

ANNO SEPTIMO

GEORGII IV. REGIS.

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CAP. XLII.

An Act to amend the Laws in force in *Ireland* for preventing the vexatious Impounding of Cattle for Trespass or Damage feasant.

[26th *May* 1826.]

WHEREAS an Act was passed in the Parliament of *Ireland* in the Fortieth Year of the Reign of His late Majesty King *George* the Third, for amending and rendering more effectual an Act passed in the Thirty-seventh Year of His said late Majesty's Reign, intituled *An Act to prevent vexatious Impounding of Cattle for Trespass or Damage feasant;* and it is expedient to render the Provisions of the said Act of the said Fortieth Year more effectual; 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, That it shall and may be lawful for the Magistrates assembled at any Quarter Sessions or Adjournment thereof, which shall be holden at any Time after the passing of this Act, in or for any County, County of a City, or County of a Town in *Ireland*, or any Barony, Half Barony, or Subdivision thereof, not less than Three such Magistrates being present, to nominate and appoint any Number of Persons, not exceeding Three, resident in each and every Parish in such County, County of a City, or County of a Town, to act as Appraisers and Arbitrators in the Execution of this Act in such Parish, or in such Number of adjacent Parishes, as such Magistrates shall

37 G. 3. (I.)

Magistrates at Sessions in Ireland may appoint Persons to be Appraisers and Arbitrators of Damages arising from Trespass;

and suspend or remove them; shall define and fix; and it shall and may be lawful for such Magistrates so assembled from Time to Time in their Quarter Sessions, not less than Three being present, to suspend or remove all or any of such Appraisers and Arbitrators, and to appoint others in their Room,

and fix or alter their Fees. and also to fix and appoint the Quantum or Rate of Fee or Remuneration to be paid to such Appraisers and Arbitrators in the Execution of their Duty, and to alter and vary the Amount thereof from Time to Time; and every Person appointed to be such Appraiser and Arbitrator, before taking upon himself such Office, shall take and subscribe the following Oath:

Oath of Appraiser and Arbitrator. 'I *A. B.* of *C. D.* in the Parish of *E.* do swear, That I will, when 'called upon, justly and honestly appraise and value and arbitrate 'with respect to all Matters relating to the Trespassing and Damage 'feasant of Animals of any Description; and that I will faithfully 'and honestly perform all other the Duties of an Appraiser and Arbi-'trator, according to an Act made in the Seventh Year of the Reign 'of King *George* the Fourth, intituled [*here set forth the Title of this* '*Act*]; and that I will not accept or take any Fee or Reward for 'executing such Duty, save and except what I shall be entitled to 'under the Provisions of said Act. So help me GOD.'

Which Oath it shall be lawful for any Magistrate within his Jurisdiction to administer in open Court at any Petty Sessions, or reputed Petty Sessions, in any Barony or Half Barony, or other Division of a County, County of a City, or County of a Town, and such Oath shall be registered and recorded at such Petty Sessions or reputed Petty

Arbitrator shall attend when called upon. Sessions; and every Person so appointed shall be liable to be so called upon, and shall attend accordingly, to appraise and to arbitrate and decide between Parties in Cases of Complaint of Injury arising from Animals of any Description trespassing or Damage feasant; and also in all Cases of Disputes and Complaints as to the State of the Fences arising under the said recited Act or this Act.

In Cases of Trespass where the Rates of Damage are fixed, Persons injured may take Cattle to the Owner, &c. who shall pay such Rates. II. And, in order to avoid the impounding of Cattle; be it further enacted, That where Animals of any Description shall be found trespassing or Damage feasant, and the Rates of Damage to be paid for such Trespass shall have been fixed by the Magistrates in pursuance of the said recited Act, it shall be lawful for the Person or Persons entitled to such Rates of Damage, to take, drive, or send such Animals to their Owner, or the known Steward or Herdsman of the Owner, or to shew such Owner, or the known Steward or Herdsman of such Owner, the Animal or Animals actually in the Act of trespassing and Damage feasant; and if such Owner, or the known Steward or Herdsman of such Owner, shall be satisfied that such Trespass has been actually committed, it shall be lawful for such Owner and he is hereby required to pay such Rates of Damage so fixed, and in such Cases the Animals

Remedy in case of Refusal. so trespassing shall not be impounded; but in case the Owner of any such Animal or Animals, or some Person on his Behalf, shall not pay the Amount of such fixed Rate of Damage, it shall and may be lawful for the Party aggrieved by such Trespass, instead of impounding them, to make his Complaint to the Magistrates assembled in Petty Sessions, or reputed Petty Sessions, for

the District where the Parties reside; and such Magistrates shall summon the Owner of the Animals so trespassing, or the Steward or Herdsman of such Owner, to appear before them, and it shall be lawful for such Magistrates (after the Time appointed by such Summons for the Appearance of the Party complained against, whether the Person so summoned shall appear or not,) upon Proof of the Service of such Summons, to enquire and examine into the Matter of such Complaint; and upon satisfactory Proof of such Trespass, and of the Neglect or Refusal to pay the Rate of Damage for such Trespass so fixed as aforesaid, to issue their Warrant to levy such Rate of Damage for such Trespass, together with such reasonable Costs for Loss of Time, as such Magistrates shall think fit to be paid to the Plaintiff, unless it shall appear to the Satisfaction of such Magistrates, that the Defendant had sufficient Grounds to justify the Nonpayment of the Rate of Damage for such Trespass.

Where the Damage for any particular Description of Trespass shall not have been rated, &c. Complainant may call upon Arbitrators to estimate and certify the Amount of Damages.

III. And be it further enacted, That in all Cases where it shall happen that the Rate of Damage for any particular Description of Trespass, which shall be the Subject of any Complaint between Parties, shall not have been fixed by the Magistrates in manner required by the said recited Act, or where any Damage so complained of shall exceed in its Nature and Amount the Rates so fixed, or where the Neglect or Refusal to pay any Demand on account of Trespass or Damage as aforesaid shall arise out of the Neglect or Refusal of the Complainant to keep his Fences in a proper State of Repair, or where the Owner or Owners of the Animals complained against as having been trespassing or Damage feasant shall neglect or refuse to appoint or concur in the Appointment of Arbitrators pursuant to the Provisions of the said recited Act, for the Space of Twenty-four Hours after Complaint made, then and in any or either of such Cases it shall and may be lawful for the Person or Persons making such Complaint as aforesaid to call upon any Person, who shall have been appointed under the Authority of this Act to be an Appraiser and Arbitrator in or for the Barony, Parish, or Place within which such Trespass or Damage shall be alleged to have been committed; and such Appraiser and Arbitrator shall proceed without Delay to view the Place, and to enquire into the Matter, and to estimate the Amount of a fair and reasonable Compensation to be paid for such Damage, and to view the State of the Fences between the Parties, and to ascertain and determine by whose Neglect or Refusal such Trespass and the Damage arising therefrom shall have been committed and caused; and such Appraiser and Arbitrator shall give a Certificate in Writing, signed with his Hand, of the Amount of Damage incurred, and specifying by whose Act or Neglect such Damage was caused, and also his Opinion of the State of the Fences, and by whom the same ought to be repaired.

Magistrates at Petty Sessions may levy Damages by Distress of

IV. And be it further enacted, That in case the Amount of such Damage so certified shall not be paid by the Person stated in such Certificate to be liable to pay the same, it shall and may be lawful for the Person aggrieved to apply to the Magistrates assembled at the Petty Sessions, or reputed Petty Sessions, not less than Two

of such Magistrates being present, and such Magistrates shall summon the Parties to appear before them, and shall examine into and determine the Matter of such Complaint; and if they shall be of Opinion that the Award and Certificate of such Appraiser and Arbitrator is just and equitable, such Magistrates shall issue their Warrant to cause the Amount of Damage so specified in such Certificate, together with reasonable Costs for Loss of Time, to be levied by Distress and Sale of the Goods of the Offender, and to be paid to the Party aggrieved, rendering the Overplus, if any, to such Offender.

Manner of Proceeding where Damage occurs from bad Fences.

V. And be it further enacted, That whenever it shall appear that the Trespassing or Damage feasant of Animals of any Description, or any Injury relating thereto, shall be occasioned to or suffered by any Person or Persons in consequence of the bad or imperfect State or Destruction of any Fences, and the Person aggrieved thereby shall, pursuant to the Provisions of the said recited Act or this Act, have laid his Complaint before a Magistrate, and Arbitrators shall have been thereupon appointed under the said recited Act, or called upon to act under this Act, and shall have estimated the Sum necessary for the Repair of such Fences, and the Proportion of Money to be paid, and also the Proportion of Fences to be kept in repair by each or any of the Parties, and shall have certified the same to the Magistrates, then and in every such Case it shall be lawful for such Magistrate, and he is hereby authorized and required to call upon such Arbitrators to add to their Certificate a Specification of the Time within which every such Party shall execute such Repairs, and such Arbitrators shall specify such Time accordingly; and such Magistrate, if he shall think fit, shall thereupon issue an Order under his Hand, requiring every such Party to make or repair the Fences, or Proportion of Fences, within such Time so specified and fixed; and if either Party shall neglect or refuse to make or repair such Fences in manner and within the Time so specified and required, it shall be lawful for such Magistrate to order and authorize the other Party forthwith to make or repair the Whole of such Fences so estimated; and the Person who shall so repair the Whole of such Fences accordingly, shall and may apply to the Magistrates assembled at any Petty Sessions, or reputed Petty Sessions, to recover the Proportion of the Expence incurred by him in respect of the Party who shall have so made Default; and the Magistrates at such Petty Sessions, or reputed Petty Sessions shall, in all Cases where the Sum awarded by them shall not exceed Five Pounds, issue their Warrant to cause the same to be levied by Distress and Sale of the Goods of the Offender, and to be paid to the Person aggrieved; and in all Cases where the Sum shall exceed Five Pounds, it shall and may be lawful for the said Magistrates, and they are hereby required, to examine into the Matter as in all other Cases, and to give a Certificate signed by them to either Party, stating their Opinion and Decision on the Case; and such Certificate shall be admitted as Evidence in the Trial of any Action which may be instituted in any Court to recover such larger Amount.

VI. And

VI. And be it further enacted, That whenever any Person shall complain of Damage sustained from Animals trespassing or Damage feasant, or by reason of the Want or Insufficiency of Fences, and it shall appear that such Person so complaining shall have been offered a fair and reasonable Compensation for such Trespass, and shall have refused the same, and shall have refused or neglected to appoint or to concur in appointing Arbitrators, and shall nevertheless persist in impounding such Animals, it shall and may be lawful for the Magistrates, before whom such Complaint shall be made, to hear and determine such Complaint, and to allow and order any reasonable Costs to be levied and paid to the Party aggrieved by such Refusal or Neglect of the Party complaining; and in case of Neglect or Refusal to pay such Costs, to issue their Warrant, and to cause the same to be levied by Distress, to be paid to the Party aggrieved accordingly.

Where Persons impounding refuse to receive Compensation, or to appoint Arbitrators, Magistrate may hear Complaint, and give Costs to the Defendant.

VII. And be it further enacted, That in all Cases of Dispute relating to Trespass or Damage feasant, in which any Magistrate or Magistrates shall have made any Order for the Payment of any Sums of Money pursuant to the Provisions of the said herein-before recited Act or this Act, if any Person against whom such Order shall have been made shall neglect or refuse to pay the Amount required by such Order for the Space of Twenty-four Hours next after such Order made, or within such further Time as such Magistrates shall fix or appoint, it shall be lawful for the Magistrates so making such Order to issue his or their Warrant to cause the Amount to be levied by Distress and Sale of the Goods of the Offender, together with such reasonable Costs as to such Magistrates shall seem meet, to be paid to the Person or Persons in whose Favour such Order shall have been made.

Where Party against whom any Order is made neglects to pay within 24 Hours, Distress shall issue.

VIII. And be it further enacted, That it shall and may be lawful for any Magistrate or Magistrates in the Execution of this Act, to order the Rate of Payment which shall be fixed by the Magistrates at the several Quarter Sessions for the Remuneration of the Appraisers and Arbitrators appointed under this Act for the Execution of their Duty, to be paid either by the Plaintiffs or Defendants, as such Magistrates shall think fit, in the several Matters of Dispute, and to issue their Warrant to compel Payment accordingly.

Magistrates may order Payment of Arbitrators, either by Plaintiff or Defendant.

IX. Provided always, and be it further enacted, That it shall and may be lawful for any Person who shall think himself aggrieved by any Order or Decision of such Magistrates, to appeal against their Decision to the next Quarter Sessions of the County, and such Appeal shall be tried and finally determined at such Quarter Sessions accordingly; and the Justices of Peace at such Sessions may affirm or reverse any such Order or Decision of such Magistrates, with such Costs as they shall think proper: Provided always, that Notice in Writing of such Appeal shall be given to the Magistrates before whom such Conviction or Decision shall be had, at the Time of their Decision upon the particular Case; and that sufficient Security,

Appeal to Quarter Sessions.

conditioned for duly prosecuting such Appeal, shall be given and entered into before such Magistrates at the Time of the making such Appeal; and whenever such Appeal shall be made, and such Security given as aforesaid, it shall not be lawful for such Magistrates to issue their Warrant for levying of any Penalty or Sum of Money in such particular Case.

LONDON: Printed by GEORGE EYRE and ANDREW STRAHAN, Printers to the King's most Excellent Majesty. 1826.