

Eng. Rep.] REG. V. TAYLOR, REG. V. CANWELL &amp; DUNN—PAGE V. WARD. [Eng. Rep.]

## COMMON LAW.

REG. V. JOHN TAYLOR.

REG. V. CANWELL AND DUNN.

*Misdemeanour—Common assault.*

Upon a count for unlawfully and maliciously wounding, or on one for unlawfully and maliciously inflicting grievous bodily harm, a prisoner may be convicted of a common assault.

[C. C. R., W. R., 623.]

Case:—The prisoner, John Taylor, was indicted at the Easter General Quarter Sessions, 1869, of the North Riding of Yorkshire, for a misdemeanor upon an indictment, of which the following is a copy:—

North Riding of Yorkshire, to wit: The jurors for our lady the Queen, upon their oath present that John Taylor, on the third day of January, in the year of our Lord one thousand eight hundred and sixty-nine, unlawfully and maliciously did wound one Thomas Meek.

And the jurors aforesaid, upon their oath aforesaid, do further present that on the day and year aforesaid, the said John Taylor did unlawfully and maliciously inflict grievous bodily harm upon the said Thomas Meek.

Upon this indictment the jury returned a verdict of "guilty of an assault."

The counsel for the prisoner contended that the prisoner could not be convicted of a common assault on that indictment, and therefore that the verdict amounted to an acquittal.

The Court thereupon postponed judgment and reserved the question of law for the consideration of the justices of either bench and barons of the Exchequer, viz.:

Whether this conviction can be sustained?

In the meantime the prisoner was admitted to bail to appear at the next Court of Quarter Sessions of the North Riding of Yorkshire to receive judgment, if called upon.

JOHN R. W. HILDYARD, *Chairman.*

*Shepherd* for the prisoner. The question is, whether the prisoner can be convicted of a common assault upon this indictment, which neither expressly charges a common assault nor mentions the word "assault" in either count. The offence charged is a misdemeanor only, and whenever a count charges a misdemeanor of a high character, which in its nature includes a lower one, it is within the province of the jury to convict of the lower. In *R. v. Oliver*, Bell C. C. 287, 9 W. R. 60, it was held that upon a count for assaulting, beating, wounding, and occasioning actual bodily harm, there might be a conviction for a common assault; and in *R. v. Yeadon*, L. & C. 81, 10 W. R. 64, where an indictment contained a count for an assault occasioning actual bodily harm, under 14 & 15 Vict. c. 100, s. 29, and the jury returned a verdict of guilty of a common assault, which the judge declined to receive, as illegal, and the jury thereupon found a general verdict of guilty, this court awarded a *venire de novo*. It is true that in those cases the word "assault" is introduced in the counts; but that is not a technical word which it is imperative to use in a count in order to support a conviction for an assault. Every battery includes an assault: 1 Hawk. P. C. 110, *R. v.*

*Ingram*, 1 Salk, 384. Here the charge of wounding includes that of assaulting. If this conviction is held to stand, a special verdict of guilty of a common assault would be entered upon the record.

No counsel appeared for the prosecution.

KELLY, C. B.—This conviction must be affirmed; although the word assault is not mentioned in either of the counts, the charge in each of them includes it, and both on principle as well as having regard to the language used, we think this conviction must be supported. In *R. v. Yeadon*, *supra*, it is observed by more than one learned judge that the first finding of the jury of a common assault was unobjectionable, and Wightman, J., says the chairman in that case substantially misdirected the jury. It is true that there the word assault occurs in the count; but the count charges a higher description of assault, and the principle is the same whether the word is used or not. In *R. v. Canwell*, the conviction must be affirmed for the same reasons.\*

The rest of the Court concurred.

*Conviction in both cases affirmed.*

## CHANCERY.

PAGE V. WARD.

*Practice—Production of documents—Privileged communication—Architect.*

The plaintiff had in her possession or power letters which had passed between her solicitor and an architect, having reference to the questions in the suit, but not written in contemplation of legal proceedings. Held, that she was bound to produce them.

[V. C. M., 17 W. R. 435.]

Adjourned summons.

This suit related to a parol agreement, under which the defendant was alleged to be a lessee of a portion of Saville House, Leicester-square, the whole of which was destroyed by fire in February, 1865. The plaintiff, Mrs. Ward, was called upon to make the usual affidavit as to documents in her possession.

By her affidavit, she admitted she had in her possession or power certain letters which had passed between Mr. Marsh Nelson, her architect, and her solicitors, which had reference to the questions in this suit. The affidavit alleged that Mr. Marsh Nelson was the principal witness on the plaintiff's behalf, and all the letters which had passed between him and her solicitors were of a confidential character. Those written by Mr. Nelson to her solicitors were written to them as her professional advisers, and those written by her solicitors to Mr. Nelson were written to him as her professional adviser and architect, and all of them were private and confidential.

Some of the letters had been written before the date of the alleged agreement, others after that date, but before any dispute had arisen, the rest after the dispute had arisen.

\* *R. v. Canwell and Dunn* was a case reserved at the same sessions upon precisely the same point, the jury having found the prisoners guilty of a common assault upon a count charging them with unlawfully and maliciously inflicting grievous bodily harm.