

IN THE HIGH COURT OF NEW ZEALAND
TIMARU REGISTRY

GR 103/83

139

BETWEEN A _____ BELL

Appellant

A N D THE POLICE

Respondent

Hearing: 10 February 1984
Counsel: A.J. Shaw for Appellant
G.D. Pearson for Respondent

ORAL JUDGMENT OF ROPER J.

This began as an appeal against both conviction and sentence on a charge of assault but the appeal against conviction has been abandoned so that I am only concerned with the sentence which was one of four months' periodic detention.

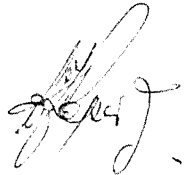
The circumstances were that in _____ of last year a Mr M _____ taxed a Mr F _____ who is the complainant, concerning money that Anglem admittedly owed to M _____. There was something of an argument and at that stage the Appellant Bell intervened on M _____'s behalf. He struck A _____ on two occasions on the face. It would appear that no serious injury resulted and it is to be noted that the charge was actually brought under the Summary Offences Act and not the Crimes Act. The serious feature of the matter, as the learned Trial Judge saw it, was that there seemed to be an element of intimidation and stand-over tactics on the part of the Appellant.

The problem that has now arisen, and it is doubtful whether the Trial Judge was aware of this, is that if the Appellant is to serve a term of periodic detention there is a very real prospect that he will lose his employment as the manager of a piggery owned by a Mr A _____ who apart from being a pig farmer is a farm management consultant and public valuer. The Appelle

is responsible for the day to day management of the piggery and is required to be on call seven days a week principally to attend to the pigs at the time of farrowing.

Mr A: describes the Appellant as the most conscientious and reliable worker he has ever employed and would be reluctant to dismiss him but that course may be necessary if the day to day running of the farm is adversely affected by the Appellant's absence at periodic detention. In this day and age it is a very unfortunate thing if people lose employment and I think it would be appropriate in this case to impose an alternative sentence, the circumstances as outlined by Mr Armstrong having made the sentence inappropriate.

The appeal against sentence is therefore allowed, the sentence of periodic detention is quashed and in lieu the Appellant is fined the sum of \$750.

A handwritten signature in dark ink, appearing to be 'D. E. J.', is located on the right side of the page.

Solicitors:

Petrie, Mayman, Timpany & More, Timaru, for Appellant
Crown Solicitor, Timaru, for Respondent