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IN THE HIGH COURT OF NEW ZEALAND  
ROTORUA REGISTRY

M.39/85

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BETWEEN

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Appellant

A N D POLICE

Respondent

Counsel: M.S. Lake for Appellant  
L.H. Moore for Respondent

Hearing and  
Judgment: 18 March 1985

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ORAL JUDGMENT OF CALLEN J.

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The appellant was convicted in the District Court at Taupo on 2 charges of obtaining books by fraud. He is said to have represented that he was a doctor and on the basis of that, obtained from a book shop, certain books. The first of these offences is alleged to have taken place on 17 March 1982 and the second on 13 October 1984. The appellant was convicted and sentenced in each case to pay a fine of \$1,200 as well as Court costs of \$20. The total value of the books involved was \$593.55.

This is a case which I find exceedingly difficult to deal with. No probation report was sought, considered or available either at the District Court or in respect of the

appeal and the comments of the learned District Court Judge on sentencing have not been recorded. There is nothing on the file to indicate the way in which he approached the matter or the reasons for approaching the penalty which he did. The circumstances also are quite unusual.

It appears that the appellant had a grievance against a surgeon as a result of certain operative work that had been carried out some years before. The appellant is of the view that he subsequently suffered considerable amounts of pain quite unnecessarily and was eventually cured by the intervention of a different surgeon. He claims to have purchased the books in the name of the surgeon concerned in order to embarrass him and there would seem to be some evidence to support this because of the arrangements which the appellant made to ensure that in the event of his death, the book shop did not suffer. He has in fact paid the amounts involved in full and there is at this stage nothing owing in respect of the books obtained.

Having regard to the circumstances and in the absence of the reasons which motivated the learned District Court Judge, it seems to me that the penalties imposed are excessive and I am prepared to allow the appeal on that ground.

Mr Moore did suggest to me that it might be appropriate to obtain additional material either by way of probation report or by way of some further information as to

the financial status of the appellant. As I have already said, this is a quite unusual matter and it is one which should be dealt with and disposed of at this stage. Arriving at an appropriate fine in these circumstances is exceedingly difficult because of the paucity of information available.

Having regard to the circumstances and to the authorities to which I was referred by Mr Lake, I think it would be appropriate if a fine of \$400 was substituted in respect of each of the charges. Costs will remain as they originally were. The appeal will therefore be allowed and fines substituted in accordance with those views.

The name of the appellant was suppressed at the earlier stage. I think it is appropriate that that suppression should continue and having regard to the circumstances, the suppression of the name of the surgeon concerned and anything which will tend to identify him will also continue.

*W. G. G. G.*

Solicitors for Appellant: Messrs Trevor Booth and Partners,  
Rotorua

Solicitor for Respondent: Crown Solicitor, Rotorua

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