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THE TOPSHAM TAR BARREL CASE. THURSDAY. —This was an appeal by the Rev. Frederick Isop Cocke, assistant curate of Topsham, against a conviction of magistrates, for unlawfully a rolling tar barrel through the streets of Topsham, on the night of the 5th of November last. Mr. Rowe and Mr. Collier appeared for the appellants—attorney, Mr. R. T. Head ; for the respondents, Mr. Cox and Mr. Karlake —attorney, Mr. G. W. Turner.

Service of the notice of appeal having been proved, it was read by Mr. Bishop.

Mr. Cox called on the appellants to put the recognisances. Mr. Rowe contended that he was not bound under the Statute under which the appellants was convicted (the Highway Act), to put in the recognisances. Mr. Collier followed on the same side. Mr. Cox and Mr. Karlake replied, and the Court overruled the objection of the respondents, taking a note of it.

Mr. Cox then opened the case for the respondent, and called Robert Fulford, the Topsham policeman, who deposed that he was near the Salutation Inn, opposite Mr. Tothill's, on the 5th of November, engaged as constable. (A notice cautioning parties against rolling tar barrels, which had been posted in the town, was put in.) Before nine o'clock, whilst standing at this place, he saw a great light towards the Exeter end of the town, near Mrs. Drewe's house. He went towards it, and when he came near Mr. Hodder's house he saw a burning tar barrel on a man's head, in the midst of a crowd of upwards of a hundred people. Witness "poked" the tar barrel off the man's head, and remonstrated with the mob on the impropriety of their conduct, to which they paid no attention, but kicked the barrel towards Taylor's lane, adjoining Mrs. Drewe's house. Witness then went back towards the Salutation, and whilst standing there, burning tar barrel was rolled out of Taylor's Lane into the street. He went towards it, and when he came near Mrs. Drewe's again remonstrated with the mob, and whilst so doing Mr. Cocke came him said, "policeman, you have done your duty you can do no more;" and directly commenced kicking the tar barrel—that was the first time he had seen him ; he came from the mob to witness. Witness desired him to desist, as he wanted to extinguish the barrel, but the mob closed in and the barrel was again kicked. Witness followed, and after a minute or two, succeeded in extinguishing it, when near an unfinished house of Mr. Rowe's. He left the barrel extinguished, and in company with Mr. Troake proceeded to the Globe Inn, and stood there in conversation several minutes, and whilst there, a burning tar barrel was brought down on a man's head, and a great number of persons were with him. Witness and Mr. Troake took this man, who refused to tell his name, into custody; the tar barrel was then rolled on towards the Strand, and witness followed, when near Shapter-street, Mr. Cocke and Cox (who had been also convicted), were both busily engaged in kicking the barrel towards him, they appeared to have the full command of the barrel, and the mob were following—they rolled the barrel, which was by this time nearly burnt out, to Mrs. Hannaford's quay. Witness then told Mr. Cocke he was sorry to say that he should be obliged to summon him for kicking the tar barrel, he replied " you've done your duty and I've done mine ;" sometime after, whilst standing near the Commercial Inn, he saw another tar barrel being brought towards him, he saw it then in company with Westcott, and they succeeded in stopping it, and some water was thrown over it. Mr. Cocke was with the mob,

and told him that if he summoned him, he should do himself no good and he (Cocke) no harm." All the constables were out at the time—did not hear Mr. Cocke address the mob, he did not assist him in extinguishing the tar barrel. He was dressed his ordinary clothing, with a white neckerchief.

Cross-examined by Mr. Rowe —He spoke to Mr. Cocke three times that night, first, near Mrs. Drew's house, between eight and nine o'clock —had a watch in his pocket, ascertained the time by it, at half past nine in the High-street, could not remember the exact spot. The matter has been much talked of and written about at Topsham, the people are divided there on the matter, witness is for the public, and for his own character, which has been questioned some parties saying that he did not tell the truth when before the magistrates, and that he was prejudiced against the parson. Knows a person named Mary Gosling, had some conversation with her in Mr. Underhill's house on the 23rd of December, she might have said to him, it was pity that this should have happened about the tar barrel; did not say in reply "it is a pity, but if the parson had owned himself fault and given 5s, nothing more would have been said about it," that is a sentiment he never thought of. Knows George Westcott, recollects coming to Exeter with him to be examined by Mr. Turner; Westcott did not say to him that he had heard Mr. Cox say for God's sake keep it off the property ;" did not on that then say to him that he (Westcott) was not to say anything about it. Knows Robert Coles, had a conversation with Coles on this matter on the day they went together to Mr. Turner's, don't recollect that Coles said that he did not see Mr. Cocke kicking the barrel except when it was near some property—did not on that, tell him not to say anything about it, but to say that he saw Mr. Cocke kicking the barrel same as other people. Knows John Ford, talked with him about it, don't recollect Ford's saying to him 'If I had kicked the barrel off from my property, would you have summoned me," he might have said so, and witness might have replied "yes I would," but did not recollect that he said so, don't believe that he said so, but he might have said so. Don't recollect what part of the High-street he was in when he looked at his watch, or by what light he saw it —it might be by the light of the tar barrel —could not say whether there was a tar barrel burning at the time. On recollection believes it was from a burning tar barrel at the end of the town near Exeter. Has heard that there was a subscription for the fireworks which were let off opposite Mr. Tothill's; don't know that Mr. Cocke had withdrawn his name from the list of subscribers. Can't tell when he first saw the barrel, whether it came from Higher Passage lane, or Taylor's lane—this was from half an hour to an hour before he looked at his watch. Don't know who the man was, who had the first tar barrel on his head, was quite close to him, but he was disguised, believes he had his face blacked, can't say what he had on, don't know his name to be Leppitt, does not know Leppitt; that tar barrel was kicked up Taylor's lane, saw no attempt made to extinguish it. Witness himself attempted to do so, but was prevented by the mob. Don't believe that any person heard what Mr. Cocke said to him the first time he addressed him—there might be people near him, but don't think they heard what was said. Had had a conversation since, with a man named Havil, who was present, and he had subpoenaed him—had been employed to assist in getting up the case, had subpoenaed other witnesses, had not been paid, nobody had promised to pay him, did it in vindication of his character, did not expect to be paid; had laid out money himself witnesses, which he expected to have returned—had subpoenaed six or eight, and gave them a shilling each - had also paid persons for their lost time, had laid out about 12s or 14s., had not paid for all, had had the plan drawn (a plan of the town, which had been put in)-expected to be paid for what he was out of pocket, but did not know by whom—don't know that he could fix the conviction on Mr. Cocke he would have to pay him—had never enquired who would have to pay the costs; his belief was that Mr. Cocke would if convicted have to pay to him. It was an unfair question to ask him, if such was his hope; but his hope was that Mr. Cocke would be convicted, that he might have his costs. Had made no enquiry, to find out if

anyone had heard the first conversation between him and Mr. Cocke. Saw Mr. Cocke in the presence of Westcott the constable, near the market place, that was an hour after the first tar barrel, he then said "You, Fulford, have done your duty, and I will do mine", he might have said "I have lived too many years in the world to see any sport in tar barrel rolling" did not recollect that he said so—did not see him touch the barrel afterwards. Saw Troake near Row's almost directly after he saw Mr. Cocke, did not hear Mr. Cocke say Well done I'm glad you are here Mr. Troake." Troake is constable, and so is Westcott •, had not subpoenaed either, as they have been subpoenaed on the other side. Don't know who the second man was who had the tar barrel on his head, Troake and witness took him into custody to ascertain his name, but Troake let him go without doing so. Had had several conversations with Cox, (who had been convicted,) but had not subpoenaed him, because he had faltered and altered his tale so very much. Had subpoenaed Havel, who was present at Hannaford's quay, but had since told Mr. Turner that he would not be wanted, as he had altered his story also ; he had told him at first that he had seen Mr. Cocke kicking the barrel near Mr. Taylor's, and in Shapter-street, which he had denied afterwards. Believes Mr. Cocke said he had done his duty in keeping the tar barrel off the property. Did not see a tar barrel near Pyle's that night —did not hear Mr. Cocke say in presence of Redmond, on the quay, Well, I've done all I can to protect property —did not answer him—" I've got your name down, and shall summon you " —Mr. Cocke might have said "Why ? For doing all the good in my power" —won't swear that he did or did not say so. Have talked with people before I summoned Mr. Cocke, have talked with Mr. Tothill, but not particularly, he churchwarden of the parish—did not tell him that Mr. Cocke had said he had done all that he could for protection of property, or that he said Why ? for doing ail the good in my power." Did not ask Mr. Tothill's opinion if he should summon Mr. Cocke, might have told him he should do so—did not expect any money from Mr. Tothill, did not know which side he was ; he was a friend of witness—could not say whether he was in favour of the conviction or not—knew Mr. Tothill had written in the papers against Mr. Cocke ; from what has been adduced the papers, he certainly was against the minister—knows a man called Stevens, did not tell him that Mr. Tothill gave directions to him to summon the clergyman.

Re-examined—Letters have appeared in the papers from Mr. Cocke as well as Mr. Tothill; never received any order from Mr. Tothill to summon Mr. Cocke ; had no enmity or grudge whatever against Mr. Cocke when he saw him on the of November ; had no grudge now. Mr. Cocke had conferred obligations on him for which he was grateful.

By the Court— The fireworks were let off the street; did not interfere to prevent it, as there was no disturbance.

Re-examined—During the first conversation he had had with Cox, Cox had told him that seeing Mr. Cocke kicking the tar barrel, he had been induced to do so himself. Some days after he saw him again, and on asking him if he had any objections to give evidence, he said he should not like to go, as he did not see him kick the barrel.

John Harris is a whitesmith of Topsham. Saw the tar barrel near Hodder's. Mr. Cocke was the foot-path, close as he could well be to the tar barrel, which was rolling near the houses, he put his hand to it, and said, " keep it off the walls, don't do any damage." The barrel was then rolled into Taylor's Lane, and about 50 yards up the lane there was another barrel which had been lit. The first barrel was then rolled down below Mr. Manley's rope yard, and when it was on the foot-path Troake and someone else attempted keep the mob back, and Fulford turned the barrel up and put it out. Mr. Cocke was standing about twenty yards off. Saw Mr.

Cocke and Fulford talking together; did not hear what they said. Afterwards, whilst another tar barrel was burning before the market place, saw Mr. Cocke, Fulford, and Westcott together, they were talking about hauling up people, if they knew who they were, on which witness, not knowing Mr. Cocke, said, Old fellow you've got into it as well as the rest, you shall be summoned, and Mr. Fulford don't get a summons, I will." He replied, "do you think a young man of 23 years of age, and of my ability, would be seen rolling tar barrels through the street—what I've done I've done for the protection properly, and I've done my duty."

George Wescott, lad, son of the constable, saw Mr. Cocke kick the tar barrel near Mrs. Drewe's house. Fulford was not there then, saw him afterwards talking to Mr. Cocke at the time the tar barrel was extinguished.

Cross-examined.—The barrel came near the railing, Mr. Cocke ran over and kicked it off the iron railing ; heard him say keep it off people's property"; told Fulford this, Fulford did not tell him to say nothing about this; did not tell his father (the constable) that Fulford had told him so.

Henry Troake, constable, was standing at his office door on the night of the 5th, saw the light, went up the street and saw the tar barrel coming down Taylor's lane with large crowd of people, did not see Mr. Cocke. He followed the tar barrel down Fore-street near Mrs. Drewe's house, where the tar barrel had been stopped, and the crowd had formed themselves into ring; he went among them and told the crowd they had better desist, for if they persisted they would be summoned ; with the same Mr. Cocke, who had been standing on his left hand, said " well done Troake, I'm glad you are here." Saw Fulford, don't recollect he said anything to witness about Mr. Cocke ; did not see Mr. Cocke interfere at all.

James Hele Westcott, constable, saw the tar barrel opposite Mr. Gale's, near Mr. Drew's, man was carrying it on his head, and witness ordered him to throw it down, which he did, and the tar barrel went out. Saw Mr. Cocke there, soon after heard him and Fulford have a conversation. Fulford said you've been kicking the tar barrel, I shall summon you." Mr. Cocke replied that "what he had done was entirely from a pure motive." Witness asked Fulford why he was going to summon Mr. Cocke, and he replied for kicking a tar barrel. Mr. Cocke heard it, and said that if he was summoned he should tell the magistrates he had done it to protect people's property, and had not committed any misdemeanour.

Re-examined— His boy told him that Fulford had said to him, he was not to tell the attorney that he he had heard Mr. Cocke say, what he did was for the protection of property.—(great sensation.)

Robert Coles, son of Mr. Jno. Coles, farmer—Saw a tar barrel, and followed it; first saw Mr. Cocke at the bottom of Shapter street, against the houses, going on by the side of the tar-barrel, sometimes walking and sometimes running; at times he was close to the barrel; he generally continued in the path; not above 20 or people were there; when the barrel went against the houses, Mr. Cocke kicked it off; saw him kick it six or eight times; saw him shove it off when near a tree at the bottom of Shapter Street, on the Quay, very near the water ; the tar-barrel came against this tree, and Mr. Cocke went behind the tree and shoved it out into the road, by pushing it from the tree away from the water, which was the other side of the tree.

Cross-examined—Mr. Cocke never kicked the tar-barrel, except when near houses; he told Fulford so, and Fulford told him not to say anything about it.

Re-examined This was on the road between Exeter and Topsham; could not tell what part of the road it was, no person was with them when the communication was made. The Court intimated that the respondents had no right to endeavour to shake the credit of their own witness, as they were not entitled to contradict him. This was the respondent's case.

Mr. Rowe thought the Court would hardly trouble him to say anything.

The Bench consulted for moment, when the Chairman observed that they were unanimously of opinion that the conviction must be quashed, subject to a case which they were prepared to grant, on the question raised by the respondents, as to the necessity of the appellant first putting in the recognisances before the appeal could be heard. Mr. Rowe then asked for costs, which were granted; the order being made on the constable, Fulford, as the party who had laid the information. Decision of the Bench was received with loud cheering outside the court. Mr. Cocke had about thirty witnesses for examination, had his case proceeded.