ANNO OCTAVO & NONO

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C A P. XXVI.

An Act to prevent fishing for Trout or other Fresh-water Fish by Nets in the Rivers and Waters in *Scotland*. [30th *June* 1845.]

WHEREAS it is expedient that Provision should be made for preventing the Destruction of Trout and other Fresh-water Fish by Nets in the Rivers, Waters, and Lochs of *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, That it shall not be lawful for any Person whatsoever, not being the Proprietor of the Land through or by which any River or Water flows, or on which any Loch is wholly or partially situated, or not having a Right there to fish for Trout or Fresh-water Fish, or not having a written Permission from some such Proprietor or Person entitled to fish as aforesaid, at any Time after the passing of this Act, to fish for Trout or other Fresh-water Fish in any such River, Water, or Loch in *Scotland*, with any Net of any Kind or Description; and if any Person, not being a Proprietor or having Right or Permission as aforesaid, shall wilfully take, fish for, or attempt to take, or aid and assist in taking or fishing for or attempting to take or fish for, in

Prohibiting fishing for Trout, &c. by means of Nets in any Rivers, &c. in Scotland.

or from any such River, Water, or Loch, any Trout or other Fresh-water Fish, by or with any Net of any Kind or Description, such Person shall forfeit and pay any Sum not exceeding Five Pounds for every such Offence, besides forfeiting the Trout or Fish taken, and also every Boat or Net in or by which the same may have been taken or attempted to be taken, and shall also pay the full Expences of the Conviction.

Penalty for trespassing on any Ground or River to fish with Net.

II. And be it enacted, That if any Person shall trespass upon any Ground, enclosed or unenclosed, or in or upon any River, Water, or Loch, with Intent to take with any Net any Trout or other Fresh-water Fish, such Person shall forfeit and pay a Sum not exceeding Five Pounds for every such Offence.

Possession of Nets Evidence of Intent.

III. And be it enacted, That if any such Trespasser shall have in his Possession any Net of any Description whereby Trout or other Fresh-water Fish may be taken or killed, the Possession thereof shall be held to be sufficient Evidence of the Intent of such Trespasser to commit such Offence.

Persons trespassing may be seized.

IV. And be it enacted, That it shall be lawful for any Person, without any Warrant or other Authority than this Act, *brevi manû*, to seize and detain any Person who shall be found committing any Offence against this Act, and to carry such Person before the Sheriff or any Justice of the Peace in the County within which the Offence shall take place, or to deliver such Person to a Constable, who is hereby required to carry such Person before such Sheriff or Justice, and the Sheriff or Justice of the Peace before whom such Offender shall be brought shall forthwith examine and discharge or commit such Offender until Caution de judicio sisti be found, as the Case may require; and it shall in like Manner be lawful to seize and detain any Boat or Net of any Description used or intended to be used in the Commission of any such Offence, and also any Fish taken by any such Offender, and to give Information thereof to the Sheriff.

Justices and Proprietors not to be disqualified.

V. And be it enacted, That all Justices of the Peace shall and may act in the Execution of this Act notwithstanding that such Justices shall be the Proprietors of Land through or by which any River or Water may flow, or upon which any Loch may be wholly or partially situated, or shall otherwise have a Right of Trout or Fresh-water Fishing in any such River, Water, or Loch, except in Cases in which any such Justice is a Party to the Prosecution of the Case, or is directly interested in the Result thereof; and no such Proprietor or Party having Right as aforesaid shall be incompetent as a Witness to prove any Offence committed against this Act by reason of his being such Proprietor or having such Right.

For the Recovery of Penalties.

VI. And for the Recovery of the Penalties and Forfeitures imposed by this Act, be it enacted, That any such Penalties or Forfeitures may be recovered by summary Proceeding upon Complaint in Writing made by any Party prosecuting for the same to the Sheriff of the County in which such Offence shall be committed, or to the Sheriff of any County in which the Offender may be found, and on such Complaint

Complaint such Sheriff shall issue a Warrant for bringing the Party complained against immediately before him, or shall issue an Order requiring such Party to appear at a Time and Place to be named in such Order; and every such Order shall be served on the Party complained against either in Person or by leaving with some Inmate at his usual Place of Abode a Copy of such Order and of the Complaint whereon the same has proceeded; and either upon the Appearance or on the Default to appear of the Party complained against it shall be lawful for the Sheriff to proceed to the hearing of the Complaint, and upon Proof of the Offence, either by the Confession of the Party complained against, or upon the Oath of One credible Witness or more, and without any written Pleadings or Record of Evidence, to convict the Offender, and upon such Conviction to decern, adjudge, and sentence him to pay the Penalty or Forfeiture incurred, and the Expences attending the Conviction, and to grant Warrant for imprisoning him until such Penalty or Forfeiture and Expences shall be paid: Provided always, that such Warrant shall specify the Amount of such Penalty or Forfeiture and Expences, and shall also specify a Period at the Expiration of which the Party shall be discharged, notwithstanding such Penalty or Forfeiture and Expences shall not have been paid, and which Period shall in no Case exceed Two Calendar Months; and it shall be lawful for the Sheriff to make such Orders concerning the immediate Disposal of any Boat, Net, or Fish seized or forfeited under the Provisions of this Act as may be necessary.

Appeal.

VII. And be it enacted, That it shall be lawful for any Person who shall think himself aggrieved by any Judgment of the Sheriff pronounced in any Case arising under this Act to appeal from the same to the next Circuit Court of Justiciary, or, where there are no Circuit Courts, to the High Court of Justiciary at *Edinburgh*, in the Manner, and by and under the Rules, Limitations, Conditions, and Restrictions contained in an Act passed in the Twentieth Year of the Reign of His Majesty King *George* the Second, for taking away and abolishing Heritable Jurisdiction in *Scotland*, with this Variation, that such Person shall, in place of finding Caution in the Terms prescribed by the said Act, be bound to find Caution to pay the Penalty or Forfeiture and Expences awarded against him by the Sentence appealed from, in the event of the Appeal being dismissed or not insisted in, together with any additional Expences that may be awarded by the Court on deciding or dismissing the Appeal; and it shall not be competent to appeal from or bring the Judgment of any Sheriff acting in the Execution of this Act under Review, by Advocation or Suspension or by Reduction, or in any other Way than as herein provided. 20 G. 2. c. 43.

Application of Penalties.

VIII. And be it enacted, That all Penalties and Forfeitures imposed under the Authority of this Act shall, when levied, be paid, the one Half thereof to the Prosecutor, and the other Half to the Poor of the Parish within which the Offence shall have been committed.

Limitation of Actions.

IX. And be it enacted, That no Prosecution or other Proceeding whatever shall be brought or commenced against any Person for any Offence

Offence against this Act, unless the same shall be commenced within Six Calendar Months after such Offence shall have been committed.

Interpretation of Act.

X. And be it enacted, That the Words "River," "Water," or "Loch" occurring in this Act shall mean and include any Stream, Burn, Mill-pool, Mill-lead, Mill-dam, Sluice, Pond, Cut, Canal, and Aqueduct, and every other Collection or Run of Water in which Trouts and other Fresh-water Fish breed, haunt, or are found or preserved; that the Word "Sheriff" shall mean the Sheriff of the County in which the Offence happens or Case arises, and shall include the Sheriff Substitutes of such Sheriffs; that the Singular shall include the Plural Number, and Words importing the Plural Number shall include the Singular; and Words importing the Masculine Gender shall include Females.

Saving the Laws regarding the Salmon Fisheries.

XI. And be it enacted, That nothing herein contained shall affect any Act of Parliament, general or local, passed for the Preservation of the Salmon Fisheries in *Scotland*, or in relation to the fishing of Salmon or Fish of the Salmon Kind in *Scotland*.

Alteration of Act.

XII. And be it enacted, That this Act may be amended or repealed by any Act of Parliament to be passed in the present Session of Parliament.

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