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IN THE HIGH COURT OF NEW ZEALAND
HAMILTON REGISTRY

M.265/84

BETWEEN

GREEN

1424

Appellant

A N D POLICE

Respondent

Hearing: 5 November 1984

Judgment: 5 November 1984

Counsel: Mr M.J.Quirke for Appellant
Mr P.J.Morgan for Respondent

ORAL JUDGMENT OF BISSON J.

The appellant, Mrs Green, was charged that, on 22 January, 1984, at Hamilton she assaulted a Mrs Q. The learned District Court Judge heard evidence both for the prosecution and for the defence. It appears that in a nightclub the complainant had dived, or made a rapid movement, for a vacant seat which the appellant also desired to occupy and, in the ensuing jostling for position, the appellant saw fit to grab the complainant by the hair, and it is in respect of her action in that regard that I feel the conviction of assault is justified. The learned District Court Judge heard some confusing evidence and did not see fit to analyse it in any detail, but he was satisfied on the evidence of a Mrs M. that an assault had taken place. He, having had the benefit of seeing and hearing the witnesses, is in a much better position than I am to make that finding of fact.

Mr Quirke, for the appellant, has submitted that it would have been more appropriate for the matter to have been

dealt with as a case of fighting in a public place which carries a lesser penalty than one of assault. However, the circumstances were such that the incident was properly described as thoroughly discreditable and that force used by the appellant was in no way related to self defence. In other words, it was not a case of one person just fighting with another one. It went beyond that by using a method of attack, namely by the pulling of hair, which constitutes an actual assault. As between two women in a night club, that assumed some serious or certainly unpleasant aspects. Accordingly, the appeal against conviction is dismissed.

An appeal was not lodged against sentence, but Mr Quirke has sought leave at this stage to appeal against sentence. It is out of time and, in any event, when one considers that the maximum penalty is \$2000 for such an offence, this Court is not prepared to interfere with a fine of \$400 as being clearly excessive. Accordingly, having given that indication, leave to appeal against sentence is refused.

Ch. Brumby

Solicitors

M.J.Quirke of Rotorua for appellant

Crown solicitor for respondent