

Laws of Her Majesty's Province of Upper Canada, passed in the year 1839. Toronto: Robert Stanton, 1839.

2 Victoria – Chapter 12

An Act to amend an Act passed in the fourth year of the reign of His late Majesty King George the Fourth, entitled, “*An Act for the preservation of Deer within this Province,*” and to extend the preservation of the same; and to prohibit Hunting and Shooting on the Lord’s Day. Passed 11th May, 1839.

Whereas it is expedient to amend and extend the provisions of an Act passed in the second year of the reign of His late Majesty King George the Third, entitled, “*An Act for the preservation of Deer within this Province,*” and to prevent the practice of Hunting and Shooting on the Sabbath: Be it therefore enacted by the Queen’s most Excellent Majesty, by and with the advice and consent of the Legislative Council and Assembly of the Province of Upper Canada, constituted and assembled by virtue of and under the authority of an Act passed in the Parliament of Great Britain, entitled “*An Act to repeal certain parts of an Act passed in the fourteenth year of His Majesty’s reign, entitled ‘An Act for making more effectual provision for the Government of the Province of Quebec, in North America, and to make further provision for the, Government of the said Province,*” and by the authority of the same, That no person or persons shall, within this Province, after the first day of February in every year, hereafter kill in any manner whatever, any Deer *ferae naturae*, until the first day of August.

II. And be it further enacted by the authority aforesaid, That if any person shall hunt, shoot, kill or destroy, any Deer or Fawn, between the first day of February and the first day of August; or any Wild Turkey, Prairie-Hen or Grouse; or any Grouse, commonly called Pheasant or Partridge; or any Quail or Wood-Cock, between the first day of March and the first day of September in every year; or shall hunt or shoot, or go out with a gun in quest or pursuit of any Deer, or other Wild Animal or Wild Fowl on the Lord’s Day, (commonly called Sunday) within this Province, any such person being convicted thereof before a Justice of the Peace, upon the oath or affirmation of one or more credible witness or witnesses, (which oath or affirmation the Justice is hereby authorized, to administer) or upon view had of the offence by the said Justice himself, shall pay a fine or penalty not exceeding Five Pounds, nor less than One Pound current money of this Province, together with the costs and charges attending the conviction.

III. And be it further enacted by the authority aforesaid, That when any person shall be charged, in writing, before any Justice of the Peace with any offence against this Act, the said Justice shall summon the person so charged to appear before him, at a time and place to be named in such summons, and if such person shall fail or neglect to appear accordingly, then (upon proof of due service of the summons upon such person, by delivering or leaving a copy thereof at his house or usual place of abode, or by reading the same over to him personally,) the said Justice may either proceed to hear and determine the case *exparte*, or

issue his warrant for apprehending such person and bringing him before himself or some other Justice of the Peace within the same District, and the Justice before whom the person charged shall appear, or be brought, shall proceed to hear and determine the case.

IV. And be it further enacted by the authority aforesaid, That the Justice before whom any person shall be convicted of any offence against this Act, may cause the conviction to be drawn up in the following form, or in any other form of words to the same effect as the case shall require, that is to say:— “Be it rembered, that on the _____ day of _____, in the year of our Lord _____, at _____, in the County of _____, (or District, Riding or Division, as the case may be,) A. B. of _____, is convicted before me C. D. one of Her Majesty’s Justices of the Peace for the said County, (or District, or Riding, or Division, as the case may be,) for that be the said A. B. did (specify the offence, and the time and place when and where the same was committed as the case maybe); and I, the said C. D. adjudged the said A. B. for his offence to pay immediately, or on or before the _____ day of _____, the sum of _____, and also the sum of _____ for costs; and in default of payment of the said sums respectively, to be imprisoned in the County Gaol of the said County, (or District, or Riding, or Division, as the case may be,) for the space of _____, unless the said sums shall be sooner paid: and I direct that the said sum of _____ pounds (the penalty) shall be paid to the Township Clerk of the Township wherein the fine may be imposed, to be by him applied according to the provisions of this Act. Given under my hand and seal, the day and year first abovementioned. C. D.”

[L.S.]

V. And be it further enacted by the authority aforesaid, That a conviction under this Act shall not be quashed for want of form; nor shall any warrant of commitment be held void by reason of any defect therein, provided it be alleged that the party has been convicted, and there be a good and valid conviction to sustain the same.

VI. And be it further enacted by the authority aforesaid, That in default of payment of any fine imposed under the authority of this Act, together with the costs attending the same, within the period specified for the payment thereof at the time of conviction by the Justice of the Peace before whom such conviction may have taken place, it shall and may be lawful for such Justice of the Peace (if he deems it expedient to do so) to issue his warrant, directed to any Constable, to levy the amount of such fine and costs within a certain time, to be in the said warrant expressed, and in case no distress sufficient to satisfy the amount shall be found, it shall and may be lawful for him to commit the offender to the common Gaol of the District wherein the offence was committed, for any term not exceeding one calendar month, unless the fine and costs shall be sooner paid.

VII. And be it further enacted by the authority aforesaid, That the prosecution for every offence punishable under this Act, shall be commenced within one calendar month after the commission of the offence, and not otherwise; and the evidence of any Inhabitant of the County, District, Riding or Division, in which the offence shall have been committed, shall be

admitted and receivable, notwithstanding the penalty incurred by the offence may be payable for the benefit of the Township or Division where the offence shall have been committed.

VIII. And be it further enacted by the authority aforesaid, That any person who shall think himself aggrieved by any conviction or decision under this Act, may appeal to the next Court of General Quarter Sessions which shall be holden not less than twelve days after the day of such conviction or decision, and if holden in less than twelve days, then to the next ensuing Court of General Quarter Sessions for the District wherein the cause of complaint shall have arisen: Provided that such person shall give to the other party a notice in writing of such appeal, and of the cause and matter thereof within three days after such conviction or decision, and seven days at least before the Sessions, and shall also either remain in custody until the Sessions, or enter into recognizance with two sufficient sureties before a Justice of the Peace, conditioned, personally to appear at the 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 recognizance entered into, 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 punished according to the conviction, and to pay such costs as shall be awarded, and shall if necessary issue process for enforcing such judgment.

IX. And be it further enacted by the authority aforesaid, That every Justice of the Peace before whom any person shall be convicted of any offence against this Act, shall transmit the conviction to the next Court of General Quarter Sessions which shall be holden for the District wherein the offence shall have been committed, there to be kept by the proper Officer among the records of the Court.

X. And for the protection of persons acting in the execution of this Act, Be it further enacted by the authority aforesaid, That all actions and prosecutions to be commenced against any person for any thing done in pursuance of this Act, shall be laid and tried in the District where the fact was committed, and shall be commenced within six calendar months after the fact committed and not otherwise; and notice in writing of such action, and of the cause thereof, shall be given to the Defendant one calendar month at least before the action; and in any such action the Defendant may plead the general issue, and give this Act and the special matter in evidence at any trial to be had thereupon; and no Plaintiff shall recover in 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 Defendant; and if a verdict shall pass for the Defendant, or the Plaintiff shall become nonsuit, or discontinue any such action after issue joined, or if upon demurrer or otherwise judgment shall be given against the Plaintiff, the Defendant shall recover his full costs as between Attorney and Client, and have the like remedy for the same as any Defendant hath by Law in other cases; and though a verdict

shall be given for the Plaintiff in any such action, such Plaintiff shall not have costs against the Defendant, unless the Judge before whom the trial shall be had shall certify his approbation of the action, and of the verdict obtained thereupon.

XI. And be it further enacted by the authority aforesaid, That all sums of money and penalties to be awarded and imposed by virtue of this Act, shall be paid to the Township Clerk of the Township or place wherein the offence was committed, and shall be by such Township Clerk paid over to the Path Master or Street Surveyor of the Division in which the offence shall have been committed or the fine levied, in aid of any commutation money to be expended for roads, or in aid of any Statute labour to be performed within such Division.

XII. Provided always, and be it further enacted by the authority aforesaid, That nothing in this Act contained shall extend, or be construed to extend, to any Indians now or hereafter to be resident within the limits of this Province.

XIII. And be it further enacted by the authority aforesaid, That this Act shall be and continue in force for and during the term of four years, and from thence to the end of the then next ensuing Session of Parliament, and no longer.