

N2LR

AP. 4/87

BETWEEN: GRAHAM ENNIS

Appellant

AND: INLAND REVENUE DEPT.

Respondent

Hearing: 13 August 1987

Counsel: J.E. McDonald for Appellant  
T.C. Brewer for Respondent

Judgment: 13 August 1987

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ORAL JUDGMENT OF ANDERSON J.

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This appeal has its genesis in a defended hearing in the District Court at New Plymouth on 12 June 1986 and 4 July 1986. On 4 April 1986 in a lengthy and carefully reasoned decision a learned District Court Judge found the various charges laid against the present appellant proven beyond reasonable doubt and costs orders were imposed pursuant to the convictions entered. The appellant appealed and on 5 November 1986 in the High Court at New Plymouth, Bisson J. in an oral judgment quashed the convictions and sentences and remitted the informations to the District Court for rehearing, having regard to doubt as to the basis upon which the learned District Court Judge had found a cash hoard to exist and doubt in relation to the amount thereof. On 1 April 1987 the learned District Court Judge delivered a decision which founds the present appeal.

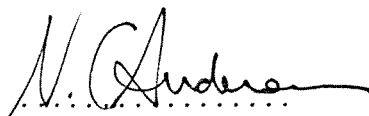
In a sensible and understandable desire by Counsel to avoid the necessity for a formal re-hearing of the evidence, Counsel agreed that the District Court Judge ought re-hear on the basis of the evidence originally presented to him and decide thereon in the light of written submissions by Counsel. It is this arrangement for reducing the scope and time of the re-hearing that has led to the present difficulty. The High Court has jurisdiction to direct a re-hearing by virtue of s.131 of the Summary Proceedings Act, s.(2) whereof stipulates "the case shall be dealt with as if a re-hearing as to the whole matter had been granted under s.75 of this Act, and the provisions of that section, as far as they are practicable and with the necessary modifications, shall apply accordingly." It is plain from the employment of the term "shall" that the procedures stipulated in s.(2) are mandatory. S.75 of the Summary Proceedings Act stipulates the procedure for re-hearings. S.(5) thereof requires in mandatory terms that the Court shall follow the same procedure as if it were the first hearing.

In the present case the learned District Court Judge had at the invitation of Counsel dealt with the matter in a manner that is inconsistent with the requirements of s.75. Findings of credibility were made on the basis of the learned District Court Judge's recollections of the demeanour and reliability of witnesses at the original hearing. I am reluctantly constrained to find that the apparent re-hearing was invalid. The nature of the case is such as to render it

quite impracticable for a District Court to make the necessary determinations envisaged by Bisson J's order for re-hearing except on the basis of the whole of the evidence available and relative to the primary issues of guilt or innocence.

Having regard to these various matters the only appropriate course is to treat the present appeal as a general appeal against conviction and sentence and to allow such general appeal with the result that the convictions originally entered and the sentences and costs orders thereon are set aside and each information is remitted to the District Court for re-hearing de novo.

All questions of costs are reserved.



N.C. ANDERSON J.

Solicitors for Appellant:

Billing and Co  
New Plymouth

Solicitors for Respondent:

Govett Quilliam & Co.  
New Plymouth