C.A. CRIMINAL LAW — Conviction for Assault Occasioning Actual Bodily harm — 2 counts — (on 21st October 1987 Sutton St RM Ct. Papers reaching CA Registry September 1988). Sentence 12 months imprisonment at hard labour on each count. Counsel states no ground she can argue in regard to conviction. Whether sentence manifestly excessive in circumstances — appeal allowed 20 years old — no warning conviction

JAMAICA

IN THE COURT OF APPEAL

RESIDENT MAGISTRATE'S CRIMINAL APPEAL NO. 86/88

Comp DUPLICATE

Appeal against conviction dismissed. Sentence quashed and fine of $2,000 or in default 4 months imprisonment at hard labour on each Count substituted.

BEFORE: THE HON. MR. JUSTICE CAREY, P. (Ag.)
THE HON. MR. JUSTICE WRIGHT, J.A.
THE HON. MISS JUSTICE MORGAN, J.A.

✓ Comp.

Per curiam: We would have been inclined to impose a short sharp (custodial) sentence but having regard to ---- delay we ---- impose pecuniary penalties.

REGINA vs. LESLIE MAYNE

(1) Sentence
(2) Delay in administration of Justice.

Mrs. Pamela Benka-Coker for appellant

Kent Pantry and Brian Sykes for the Crown

Case referred to

September 22, 1988

CAREY, P. (Ag.):

The appellant, Leslie Mayne, was convicted in the Sutton Street Resident Magistrate's Court as far back as the 21st of October, 1987 on two counts charging assault and assault occasioning bodily harm.

It is a matter of regret that the papers are only now reaching the Registry of this Court for reasons which we are unable to appreciate.

The circumstances giving rise to these charges may be summarily stated: On the 5th of July, 1987 about 5:30 in the evening, Mr. Wray Lawrence was driving his minibus on South Camp Road when he stopped at a stop light near the Palace Theatre. The appellant who was a passenger in this bus indicated to Mr. Lawrence that he wished to disembark at the stop light. But the driver demurred. The appellant insisted and told the conductor to open the door because he wished to get off. Lawrence said he would stop only at the bus stop. At this point, the light changed to green and the bus drove off. When it came

to a halt at the bus stop on East Queen Street, the appellant disembarked and engaged in a tussle with the conductor. The driver also came off, whereupon, the appellant rushed at him with an ice-pick. This caused Mr. Lawrence to run off to avoid being stabbed. It was that event which gave rise to the charge of assault at common law [count 1]. The bus continued on its way to the terminus.

The second count arose out of an incident which occurred on the return journey. It seems obvious that the appellant way-laid the bus. He was seen with several stones one of which he hurled at the bus or the driver. Unfortunately, it came in contact with the head of a fourteen year old girl who was a passenger on that bus.

The appellant made an unsworn statement and his account varied from that by the prosecution. He denied that he assaulted anyone.

Learned counsel, Mrs. Benka-Coker, has stated quite commendably that there is no ground which she could successfully argue in regard to conviction. Her concern this morning was as to the sentence imposed by the learned Resident Magistrate. He imposed a sentence of twelve months imprisonment at hard labour on each count.

He gave his reasons for what appears to be a draconian sentence. He said that fighting in buses was prevalent and he was constrained to impose a deterrent sentence.

Mrs. Benka-Coker submitted that the sentences in all the circumstances were manifestly excessive. The appellant, she pointed out, was twenty years old. He has had no previous conviction and, having regard to his antecedent, there was no reason for the sentences imposed.

The question of sentence is always one of great difficulty and there is no doubt that the learned Resident Magistrate applied his mind to this aspect of the case.

We think that one question the learned Magistrate should ask himself is: "What am I trying to deter?" On this occasion, it was not

violence in the sense of the many examples we have, such as robbery with aggravation and shooting with intent, that sort of criminality. This was hooliganism; it was conduct in public against which the Court must set its face. But we do not think the sentence of twelve months imprisonment for a first offender can be regarded as justifiable. Either a short, sharp sentence should have been imposed or a heavy pecuniary penalty awarded against him. We would have been inclined to impose a short, sharp sentence to mark the Court's abhorrence of such conduct but, having regard to the fact that this matter is coming before the Court after such a long delay, we think it is only right to impose pecuniary penalties.

What we propose to do in the circumstances, is to affirm the conviction so that the appeal against the conviction is dismissed and in so far as the sentences imposed by the learned Resident Magistrate are concerned, we will quash those sentences and in their place, substitute fines of Two Thousand Dollars ($2,000.00) in respect of each count and in default of payment, the appellant will suffer imprisonment for four months at hard labour.