



Crime and Punishment

Fovant

POACHING

(Before Mr. Locke and Mr. Scott.)

Geo. Goodfellow, aged 27, Moses Goodfellow, aged 23, and John Goodfellow, aged 22, were indicted for having unlawfully entered certain lands, in the night time, armed with a gun, for the purpose of destroying game, and then and there assaulted James Barrett.

John Swayne —I am Clerk of the Peace for the county of Wilts, and am Steward to Lord Pembroke. Mr. Swayne here produced an enrollment of a deputation for the Manor of Fovant, dated 13th Oct. 1829, granted by Lord Pembroke and his Trustees, to J. H. Penruddocke, esq and continued his evidence :—Lord Pembroke has now taken the Manor into his own hands; no deputation of that Manor has since been granted.

An objection was here made, by Mr. S. Williams, on the part of the defendants that as the deputation was granted to Mr. Penruddocke by Lord Pembroke, *and his trustees*, and the former having now taken the manor into his own hands, it was to be presumed that the trustees had ceased to act, and therefore such deputation to Mr. Penruddocke was become void, having been granted by them jointly.

This objection was overruled, the Court holding that the onus probandi lay on the defendants to show that such deputation was void.

The following witnesses were then examined :—

James Barrett :— I am under gamekeeper for the manor of Compton; am general gamekeeper deputed for that manor. I have been assisting Mr. Penruddocke since the 11th and 12th December in preserving game on Fovant manor; have a game license for Compton Chamberlain, Baverstock, and Fovant; it is not a general license. Mr. Penruddocke exercised rights of shooting and preserving game in the manor of Fovant; Mr Penruddocke gave me direction to shoot and preserve game there, and watch for poachers; gave me directions before the 11th of December; I have often shot there before the 11th Dec., according to his directions. I watched the game on the 11th December with Geo. Reed and Frederick Sanger; I was in the manor of Fovant about six o'clock that evening, just at

the division of the manors of Compton and Fovant. I heard the report of one gun and soon afterwards a second report proceeded from the middle of Fovant wood, in the manor of Fovant; we advanced towards the place whence the report proceeded; a third gun was then fired; we went through a coppice into the pasture land; I left Reed and Sanger there, and went on to another spot, about 150 or 200 yards from them; I there saw three men coming through a pasture field, in the occupation of Mr. Frederick Barnes; that field was in the manor and parish of Fovant; they were coming in the direction from the wood where I heard the last gun fired. The 1st man was George Goodfellow; he had a gun in his hand, the two others were following him; I went up to them, and caught George Goodfellow by the neckcloth; one or both of the other men immediately came behind me, and giving me a tremendous blow on the head, knocked me down on my knees. These men had sticks in their hands; when I was down, I called to Reed and Sanger to come to my assistance; they came as quick as they could, but before they arrived, I received several other blows, which disabled my right arm; I did not let George Goodfellow go; he kept pushing the gun forward at me; I received a blow to the forehead, but don't know from whom; I also received several blows on different parts of my body; they struck my hat off, and knocked the crown out; the blood ran from the blows on my head; I tried to save myself from the blows of one of the men by kneeling down and thrusting my head against his stomach, and consequently saved many blows. Sanger and Reed now came up; they then left off beating me, and I got up on my legs. George Goodfellow did not get from my hands until I got home; he struggled, but could not get away. I took the gun from him when I arrived at home; found no game on him; he drew the charge from the gun in my presence. The guns and sticks were produced and identified. I was unable to use my arm for some time; had a surgeon attend me; my shoulder is still bad.

In his cross-examination, he said - I am gamekeeper under Mr. Penruddocke for only those manors named in the certificate. I went to Fovant wood just before dark on the 11th December; was there about an hour before I heard the first report; the second was about ten minutes after the first; and the third about a quarter of an hour after the second; so that altogether the three were fired in about half an hour; heard no more guns fire near that place. George Goodfellow had the gun, and Moses Goodfellow had two pheasants. Reed took the pheasants from Moses. I seized George Goodfellow by the collar; I did not knock him down. I had a Newfoundland dog with me; he was quite still. The dog had stopped them, and when they knocked me down, I set the dog at them; upon this the men knocked me about. I did not strike either of the prisoners. I swear I did not strike either of them.

In his re-examination, he said— I usually take the dog with me; he acts as an assistant; the dog did not touch any of them that I know of.

George Reed, after corroborating the former part of Barrett's evidence, said.—We heard blows given about 150 or 200 yards off; we went to the place; saw two men beating Barrett with sticks; Barrett was holding George Goodfellow, and John and Moses Goodfellow were beating Barrett. Barrett was on his knees; he was beaten very violently; I came up before Sanger; the prisoners knocked me down; Moses and John struck me; George had a gun, and the other two sticks; on getting up the second time I laid hold of Moses and took him at last; he was a rough customer; I examined him and found two pheasants upon him; they were warm, and had been lately killed.

Frederick Sanger, deposed that when he came up, the prisoners also knocked him down. He secured John Goodfellow; but found nothing upon him but a stick.

Mr. Williams stated that he had two objections to make to the indictment; First—That as no evidence had been produced to show that the defendants when in the ground where they were taken, were there with the intention of taking or destroying game, the indictment was bad, as they were indicted under 9th Geo. 4, c. 69, sec. 2 for being found on that particular ground, armed with the intention of destroying game; and the evidence of Barrett and the other witnesses in support of the indictment, only went to prove that the defendants when taken were going across such ground towards Fovant, the place of their residence, and therefore he contended that it was quite immaterial, whether they were armed or had game in their possession at that time, unless it was proved in evidence that they were there in the actual pursuit of game. In support of such objection, he cited the case of *The King v. T. Barham, R. and M. c. c. 151*, where it appeared, that the prisoner was taken in the close in question in the night time, armed with a gun, and having 2 pheasants in his pockets; he was coming in a direction from a wood which was a preserve for game, and going towards two other woods, which were also preserves: but the close in which he was taken was not a preserve. The judge left it to the jury to say, whether the defendant, when taken, was returning home or still in the pursuit of game; and if the latter, whether his purpose was to kill game in the close mentioned in the indictment. The Jury found that the prisoner was still in the pursuit of game; but they could not say whether in the close or elsewhere. The prisoner being convicted, the Judges held the conviction to be wrong, because the entry with intent to kill game being confined by the indictment to the close therein specified, the intent should have been proved as to that particular close.

The Court, however, overruled this objection.

Mr. Williams then stated his 2d objection to the indictment, which was, that Jas. Barrett, being only an assistant to Mr. Penruddocke, he was not a person legally authorised to apprehend the defendants, the gamekeeper not having been present when they were taken, as by the 9 Geo. 4, c. 69, s.c. 2, the only persons authorised to apprehend poachers, are the Lord of the Manor, the owner of the soil, the gamekeeper *or any person assisting such gamekeeper*. He therefore contended that the words "*assisting such gamekeeper*" meant only such persons as the gamekeeper should have taken out with him, or have called to his assistance when out for the purpose of watching for poachers, and that the evidence in this case did not prove Mr. Penruddocke or the keeper to have been present when the defendants were taken, and therefore Barrett could not be such an assistant to the keeper as was contemplated by this section of the Act.—The Court held this to be a valid objection, and acquitted the 3 prisoners.

The prisoners were then convicted under the second count in the indictment, of assault only, and sentenced to 3 months imprisonment each in Fisherton Gaol.

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