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C A P. LXXIII.

An Act for the Abatement of the Nuisance arising from the Smoke of Furnaces in *Scotland.*

[25th *August* 1857.]

WHEREAS it is expedient to make Provision for the Abatement of the Nuisance arising from the Smoke of Furnaces in *Scotland:* Be it therefore enacted by the Queen'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, as follows:

From and after 1st Aug. 1858, all Furnaces within the Limits of the Act to consume their own Smoke.

I. From and after the First Day of *August* One thousand eight hundred and fifty-eight, every Furnace employed or to be employed in the working of Engines by Steam, whether locomotive or otherwise, in any Place to which this Act shall apply, or on board of any Steam Vessel stopping at or in any such Place, or in or at any Port, Pier, Landing Place, or Harbour within the same, or when plying on any Part of a River which at such Part shall not exceed a Quarter of a Mile in Breadth, and every Furnace employed or to be employed in any Mill, Factory, Distillery, Brewhouse, Sugar Refinery, Bakehouse, Gasworks, Waterworks, (although a Steam Engine be not employed therein), or in any Public Bath or Wash-house within the same, although such Public Bath or Wash-house shall not be used for the Purposes of Trade or Manufacture, shall in all Cases be constructed or altered so as to consume or burn the Smoke arising from such Furnace; and if any Person or Company shall, after the First Day of *August* One thousand eight hundred and fifty-eight, use in any such Place, or on board of any such Steam Vessel, any such Furnace which shall not be constructed so as to consume or burn its own Smoke, or shall so negligently use any such Furnace as that the Smoke arising therefrom shall not be effectually consumed or burnt, every Person or Company so offending, being the Owner or Occupier of the Premises or the Owner of the Locomotive Engine in which any such

Furnace shall be, or being a Foreman or other Person employed by such Owner or Occupier in connexion with such Furnace, or being the Owner or Master or other Person in charge for the Time being of any such Steam Vessel, shall, upon a summary Conviction for such Offence before the Sheriff or Sheriff Substitute of the County, or any Two Justices having Jurisdiction within the Place within which, or adjacent to the Port, Pier, Landing Place, River, or Harbour in which, the Offence against this Act is alleged to have been committed, where such Place is not a Burgh, and where such Place is a Burgh then before the Sheriff or Substitute of the County within which or within any Part of which the same shall be situate, or before the Magistrate of such Burgh, forfeit and pay a Sum not more than Five Pounds nor less than Forty Shillings, and upon a Second Conviction for such Offence the Sum of Ten Pounds, and for each subsequent Conviction a Sum double the Amount of the Penalty imposed for the last preceding Conviction, and shall also pay to the Local Authority the whole Costs incurred in the Proceedings for the Recovery of any such Penalty.

Power to remit Penalties where Furnaces have been so constructed or altered as to consume, as far as possible, all the Smoke arising from the same.

II. Provided always, That the Words "consume or burn the Smoke" shall not be held in all Cases to mean "consume or burn all the Smoke;" and that the Sheriff, Sheriff Substitute, Magistrates, or Justices before whom any Person shall be summoned may remit the Penalties enacted by this Act, if he or they shall be of opinion that such Person has so constructed or altered his Furnace as to consume or burn as far as possible all the Smoke arising from such Furnace, and has carefully attended to the same, and consumed or burned as far as possible the Smoke arising from such Furnace; and it shall be lawful for such Sheriff, Sheriff Substitute, Magistrates, or Justices, with the Consent of such Person, on the Hearing of the Petition herein-after mentioned, to appoint a competent Person to examine such Furnace, and to report thereupon whether it has been so constructed or altered.

No Complaint to be brought except by Local Authority, &c.

III. Provided always, That no Complaint shall be brought against any Person for the Recovery of any Penalty under this Act, except by the Local Authority, or by the Owner or Occupier of Premises with reference to which the Furnace is so situate as to create an Annoyance to the Occupiers of such Premises, and in either Case with the Concourse of the Lord Advocate.

All Complaints brought and all Applications to Sheriff, &c. to be by summary Petition, &c.

IV. All Complaints which shall be brought, and all Applications to the Sheriff, Sheriff Substitute, Magistrates, or Justices to enforce any Provision of this Act, shall be by summary Petition, and such Petition shall refer to the Clauses of this Act on which it is founded, without setting forth the same; and the Sheriff, Sheriff Substitute, Magistrates, or Justices shall thereupon appoint the Petition to be answered within Three Days, or may order the Parties to attend him or them in Person forthwith, and on advising such Answer, or hearing the Parties, may at once decern, or may, if either Party desire it, order Proof to be led on any specific Points, and shall in that Case appoint a Day, not more than Five Days thereafter, for hearing such Proof, and if the Proof be not on that Day completed, may adjourn the same from Time to Time until completed, and within Three Days after such Completion shall give Decree, and

may find the Party complained of liable in Expenses, and may grant Warrant for the Recovery of the Penalties and Expenses decerned for, and failing Payment within Eight Days after Conviction, by Poinding, and Imprisonment for a Period at the Discretion of the Sheriff, Sheriff Substitute, Magistrates, or Justices, not exceeding Fourteen Days.

No written Pleadings, &c. allowed.

V. No written Pleadings, other than the Petition and Answers (when ordered), shall be allowed; and the Sheriff, Sheriff Substitute, Magistrates, or Justices shall take Notes of the Evidence in like Manner as in Civil Proofs: Provided always, that no Decree under this Act against any Party shall bar his Right to Relief against any other Party legally liable therein.

Justices and Magistrates not to act, where Expense of altering Furnace, &c. will exceed a certain Sum.

VI. Where it shall appear to the Magistrates or Justices before whom any Party may be cited under this Act that the Cost of the Operations necessary to alter or amend any Furnace complained of will exceed the Sum of Twenty-five Pounds, they shall certify or endorse their Opinion to that Effect on the Petition, and sign the same, and it shall thereupon be incompetent for the Local Authority to proceed further before them in the Matter of such Petition, without Prejudice nevertheless to his instituting Proceedings of new in the same Matter before the Sheriff or Sheriff Substitute.

Appeal in certain Cases.

VII. Where it shall appear to the Sheriff Substitute that the Cost of the Operations necessary to alter or amend any Furnace complained of will exceed the Sum of Twenty-five Pounds, he shall certify an Opinion to that Effect in the Decree, and the Parties shall thereupon be entitled to appeal to the Sheriff, on lodging within Three Days after the Decree a Note of Appeal with the Sheriff Clerk, and serving the same on the opposite Party, and such Note shall operate as a Sist of Execution until the Appeal be determined; and on such Note being lodged the Sheriff Clerk shall transmit the Process, together with the Sheriff Substitute's Notes of the Evidence, to the Sheriff, who shall thereupon proceed to give Judgment as aforesaid; and in the event of either Party being dissatisfied with such Judgment he or they shall be entitled to present a Note of Appeal to the Lord Ordinary on the Bills, for Relief against such Judgment, provided such Note be lodged in the Bill Chamber, and a Copy thereof served on the opposite Party within Eight Days of the Date of the Sentence complained against, which Note shall in like Manner operate as a Sist of Execution until a Judgment be pronounced by the Lord Ordinary, which Judgment shall be final, and in no Case subject to Review.

Expense may be awarded against the Local Authority or Party complaining.

VIII. It shall be competent to the Sheriff, Sheriff Substitute, Magistrates, or Justices to award Expenses against the Local Authority, or against any Party complaining with Concourse as aforesaid, in any Case in which he or they may think fit, and such Expenses shall be paid accordingly.

No Appeal.

IX. No Appeal from nor Suspension of any Decree or Sentence under this Act shall be competent, nor shall any Decree or Sentence be subject to any Review whatever, save in Cases certified as aforesaid.

X. Notices

Service of Notices and Petitions.

X. Notices and Petitions under this Act may be served by delivering the same to or at the Residence of the Parties to whom they are addressed, or on whom they are intended to be served, and in the Case of Companies at their nearest Office, Station, or Place of Business, or by being put into the Post Office duly addressed to the Parties as aforesaid, or they may be served by delivering the same or a true Copy thereof to some Person upon the Premises, or One of the Crew of such Steam Vessel.

One or more joint Owners may be proceeded against alone.

XI. In case of any Complaint under this Act to which Two or more Parties, whether as Owners or Occupiers of Premises, or Owners of such Steam Vessel or Locomotive, may be jointly answerable, it shall be sufficient to proceed against any one or more of them, without proceeding against the others or other of them; but nothing herein contained shall prevent the Parties so proceeded against from recovering Relief in any Case in which they would now be entitled to Relief by Law.

As to Expenses incurred in executing this Act.

XII. All Charges and Expenses incurred by the Local Authority in any Proceeding under this Act, in any Place to which this Act shall apply, and not recovered as herein-before provided, may be defrayed out of an Assessment to be levied along with, and in like Manner and under like Powers, which are hereby given, as the Assessment for the Relief of the Poor of the Parish or Place in which the Penalties may have been incurred, or, where there is no such Assessment, by an Assessment levied in such Manner as an Assessment might have been levied for the Relief of the Poor.

How Moneys recovered under this Act to be applied.

XIII. All Moneys recovered by a Local Authority under this Act shall be applied towards the Expense of executing and enforcing this Act, and any Surplus which may thereafter remain shall be paid to the Parochial Board of the Parish or Combination of Parishes in which the Premises complained of may have been situated, and shall by them be applied in aid of the Rates or Funds for the Relief of the Poor of such Parish or Combination of Parishes.

Interpretation of Terms.

XIV. In this Act the Word "Place" shall mean every City or Royal Burgh in *Scotland* and shall include the whole Area contained within the Parliamentary or Police Limits or Boundaries thereof, provided the same comprehend a Population of not less than Two thousand, and shall also mean and include every Burgh of Barony, Burgh of Regality, containing a similar Amount of Population, according to the Census for the Time being presented to both Houses of Parliament by Command of Her Majesty; and the Expression "Local Authority" shall mean the Procurator Fiscal of the Burgh or County, or of any District thereof, or the Commissioners of Police acting under any Local or General Act of Parliament within any such Place or any Part thereof.

LONDON:
Printed by GEORGE EDWARD EYRE and WILLIAM SPOTTISWOODE,
Printers to the Queen's most Excellent Majesty. 1857.