IN THE HIGH COURT OF NEW ZEALAND
CHRISTCHURCH REGISTRY 28/6 A.P. No.127/91

BETWEEN LANCE JOHN JACKSON

Appellant

1129

A N D POLICE

Respondent

Hearing: 10 June 1991

Counsel: D.A. Webb for Appellant
R.E. Neave for Respondent

Judgment: 10 June 1991

ORAL JUDGMENT OF TIPPING, J.

Mr Webb has done his best in respect of this appeal against sentence but in my view it cannot possibly succeed. The Appellant seeks to appeal against a fine of $750.00 on a charge of assault under the Summary Offences Act. There was indeed another charge which attracted the same penalty relating to a female but the appeal against that fine has been withdrawn.

The background has been described to me by counsel. There were some young persons in a car, among them the Appellant and another person. The car got blocked. The driver then drove on to the footpath. A scuffle developed. The Appellant got out and joined in. He hit the female complainant on the nose and he also hit the male complainant in respect of whom the appeal is still

alive. He was fined similarly $750.00 on each charge, the Judge not seeing fit to distinguish between them.

They were exactly the same offence nominally. The assault on the woman might have been slightly more serious than that on the male but I can see no real force in the submission that the Judge should have distinguished materially between the two as to penalty. There was no permanent injury.

This man was a first offender. He had significant savings, which is to his credit but which means he could pay a substantial fine as opposed to some other form of community based sanction. He was aged 19. The co-offender, who faced only one charge, was sentenced to 100 hours community service. The Appellant seeks to equate that with approximately six weeks wages on his part, or I suppose about 240 hours. It is not an appropriate equation simply because the Appellant was facing two charges and the co-offender only one, and I doubt it would have been an appropriate equation in any event.

Mr Neave for the Crown submits that this man was lucky if anything in his sentence. This was unprovoked violence, largely unprovoked violence, on the part of this Appellant. Although there was a fracas going on he certainly need not have joined in. It is the sort of situation which in my view deserves some significant penalty both to deter the particular individual and to deter others.

I can only intervene if I am satisfied the sentence was either inappropriate or clearly

excessive. A fine was clearly appropriate. It was what the probation officer recommended and the Judge adopted it. As to manifest excess in my judgment the appeal is hopeless on that front and is dismissed.

The Crown through Mr Neave has asked for costs. In my judgment this is a case for costs. While this Court is always ready, willing and anxious to hear appeals that have some prima facie merit it seems to me that this case had none. The Appellant is ordered to pay the Respondent $100.00 for costs.