ment was submitted on his behalf. The answer to much that is said is that the questions for the opinion of the Court are not whether, in view of what, according to the evidence, undoubtedly occurred on the occasion of the alleged rape, the learned trial Judge did right in leaving it to the jury to pass upon the question of common assault, or whether, upon the evidence, the verdict of common assault which the jury found was a verdict which they should have found.

So far as the verdict is concerned, the sole question submitted is, "Had the jury power to find a verdict of common assault upon this indictment for rape?" . . .

The abolition of the distinction between felony and misdemeanour, by sec. 14 of the Criminal Code, and the provisions of other sections of the Code, remove the objections which formerly appeared to exist. The first question should be answered in the affirmative. It may be also pointed out that the form of the indictment in this case goes far towards enabling the jury to find a verdict of common assault, for it contains a charge of assault as well as one of rape. . . .

The evidence referred to in paragraph 4 of the case was inadmissible, in the circumstances, and should have been rejected.

The effect of the answers to questions 1 and 2 being that the conviction for common assault stands against the prisoner, the necessity for answering the third question does not arise. The Court is asked to answer it only in the event of the answer to the first question being in the negative, and it has been answered in the affirmative.

MACLAREN, J.A., gave reasons in writing for the same conclusions.

GARROW and MAGEE, JJ.A., also concurred.

MEREDITH, J.A., for reasons stated in writing, agreed that the first question should be answered in the affirmative and the second in the negative; but, as to the third question, was of opinion that the Crown was entitled to a new trial.