ANNO DECIMO TERTIO

Georgii III. Regis.

CAP. LIV.

An Act for the more effectual Preservation of the Game in that Part of *Great Britain* called *Scotland*; and for repealing and amending several of the Laws now in being relative thereto.

WHEREAS the Laws already made for the Preservation of Game in that Part of Great Britain called Scotland are found, by Experience, to be insufficient for that Purpose, without being altered and amended; may it therefore please Your Majesty that it may be enacted; and be it enacted by the King's most Excellent Majesty, by and with the Advice and Consent of the Lords Spiritual and Temporal, Preamble.

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Persons taking, killing, selling, or buying, Muir Fowl, &c. between *Dec.* 10, and *Aug.* 12, &c. shall forfeit, for every Bird so destroyed, 5*l.*

poral, and Commons, in this present Parliament assembled, and by the Authority of the same, That every Person who shall wilfully take, kill, destroy, carry, sell, buy, or have in his or her Possession, or use any Muir Fowl or Tarmargan, between the Tenth Day of December and the Twelfth Day of August in any Year; or any Heath Fowl, between the Tenth Day of December and the Twentieth Day of August in any Year; or any Partridge, between the First Day of February and the First Day of September in any Year; or any Pheasant, between the First Day of February and the First Day of October in any Year; shall, for every Bird so taken, killed, destroyed, carried, sold, bought, found, or used, forfeit and pay the Sum of Five Pounds Sterling: And in case of not paying the Sum decreed within the Space of Ten Days after Conviction by a final Sentence, shall suffer Imprisonment for Two Months for each Five Pounds Sterling thereof.

Not to extend to Pheasants, &c. taken in the Seasons allowed, and kept in breeding Places.

Provided always, That nothing in this Act shall extend to any Pheasant or Partridge which shall be taken in the Seasons allowed by this Act, and kept in any Pew or breeding Place.

Any Person not qualified to kill Game, having Game in his Custody, without Leave of Persons qualified, to forfeit 20*s.* for the First, and for every other Offence, 40*s.*

And be it further enacted by the Authority aforesaid, That every Person whatsoever, not qualified to kill Game in Scotland, who shall have in his or her Custody, or carry, at any Time of the Year, upon any Pretence whatsoever, any Hares, Partridges, Pheasants, Muir Fowl, Tarmargans, Heath Fowl, Snipes, or Quails, without the Leave or Order of a Person qualified to kill Game in Scotland, for carrying such Hares or other Game, or for having the same in his or her Custody, shall, for the First Offence, forfeit and pay the Sum of Twenty Shillings Sterling; and for the Second, and every other subsequent Offence, the Sum of Forty Shillings Sterling: And in case of not paying the Sum decreed within the Space of Ten Days after Conviction by a final Judgement, shall suffer Imprisonment for Six Weeks for the First Offence, and for Three Months

for the Second, and every other subsequent Offence.

And be it enacted by the Authority aforesaid, That every Person who shall make Muirburn, or set fire to any Heath or Muir, in that Part of Great Britain called Scotland, from the Eleventh Day of April to the First Day of November in any Year, shall forfeit and pay the Sum of Forty Shillings Sterling for the First Offence, Five Pounds Sterling for the Second Offence, and Ten Pounds Sterling for the Third and every other subsequent Offence: And in case of not paying the Sum decreed within the Space of Ten Days after Conviction by a final Judgement, shall suffer Imprisonment for Six Weeks for the First Offence, Two Months for the Second, and Three Months for the Third and every other subsequent Offence.

Penalties for First and subsequent Offences on Persons making Muirburn from *April* 11, to *Nov.* 1.

And be it further enacted by the Authority aforesaid, That the Tenant, Possessor, or Occupier of the Ground upon which such Muirburn shall be made or discovered within the forbidden Time aforesaid, shall be deemed and taken to be guilty of the Offence, and shall be liable to the several Penalties aforesaid, unless such Tenant, Possessor, or Occupier, shall prove, to the Satisfaction of the Court before which he or she shall be prosecuted, that such Fire was communicated from some neighbouring Ground, or was raised upon his or her Ground by some other Person not in his or her Service or Family.

If any Muirburn be discovered within the Time forbidden, Occupiers of the Ground to be liable, unless they shall prove the contrary.

Provided always, and be it enacted by the Authority aforesaid, That every Proprietor of high and wet Muir Lands, the Heath upon which frequently cannot be burnt so early as the Eleventh Day of April, may, when such Lands are in his own Occupation, burn the Heath upon the same at any Time between the Eleventh and Twenty-fifth Day of April in any Year, without incurring any of the Penalties before mentioned; and when such Lands are let, the Proprietor, or his Commissioner or Factor, may, by a Writing under his or their Hands, authorise his Tenant or Tenants in such Lands to burn the Heath thereon,

Proprietors of wet Lands in their own Occupation may burn Heath between the 11th & 25th *April*;

or may authorise their Tenants so to do.

thereon, at any Time between the Eleventh and Twenty-fifth Day of April, in any Year, without incurring any of the Penalties before mentioned.

Writings authorising Tenants to burn Heath, as aforesaid, to be recorded in the Sheriff Court Books.

Provided also, That the Writing authorising such burning, when the Lands are in the Occupation of a Tenant, shall, previous to such burning, be recorded in the Sheriff or Stewart Court Books of the County or Stewartry within which the Lands are, and which the Sheriff or Stewart Clerk of such County, or Stewartry, is hereby ordered and directed to do, upon receiving Payment of the Fees usually paid for recording Writings.

Offences may be enquired into and determined by the Justices, &c.

And be it further enacted by the Authority aforesaid, That all Offences against this Act shall and may be enquired into and determined, either by the Oath or Oaths of One or more credible Witness or Witnesses, or by the Confession or Oaths of the Parties accused, before any Two or more of His Majesty's Justices of the Peace, or before the Sheriff, or Stewart-depute, or Substitute, of the County where the Offence shall be committed, or where the Offender shall be found; and that all Prosecutions for Offences against this Act shall be carried on, either at the Instance of the Fiscal of the Court in which the Prosecution is brought, or of any other Person who will inform or complain.

Persons convicted to pay the Penalties within Ten Days, or the same may be levied by Distress.

And be it further enacted by the Authority aforesaid, That if any Person convicted of any of the Offences against this Act shall not pay the Penalty or Forfeiture decreed against him or her, within the Space of Ten Days from and after a final Judgement of Conviction, it shall and may be lawful for the Justices of the Peace, Sheriff, or Stewart-depute, or Substitute, before whom the Information, Complaint, or Action may have been brought, upon the Application of the Prosecutor, to grant Warrant for levying the Penalties or Forfeitures, by immediate Distress and Sale of the Offenders Goods and Moveables, together with the Costs and Charges attending the levying thereof, returning the Overplus, if any be, to the Owner; or to grant Warrant for committing

mitting the Offender to the common Gaol of the County, for the Time specified in this Act, as Satisfaction for the Penalty or Forfeiture incurred, or until Payment: And in case a Warrant for levying the Penalty by Distress and Sale of the Offender's Goods and Moveables shall be first applied for and obtained, and that the Penalty or Forfeiture shall not be recovered in Consequence thereof, it shall and may be lawful for the Justices of Peace, Sheriff, or Stewart-depute, or Substitute, who granted the Warrant for levying the Penalty or Forfeiture by Distress and Sale of the Offender's Goods and Moveables, upon its being certified to him or them by the Officer employed in executing the Warrant, either that he has been able to recover no Part of the Penalty or Forfeiture, or that a certain Part, to be certified by him, still remains unrecovered, to grant Warrant for committing the Offender to the common Gaol of the County for the Time specified in this Act, as Satisfaction for the Penalty or Forfeiture incurred, or until compleat Payment shall be made of the Penalty or Forfeiture incurred and decreed.

In case the Penalty cannot be recovered by Distress, Offenders to be committed.

And be it further enacted by the Authority aforesaid, That One Moiety of the Penalties or Forfeitures to be incurred for any Offence against this Act, shall, when recovered, be paid to the Prosecutor, and the other Moiety shall be applied to the Use of the Poor of the Parish, or to the repairing of the High Roads within the Parish where the Offence shall be committed, as the Justices of the Peace, or the Sheriff or Steward-depute, or Substitute, shall direct, before whom the Offender shall be convicted.

Penalties and Forfeitures how to be applied.

Provided always, and be it enacted by the Authority aforesaid, That it shall and may be lawful to or for any Person conceiving himself or herself aggrieved by any Decree of the Justices of the Peace, or Sheriff, or Stewart-depute, or Substitute, in such Prosecutions, to complain and seek Relief by Appeal to the next Circuit Court of Justiciary of the Circuit wherein the County is where the Decree is pronounced; or where

Persons thinking themselves aggrieved, may appeal to the next Court of Justiciary;

and where there are no Circuit Courts, to the Court of Justiciary at *Edinburgh*.

there are no Circuit Courts, to the Court of Justiciary at Edinburgh, by taking and entering an Appeal in open Court, at the Time of pronouncing such Decree, or at any Time thereafter within Ten Days, by lodging the same in the Hands of the Clerk of the Court, and serving the adverse Party with a Duplicate thereof personally, or at his Dwelling-house, or his Procurator or Agent in the Cause; and such Service shall be sufficient Summons to oblige the Prosecutor to attend and answer at the next Circuit Court which shall happen to be held, at least Fifteen Days after Service, or at the first Court of Justiciary which shall be held at Edinburgh, in the Case where there are no Circuit Courts, at least Fifteen Days after such Service; and thereupon the Judge or Judges at such Circuit Court, or in the Court of Justiciary at Edinburgh, shall and may proceed to cognosce, hear, and determine: And in case they shall find the Reasons of any such Appeal not relevant, or not instructed, or shall determine against the Party appealing, the Judge or Judges shall condemn the Appellant in such Costs of Suit as shall appear to be just and reasonable, and the Decree so pronounced shall be final and conclusive to the Parties.

Sentence of said Court to be final.

Persons appealing to lodge a Bond with the Clerk of Court, for paying the Sums appealed against, and for Costs, &c.

Provided also, and be it enacted by the Authority aforesaid, That when an Appeal is taken, the Appellant, at the Time of entering his or her Appeal, shall lodge with the Clerk of the Court from which the Appeal is taken a Bond, with a sufficient Cautioner, for paying the Sum or Sums contained in the Decree appealed against, so far as affirmed and approved of by the Judgement upon the Appeal, and for paying the Costs of Suit, if any shall be awarded; and the Clerk of Court shall be answerable for the Sufficiency of such Cautioner.

In case of any Difficulty before the Circuit Court, &c. the Proceedings thereupon may be laid before the Justiciary Court at *Edinburgh*.

Provided likewise, and be it enacted by the Authority aforesaid, That in case any Circuit Court shall, on hearing any such Appeal, find any such Difficulty to arise, that by Means thereof such Circuit Court cannot proceed to the Determination of the same, consistently with

Justice

Justice and the Nature of the Case; in any such Case, and not otherwise, it shall and may be lawful to and for such Circuit Court to certify such Appeal, together with the Reasons of such Difficulty, and the Proceedings thereupon had before such Circuit Court, to the Court of Justiciary at Edinburgh, which is hereby authorised and required to proceed in and determine the same. and be there finally determined.

Provided always, That no Penalty or Forfeiture in this Act shall be recovered, unless the Prosecution for recovering thereof shall be commenced within Six Months after the Offence committed. Limitation of Actions.

Provided also, That no Person shall be liable to any of the Penalties or Forfeitures hereby enacted, except for such Offence as shall be committed after the Twenty-fourth Day of June, One thousand seven hundred and seventy-three. No Person liable for such Offence till after *June* 24.

And be it further enacted by the Authority aforesaid, That from and after the passing of this present Act, an Act, passed in the Twenty-fourth Year of his late Majesty King George the Second, intituled, An Act for the better Preservation of the Game in that Part of *Great Britain* called *Scotland*; and an Act, passed in the Third Year of his present Majesty, intituled, An Act for the better Preservation of the Game in that Part of *Great Britain* called *Scotland*; and for repealing Part of an Act, passed in the Twenty-fourth Year of His late Majesty, *For the better Preservation of the Game in that Part of* Great Britain *called* Scotland; and so much of an Act, passed in the Sixth Year of his present Majesty, intituled, An Act to extend an Act, made in the Fourth Year of the Reign of King *George* the First, intituled, *An Act for the further preventing Robbery, Burglary, and other Felonies; and for the more effectual Transportation of Felons, and unlawful Exporters of Wool; and for declaring the Law, upon some Points, relative to Pirates, to that Part of* Great Britain *called* Scotland, *so far as the Act relates to the more ef-* Act 24 *Geo.* II. Act 3 *Geo.* III. and Act 6 *Geo.* III. repealed.

fectual Tranſportation of Felons; and for amending and rendering more effectual the Laws for reſtraining Muirburn in forbidden Time, in that Part of the United Kingdom as limits the Time for making Muirburn; **ſhall be, and are hereby declared to be repealed.**

2 FINIS.