



Malicious Damage Act 1861

1861 CHAPTER 97

Other Matters

56 Principals in the Second Degree and Accessories.

In the Case of every Felony punishable under this Act, every Principal in the Second Degree, and every Accessory before the Fact, shall be punishable in the same Manner as the Principal in the First Degree is by this Act punishable; and every Accessory after the Fact to any Felony punishable under this Act shall on Conviction be liable, at the Discretion of the Court, to be imprisonment for any Term not exceeding Two Years, with or without Hard Labour, and with or without Solitary Confinement; and every Person who shall aid, abet, counsel, or procure the Commission of any Misdemeanor punishable under this Act shall be liable to be proceeded against, indicted, and punished as a principal Offender.

57 A Person loitering at Night and suspected of any Felony against this Act may be apprehended.

Any Constable or Peace Officer may take into Custody, without Warrant, any Person whom he shall find lying or loitering in any Highway, Yard, or other Place during the Night, and whom he shall have good cause to suspect of having committed or being about to commit any Felony against this Act, and shall take such Person as soon as reasonably may be before a Justice of the Peace, to be dealt with according to Law.

58 Malice against Owner of Property unnecessary.

Every Punishment and Forfeiture by this Act imposed on any Person maliciously committing any Offence, whether the same be punishable upon Indictment or upon summary Conviction, shall equally apply and be enforced, whether the Offence shall be committed from Malice conceived against the Owner of the Property in respect of which it shall be committed or otherwise.

59 Provisions of this Act shall apply to Persons in possession of the Property injured.

Every Provision of this Act not herein-before so applied shall apply to every Person who, with Intent to injure or defraud any other Person, shall do any of the Acts herein-before made penal, although the Offender shall be in possession of the Property against or in respect of which such Act shall be done.

60 Intent to injure or defraud particular Persons need not be stated in any Indictment.

It shall be sufficient in any Indictment for any Offence against this Act, where it shall be necessary to allege an Intent to injure or defraud, to allege that the Party accused did the Act with Intent to injure or defraud (as the Case may be), without alleging an Intent to injure or defraud any particular Person; and on the Trial of any such Offence it shall not be necessary to prove an Intent to injure or defraud any particular Person, but it shall be sufficient to prove that the Party accused did the Act charged with an Intent to injure or defraud (as the Case may be).

61 Persons in the Act of committing any Offence may be apprehended without a Warrant.

Any Person found committing any Offence against this Act, whether the same be punishable upon Indictment or upon summary Conviction, may be immediately apprehended, without a Warrant, by any Peace Officer, or the Owner of the Property injured, or his Servant, or any Person authorized by him, and forthwith taken before some neighbouring Justice of the Peace, to be dealt with according to Law.

62 Mode of compelling the Appearance of Persons punishable on summary Conviction.

Where any Person shall be charged on the Oath of a credible Witness before any Justice of the Peace with any Offence punishable on summary Conviction under this Act, the Justice may summon the Person charged to appear at a Time and Place to be named in such Summons; and if he shall not appear accordingly, then (upon Proof of the due Service of the Summons upon such Person by delivering the same to him personally, or by leaving the same at his usual Place of Abode,) the Justice may either proceed to hear and determine the Case *ex parte*, or issue his Warrant for apprehending such Person and bringing him before himself or some other Justice of the Peace; or the Justice before whom the Charge shall be made may (if he shall so think fit), without any previous Summons (unless where otherwise specially directed), issue such Warrant; and the Justice before whom the Person charged shall appear or be brought shall proceed to hear and determine the Case.

63 Abettors in Offences punishable on summary Conviction.

Whosoever shall aid, abet, counsel, or procure the Commission of any Offence which is by this Act punishable on summary Conviction, either for every Time of its Commission or for the First and Second Time only, or for the First Time only, shall, on Conviction before a Justice of the Peace, be liable, for every First, Second, or subsequent Offence of aiding, abetting, counselling, or procuring, to the same

Forfeiture and Punishment to which a Person guilty of a First, Second, or subsequent Offence as a principal Offender is by this Act made liable.

64 Application of Forfeitures and Penalties upon summary Convictions. Proviso where several Persons join in Commission of same Offence.

Every Sum of Money which shall be forfeited for the Amount of any Injury done shall be assessed in each Case by the convicting Justice, and shall be paid to the Party aggrieved, except where he is unknown, and in that Case such Sum shall be applied in the same Manner as a Penalty; and every Sum which shall be imposed as a Penalty by any Justice of the Peace, whether in addition to such Amount, or otherwise, shall be paid and applied in the same Manner as other Penalties recoverable before Justices of the Peace are to be paid and applied in Cases where the Statute imposing the same contains no Directions for the Payment thereof to any Person : Provided that where several Persons shall join in the Commission of the same Offence, and shall, upon Conviction thereof, each be adjudged to forfeit a Sum equivalent to the Amount of the Injury done, in every such Case no further Sum shall be paid to the Party aggrieved than such Value or Amount; and the remaining Sum or Sums forfeited shall be applied in the same Manner as any Penalty imposed by a Justice of the Peace is herein before directed to be applied.

65 If a Person summarily convicted shall not pay, &c., the Justice may commit him.

In every Case of a summary Conviction under this Act, where the Sum which shall be forfeited for the Amount of the Injury done, or which shall be imposed as a Penalty by the Justice, shall not be paid, either immediately after the Conviction, or within such Period as the Justice shall, at the Time of the Conviction, appoint, the convicting Justice (unless where otherwise specially directed) may commit the Offender to the Common Gaol or House of Correction, there to be imprisoned only, or to be imprisoned and kept to Hard Labour, according to the Discretion of the Justice, for any Term not exceeding Two Months, where the Amount of the Sum forfeited, or of the Penalty imposed, or of both (as the Case may be), together with the Costs, shall not exceed Five Pounds; and for any Term not exceeding Four Months where the Amount, with Costs, shall not exceed Ten Pounds; and for any Term not exceeding Six Months in any other Case; the Commitment to be determinable in each of the Cases aforesaid upon Payment of the Amount and Costs.

66 The Justice may discharge the Offender in certain Cases.

Where any Person shall be summarily convicted before a Justice of the Peace of any Offence against this Act, and it shall be a First Conviction, the Justice may, if he shall so think fit, discharge the Offender from his Conviction upon his making such Satisfaction to the Party aggrieved for Damages and Costs, or either of them, as shall be ascertained by the Justice.

67 A summary Conviction shall be a Bar to any other Proceeding for the same Cause.

When any Person convicted of any Offence punishable upon summary Conviction by virtue of this Act shall have paid the Sum adjudged to be paid, together with Costs, under such Conviction, or shall have received a Remission thereof from the Crown, or the Lord Lieutenant or other Chief Governor of *Ireland*, or shall have suffered the

Imprisonment awarded for Nonpayment thereof, or the Imprisonment awarded in the first instance, or shall have been so discharged from his Conviction by any Justice as aforesaid, he shall be released from all further or other Proceedings for the same Cause.

68 Appeal.

In all Cases where the Sum adjudged to be paid on any summary Conviction shall exceed Five Pounds, or the Imprisonment adjudged shall exceed One Month, or the Conviction shall take place before One Justice only, any Person who shall think himself aggrieved by any such Conviction may appeal to the next Court of General or Quarter Sessions which shall be holden not less than Twelve Days after the Day of such Conviction for the County or Place wherein the Cause of Complaint shall have arisen; provided that such Person shall give to the Complainant a Notice in Writing of such Appeal, and of the Cause and Matter thereof, within Three Days after such Conviction, and Seven clear Days at the least before such Sessions, and shall also either remain in Custody until the Sessions, or shall enter into a Recognizance, with Two sufficient Sureties, before a Justice of the Peace, conditioned personally to appear at the said 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; or if such Appeal shall be against any Conviction whereby only a Penalty or Sum of Money shall be adjudged to be paid, shall deposit with the Clerk of the convicting Justice such a Sum of Money as such Justice shall deem to be sufficient to cover the Sum so adjudged to be paid, together with the Costs of the Conviction and the Costs of the Appeal; and upon such Notice being given, and such Recognizance being entered into, or such Deposit being made, the Justice before whom such Recognizance shall be entered into, or such Deposit shall be made, 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; and in any Case where after any such Deposit shall have been made as aforesaid, the Conviction shall be affirmed, the Court may order the Sum thereby adjudged to be paid, together with the Costs of the Conviction and the Costs of the Appeal, to be paid out of the Money deposited, and the Residue thereof, if any, to be repaid to the Party convicted; and in any Case where after any such Deposit the Conviction shall be quashed, the Court shall order the Money deposited to be repaid to the Party convicted; and in every Case where any Conviction shall be quashed on Appeal as aforesaid, the Clerk of the Peace or other proper Officer shall forthwith indorse on the Conviction a Memorandum that the same has been quashed; and whenever any Copy or Certificate of such Conviction shall be made, a Copy of such Memorandum shall be added thereto, and shall be sufficient Evidence that the Conviction has been quashed in every Case where such Copy or Certificate would be sufficient Evidence of such Conviction.

69 No Certiorari, &c.

No such Conviction, or Adjudication made on Appeal therefrom, shall be quashed for Want of Form, or be removed by Certiorari into any of Her Majesty's Superior Courts of Record; and no Warrant of Commitment shall be held void by reason of any Defect therein, provided it be therein alleged that the Party has been convicted, and there be a good and valid Conviction to sustain the same.

70 Convictions to be returned to the Quarter Sessions. How far Evidence in future Cases.

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 or Quarter Sessions which shall be holden for the County or Place wherein the Offence shall have been committed, there to be kept by the proper Officer among the Records of the Court; and upon any Indictment or Information against any Person for a subsequent Offence, a Copy of such Conviction, certified by the proper Officer of the Court, or proved to be a true Copy, shall be sufficient Evidence to prove a Conviction for the former Offence, and the Conviction shall be presumed to have been unappealed against until the contrary be shown.

71 Venue in Proceedings against Persons acting under this Act. General Issue, &c

All Actions and Prosecutions to be commenced against any Person for anything done in pursuance of this Act shall be laid and tried in the County where the Fact was committed, and shall be commenced within Six 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 Month at least before the Commencement of 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 any 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 has 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 shall certify his Approbation of the Action.

72 Offences committed within the Jurisdiction of the Admiralty.

All indictable Offences mentioned in this Act which shall be committed within the Jurisdiction of the Admiralty of *England* or *Ireland* shall be deemed to be Offences of the same Nature and liable to the same Punishments as if they had been committed upon the Land in *England* or *Ireland*, and may be dealt with, inquired of, tried, and determined in any County or Place in *England* or *Ireland* in which the Offender shall be apprehended or be in Custody, in the same Manner in all respects as if they had been actually committed in that County or Place; and in any Indictment for any such Offence, or for being an Accessory to such an Offence, the Venue in the Margin shall be the same as if the Offence had been committed in such County or Place, and the Offence shall be averred to have been committed " on the High Seas : " Provided that nothing herein contained shall alter or affect any of the Laws relating to the Government of Her Majesty's Land or Naval Forces.

73 Fine and Sureties for keeping the Peace; in what Cases.

Whenever any Person shall be convicted of any indictable Misdemeanor punishable under this Act, the Court may, if it shall think fit, in addition to or in lieu of any of the Punishments by this Act authorized, fine the Offender, and require him to

enter into his own Recognizances, and to find Sureties, both or either, for keeping the Peace and being of good Behaviour; and in case of any Felony punishable under this Act, the Court may, if it shall think fit, require the Offender to enter into his own Recognizances, and to find Sureties, both or either, for keeping the Peace, in addition to any Punishment by this Act authorized: Provided that no Person shall be imprisoned under this Clause for not finding Sureties for any Period exceeding One Year.

74 Hard Labour.

Whenever Imprisonment, with or without Hard Labour, may be awarded for any indictable Offence under this Act, the Court may sentence the Offender to be imprisoned, or to be imprisoned and kept to Hard Labour, in the Common Gaol or House of Correction.

75 Solitary Confinement and Whipping.

Whenever Solitary Confinement may be awarded for any indictable Offence under this Act, the Court may direct the Offender to be kept in Solitary Confinement for any Portion or Portions of his Imprisonment, or of his Imprisonment with Hard Labour, not exceeding One Month at any One Time, and not exceeding Three Months in any One Year; and whenever Whipping may be awarded for any indictable Offence under this Act, the Court may sentence the Offender to be once privately whipped ; and the Number of Strokes, and the Instrument with which they shall be inflicted, shall be specified by the Court in the Sentence.

76 Summary Proceedings in England may be under the 11 & 12 Vict. c. 43., and in Ireland under the 14 & 15 Vict. c. 93. ; except in London and the Metropolitan Police District.

Every Offence hereby made punishable on summary Conviction may be prosecuted in *England* in the Manner directed by the Act of the Session holden in the Eleventh and Twelfth Years of Queen *Victoria*, Chapter Forty-three, so far as no Provision is hereby made for any Matter or Thing which may be required to be done in the course of such Prosecution, and may be prosecuted in *Ireland* before Two or more Justices of the Peace, or One Metropolitan or Stipendiary Magistrate, in the Manner directed by the Act of the Session holden in the Fourteenth and Fifteenth Years of Queen *Victoria*, Chapter Ninety-three, or in such other Manner as may be directed by any Act that may be passed for like Purposes, and all Provisions contained in the said Acts shall be applicable to such Prosecutions in the same Manner as if they were incorporated in this Act: Provided that nothing in this Act contained shall in any Manner alter or affect any Enactment relating to Procedure in the Case of any Offence punishable on Summary Conviction within the City of London or the Metropolitan Police District, or the Recovery or Application of any Penalty or Forfeiture for any such Offence.

77 The Costs of the Prosecution of Misdemeanors against this Act may be allowed.

The Court before which any indictable Misdemeanor against this Act shall be prosecuted or tried may allow the Costs of the Prosecution in the same Manner as in Cases of Felony; and every Order for the Payment of such Costs shall be made out, and the Sum of Money mentioned therein paid and repaid, upon the same Terms and in the same Manner in all respects as in Cases of Felony.

78 Act not to extend to Scotland.

Nothing in this Act contained shall extend to Scotland, except as herein-before otherwise expressly provided.

79 Commencement of Act.

This Act shall commence and take effect on the First Day of November One thousand eight hundred and sixty-one.