

ACT OF PROSCRIPTION 1747

19 GEO. II. c. 39.

An act for the more effectual disarming the highlands in Scotland; and for the more effectual securing the peace of the said highlands; and for restraining the use of the highland dress; and for further indemnifying such persons as have acted in the defence of His Majesty's person and government, during the unnatural rebellion; and for indemnifying the judges and other officers of the court of judiciary in Scotland, for not performing the northern circuit in May, one thousand seven hundred and forty six; and for obliging the masters and teachers of private schools in Scotland, and chaplains, tutors and governors of children or youth, to take the oaths to his Majesty, his heirs and successors, and to register the same.

WHEREAS by an act made in the first year of the reign of his late majesty King George the First, of glorious memory, intituled, An act for the more effectual securing the peace of the highlands in Scotland, it was enacted, That from and after the first day of November, which was in the year of our Lord one thousand seven hundred and sixteen, it should not be lawful for any person or persons (except such persons as are therein mentioned and described) within the shire of Dunbartain, on the north side of the water of Leven, Stirling on the north side of the river of Forth, Perth, Kincardin, Aberdeen, Inverness, Nairn, Cromarty, Argyle, Forfar, Bamff, Sutherland, Caithness, Elgine and Ross, to have in his or their custody, use, or bear, broad sword or target, poignard, whinger, or durk, side pistol, gun, or other warlike weapon, otherwise than in the said act was directed, under certain penalties appointed by the said act; which act having by experience been found not sufficient to attain the ends therein proposed, was further enforced by an act made in the eleventh year of the reign of his late Majesty, intituled, An act for the more effectual disarming the highlands in that part of Great Britain called Scotland; and for the better securing the peace and quiet of that part of the kingdom; and whereas the said act of the eleventh year of his late Majesty being, so far as it related to the disarming of the highlands, to continue in force only during the term of seven years, and from thence to the end of the next session of parliament, is now expired; and whereas many persons within the said bounds and shires still continue possessed of great quantities of arms, and there, with a great number of such persons, have lately raised and carried on a most audacious and wicked rebellion against his Majesty, in favour of a popish pretender, and in prosecution thereof did, in a traiterous and hostile manner, march into the southern parts of this kingdom, took possession of several towns, raised contributions upon the country, and committed many other disorders, to the terror and great loss of his Majesty's faithful subjects, until, by the blessing of God on his Majesty's arms, they were subdued: now, for preventing rebellion, and traiterous attempts in time to come, and the other

mischiefs arising from the possession or use of arms, by lawless, wicked, and disaffected persons inhabiting within the said several shires and bounds; be it 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 from and after the first day of August, one thousand seven hundred and forty six, it shall be lawful for the respective lords lieutenants of the several shires above recited, and for such other persons as his majesty, his heirs or successors shall, by his or their sign manual, from time to time, think fit to authorize and appoint in that behalf, to issue, or cause to be issued out, letters of summons in his Majesty's name, and under his or their respective hands and seals, directed to such persons within the said several shires and bounds, as he or they, from time to time, shall think fit, thereby commanding and requiring all and every person and persons therein named, or inhabiting within the particular limits therein described, to bring in and deliver up, at a certain day, in such summons to be prefixed, and at a certain place therein to be mentioned, all and singular his and their arms and warlike weapons, unto such lord lieutenant, or other person or persons appointed by his Majesty, his heirs, of successors, in that behalf, as aforesaid, for the use of his Majesty, his heirs or successors, and to be disposed of in such manner as his Majesty, his heirs or successors shall appoint; and if any person or persons in such summons mentioned by name, or inhabiting within the limits therein described, shall, by the oaths of one or more credible witness or witnesses, be convicted of having or bearing any arms, or warlike weapons, after the day prefixed in such summons, before any one or more of his Majesty's justices of the peace for the shire or stewardry where such offender or offenders shall reside, or be apprehended, or before the judge ordinary, or such other person or persons as his Majesty, his heirs or successors shall appoint, in manner herein after directed, every such person or persons so convicted shall forfeit the sum of fifteen pounds sterling, and shall be committed to prison until payment of the said sum; and if any person or persons, convicted as aforesaid, shall refuse or neglect to make payment of the aforesaid sum of fifteen pounds sterling, within the space of one calendar month from the date of such conviction, it shall and may be lawful to any one or more of his Majesty's justices of the peace, or to the judge ordinary of the place where such offender or offenders is or are imprisoned, in case he or they shall judge such offender or offenders fit to serve his majesty as a soldier or soldiers, to cause him or them to be delivered over (as they are hereby empowered and required to do) to such officer or officers belonging to the forces of his Majesty, his heirs or successors, who shall be appointed from time to time to receive such men, to serve as soldiers in any of his majesty's forces in America; for which purpose the respective officers who shall receive such men, shall, then cause the articles of war against mutiny and desertion to be read to him or them in the presence of such justices of the peace, or judge ordinary, who shall so deliver over such men, who shall cause an entry or memorial thereof to be made, together with the names of the persons so delivered over, with a certificate thereof in writing, under his or their hands, to be delivered to the officers appointed to receive such men; and from and after reading of the said articles of war,

every person so delivered over to such officer, to serve as a soldier as aforesaid, shall be deemed a listed soldier to all intents and purposes, and shall be subject to the discipline of war; and in case of desertion, shall be punished as a deserter; and in the case such offender or offenders shall not be judged fit to serve his majesty as aforesaid, then he or they shall be imprisoned for the space of six calendar months, and also until he or they shall give sufficient security for his or their good behaviour for the space of two years from the giving thereof.

And be it further enacted by the authority aforesaid, That if, after the day appointed by any summons for the delivery up of arms in pursuance of this act, any arms, or warlike weapons, shall be found hidden or concealed in any dwelling house, barn, out-house, office, or any other house whatsoever, being the residence or habitation of or belonging to any of the persons summoned to deliver the up arms as aforesaid, the tenant or possessor of such dwelling-house, or of the dwelling-house to which such barn, office, or out-house belongs, being thereof convicted in manner above-mentioned, shall be deemed and taken to be the haver and concealer of such arms, and being thereof convicted in manner above-mentioned, shall suffer the penalties hereby above enacted against concealers of arms, unless such tenant or possessor, in whose house, barn, out-house, office, or other house by them possessed, such arms shall be found concealed, do give evidence, by his or her making oath, or otherwise to the satisfaction of the said justices of the peace, judge ordinary, or other person authorized by his Majesty, before whom he or she shall be tried, that such arms were so concealed and hid without his or her knowledge, privity, or connivance.

And be it further enacted by the authority aforesaid, That if any person who shall have been convicted of any of the above offences of bearing, hiding, or concealing arms, contrary to the provisions in this act, shall thereafter presume to commit the like offence a second time, that he or she being thereof convicted before any court of judicary or at the circuit courts, shall be liable to be transported to any of his Majesty's plantations beyond the seas, there to remain for the space of seven years.

And for the more effectual execution of this present act, be it further enacted by the authority aforesaid, That it shall be lawful to his Majesty, his heirs or successors, by his or their sign manual, from time to time, to authorize and appoint such persons as he or they shall think proper, to execute all the powers and authorities by this act given to one or more justice or justices of the peace, or to the judge ordinary, within their respective jurisdictions, as to the apprehending, trying, and convicting such person or persons who shall be summoned to deliver up their arms, in pursuance of this act.

And to the end that ever person or persons, named or concerned in such summons, may have due notice thereof, and to prevent all questions concerning the legality of such notice, it is hereby further enacted by the authority aforesaid, That such summons notwithstanding the generality thereof, be deemed sufficient, if it express the person or persons that are commanded to deliver up their weapons, or the parishes, or the lands. limits, and bounding of the respective territories and places,

whereof the inhabitants are to be disarmed as aforesaid; and that it shall be a sufficient and legal execution or notice of the said summons, if it is affixed on the door of the parish church or parish churches of the several parishes within which the lands (the inhabitants whereof are to be disarmed) do lie, on any Sunday, between the hours of ten in the forenoon, and two in the afternoon, four days at least before the day prefixed for the delivering up of the arms, and on the market cross of the head burgh of the shire or stewartry, within which the said lands lie, eight days before the day appointed for the said delivery of arms; and in case the person or persons employed to affix the said summons on the doors of the several parish churches, or any of them, shall be interrupted, prevented, or forcibly hindered from affixing the said summons on the doors of the said churches, or any of them, upon oath thereof made before any of his Majesty's justices of the peace, the summons affixed on the market cross of the said head burgh of the shire or stewartry as aforesaid, shall be deemed and taken to be a sufficient notice to all the persons commanded thereby to deliver up heir arms, within the true intent and meaning, and for the purposes of this act.

And to the end that there may be sufficient evidence of the execution, or notice given of the summons for disarming the several persons and districts, as aforesaid, be it further enacted by the authority aforesaid, That upon the elapsing of the said several days to be prefixed for the delivering up arms, the person or persons employed to fix the summons, as above mentioned, on the market cross of the head burghs of any shire or stewartry, shall, before any one of his Majesty's justices of the peace for the said shire or stewartry, make oath, that he or they did truly execute and give notice of the same, by affixing it as aforesaid; and the person or persons employed to affix the said summons on the doors of the parish church or parish churches, shall make oath in the same manner, and to the same effect, or otherwise shall swear that he or they were interrupted, prevented, or forcibly hindered from affixing the said summons as aforesaid; which oaths, together with copies or duplicates of the summons, to which they severally relate, shall be delivered to the sheriff or steward clerk of the several shires or stewartries within which the persons intended to be disarmed do live and reside, who shall enter the same in books, which he and they is and are hereby required to keep for that purpose; and the said books in which the entries are so made, or extracts out of the same, under the hand of the sheriff or steward clerk, shall be deemed and taken to be full and complete evidence of the execution of the summons, in order to the convictions of the persons who shall neglect and refuse to comply with the same.

And be it further enacted by the authority aforesaid, That if any such sheriff or steward clerk neglect or refuse to make such entry as is above mentioned, or shall refuse to exhibit the books containing such entries, or to give extracts of the same, being thereto required by any person or persons who shall carry on any prosecutions in pursuance of this act, the clerk so neglecting or refusing shall forfeit his office, and shall likewise be fined in the sum of fifty pounds sterling; to be recovered upon a

summary complaint before the court of session, for the use of his Majesty, his heirs or successors.

And be it further enacted by the authority aforesaid, That it shall and may be lawful to and for the lord of any of the shires aforesaid, or the person or persons authorised by his Majesty, his heirs or successors, as aforesaid, to summon the person or persons aforesaid to deliver up his or their arms, in manner above mentioned, or to and for any justice of the peace of the respective shires above mentioned, or to such person or persons as shall be authorised by his Majesty, his heirs or successors, for trying offences against this act, to authorise and appoint such person or persons as they think fit to apprehend all such person or persons as may be found within the limits aforesaid, having or wearing any arms, or warlike weapons, contrary to law, and forthwith to carry him or them to some sure prison, in order to their being proceeded against according to law.

And be it further enacted by the authority aforesaid, That it shall and may be lawful to and for his Majesty, his heirs and successors, by warrant under his or their royal sign manual, and also to and for the lord lieutenant of any of the shires aforesaid, or the person or persons authorized by his majesty to summon the person or persons aforesaid to deliver up their arms, or any one or more justices of the peace, by warrant under his or their hands, to authorize and appoint any person or persons to enter into any houses, within the limits aforesaid, either by day or by night, and there to search for, and to seize all such arms as shall be found contrary to the direction of this act.

Provided, That if the above-mentioned search shall be made in the night-time, that is to say, between sun setting and sun rising, it shall be made in the presence of a constable, or of some person particularly to be named for that purpose in the warrant for such search, and if any persons, to the number of five or more, shall at any time assemble together to obstruct the execution of any part of this act, it shall and may be lawful to and for every lord lieutenant, deputy lieutenant, or justice of the peace where such assembly shall be, and also to and for every peace office within any such shire, stewartry, city, burgh, or place where such assembly shall be, and likewise to and for all and every such other person or persons, as by his Majesty, his heirs or successors, shall be authorized and appointed in that behalf as aforesaid, to require the aid and assistance of the forces of his Majesty, his heirs or successors, by applying to the officer commanding the said forces (who is hereby authorized, empowered, and commanded to give such aid and assistance accordingly) to suppress such unlawful assembly, in order to the putting this act in due execution; and also to seize, apprehend, and disarm, and they are hereby required to seize, apprehend, and disarm such persons so assembled together, and forthwith to carry the persons so apprehended before one or more of his Majesty's justices of the peace of the shire or place where such persons shall be so apprehended, in order to their being proceeded against, for such their offences, according to law; and if the persons so unlawfully assembled, or any of them, or any other person or persons summoned to deliver up

his or their arms in pursuance of this act, shall happen to be killed, maimed, or wounded in the dispersing, seizing, or apprehending, or in the endeavouring to disperse, seize, or apprehend, by reason of their resisting the persons endeavouring to disperse, seize, and apprehend them; then all and every such lord lieutenant, justice or justices of the peace, or any peace officer or officers, and all and every person or persons, authorized and appointed by his Majesty, his heirs or successors, in that behalf, as aforesaid, and all persons aiding and assisting him, them, or any of them, shall be freed, discharged, and idemnified, as well against the King's majesty, his heirs and successors, as against all and every other person and persons. of, for, or concerning the killing, maiming, or wounding any such person or persons so unlawfully assembled, that shall be killed, maimed, or wounded as aforesaid.

And be it enacted by the authority aforesaid, That if any action civil or criminal, shall be brought before any court whatsoever, against any person or persons for what he or they shall lawfully do in pursuance or execution of this act, such court shall allow the defendant the benefit of discharge and idemnity above provided, and shall further discern the pursuer to pay to the defender the full and real expences that he shall be put to by such action or prosecution.

Provided nevertheless, and be it enacted by the authority aforesaid, That no peers of this realm, nor their sons, nor any members of parliament, nor any persons or persons, who, by the act above recited of the first year of his late Majesty, were allowed to have or carry arms, shall by virtue of this act be liable to be summoned to deliver up their arms, or warlike weapons; nor shall this act, or the above creited act, be construed to extend to include or hinder any person, whom his Majesty, his heirs or successors, by licence under his or their sign manual, shall permit to wear arms, or who shall be licenced to wear arms by any writing or writings under the hand and seal, or hands and seals of any person or persons authorized by his Majesty, his heirs or successors, to give such licence, from keeping, bearing, or wearing such arms, and warlike weapons as in such licence or licences shall for that purpose be particularly specified.

And to the end that no persons may be discouraged from delivering up their arms, from the apprehension of the penalties and forfeitures which they may have incurred, through their neglecting to comply with the directions of the said act of the first year of his late Majesty's reign, be it further enacted by the authority aforesaid, that from and after the time of affixing any such summons as aforesaid, no person or persons residing within the bounds therein mentioned, shall be sued or prosecuted fir his or their having, or having had, bearing, or having borne arms at any time before the several days to be prefixed or limited by summons as aforesaid, for the respective persons and districts to deliver up their arms; but if any person or persons shall refuse or neglect to deliver up their arms in obedience to such summons as aforesaid, or shall afterwards be found in arms, he and they shall be liable to the penalties and forfeitures of the statute above recited, as well as to the penalties of this

present act.

And be it further enacted by the authority aforesaid, That one moiety of the penalties imposed by this act, with respect to which no other provision is made, shall be to the disposal of the justices of the peace, judge ordinary, or other person authorized by his Majesty as aforesaid, before whom such convictions shall happen, provided the same be applied towards the expence incurred in the execution of this act.

And be it further enacted by the authority aforesaid, That the above provisions in this act shall continue in force for seven years, and from thence to the end of the next session of parliament, and no longer.

And be it further enacted by the authority aforesaid, That from and after the first day of August, one thousand seven hundred and forty seven, no man or boy, within that part of Great Briton called Scotland, other than shall be employed as officers and soldiers in his Majesty's forces, shall on any pretence whatsoever, wear or put on the clothes commonly called Highland Clothes (that is to say) the plaid, philibeg, or little kilt, trowse, shoulder belts, or any part whatsoever of what peculiarly belongs to the highland garb; and that no tartan, or partly-coloured plaid or stuff shall be used for great coats, or for upper coats; and if any such person shall presume, after the said first day of August, to wear or put on the aforesaid garments or any part of them, every such person so offending, being convicted thereof by the oath of one or more credible witness or witnesses before any court of justiciary, or any one or more justices of the peace for the shire or stewartry, or judge ordinary of the place where such offence shall be committed, shall suffer imprisonment, without bail, during the space of six months, and no longer; and being convicted for a second offence before a court of justiciary or at the circuits, shall be liable to be transported to any of his Majesty's plantations beyond the seas, there to remain for a space of seven years.

And whereas by an act made in this session of parliament, intituled, An act to indemnify such persons as have acted in defence of his Majesty's person and government, and for the preservation of the publick peace of his kingdom, during the time of the present unnatural rebellion, and sheriffs and others who have suffered escapes, occasioned thereby, from vexatious suits and prosecutions, it is enacted, That all personal actions and suits, indictments, informations, and all molestations, prosecutions, and proceedings whatsoever, and judgements thereupon, if any be, for or by reason of any matter or thing advised, commanded, appointed, or done during the rebellion, until the thirtieth day of April, in the year of our lord one thousand seven hundred and forty six, in order to suppress the said unnatural rebellion, or for the preservation of the publick peace, or for the service or safety of the government, shall be discharged and made void; and whereas it is also reasonable, that acts, done for the publick service, since the said thirtieth day of April, though not justifiable by the strict forms of law, should be justified by act of parliament; be it enacted by the authority aforesaid, That all personal action and suits, indictments and informations, which have been or shall be commenced or prosecuted, and all molestations,

prosecutions, and proceedings whatsoever, and judgements thereupon, if any be, for or by reason of any act, matter, or thing advised, commanded appointed, or done before the twenty fifth day of July in the year of our Lord one thousand seven hundred and forty six, in order to suppress the said unnatural rebellion, or for the preservation of the publick peace, or for the safety or service of the government, shall be discharged and made void; and that every person, by whom any such act, matter, or thing shall have been so advised, commanded, appointed, or done for the purposed aforesaid, or any of them, before the said five and twentieth day of July, shall be freed, acquitted, and indemnified, as well against the King's majesty, his heirs and successors, as against all and every other person and persons; and that if any action or suit hath been or shall be commenced or prosecuted, within that part of Great Briton; called England, against any person for any such act, matter, or thing so advised, commanded, appointed, or done for the purposes aforesaid, or any of them, before the said twenty fifth day of July, he or she may plead the general use, and give this act and the special matter in evidence; and if the plaintiff or plaintiffs shall become nonsuit, or forbear further prosecution, or suffer discontinuance; or if a verdict pass against such plaintiff or plaintiffs, the defendant or defendants shall recover his, her or their double costs, for which, he she or they shall have the like remedy, as in cases where costs by law are given to defendants; and if such action or suit hath been or shall be commenced or prosecuted in that part of Great Briton, called Scotland, the court, before whom such action or suit hath been or shall be commenced or prosecuted, shall follow to the defender the benefit of the discharge and indemnity above provided, and shall further discern the pursuer to pay the defender the full and real expences that he of she shall be put to by such action or suit.

And whereas by an act passed in the sixth year of her late Majesty Queen Anne, intituled, An act for rendering the union of the two kingdoms more entire and complete; it is, amongst other things, enacted, That circuit courts shall be holden in that part of the united kingdom called Scotland; in a manner, and at the places mentioned in the said act; and where by the late unnatural rebellion, the course of justice in Scotland has been so interrupted, as rendered it impracticable to give up and transmit presentments, in such due time as prosecutions might thereupon commence, before the northern circuit, to be holden in May this present year, whereby there appeared a necessity of superseding the said circuit; be it therefore enacted by the authority aforesaid, That the judges of the court of justiciary, and all and every other person and persons therein concerned, are hereby indemnified for their not performing the said circuit, as by the forecited act they were obliged to do; any thing in the same act, or in any other law or statute to the contrary notwithstanding.

And whereas a doubt hath arisen with respect to the shire of Dunbartain, what proof thereof was intended to be disarmed by the first recited act made in the first year of his late Majesty King George, and intended to be carried into further execution by the present act; be it enacted by the authority aforesaid, That such parts of the said shire

of Dunbartain, as lie upon the east, west and north sides of Lochlomond, to the northward of that point where the water of Leven runs from Lochlomond, are and were intended to be disarmed by the aforesaid act, and a comprehended and subject to the directions of this act.

And whereas it is of great importance to prevent the rising generation being educated in disaffected or rebellious principles, and although sufficient provision is already made by law for the due regulation of the teachers in four universities, and in the publick schools authorized by law in the royal burghs and country parishes in Scotland, it is further necessary, that all persons who take upon them to officiate as masters or teachers in private schools, in that part of Great Briton called Scotland, should give evidence of their good affection to his Majesty's person and government; be it therefore enacted by the authority aforesaid, That from and after the first day of November, in the year of our Lord one thousand seven hundred and forth six, it shall not be lawful for any person in Scotland to keep a private school for teaching English, Latin, Greek, or any part of literature, or to officiate as a master or teacher in such school; or any school for literature, other than those in universities, or established in the respectively royal burghs, by publick authority, or the parochial schools settled according to law, or the schools maintained by the society in Scotland for propogating christian knowledge, or by the general assemblies of the church of Scotland, or committees thereof, upon the bounty granted by his Majesty, until the situation and description of such private school be first entered and registered in a book, which shall be provided and kept for that purpose by the clerks of the several shires, stewartries, and burghs in Scotland, together with a certificate from the proper officer, of every such master and teacher having qualified himself, by taking the oaths appointed by law to be taken by persons in offices of publick trust in Scotland; and every such master and teacher of a private school shall be obliged, and is hereby required, as often as prayers shall be said in such school, to pray, or cause to be prayed for, in express words his Majesty, his heirs and successors, by name, and for all the royal family; and if any person shall, from and after the said first day of November, presume to enter upon, or exercise the function or office of a master or teacher of any such private school as shall not have been registered in manner herein directed, or without having first qualified himself, and caused the certificate to be registered as above mentioned; or in case he shall neglect to pray for his Majesty by name, an all the royal family, or to cause them to be prayed for as herein directed; or in case he shall resort to, of attend divine worship in any episcpal meeting-house not allowed by law; every person so offending in any of the premisses, being thereof lawfully convicted before any two or more justices of the peace, or before any other judge competent of the place summarily, shall for the first offence, suffer imprisonment for the space of six months; and for the second, or any subsequent offence, being thereof lawfully convicted before the court of justiciary, or in any of the circuit courts, shall be adjudged to be transported, and accordingly shall be transported to some of his Majesty's plantations in America for life; and in case any person adjudged to be so transported shall return into, or be found in Great Briton, then every such person shall suffer imprisonment for life.

And be it further enacted by the authority aforesaid, That if any parent or guardian shall put a child or children under his care to any private school that shall not be registered according to the directions of this act, or whereof the principal master or teacher shall not have registered the certificate of his having qualified himself as herein directed, every such parent or guardian so offending, and being thereof lawfully convicted before any two or more justices of the peace, or before any other judge competent of the place summarily, shall, for the space of three months.