



Game (Scotland) Act 1832

1832 CHAPTER 68

An Act for the more effectual Prevention of Trespasses upon Property by Persons in pursuit of Game in that Part of *Great Britain* called *Scotland*. [17th July 1832]

WHEREAS Trespasses upon Property by Persons unlawfully engaged in the Pursuit of Game have recently become frequent in various Parts of *Scotland*, and have, in many Cases, been attended by Acts of Violence and Intimidation, for the Repression of which the Laws now in force in that Part of the United Kingdom provide no sufficient Remedy, and that it is therefore expedient that more effectual and summary Remedies should be provided;

be it therefore enacted by the King's most Excellent Majesty, by and with the Advice and Consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the Authority of the same,

Penalty on Persons trespassing in the Day-time upon Lands in search of Game.

That if any Person whatsoever shall commit any Trespass by entering or being, in the Day-time, upon any Land, without Leave of the Proprietor, in search or pursuit of Game, or of Deer, Roe, Woodcocks, Snipes, Quails, Landrails, Wild Ducks, or Conies, such Person shall, on being summarily convicted thereof before a Justice of the Peace, on Proof on Oath by One or more credible Witness or Witnesses, or Confession of the Offence, or upon other legal Evidence, forfeit and pay such Sum of Money, not exceeding Two Pounds, as to the Justice shall seem meet, together with the Costs of the Conviction; and that if any Person having his Face blackened, coloured, or otherwise disfigured for the Purpose of Disguise, or if any Persons to the Number of Five or more together shall commit any Trespass by entering or being, in the Daytime, upon any Land in search or pursuit of Game, or of Deer, Roe, Woodcocks, Snipes, Quails, Landrails, Wild Ducks, or Conies, each of such Persons shall, on being summarily convicted thereof before a Justice of the Peace on Proof on Oath by One or more credible Witnesses or Witnesses, or Confession of the Offence, or upon other legal Evidence, forfeit and pay such Sum of Money, not exceeding Five Pounds, as to the said Justice shall seem meet, together with the Expences of Process:

Proviso.

Provided always, that any Person charged with any such Trespass shall be at liberty to prove, by way of Defence, any Matter which would have been a Defence to an Action at Law for such Trespass.

II Such Trespassers may be required to quit the Land, and to give their Names and Abodes; and in case of Refusal may be arrested. Penalty. Party arrested must be discharged, unless brought before a Justice with 12 Hours.

And be it enacted, That where any Person shall be trespassing on any Land, in the Day-time, in search or pursuit of Game, or Woodcocks, Snipes, Quails, Landrails, Wild Ducks, or Conies, it shall be lawful for any Person having the Right of killing the Game upon such Land, or for the Occupier of the Land, or for any Gamekeeper or Servant of either of them, or for any Person authorized by either of them, to require the Person so trespassing forthwith to quit the Land whereon he shall be so trespassing, and also to tell his Christian Name, Surname, and Place of Abode and in case such Person shall, after being so required, offend by refusing to tell his real Name or Place of Abode, or by giving such a general Description of his Place of Abode as shall be illusory for the Purpose of Discovery, or by wilfully continuing or returning upon the Land, it shall be lawful for the Party so requiring as aforesaid, and also for any Person acting by his Order and in his Aid, to apprehend such Offender, and to convey him, or cause him to be conveyed, as soon as conveniently may be, before a Justice of the Peace; and such Offender (whether so apprehended or not), upon being summarily convicted of any such Offence before a Justice of the Peace, at the Instance of the Owner or Occupier of such Land, or of the Procurator Fiscal for the County, on Proof on Oath by One or more credible Witness or Witnesses, or Confession of the Offence, or upon other legal Evidence, shall forfeit and pay such Sum of Money, not exceeding Five Pounds, as to the convicting Justice shall seem meet, together with Expences of Process: Provided always, that no Person so apprehended shall on any Pretence whatsoever be detained for a longer Period than Twelve Hours from the Time of his Apprehension until he shall be brought before some Justice of the Peace; and that if he cannot, on account of the Absence or Distance of the Residence of any such Justice of the Peace, or owing to any other reasonable Cause, be brought before a Justice of the Peace within such Twelve Hours as aforesaid, then the Person so apprehended shall be discharged at the End of that Time, but may nevertheless be proceeded against for his Offence by Summons or Warrant, according to the Provisions herein-after mentioned, as if no such Apprehension had taken place.

III What to be deemed Daytime.

And be it enacted, That for the Purposes of this Act the Daytime shall be deemed to commence at the Beginning of the last Hour before Sunrise, and to conclude at the Expiration of the first Hour after Sunset.

IV The Provisions as to Trespassers not to apply-to Persons hunting, &c.

Provided always, and be it enacted, That the aforesaid Provisions against Trespassers shall not extend to any Person hunting or Coursing upon any Lands with Hounds or Greyhounds, and being in fresh Pursuit of any Deer, Hare, or For already started upon any other Land on which such Person was entitled to hunt or course.

V Game may be taken from Trespassers not delivering up the same when demanded.

And be it enacted, That where any Person shall be found trespassing by Day upon any Land in search or pursuit of Game, and shall then and there have in his Possession any Game, it shall be lawful for any Person having the Right of killing the Game upon such Land, or for the Occupier of such Land, or for any Gamekeeper or Servant of either of them, or for any other Person authorized by either of them, or for any Person acting by the Order and in Aid of any of the said several Persons, to demand from such Trespasser such Game in his Possession, and in case such Trespasser shall not immediately deliver up such Game, to seize and take the same from him, for the Use of the Person entitled to the Game upon such Land.

VI Penalty on Aggressors for assaulting any one executing this Act.

And be it enacted, That if any Person being in the Commission of a Trespass shall assault or obstruct any Person acting in the Execution or in virtue of the Powers and Provisions of this Act, such Person, on being convicted thereof before Two Justices of Peace, on Proof on Oath by One or more credible Witness or Witnesses, or Confession of the Offence, or upon other legal Evidence, shall forfeit and pay any Sum not exceeding Five Pounds, over and above any Penalty which he may have incurred by contravening this Act, and in default of Payment thereof at such Time as to the said Justices may seem fit, shall be imprisoned in the Common Gaol or House of Correction (with or without hard Labour) for a Period not exceeding Three Months.

VII Application of Penalties.

And be it enacted, That every Penalty and Forfeiture for any Offence against this Act shall be paid to the Moderator or other Officer of the Kirk Session of the Parish where the Offence was committed, for the Use and Benefit of the Poor of such Parish.

VIII Justices to fix the Time for Payment of Penalties. Imprisonment for Nonpayment.

And be it enacted, That the Justice or Justices of the Peace by whom any Person shall be summarily convicted and adjudged to pay any Sum of Money for any Offence against this Act, together with Expences, may adjudge that such Person shall pay the same, either immediately, or within such Period as the said Justice or Justices shall think fit; and that in default of Payment at the Time appointed, such Person shall be imprisoned in the Common Gaol or House of Correction (with or without hard Labour), as to the Justice or Justices shall seem meet, for any Term not exceeding Two Calendar Months, the Imprisonment to cease upon Payment of the Amount and Costs.

IX Form of Conviction.

And be it enacted, That the Justice or Justices of the Peace before whom any Person shall be summarily convicted of any Offence against this Act may cause the Conviction to be drawn up according to the following Form of Words, or in any other Form of Words to the same or the like Effect; (that is to say,)

Status: This is the original version (as it was originally enacted).

to wit. { **BE** it remembered, That on the Day of
in the Year of our Lord at
in the County of [or Division, *et cetera*, as the Case may be],
A.O. is convicted before me *J.P.*, One [or us *J.P.* and *J.J.P.*,
Two, as the Case may require], of His Majesty's Justices of the
Peace for the said County [*et cetera*], for that he the said *A.O.*
did unlawfully on at trespass or was found tres-
passing in search or pursuit of Game [*et cetera*, as the Case may be],
and I [or we] do adjudge that the said *A.O.* shall for the said
Offence forfeit the Sum of [or we do adjudge that the
said *A.O.* shall for the said Offence forfeit the Sum of],
and shall forthwith pay the said Sum, together with the Sum of
of Expences of Process, and that in default of imme-
diate Payment of the said Sums he the said *A.O.* shall be imprisoned
[or imprisoned and kept to hard Labour] in the of
for the Space of unless the said Sums
shall be sooner paid; [or, and I [or we] order that the said Sums
shall be paid by the said *A.O.* on or before the Day of
and in default of Payment on or before that Day I
[or we] adjudge the said *A.O.* to be imprisoned [or imprisoned and
kept to hard Labour] in the of for the Space
of unless the said Sums shall be sooner paid]; and I
[or we] direct that the said Sum of (*i. e.* the Penalty)
shall be paid to being the Minister of, *et cetera*, to be by him
applied according to the Directions of the Statute in such Case
made and provided; and I [or we] order that the said Sum of
of Expences shall be paid to (the Com-
plainer). Given under my Hand [or our Hands] the Day and Year
first above mentioned.

J.P.
[or *J.P.* and *J.J.P.*]

X Power to summon Witnesses. Penalty for Disobedience of Summons, &c.

And be it enacted, That it shall be lawful for any Justice of the Peace to issue his Summons requiring any Person to appear, before himself, or any One or Two Justices of the Peace, as the Case may require, for the Purpose of giving Evidence touching any Offence against this Act; and if any Person so summoned shall neglect or refuse to appear at the Time and Place appointed by such Summons, and no reasonable Excuse for his Absence shall be proved before the Justice or Justices then and there present, or if any Person appearing in obedience to such Summons shall refuse to be examined on Oath touching any such Offence by the Justice or Justices then and there present, every Person so offending shall, on Conviction thereof before the said Justice or Justices, or any other Justice or Justices of the Peace, forfeit and pay such Sum of Money, not exceeding Five Pounds, as to the convicting Justice or Justices shall seem meet.

XI As to Prosecutions for Offences.

And be it enacted, That the Prosecution for every Offence punishable by virtue of this Act shall be commenced within Three Calendar Months after the Commission of the Offence; and that where any Person shall be charged, on the Oath of a credible

Witness, with any such Offence before a Justice of the Peace, the Justice may summon the Party charged to appear before himself, or any One or Two Justices of the Peace, as the Case may require, at any Time and Place to be named in such Summons; and if such Party shall not appear accordingly, then (upon Proof of the due Service of the Summons, by delivering a Copy thereof to the Party, or by delivering such Copy at the Party's usual Place of Abode to some Inmate thereat, and explaining the Purport thereof to such Inmate,) the Justice or Justices may either proceed to hear and determine the Case in the Absence of the Party, or may issue his or their Warrant for apprehending and bringing such Party before him or them, as the Case may be ; or the Justice before whom the Charge shall be made may, if he shall have Reason to suspect, from Information upon Oath, that the Party is likely to abscond, issue such Warrant in the first instance, without any previous Summons.

XII Prosecutor not required to prove a Negative.

And be it declared and enacted, That it shall not be necessary in any Proceeding against any Person under this Act to negative by Evidence any Licence, Consent, Authority, or other Matter of Exception or Defence ; but that the Party seeking to avail himself of any such Licence, Consent, Authority, or other Matter of Exception or Defence, shall be bound to prove the same.

XIII Convictions to be returned to Sessions, and kept as Evidence.

And be it enacted, That the Justice or Justices of the Peace before whom any Person shall be convicted of any Offence punishable under this Act shall transmit every such Conviction to the next Court of General or Quarter Sessions of the Peace for the County or Division wherein the Offence shall have been committed, there to be kept by the proper Officer among the Records of the Court,

XIV Appeal.

And be it enacted, That any Person who shall think himself aggrieved by any Conviction in pursuance of this Act may appeal to the Justices at the next General or Quarter Sessions of the Peace, to be holden, not less than Twelve Days after such Conviction, for the County or Division wherein the Cause of Complaint shall have arisen, provided that such Person shall give to the Complainant a Notice in Writing of such Appeal, and of the Cause and Matter thereof, within Three Days after such Conviction, and Seven clear Days at the least before such Sessions, and shall also remain either in Custody until the Sessions, or within such Three Days find a Security, by Bail Bond before a Justice, personally to appear at the said Sessions, and to try such Appeal, and to abide the Judgment of the Court thereupon, and to pay such Costs as shall be by the Court awarded; and upon such Notice being given, and such Security being found, the Justice before whom the same shall be produced shall liberate such Person if in Custody; and the Court at such Sessions shall hear and determine the Matter of the Appeal, and shall make such Order therein, with or without Costs to either Party, as to the Court shall seem meet, and in case of the Dismissal of the Appeal, or the Affirmance of the Conviction, shall order and adjudge the Offender to be dealt with and punished according to the Conviction, and to pay such Costs as shall be awarded, and shall, if necessary, grant Warrant for enforcing such Judgment in common Form.

XV Convictions, &c. not to be quashed for Want of Form, or removable by Advocation, &c.

And be it enacted, That no Conviction in pursuance of this Act, or Judgment given on Appeal therefrom; shall be quashed for Want of Form, or be removed by Advocation, Suspension, or Reduction into any Superior Court of Law; and that no Warrant of Commitment shall be held void by reason of any Defect therein, provided it be therein alleged that it is founded on a Conviction, and there be a good and valid Conviction to sustain the same.

XVI This Act not to preclude Actions for Trespass; but no Double Proceedings shall be had for the same Trespass.

Provided always, and be it enacted That nothing in this Act contained shall prevent any Person from proceeding by way of Civil Action to recover Damages in respect of any Trespass upon his Land, whether committed in pursuit of Game or otherwise, save and except that where any Proceedings shall have been instituted under the Provisions of this Act against any Person for or in respect of any Trespass, no Action at Law shall be maintainable for the same Trespass by any Person at whose Instance or with whose Concurrence or Assent such Proceedings shall have been instituted, but that such Proceedings shall in such Case be a Bar to any such Action, and may be given in Evidence to this Purpose and Effect.

XVII Venue. Notice of Action. Tender of Amends.

And for the Protection of Persons acting in the Execution of this Act, be it enacted, That all Actions and Prosecutions to be commenced against any Person for any thing done in pursuance of this Act shall be commenced within Six Calendar Months after the Fact committed, and not otherwise; and Notice in Writing of such Action, and of Cause thereof, shall be given to the Defender One Calendar Month at least before the Commencement of the Action ; and no Prosecutor shall recover in any such Action if Tender of sufficient Amends shall have been made before such Action brought, or if a sufficient Sum of Money shall have been paid into Court after such Action brought, by or on behalf of the Defender.

XVIII Limits of Act.

And be it enacted, That nothing in this Act contained shall extend to *England Wales, or Ireland.*