

TRANSFERRED MALICE—SOCIETY FOR PREVENTION OF CRUELTY TO ANIMALS V. COURSOLES.

the glass, and although that was not his wish, yet that he was reckless whether he did it or not; but the jury have not so found, and I think it is impossible to say in this case that the prisoner has maliciously done an act which he did not intend to do." The case of *Reg. v. Pembliton* being thus distinguished, it only remained for the court to apply to the case before them the ordinary rule of law that, where it is necessary to prove an act was done maliciously, it is not necessary to prove malice on the part of the prisoner against a particular individual, and Lord Coleridge, C.J., pointed out that, but for the case of *Reg. v. Pembliton*, the case was *res judicata*, for in *Reg. v. Hunt*, in 1825 (1 Moo. C. C. 93), it was held that, on an indictment for maliciously cutting, malice against the individual cut is not essential; general malice is sufficient. On behalf of the prisoner in *Reg. v. Latimer*, it was argued that the decision in *Reg. v. Hewlett*, in 1858 (1 F. & F. 91), was to the contrary effect, for there it was held that where a person strikes A., and B. interposing receives the blow, a conviction for wounding with intent to do grievous bodily harm to B. cannot be sustained. But the Court pointed out that there Mr. Justice Crowder said the evidence would not sustain the charge of wounding with intent to do grievous bodily harm to B., but that the prisoner might be convicted of unlawfully wounding. The case of *Reg. v. Faulkner*, (13 Cox C. C. 550) was also cited on behalf of the prisoner. In that case a sailor entered a part of a vessel for the purpose of stealing rum, and while he was tapping a cask of rum a lighted match, held by him, came in contact with the spirits which were flowing from the cask, and a conflagration ensuing the vessel was destroyed, but the prisoner was nevertheless acquitted of the crime of arson. Mr. Justice Barry, in delivering his judgment in that case, said: "Perhaps the true solution of the difficulty is, that the doctrine of constructive malice or intention only applies to cases where the mischief with which the accused stands charged would be, if maliciously committed, an offence at common law. . . . The jury were, in fact, directed to give a verdict of guilty upon the simple ground that the firing of the ship, though accidental, was caused by an act

done in the course of, or immediately consequent upon a felonious operation, and no question of the prisoner's malice, constructive or otherwise, was left to the jury;" and the Court in *Reg. v. Latimer* pointed out that in *Reg. v. Faulkner* there was no evidence of malice at all which could have been left to the jury.—*Law Times*.

REPORTS.

MAGISTRATES' CASES—POLICE COURT.

SOCIETY FOR PREVENTION OF CRUELTY TO ANIMALS V. COURSOLES.

43 Vict. cap. 38, sec. 2—*Torturing domestic birds.*

Pigeon shooting from traps at a shooting match, accompanied by the usual cruelty and misusage incident to the birds under such circumstances,

Held, not to be an offence under the above statute.

[Ottawa, July 15, 1886.]

The complaint was laid under 43 Vict. cap. 38, sec. 2—"Whosoever wantonly, cruelly or unnecessarily beats, abuses or tortures any domestic bird shall," etc.

From the evidence of Mr. Baker, secretary of the Metropolitan Society for the Prevention of Cruelty, it appeared that the pigeon-shooting tournament was advertised as under the conduct of the St. Hubert Gun Club. The matches were open to all who paid the entrance fees. The shooting was for various prizes as advertised. It took place in the south-eastern portion of the city. The defendant was one of those who took part in the shooting. The birds used were tame or domesticated pigeons. They were brought into the field from a barn, in which they had been stowed for some time in boxes. They were greatly overcrowded in the boxes; and were left exposed to the sun in this crowded condition until required to be shot at. They were taken out by a boy and placed singly in traps; these were small boxes of sheet iron, so constructed that upon a rope being pulled it fell apart and freed the bird. A second rope was used with one end fastened beyond the box by which the bird was beaten or whipped up till forced to fly.

The first bird placed for Coursolles was whipped up. It rose; was fired at, and wounded; one leg apparently broken and the wing disabled. It was