

## CHARGE OF ASSAULT.

### TROUBLE OVER LEMONADE.

### CASES AT POLICE COURT.

At the Police Court at Paeroa on Thursday, before Mr F. J. Burgess, S.M., C. H. Menzies was charged, on the information of Robert Whitten, that he did assault and beat Robert Whitten and caused him bodily harm, and that he did damage the property of Robert Whitten to the extent of £2 13s 4d.

Mr J. L. Hanna appeared for the complainant, and Mr T. A. Moresby for the defendant.

Mr Moresby objected to the two charges of assault and damage being combined in the one charge, and on the Magistrate upholding the objection, Mr Hanna agreed to withdraw the charge of causing damage to property, and to treat the case as a charge of common assault. To this charge defendant pleaded not guilty.

R. Whitten was charged with trespassing on the property of Grey and Menzies' aerated water factory at Paeroa, and with failing to leave when warned by the manager to do so. Defendant pleaded not guilty, and as the two cases arose out of the same circumstances they were taken together.

Mr Hanna explained that a dispute arose over the sale of cordials to the plaintiff, and there was a scuffle and Whitten was knocked about by Menzies, who was recognised as a good boxer and all round athlete, while Whitten

was not so good at athletics.

R. Whitten, the plaintiff, said that he went over to Grey and Menzies' factory with a case of empty "returns." Menzies challenged him to wrestle for a pound, but witness declined the offer. The empty bottles were then checked over as usual, and the full bottles of cordials that witness was buying put into a box. Menzies owed him fourpence on a previous account for empties, so witness tendered him the amount less the fourpence. Menzies said he would not allow him a shilling for the returned bottles, so witness got his money back. Witness then stooped down and tumbled the full bottles out of his box, but none of them were broken. Menzies then struck him on the side of the neck, caught hold of him by the arms, and hustled him out of the building. They came down together on to the ground, and Menzies tried to put him out of the gate. Witness then turned round and made a strike at defendant. Menzies tripped him up and knocked him down, put his knee on witness' body, and held him by the back of the shirt. Menzies also struck him three or four times on the face. Witness then grabbed a stone to frighten his opponent off, and Menzies then let him up. Witness then retired from the scene and saw the doctor, and afterwards reported the matter to the police. He did not give Menzies any provocation whatever, and called him no names until after the assault. There was subsequently, however, a little "high flown language." Witness' clothes were considerably damaged in the scuffle. Manning, an employee in the factory, was also present at the time

the factory, was also present at the time of the assault. The case and empty bottles were still in the factory, witness not caring about risking a repetition of the former trouble.

Cross-examined by Mr Moresby, witness said he had had a wrestle with Menzies twelve months previously, and on that occasion Menzies came out on top. He had been dealing with the firm for a long time past, and Menzies had not assaulted him before. Witness tendered Menzies 2s for the cordials he was buying, but he had the balance in his other hand. Witness did not make use of any bad language towards Menzies. He denied that Menzies ordered him off the premises previous to the assault. The language he used towards Menzies was a little "high flown," but there were no ladies about at the time. He believed Menzies had a grievance against him because he had sent out of the district for cordials.

C. Menzies, the defendant, said he was manager for Grey and Menzies, cordial manufacturers. When Whitten came to the factory he brought a dozen empty bottles with him, and said he wanted some stuff. Witness looked at the bottles and told Whitten he could only allow him sixpence for them as they were dirty and some of the rubbers were missing. Witness had often said to Whitten for fun that he would wrestle him. Witness told Whitten to pick out

what stuff he wanted, and Whitten did so. The money came to 3s 9d less sixpence for the empties. Whitten tendered 2s, which witness said was no good to him. The money was then returned, and Whitten capsized the box of bottles and broke three of them. Witness told him two or three times to get out of the factory, but he did not go. Whitten then made use of an objectionable expression, and witness then caught him by the arms and pushed him out of the factory. Out in the yard of the factory Whitten called him some rather uncomplimentary names and struck him. Witness then struck Whitten, but had not hit him up to that time. Whitten then picked up a stone to throw, but witness made him put it down, and Whitten then retired off the premises altogether.

H. Manning was the next witness, and he corroborated Menzies' evidence.

The Magistrate said the information for the assault must fail. Whitten should have gone off the premises when ordered, and if he did not go quietly Menzies was entitled to use sufficient force to put him off. No doubt Menzies did strike Whitten, but he struck after being hit and after Whitten had used a very provocative epithet. Therefore, he could not convict Menzies for assault. He would not convict Whitten for trespassing, as he had a right to be there, as he was there on business in the first place. All this happened so rapidly that he was not liable for punishment for trespass. The informations would both be dismissed, and Whitten ordered to pay 16s costs.