

upon the evidence, that the accused, having this and another girl in his office, locked both outside doors, putting the other girl in one room and remaining alone with Virginia Harrison in the other room, that he unbuttoned his trousers, that he shoved her against the bed with a view to having connection with her against her will, they might and it was their duty to find him guilty of the crime of indecent assault. These instructions are not open to exception.

These were all the material circumstances. Nothing further occurred before the police effected an entrance and took all parties into custody. The girl made no complaint to the police, at the time, of any indecency, and what is reported as having been said by her later on at the police station does not indicate that what was done or intended to be done was against her will, but, if anything, rather the contrary.

The jury did not find, and upon the evidence could not have safely found, the accused guilty of indecent assault, but did find him guilty of an attempt to commit an indecent assault.

It is difficult to understand how, if, on the evidence and the charge of the learned Judge, they were unable to find the accused guilty of the offence charged, they could, upon the same evidence, find him guilty of an attempt to commit the offence. What was alleged to have been done would, if proved, have rendered the accused guilty of an indecent assault. And upon the verdict of the jury it must be taken that they did not find these facts to be proved.

If the jury believed the evidence, the offence was committed. If they did not, there was nothing left whereon they could base a finding of an attempt.

As the learned Judge instructed the jury in substance, an attempt is an effort to commit an unlawful act that is prevented or frustrated by some event which intervenes before accomplishment.

But here, if the jury believed the evidence, there had been accomplishment of an indecent assault, even though it had been the design of the accused to go further. Nothing further happened, and there was nothing to go to the jury upon the question of attempt, if they found against the principal charge.

In my opinion, the jury should have been so directed; and the direction actually given was erroneous.

The question should be answered in the negative, and the accused discharged.