HOUSE OF LORDS

47

Thursday 13th October 1983.

COMMISSIONER OF POLICE FOR THE METROPOLIS — Appellant

v.

WILSON — Respondent

REGINA — Appellant

v.

JENKINS E.J. and JENKINS R.P. — Respondents

(Consolidated appeals)

Dates of hearing: 13, 14 & 18 July 1983.

Lords present:

Lord Fraser of Tullybelton
Lord Elwyn-Jones
Lord Edmund-Davies
Lord Roskill
Lord Brightman

Counsel for the Appellant Commissioner of Police for the Metropolis:	MR M. HILL Q.C. and MR D. ZEITLIN
Solicitor:	Mr. D.M. O'Shea, Solicitor to the Commissioner of Police for the Metropolis
Counsel for the Respondent Wilson:	MR A. SCRIVENER Q.C. and MR D. GUY
Solicitors:	Messrs. H.C.L. Hanne & Co.
Counsel for the Appellant Regina:	MR M. HILL Q.C.
Solicitors:	Messrs. Sharpe, Pritchard & Co.
Counsel for the Respondents E.J. and R.P. Jenkins:	Mr. D. GUY and MR G. STONE
Solicitors:	Messrs. Boxall & Boxall, Agents for Messrs. Godfrey Davis & Waitt, Ramsgate.

CONSIDERATION OF THE REPORT FROM THE APPELLATE COMMITTEE

LORD FRASER OF TULLYBELTON: My Lords, I beg to move that the Report of the Appellate Committee be egreed to.

QUESTIONS PUT:

That the Report of the Appellate Committee be agreed to.

The Contents have it.

That the Order appealed from be Reversed save as to the grants of legal aid, the Certified Questions answered in the affirmative, and the Order of the Kingston-upom- Thames Crown Court of 4th November 1981 and the Order of the Canterbury Crown Court of 4th December 1981 Restored.

The Contents have it.

That the Costs of the Appellants be paid out of Central Funds pursuant to section 10 of the Costs in Criminal Cases Act 1973.

? ? ? ?

COMMISSIONER OF POLICE FOR THE METROPOLIS (APPELLANT)

v.

WILSON (RESPONDENT)

(On Appeal from the Court of Appeal (Criminal Division))

REGINA (APPELLANT)

v.

E.J. JENKINS (RESPONDENT)

(First Appeal)

(On Appeal from the Court of Appeal (Criminal Division))

REGINA (APPELLANT)

v.

R.P. JENKINS (RESPONDENT)

(Second Appeal)

(On Appeal from the Court of Appeal (Criminal Division))

(Consolidated Appeals)

My Lords, I beg to move that the Report of the Appellate Committee be now considered.

The Question is:-

That the Report of the Appellate Committee be now considered.

As many as are of that opinion will say "Content". The contrary "Not-content".

The Contents have it.

(Their Lordships will indicate what Order they would propose to make.)

My Lords, I beg to move that the Report of the Appellate Committee be agreed to.

The Question is:-

That the Report of the Appellate Committee be agreed to.

As many as are of that opinion will say "Content". The contrary "Not-content".

The Contents have it.

- PLEASE TURN OVER -

COMMISSIONER OF POLICE FOR THE METROPOLIS v. WILSON

REGINA v. E.J.JENKINS

REGINA v. R.P.JENKINS

The Question is:-

That the Orders appealed from be Reversed save as to the grants of legal aid, the Certified Questions answered in the affirmative, and the Order of the Kingston-Upon-Thames Crown Court of 4th November 1981 and the Orders of the Canterbury Crown Court of 4th December 1981 Restored.

As many as are of that opinion will say "Content". The contrary "Not-content".

The Contents have it.

The Question is:-

That the Costs of the Appellants be paid out of central funds pursuant to section 10 of the Costs in Criminal Cases Act 1973.

As many as are of that opinion will say "Content". The contrary "Not-content".

The Contents have it.

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HOUSE OF LORDS

COMMISSIONER OF POLICE FOR THE METROPOLIS
(APPELLANT)

v.

WILSON (RESPONDENT)

(ON APPEAL FROM THE COURT OF APPEAL
(CRIMINAL DIVISION))

REGINA (APPELLANT)

v.

E. J. JENKINS (RESPONDENT) (FIRST APPEAL)

(ON APPEAL FROM THE COURT APPEAL
(CRIMINAL DIVISION))

REGINA (APPELLANT)

v.

R. P. JENKINS (RESPONDENT) (SECOND APPEAL)

(ON APPEAL FROM THE COURT OF APPEAL
(CRIMINAL DIVISION))

(CONSOLIDATED APPEALS)

LORD FRASER OF TULLYBELTON

My Lords,

Lord Fraser of Tullybelton
Lord Elwyn-Jones
~~Lord Edmund-Davies~~
Lord Roskill
Lord Brightman

I have had the advantage of reading in draft the speech prepared by my noble and learned friend, Lord Roskill.

For the reasons given by him I would allow both appeals and answer both certified questions in the affirmative.

LORD ELWYN-JONES

My Lords,

I have had the benefit of reading in draft the speech to be delivered by my noble and learned friend, Lord Roskill. I agree with it and for the reasons he gives I would allow both appeals.

Both Questions
Answered in affirmative

Speech for L. Edmund Davies

on behalf of Clarence George Wilson, Edward John Jenkins and

LORD EDMUND-DAVIES

My Lords,

I am grateful for the opportunity of reading during the long vacation the speech prepared by my noble and learned friend, Lord Roskill. I am in respectful agreement with the views he has expressed and the conclusions at which he has arrived.

LORD ROSKILL

My Lords,

These two consolidated appeals by the prosecution are brought by leave of your Lordships' House and necessitate the House considering the true construction of section 6(3) of the Criminal Law Act 1967 - "1967 Act" - for the first time since its enactment some sixteen years ago. The Court of Appeal (Criminal Division) granted certificates in each case. Wilson, the respondent in the first appeal, was indicted at Kingston Crown Court on a single count of "maliciously inflicting grievous bodily harm" on a man named Latham. Wilson was acquitted on that count but the learned trial judge, His Honour Judge Rubin, directed the jury that if they were not satisfied that Latham's injuries were sufficiently serious to justify conviction, they might on that single count convict Wilson of assault occasioning actual bodily harm. The jury did so. That direction was given after the learned judge had heard argument. I shall refer to this case as "Wilson".

The two respondents, Edward and Roland Jenkins, were father and son. They faced a single count of burglary at Canterbury Crown Court before Mr. Recorder Lewis Q.C. and a jury. That charge was laid under section 9(1)(b) of the Theft Act 1968, the particulars being that they had entered a building at Westgate "as trespassers" and there "inflicted grievous bodily harm" upon a man named Wilson. If one omits the references to entering the building "as trespassers", the particulars, apart from the omission of the word "maliciously" were identical with those in Wilson. I shall refer to this case as "Jenkins". The learned recorder, after lengthy legal arguments - he himself had first raised the question - gave the same direction to the jury as had been given in Wilson regarding the possibility, in the event of acquittal on the burglary count, of convicting these respondents of assault occasioning actual bodily harm.

These rulings and directions were founded upon section 6(3) of the 1967 Act. All the respondents, upon their respective convictions, appealed. Wilson was heard by the Court of Appeal (Criminal Division) - Watkins L.J. and Cantley and Hirst J.J. - judgment being given on the 28th January 1983 by Cantley J. Jenkins was heard by a differently constituted Court of Appeal (Criminal Division) - Purchas L.J. and Talbot and Staughton J.J. - judgment being given on the 18th February 1983 by Purchas L.J. The convictions in both cases were quashed. The reasons were substantially the same with the additional reason in Jenkins that

that court was bound by the earlier decision in Wilson. Stated briefly, the reason was that the decision of the Court of Appeal (Criminal Division) in Springfield (1969) 53 Cr.App.R. 608 made it impossible to justify a conviction for assault occasioning actual bodily harm, contrary to section 47 of the Offences Against the Person Act 1861 ("the 1861 Act"), by virtue of section 6(3) of the 1967 Act, since the offence charged of "inflicting grievous bodily harm" did not, upon the authorities, necessarily include the offence of assault occasioning actual bodily harm. The emphasis added to these three words is mine.

Both courts granted certificates but refused leave to appeal. That leave was, as already stated, granted by this House. The certificate in Wilson was in the following terms: "Whether on a "charge of inflicting grievous bodily harm contrary to section 20 "of the Offences Against the Person Act 1861 it is open to a jury "to return a verdict of not guilty as charged but guilty of assault "occasioning actual bodily harm." The certificate in Jenkins was in slightly different terms. It read thus: "Whether on a charge of "burglary contrary to section 9(1)(b) of the Theft Act 1968, the "particulars of the offence being that the accused having entered a "building as trespassers inflicted grievous bodily harm upon a "person therein, it is open to a jury to return a verdict of not "guilty as charged but guilty of assault occasioning actual bodily "harm." In substance both certificates raised the same point of law.

My Lords, it is a regrettable fact that, at least in Wilson, the question raised in the courts below and now in your Lordships' House need never have arisen had the prosecution's case at the time of committal for trial been properly prepared in the magistrates' court. Wilson was committed only on the section 20 charge. Two applications were made to the learned trial judge when the present issue arose, one to add a count under section 47 of the 1861 Act, and the other, to overcome the point on which both appeals ultimately succeeded, by adding to the particulars of the offence charged under section 20, the words "by assaulting".

The learned judge rejected the first application, on the ground that he had no power to add the count under section 47, since the witness statement from Latham did not even identify Wilson as his assailant. This reasoning was unassailable. Your Lordships were shown a copy of the statement. It is a matter for severe criticism of those who had charge of the prosecution's case at the time of committal that it should have been so slovenly prepared. For this reason the learned judge declined, to quote his own words, "to help the prosecution" by amending the count since the problem was entirely of the prosecution's own making.

It was in these circumstances that the learned judge came to leave the section 47 charge to the jury in the exercise of what he believed to be his power under section 6(3) of the 1967 Act. Thus it was as regards Wilson that this matter has reached this House. This need never have happened. In Jenkins, the learned recorder himself raised the question, but after an argument the transcript of which occupied some forty pages, decided against any other course than that he would leave the alternative section 47 charge to the jury in accordance with his view of section 6(3).

My Lords, it would be convenient to preface discussion of the problems to which section 6(3) of the 1968 Act gives rise by first setting out the several statutory provisions which fall for consideration in this appeal.

Section 6(3) itself reads thus:

> "(3) Where, on a person's trial on indictment for any offence "except treason or murder, the jury find him not guilty of "the offence specifically charged in the indictment, but the "allegations in the indictment amount to or include "(expressly or by implication) an allegation of another "offence falling within the jurisdiction of the court of trial, "the jury may find him guilty of that other offence or of an "offence of which he could be found guilty on an indictment "specifically charging that other offence."

The words "falling within the jurisdiction of the court of "trial" can now be ignored since the creation of the Crown Court.

Section 18 of the 1861 Act so far as presently relevant reads:

> "Whosoever shall unlawfully and maliciously by any means "whatsoever wound or cause any grievous bodily harm to any "person ... with intent ... to do some ... grievous bodily "harm to any person ... shall be guilty ...".

Section 20 of the 1861 Act reads:

> "Whosoever shall unlawfully and maliciously wound or inflict "any grievous bodily harm upon any other person ... shall be "guilty of a misdemeanor ...".

I draw attention to the fact that the word "assault" nowhere appears in this section.

Section 47 of the 1861 Act reads thus:

> "Whosoever shall be convicted upon an indictment of any "assault occasioning actual bodily harm shall be liable ...".

Section 9(1)(a) and (2) of the Theft Act 1968 reads thus:

> "9(1) A person is guilty of burglary if -
>
> > "(a) he enters any building or part of a building as a "trespasser and with intent to commit any such "offence as is mentioned in subsection (2) below;
>
> "(2) The offences referred to in subsection (1)(a) above are "offences ... of inflicting on any person therein any grievous "bodily harm ...".

My Lords, there can be no doubt that before 1967 the view was widely held that at common law upon a charge under section 20, a defendant might be convicted of at least common assault. See Archbold (36th Ed.) 1966 paragraph 575. "Upon an indictment "for assaulting and unlawfully wounding and ill-treating the

"prosecutor, and thereby occasioning him actual bodily harm, the "prisoner may be convicted of common assault .... The prisoner "may also be convicted of a common assault upon either count of "an indictment charging him in the first count with unlawfully and "maliciously wounding, and in the second count with unlawfully "and maliciously inflicting grievous bodily harm, although the word "'assault' is not used in the indictment. R. v. Taylor L.R. 1 "C.C.R. 194." It will be within the recollection of those of your Lordships who have in the past sat, either as recorders or chairmen of Quarter Sessions, that this statement in Archbold accurately stated the practice, at least before 1967. If this be right, it is not easy to see why in principle such a defendant should not equally, at common law, be liable to conviction under section 47. The current (41st; 1982) edition of Archbold at paragraph 20.145, states that upon an indictment under section 20 either for unlawful wounding or for inflicting grievous bodily harm, the defendant may be convicted of common assault. Thus, long after 1967, the same view was expressed as I have already quoted from the 36th edition, published in 1966. These two passages justify the statement by Mr. Hill Q.C. for the prosecution, in opening these appeals, that both before and after 1967 the view was widely held that assault, whether common assault or assault occasioning actual bodily harm, was available at common law as an alternative charge to inflicting grievous bodily harm contrary to section 20 in the event of an acquittal upon that latter charge.

My Lords, in Lillis [1972] 2 Q.B. 236 a five-judge Court of Appeal (Criminal Division) which included my noble and learned friend, Lord Edmund-Davies, then Edmund-Davies L.J., in a judgment delivered by Lawton L.J., described the purposes and effect of section 6(3) as follows:

> "Before the passing of the Criminal Law Act 1967, the law "applicable to the kind of problem which presented itself to "the trial judge in this case was partly to be found in the "common law and partly in a number of statutes. At "common law on an indictment charging felony the accused "could be convicted of a less aggravated felony of which "the ingredients were included in the felony charged and "similarly as regards misdemeanours; but except under "statute, a conviction for a misdemeanour was not allowed "on a charge of felony. The object of section 6(3) of the "Criminal Law Act 1967 was to provide a general rule "continuing and combining the rules of common law and the "provisions of most of the statutes which enabled "alternative verdicts to be returned in specific cases or "types of cases." See page 240.

I would respectfully accept that statement as correct. In Lillis the court, as in effect it was bound to do, accepted that Springfield had been correctly decided. Indeed, the contrary does not appear to have been argued. Applying Springfield, the court held that the indictment, which had charged burglary, expressly (my emphasis) included an allegation of theft, and that burglary not having been proved, but theft having been proved, a conviction for theft could be sustained under section 6(3). My Lords, I entertain no doubt that Lillis was correctly decided. But that

leaves open the question whether Springfield was also correctly decided. The statements in Lillis to the effect that Springfield was correctly decided are, in the circumstances, plainly obiter. The crucial passage in the judgment of Sachs L.J. in Springfield appears on pages 610-611, and reads thus:

> "The question accordingly arises as follows. Where an "indictment thus charges a major offence without setting out "any particulars of the matters relied upon, what is the "correct test for ascertaining whether it contains allegations "which expressly or impliedly include an allegation of a "lesser offence? The test is to see whether it is a "necessary step towards establishing the major offence to "prove the commission of the lesser offence; in other words, "is the lesser offence an essential ingredient of the major "one?"

Two comments may be made upon this passage. First, the words "major offences" and "lesser offences" nowhere appear in the subsection. Secondly, the subsection says nothing about it being "a "necessary step" towards establishing the "major offence" to prove the commission of the lesser offence, so that the so-called lesser offence has to be an "essential ingredient" of the major offence. Neither the adjective "necessary" nor the adverb "necessarily" appear anywhere in the subsection.

My Lords, the right approach to the solution of the present problem must first be to determine the true construction of section 6(3), bearing in mind the observations of Lawton L.J. in Lillis as to its purpose and as to the position before its enactment. Ignoring the reference to murder or treason, there seem to me to be four possibilities envisaged by the subsection. First, the allegation in the indictment expressly amounts to an allegation of another offence. Second, the allegation in the indictment impliedly amounts to an allegation of another offence. Thirdly, the allegation in the indictment expressly includes an allegation of another offence. Fourthly, the allegation in the indictment impliedly includes an allegation of another offence.

If any one of these four requirements is fulfilled, then the accused may be found guilty of that other offence. My Lords, if that approach to the construction of the subsection be correct, it avoids any consideration of "necessary steps" or of "major" or "lesser" offences, and further avoids reading into the subsection words which were never used by the draftsman. I am unable to find that this approach to the construction of the subsection was ever advanced in Springfield. If it were, there is no reflection of such an argument in the judgment. I would add the observation that although section 6(3) is often spoken of as permitting conviction for a less serious offence upon a count charging a more serious offence, the maximum penalties for offences against both section 20 and section 47 are the same - five years imprisonment.

There is, in my view, a clear antithesis in the subsection between "amount to" and "include"; the word "or" which joins those two words is clearly disjunctive and must not be ignored. If either limb of the phrase is satisfied, then the stated consequences can follow. Thus, in Lillis the allegation of burglary plainly expressly included (my emphasis) the allegation of theft. O'Brien

(1911) 6 Cr.App.R. 106 is another example of one charge being expressly included in another. The charge was of riot but that charge included an allegation of assault. The appellant was acquitted of riot but convicted of common assault and the conviction was upheld. Hollingberry (1825) 4 B. & C. 329, which was followed in O'Brien, is another and much earlier example of the application of the same principle These are examples of the so-called "red-pencil" rule. The rule was that all the facts charged in the indictment need not be proved; provided those facts proved constituted an offence of which by law the offender might be convicted on the indictment. These cases to-day would plainly fall within that particular limb of section 6(3). In the present case, the issue to my mind is not whether the allegations in the section 20 charge, expressly or impliedly, amount to an allegation of a section 47 charge, for they plainly do not. The issue is whether they either expressly or impliedly include such an allegation. The answer to that question must depend upon what is expressly or impliedly included in a charge of "inflicting any "grievous bodily harm".

I can, for present purposes, ignore the first limb of section 20 which is concerned only with unlawful wounding. As regards the second, if A includes B, it must be because A is sufficiently comprehensive to include B. Thus A may include B, but B will not necessarily include A, though of course B may do so. If this reasoning be right, I do not think it is relevant, in order to determine whether A includes B, to ask whether proof of B is a "necessary step" to proof of A. This seems to me to state the problem the wrong way round and, with all respect to Sachs L.J. in Springfield, after the learned Lord Justice asked the right question he applied the wrong test in order to answer it.

What then, are the allegations expressly or impliedly included in a charge of "inflicting grievous bodily harm". Plainly that allegation must, so far as physical injuries are concerned, at least impliedly if not indeed expressly, include the infliction of "actual bodily harm" because infliction of the more serious injuries must include the infliction of the less serious injuries. But does the allegation of "inflicting" include an allegation of "assault"? The problem arises by reason of the fact that the relevant English case law has proceeded along two different paths. In one group it has, as has already been pointed out, been held that a verdict of assault was a possible alternative verdict on a charge of inflicting grievous bodily harm contrary to section 20. In the other group grievous bodily harm was said to have been inflicted without any assault having taken place, unless of course the offence of assault were to be given a much wider significance than is usually attached to it. This problem has been the subject of recent detailed analysis in the Supreme Court of Victoria in Salisbury [1976] V.R. 452. In a most valuable judgment - I most gratefully acknowledge the assistance I have derived from that judgment in preparing this speech - the full court drew attention, in relation to comparable legislation in Victoria, to the problems which arose from this divergence in the main stream of English authority. The problem with which your Lordships' House is now faced arose in Salisbury in a different way from the present appeals. There, the appellant was convicted of an offence against the Victorian equivalent of section 20. He appealed on the ground that the trial judge had refused to leave to the jury the possibility of convicting

him on that single charge of assault occasioning actual bodily harm or of common assault. The full court dismissed the appeal on the ground that at common law these latter offences were not "necessarily included", (see page 461), in the offence of "inflicting "grievous bodily harm". The reasoning leading to this conclusion is plain. "It may be that the somewhat different wording of section "20 of the English Act has played a part in bringing about the "existence of the two lines of authority in England, but be that as "it may, we have come to the conclusion that, although the word "'inflicts' ... does not have as wide a meaning as the word 'causes' "... the word 'inflicts' does have a wider meaning than it would "have if it were construed so that inflicting grievous bodily harm "always involved assaulting the victim. In our opinion, grievous "bodily harm may be inflicted ... either where the accused has "directly and violently inflicted it by assaulting the victim, or "where the accused has 'inflicted' it by doing something "'intentionally' which, though it is not itself a direct application of "force to the body of the victim, does directly result in force "being applied violently to the body of the victim, so that he "suffers grievous bodily harm. Hence, the lesser misdemeanours "of assault occasioning actual bodily harm and common assault ... "are not necessarily included in the misdemeanour of inflicting "grievous bodily harm ...". See page 461.

This conclusion was reached after careful consideration of English authorities such as Taylor (1861) L.R. 1 C.C.R. 194, Martin (1881) 8 Q.B.D. 54, Clarence (1888) 22 Q.B.D. 23, Halliday (1889) 6 T.L.R. 109. My Lords, it would be idle to pretend that these cases are wholly consistent with each other, or even that, as in Clarence, though there was a majority in favour of quashing the conviction then in question, the judgments of those judges among the thirteen present who formed the majority are consistent with each other. Some of these cases were not argued on both sides. Others are very inadequately reported and different reports vary. Thus, Stephen J. who was in the majority in Clarence, at page 41 of the report described the infliction of grievous bodily harm in these words:

> "The words appears to me to mean the direct causing of "some grievous injury to the body itself with a weapon, as "by a cut with a knife, or without a weapon, as by a blow "with the fist, or by pushing the person down. Indeed, "though the word 'assault' is not used in the section, I think "the words imply an assault and battery of which a wound "or grievous bodily harm is the manifest immediate and "obvious result. This is supported by Taylor ...".

But Wills J., also in the majority, was clearly of the view that grievous bodily harm could be inflicted without an assault, as for example, by creating panic. On the other hand, in Taylor, where the accused was charged on two counts, one under each limb of section 20, the jury convicted him of common assault. Kelly C.B. said that each count was for an offence which necessarily included an assault, and a verdict of guilty of common assault was upheld. Taylor is not easy to reconcile with the later cases unless it is to be supported on the basis of the wounding count in the indictment. In Martin, on the other hand, there was no reference to the issue whether the accused's conduct in creating panic among a theatre audience constituted assault. He did an unlawful act calculated to

cause injury and injury was thereby caused. He was thus guilty of an offence against section 20.

My Lords, I doubt whether any useful purpose would be served by further detailed analysis of these and other cases, since to do so would only be to repeat less felicitously what has already been done by the full court of Victoria in Salisbury. I am content to accept, as did the full court, that there can be an infliction of grievous bodily harm contrary to section 20 without an assault being committed. The critical question is, therefore, whether it being accepted that a charge of inflicting grievous bodily harm contrary to section 20 may not necessarily involve an allegation of assault, but may nonetheless do so, and in very many cases will involve such an allegation, the allegations in a section 20 charge "include either expressly or by implication" allegations of assault occasioning actual bodily harm. If "inflicting" can, as the cases show, include "inflicting by assault", then even though such a charge may not necessarily do so, I do not for myself see why on a fair reading of section 6(3) these allegations do not at least impliedly include "inflicting by assault". That is sufficient for present purposes though I also regard it as also a possible view that those former allegations expressly include the other allegations.

The courts below were bound by Springfield. On the basis that Springfield was correctly decided, those decisions were without doubt correct. But once the reasoning in Springfield is rejected, and the reasoning I have endeavoured to set out in this speech is accepted, it follows that both the learned judge and learned recorder were correct in leaving the possibility of conviction of the section 47 offences to the jury in these cases. It also follows that by the law of this country, as I conceive it to be, Salisbury would have been differently decided.

Mr. Scrivener Q.C., for the respondents, urged your Lordships to leave Springfield undisturbed on the ground that it had not given rise to difficulties. With respect, I cannot accept that that is so. Not only does it produce a result inconsistent with that previously widely accepted as correct and still accepted in the 41st edition of Archbold, but the difficulties to which it has given rise are demonstrated by cases such as Hodgson [1973] 1 Q.B. 565 at 570, and a number of more recent cases to which your Lordships' attention was drawn in argument but to which I do not find it necessary to refer in detail. I hope that in the future some of those difficulties at least will disappear and technical arguments of the type which have arisen in the present cases avoided for the future.

If it be said that this conclusion exposes the defendant to the risk of conviction on a charge which would not have been fully investigated at the trial on the count in the indictment, the answer is that a trial judge must always ensure, before deciding to leave the possibility of conviction of another offence to the jury under section 6(3), that that course will involve no risk of injustice to the defendant and that he has had the opportunity of fully meeting that alternative in the course of his defence.

I would, therefore, allow both appeals and answer both certified questions in the affirmative. It follows that the

convictions for offences against section 47 of the 1861 Act should be restored in both appeals.

My Lords, at the close of the argument a request was made that your Lordships should allow three counsel on either side in this case. My Lords, in my view it would be improper so to do. Two counsel on either side are adequate. I suggest that the appellants' costs should be borne out of central funds but that only two counsel should be allowed on taxation. The respondents' costs, limited to two counsel, will be taxed in accordance with the appropriate legal aid provisions.

LORD BRIGHTMAN

My Lords,

I would allow both appeals for the reasons given by my noble and learned friend, Lord Roskill.

LORD FRASER OF TULLYBELTON: My Lords, I beg to move that the Report of the Appellate Committee be now considered,

QUESTION PUT:

That the Report of the Appellate Committee be now considered.

The Contents have it.

COMMISSIONER OF POLICE
FOR THE METROPOLIS
-V-
WILSON
-V-
JENKINS

Commissioner of Police for the Metropolis (Appellant)

v.

Wilson (Respondent)
(On Appeal from the Court of Appeal (Criminal Division))

Regina (Appellant)

v.

E.J. Jenkins (Respondent)(First Appeal)
(On Appeal from the Court of Appeal (Criminal Division))

Regina (Appellant)

v.

R.P. Jenkins (Respondent)(Second Appeal)
(On Appeal from the Court of Appeal (Criminal Division))

(Consolidated Appeals)

JUDGMENT

Die Jovis 13^{o} Octobris 1983

Upon Report from the Appellate Committee to whom was referred the Cause Commissioner of Police for the Metropolis against Wilson, Regina against E.J. Jenkins and Regina against R.P. Jenkins, That the Committee had heard Counsel as well on Wednesday the 13th as on Thursday the 14th and Monday the 18th days of July last upon the Petition and Appeal of the Commissioner of Police for the Metropolis, of New Scotland Yard, London, SW1 praying that the matter of the Order set forth in the Schedule thereto, namely an Order of Her Majesty's Court of Appeal (Criminal Division) of the 10th day of February 1983, might be reviewed before Her Majesty the Queen in Her Court of Parliament and that the said Order might be reversed, varied or altered or that the Petitioner might have such other relief in the premises as to Her Majesty the Queen in Her Court of Parliament might seem meet; as also upon the Petition and Appeal of the Chief Constable of Kent, of Police Headquarters, Sutton Road, Maidstone, Kent (on behalf of Her Majesty) praying that the matter of the Orders set forth in the Schedule thereto, namely Orders of Her Majesty's Court of Appeal (Criminal Division) of the 18th day of February 1983, might be reviewed before Her Majesty the Queen in Her Court of Parliament and that the said Orders might be reversed, varied or altered or that the Petitioner might have such other relief in the premises as to Her Majesty the Queen in Her Court of Parliament might seem meet (which said Appeals were by an Order of the House of the 7th day of June last Ordered to be Consolidated); and Counsel having been heard on behalf of Clarence George Wilson, Edward John Jenkins and Ronald Patrick Jenkins the Respondents to the said Appeals; and due consideration had this day of what was offered on either side in this Cause:

It is Ordered and Adjudged, by the Lords Spiritual and Temporal in the Court of Parliament of Her Majesty the Queen assembled, That the said Orders, of Her Majesty's Court of Appeal (Criminal Division) of the 10th and 18th days of February 1983 complained of in the said Appeals be, and the same are hereby, **Reversed** save as to the grants of legal aid and that the Order of the Kingston-upon-Thames Crown Court of the 4th day of November 1981, and the Orders of the Canterbury Crown Court of the 4th day of December 1981 be, and the same are hereby, **Restored:** And it is further Ordered, That the Certified Questions be answered in the affirmative: And it is further Ordered, That the Costs of the Appellants in respect of the said Appeals to this House be paid out of central funds pursuant to section 10 of the Costs in Criminal Cases Act 1973, the amount thereof to be certified by the Clerk of the Parliaments: And it is also further Ordered, That the Cause be, and the same is hereby, remitted back to the Court of Appeal (Criminal Division) to do therein as shall be just and consistent with this Judgment.

Cler: Parliamentor: