



Case of the Three Pigeons

DEVIZES PETTY SESSIONS

Before Mr. Locke, Major Grubbe, Mr. Colston, Mr. Nisbet, and Mr. Schomberg.

The next case was one in which a young man named Burgess, a respectable looking labourer in the employ of Mr. Coward of Roundway, was charged with shooting three pigeons, the property of Mr. Cook. Three other persons, it appeared, were present at the time, but each seemed to have made up his mind to know nothing whatever of the matter. The first witness put under examination was an old man named Day, who, at the outset, seemed deaf beyond all cure. The applications, however, resorted to in Courts of Justice, in cases of this description, had a wonderful effect upon the old fellow's auriculate organs; and with a little coaxing, intermingled with a vivid description of the consequences of suppressing the truth from a bench of magistrates, Mr. Norris contrived to wring out of time that on the 23rd Nov. he was bird keeping near the hay rick (situate close to a drove), at which Burgess, and two persons named Willis, were at work. On the other side of the drove was Mr. Cook's land, and here upon a barley rick were a number of pigeons. Burgess had the gun from the old man and went across, and immediately afterwards a report was heard, and the gun brought back unloaded. In the course of 3 or 4 minutes three pigeons were brought to the rick, which appeared to have been just killed, but Day did not know whose they were. They had scarcely been put under the rick, however, when Mr. Cook came up and enquired who had shot at the pigeons? To which day replied "James Burgess," as he believed it was him, though he did not see him.

In answer to the question of Mr. Wittey, the old man said he did not see the pigeons killed, he did not know who fired nor did he know whose pigeons they were.

Out of the other two men nothing whatever could be got, they knew nothing: saw nothing: and though they could not deny that they heard the report of a gun at about 30 yards distance, so bent were they upon their work that they never thought of looking round, nor did they even miss Burgess from the rick they had all three been engaged in cutting.

This being the state of affairs, and no proof whatever being before the bench that the pigeons were the property of Mr. Cook, Mr. Norris submitted that inasmuch as the offence was a general one against the statute law, it was competent for any person to be the informer, without the ownership of the property appearing.

Mr. Wittey, however, contended that the course of proceeding was altogether incorrect. The information stated the pigeons to be the property of A. B., and no proof whatever had been adduced to shew in whom the ownership lay. If the offence were to be taken as a general one, the information should have been framed in accordance with the Act of Parliament. Supposing the defendant to be convicted of a general breach of the statute law, to whom would they award the half of the penalty – the pigeons being described as the property of Mr. Cook?

Mr. Norris – The 7th and 8th of Geo. 4. provides that “Every sum of money which shall be forfeited for the value of any property stolen or taken, or for the amount of any injury done, shall be paid to the party aggrieved, if known, except where such party shall have been examined in proof of the offence, and in that case or where the party aggrieved is unknown such sum shall be applied in the same manner as a penalty, and any sum which shall be imposed as a penalty by any justice of the peace shall be paid to some one of the overseers of the poor of the parish or place in which such offence shall have been committed.”

There is, I submit, evidence before the Bench to prove that the pigeons were destroyed whilst upon Mr. Cook's land, who in the eye of the law had thereby such a constructive possession and special property in them as to enable him to maintain the present charge, and consequently it is unnecessary to prove the actual ownership. In like manner, as where goods are stolen from a bailee, they may be described in the indictment as the property of the bailor or bailee, although they were never in the real owner's possession.

Mr. Locke said the Bench were of the opinion that Mr. Cook's property in the pigeons should be proved before the charge, as laid against the defendant could be substantiated. He, however, intimated to Burgess that he had got off entirely by a matter of chance, for as to his having committed an offence, by destroying property which did not belong to him, there could be no doubt.

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