

with the robbery, "by means of violence then and there used by them against the person of the said T.," etc., but the indictment concludes with the words, "and that at the time they so robbed the said T. . . . as aforesaid they did wound the said T.," etc.

I am not satisfied that a verdict of assault occasioning actual bodily harm, under sec. 295, could have been found upon this indictment. The statutory offence charged—robbery—does not include it, nor is it technically charged in the count, as the offence of wounding is.

The commission of the offence charged includes, as charged, the commission of the other two offences I have mentioned, either of which the jury might have found by their verdict.

If they had simply found the prisoners guilty of assault, which was their verdict as they first announced it, that would, in my opinion, have been a good verdict of common assault, the minor offence, and the least and lowest of that nature for which they could have been convicted; and in favour of supporting the verdict, as well as in favour of the accused, it must have been so interpreted, unreasonable as such verdict would, upon the evidence, appear to have been.

The verdict actually recorded, however, "guilty of assault as charged," introduces an element of uncertainty, as we are obliged to look at the indictment to discover what is meant. The jury may have meant to find a common assault, or they may have meant an unlawful wounding, for, looking at the indictment, "assault as charged," though not the appropriate technical language for describing the offence, might mean either. They should have been required to find expressly one way or other—common assault or unlawful wounding.

The questions reserved by the Chairman must, therefore, both be answered in the negative, viz., that the verdict was not rightly recorded, and was not rightly interpreted.

The result is that the conviction must be quashed, but the case is clearly one in which a new trial should be granted on the whole record, as the assault cannot be inquired into except as connected with an alleged robbery.

The prisoners will thus have an opportunity of being entirely acquitted if they can persuade the jury of their innocence, or of being convicted of the aggravated robbery, involving a possible sentence of imprisonment for life and