

COPY 3

HALSBURY'S STATUTES OF ENGLAND

SECOND EDITION

EDITOR-IN-CHIEF

SIR ROLAND BURROWS, K.C.

RECORDER OF CAMBRIDGE

VOLUME 5

COUNCIL OF LEGAL EDUCATION
NORMAN MANLEY LAW SCHOOL LIBRARY,
U.W.I. MONA, KINGSTON, 7 JAMAICA

COUNTY COURTS
COURTS
CRIMINAL LAW

LONDON

BUTTERWORTH & CO. (PUBLISHERS) LTD.
BELL YARD, TEMPLE BAR, W.C.2.

1948

AFRICA: BUTTERWORTH & CO. (AFRICA) LTD.
DURBAN: LINCOLN'S COURT, MASONIC GROVE

AUSTRALIA: BUTTERWORTH & CO. (AUSTRALIA) LTD.
SYDNEY: 8 O'CONNELL STREET
MELBOURNE: 430 BOURKE STREET
BRISBANE: 240 QUEEN STREET

CANADA: BUTTERWORTH & CO. (CANADA) LTD.
TORONTO: 1367 DANFORTH AVENUE

NEW ZEALAND: BUTTERWORTH & CO. (AUSTRALIA) LTD.
WELLINGTON: 49-51 BALLANCE STREET
AUCKLAND: 35 HIGH STREET

or the commissioners for tryall of pirates appointed by this Act shall from and after the said nine and twentieth day of September one thousand seven hundred have the sole power and authority of trying hearing and determining the said crimes and offences within all or any of the colonies and plantations in America governed by proprietors or under grants or charters from the Crowne and of bringing the offenders to condigne punishment and shall and may issue forth their warrant or warrants for the seizure and apprehending of any pirates felons or robbers upon the sea or their confederates or accessaries being within any of the said colonies and plantations in order to their being brought to tryall within the same or any other plantation in America according to this Act or sent into England to be tried there and . . . all and every governour and governours persons and persons in authority in the said colonies and plantations governed [by proprietors¹] or under charters as aforesaid shall assist the commissioners and their subordinate officers in doing their duty and alsoe in the execution of such warrants and otherwise and shall deliver up to such commissioners or commissioners officer or officers any pirates felons and robbers upon the sea and their confederates and accessaries in order to their being tried sent into England as aforesaid any letters patents grants or charters of government in and about the said plantations or other usages heretofore had or made to the contrary notwithstanding. [1078]

NOTE

28 Hen. 8 c. 15. This is the Offences at Sea Act, 1536 (c. 15), p. 479, *ante*. Also note to s. 7, p. 517, *ante*.

15. (*Rep. by the S.L.R. Act, 1867 (c. 50).*)

16. **How commissions for trial of offences within the cinque-ports to be directed.**—Provided alwaies . . . that whensoever any commission for the tryall and punishment of the offences aforesaid or any of them shall be directed or sent to any place within the jurisdiction of the cinque-ports that then every such commission shall be directed unto the lord warden of the cinque-ports for the time being or to his lieutenant and unto such other persons as the lord high chancellor or keeper of the great seale of England for the time being or commissioners for the custody of the great seale shall name and appoint. And likewise that every inquisition and tryall to be had by vertue of such commission soe directed and sent to any place in the said cinque-ports shall be made and had by the inhabitants of the said cinque-ports or the members of the same any thing in this Act to the contrary [thereof¹] notwithstanding. [1079]

17. **Seamen, etc., deserting.**—And for the prevention of seamen deserting of merchant shippes abroad in parts beyond the seas which is the chiefe occasion of their turning pirates and of great detriment to trade and navigation in generall . . . all such seamen officers or saylors who shall desert the shippes or vessels wherein they are hired to serve for that voyage shall for such offence forfeite all such wages as shall be then due to him or them. [1080]

NOTE

As to desertion, see Merchant Shipping Act, 1894 (c. 50), s. 221, title Shipping and Navigation, Vol. 23.

18. (*Rep. by 9 Geo. 4 c. 31 (1828), s. 1.*)

¹ Interlined in the roll.

11 WILL. 3 C. 12

(Crimes by Governors of Colonies) (1698–9)

An Act to punish Governors of Plantations in this Kingdom for Crimes by them committed in the Plantations [1081]
Northern Ireland. This Act does not apply.

How and where oppressions by governors, etc., of plantations abroad tried.—If any governor lieutenant governor deputy governor or commander in chiefe of any plantation or colony within his Majesties dominions beyond the seas shall after the first day of August one thousand seven hundred be guilty of oppressing any of his Majesties subjects beyond the seas within their respective governments or commands or shall be guilty of any other crime or offence contrary to the laws of this realme or in force within their respective governments or commands such oppressions crimes and offences shall be enquired of heard and determined in his Majesties Court of Kings Bench here in England or before such commissioners and in such county of this realme as shall be assigned by his Majesties commission and by good and lawfull men of the same county and that such punishments shall be inflicted on such offenders as are usually inflicted for offences of like nature committed here in England. [1082]

NOTES

See the Administration of Justice (Miscellaneous Provisions) Act, 1933 (c. 36), s. 1 (4) and First Schedule, pp. 1066, 1069, *post*, by which the provisions of that Act relating to the abolition of grand juries are excepted from applying to an indictment made under this Act.

Any plantation or colony. This Act applies only to governors and commanders-in-chief of colonies. Its scope was considerably enlarged by the Criminal Jurisdiction Act, 1802 (c. 35); see note to s. 1 of that Act, p. 596, *post*.

THE RIOT ACT (1714)

(1 Geo. 1 stat. 2 c. 5)

ARRANGEMENT OF SECTIONS

Section	Page
1. Twelve persons or more unlawfully assembled after the last day of July, 1715, and not dispersing after commanded by one justice, etc., by proclamation, shall be adjudged felons	522
2. How the proclamation shall be made	522
3. Persons so assembled and not dispersing within an hour to be seized and if they make resistance, the persons killing them, etc., to be indemnified	523
5. Opposing, etc., the making such proclamation, felony without benefit of clergy	524
7. This Act to be read at the quarter sessions, etc.	524
8. Prosecution within twelve months	524

An Act for preventing Tumults and riotous Assemblies, and for the more speedy and effectual punishing the Rioters [1083]

The short title "The Riot Act," was given to this Act by the Short Titles Act, 1896 (c. 22).

Northern Ireland. This Act does not apply. Some pending legislation is noted in sections.

[1.] Twelve persons or more unlawfully assembled after the last day of July, 1715, and not dispersing after commanded by one justice, etc., by proclamation, shall be adjudged felons.—If any persons, to the number of twelve or more, being unlawfully, riotously, and tumultuously assembled together, to the disturbance of the publick peace at any time after the last day of July in the year of our Lord one thousand seven hundred and fifteen, and being required or commanded by any justice or justices of the peace, or by the sheriff of the county, his under-sheriff, or by the mayor, bailiff or bailiffs, or other head officer or justice of the peace of any city or town-corporate, where such assembly shall be, by proclamation to be made in the Kings name, in the form hereinafter directed, to disperse themselves, and peaceably to depart their habitations or to their lawful business, shall to the number of twelve or more (notwithstanding such proclamation made) unlawfully, riotously, and tumultuously remain or continue together by the space of one hour after such command or request made by proclamation, that then such continuing together to the number of twelve or more, after such command or request made by proclamation, shall be adjudged felony, . . . [1086]

NOTES

The words omitted at the end of this section were repealed by the S.L.R. Act, 1888 (c. 3).

Common law riot. As to the necessary elements of the offence of riot, which is a misdemeanour at common law, see 9 Halsbury's Laws (2nd Edn.) 314, and 15 Digest 646, 647.

To constitute riot at common law, three or more persons must be assembled together, whereas to constitute a riotous assembly under this statute, twelve or more persons are necessary, who shall remain riotously together for one hour after proclamation has been made in the form and manner prescribed by the statute. As to riot by seamen, etc., see the Shipping Offences Act, 1793 (c. 97), p. 569, *post*.

Punishment. The offence under the statute is felony, the punishment for which was death. This was abolished in this and certain other cases by the Punishment of Offences Act, 1837 (c. 91), s. 1, p. 643, *post*, and the present maximum punishment is penal servitude for life.

Northern Ireland. Cf. 27 Geo. 3 c. 15 (1787) (Ir.), s. 1. By the Capital Punishment (Ireland) Act, 1842 (c. 28), s. 6, the punishment is penal servitude for life or not less than three years or imprisonment not exceeding two years with or without hard labour.

2. How the proclamation shall be made.—And . . . the order and form of the proclamations that shall be made by the authority of this Act shall be as hereafter followeth, (that is to say) the justice of the peace, or other person authorized by this Act to make the said proclamation, shall, among the said rioters, or as near to them as he can safely come, with a loud voice command or cause to be commanded silence to be while proclamation is making and after that, shall openly and with loud voice make or cause to be made proclamation in these words, or like in effect: Our sovereign lord the King chargeth and commandeth all persons, being assembled: immediately to disperse themselves, and peaceably to depart to their habitations or to their lawful business, upon the pains contained in the Act made in the first year of King George, for preventing tumults and riotous assemblies.

God save the King. And every such justice and justices of the peace, sheriff, under-sheriff, mayor, bailiff, and other head officer aforesaid, within the limits of their respective jurisdictions, are hereby authorised, impowered, and required, on notice or knowledge of any such unlawful, riotous, and tumultuous assembly, to resort to the place where such unlawful, riotous, and tumultuous assembly shall be, of persons to the number of twelve or more, and there to make proclamation to be made proclamation in manner aforesaid.

[1085]

NOTES

Where words are omitted (as shown by the insertion of stops) in any of the sections of this Act, and there is no special note stating why, the words omitted are merely the formal enacting words which were repealed by the S.L.R. Act, 1888 (c. 3).

The proclamation must be read verbatim and in its entirety (*R. v. Child* (1830), 4 C. & P. 442; 15 Digest 648, 6907).

If the proclamation is read more than once, the period of one hour is to be computed from the time of the first reading (*R. v. Woolcock* (1833), 5 C. & P. 516; 15 Digest 643, 6832).

Northern Ireland. Cf. 27 Geo. 3 c. 15 (1787) (Ir.), s. 2.

3. Persons so assembled and not dispersing within an hour to be seized and if they make resistance, the persons killing them, etc., to be indemnified.—And . . . if such persons so unlawfully, riotously, and tumultuously assembled, or twelve or more of them, after proclamation made in manner aforesaid, shall continue together, and not disperse themselves within one hour, that then it shall and may be lawful to and for every justice of the peace, sheriff or under-sheriff of the county where such assembly shall be, and also to and for every high or petty constable, and other peace-officer within such county, and also to and for every mayor, justice of the peace, sheriff, bailiff, and other head officer, high or petty constable, and other peace-officer of any city or town-corporate where such assembly shall be, and to and for such other person and persons as shall be commanded to be assisting unto any such justice of the peace, sheriff or under-sheriff, mayor, bailiff, or other head officer aforesaid (who are hereby authorised and impowered to command all his Majesties subjects of age and ability to be assisting to them therein) to seize and apprehend, and they are hereby required to seize and apprehend such persons so unlawfully, riotously, and tumultuously continuing together after proclamation made as aforesaid, and forthwith to carry the persons so apprehended before one or more of his Majesties justices of the peace of the county or place where such persons shall be so apprehended, in order to their being proceeded against for such their offences according to law; and that if the persons so unlawfully, riotously, and tumultuously assembled, or any of them, shall happen to be killed, maimed, or hurt in the dispersing, seizing, or apprehending, or endeavouring to disperse, seize, or apprehend them, by reason of their resisting the persons so dispersing, seizing, or apprehending, or endeavouring to disperse, seize, or apprehend them, that then every such justice of the peace, sheriff, under-sheriff, mayor, bailiff, head officer, high or petty constable, or other peace-officer, and all and singular persons, being aiding and assisting to them, or any of them, shall be free, discharged, and indemnified, as well against the Kings Majesty, his heirs and successors, as against all and every other person and persons of, for, or concerning the killing, maiming, or hurting of any such person or persons, so unlawfully, riotously, and tumultuously assembled, that shall happen to be so killed, maimed, or hurt as aforesaid.

[1086]

NOTES

Effect of not reading proclamation. A riot is not the less a riot because the proclamation has not been read, and authorised persons and even private individuals are justified in dispersing the rioters (*R. v. Furey* (1833), 6 C. & P. 81; 15 Digest 644, 6850). Similarly, such action may be taken after the proclamation has been read, but before the period of one hour has elapsed. In such case, however, the offence of riot at common law and not the offence under s. 1 of this Act would have been committed (but see s. 5, p. 524, *post*).

... actually been committed, provided there is an assemblage of persons gathered together in such circumstances that the actual commission of a riot is to be apprehended (*R. v. James* (1731), 5 C. & P. 153; 15 Digest 649, 6933).

Damage to buildings. As to riotous demolition of or damage to buildings, etc., see the Malicious Damage Act, 1861 (c. 97), ss. 11, 12, p. 756, *post*.

See also the Riot (Damages) Act, 1850 (c. 38), title Police, Vol. 18.

Suppression of riots. See note to 17 Ric. 2 c. 8 (1393-4), p. 466, *ante*, for statutes dealing with the suppression of riots.

Northern Ireland. Cf. 27 Geo. 3 c. 15 (1787) (Ir.), s. 4 and 3 Geo. 3 c. 19 (1763) (Ir.).

As to rioters interfering with the storage, carriage or export of corn, flour etc., or potatoes or destroying buildings or goods manufactured or unmanufactured or the engine of any colliery or mine, see 23 & 24 Geo. 3 c. 20 (1783-4) (Ir.), ss. 7 and 8. As to punishment, see the Capital Punishment (Ireland) Act, 1842 (c. 28), s. 5.

As to riotous demolition of or damage to buildings, see Malicious Damage Act, 1861 (c. 97), ss. 11, 12, p. 756, *post*.

As to injuries and violence with intent to hinder the exportation of corn, see 17 Geo. 3 c. 7 (1771) (Ir.).

4. (*Rep. by 7 & 8 Geo. 4 c. 27 (1826-7), s. 1.*)

5. **Opposing, etc., the making such proclamation, felony without benefit of clergy.**—Provided always, . . . that if any person or persons do or shall, with force and arms, wilfully and knowingly oppose, obstruct or in any manner wilfully and knowingly lett, hinder, or hurt any person or persons that shall begin to proclaim or go to proclaim according to the proclamation hereby directed to be made, whereby such proclamation shall not be made, that then every such opposing, obstructing, letting hindring, or hurting such person or persons so beginning or going to make such proclamation as aforesaid, shall be adjudged felony. . . . ; and that also every such person and persons so being unlawfully, riotously, and tumultuously assembled, to the number of twelve, as aforesaid, or more, to whom proclamation should or ought to have been made if the same had not been hindered as aforesaid, shall likewise in case they or any of them, to the number of twelve or more, shall continue together, and not disperse themselves within one hour after such lett or hindrance so made, having knowledge of such lett or hindrance so made, shall be adjudged felons, . . .

[1087]

NOTES

The words omitted in this section were repealed by the S.L.R. Act, 1888 (c. 3).

The punishment, formerly death, is now penal servitude for life; see note to s. 1, p. 522, *ante*.

Northern Ireland. Cf. 27 Geo. 3 c. 15 (1787) (Ir.), s. 3. As to punishment, see note to s. 1, p. 522, *ante*.

6. (*Rep. by 7 & 8 Geo. 4 c. 27 (1826-7), s. 1.*)

7. **This Act to be read at the quarter sessions, etc.**—And . . . this Act shall be openly read at every quarter-sessions, and at every leet or law-day. [1088]

NOTE

This provision is no longer observed.

8. **Prosecution within twelve months.**—Provided always, that no person or persons shall be prosecuted by virtue of this Act for any offence or offences committed contrary to the same, unless such prosecution be commenced within twelve months after the offence committed. [1089]

NOTES

"Months" presumably means lunar months, this statute being prior to 1850 (Interpretation Act, 1850 (c. 63), s. 3, title Statutes, Vol. 24; see also *Lacon v. Hooper* (1755), 9 Term Rep. 244; *Bruner v. Moore*, 1004; 10 B. 303; 42 Digest 1031, 31).

Northern Ireland. 27 Geo. 3 c. 15 (1787) (Ir.), s. 12, provides that no person may be prosecuted for any offence under that Act unless the prosecution be commenced within one year after the commission of the offence. By 3 Geo. 3 c. 19 (1763) (Ir.), a similar limitation as to time is imposed with respect to offences committed by persons aiding in the dispersing of riots and arresting the rioters.

9, 10. (*Application to Scotland.*)

THE PIRACY ACT, 1717

(4 Geo. I c. II)

An Act . . . for declaring the Law upon some Points relating to Pirates
[1090]

The short title was given to this Act by the Short Titles Act, 1896 (c. 14).
The words omitted in the long title were repealed by the S.L.R. Act, 1887 (c. 59).
Northern Ireland. This Act does not apply.

(*Whole Act except s. 7 rep. by 7 & 8 Geo. 4 c. 27 (1826-7), s. 1.*)

7. **Offenders against the Act 11 Will. 3 c. 7, may be tried as if directed by 28 Hen. 8 c. 15.**—And be it hereby declared, that all and every person and persons who have committed or shall commit any offence or offences, for which they ought to be adjudged, deemed, and taken to be pirates, felons, or robbers by an Act made in the Parliament holden in the eleventh and twelfth years of the reign of his late Majesty King William the Third, intituled "An Act for the more effectual suppression of piracy," may be tryed and judged for every such offence in such manner and form as in and by an Act made in the twenty eighth year of the reign of King Henry the Eighth is directed and appointed for the tryal of pirates, and shall and ought to be utterly debarred and excluded from the benefit of clergy for the said offences, any law or statute to the contrary thereof in any wise notwithstanding. [1091]

NOTES

This Act was repealed so far as relates to punishment of piracy and offences declared to be piracy and punishment of accessories thereto by s. 1 (repealed) of the Piracy Act, 1837 (c. 88); see now that Act, p. 641, *post*.

This section makes persons who have committed offences punishable under 11 Will. 3 c. 7 (1698-9), p. 516, *ante*, liable under the provisions of the Offences at Sea Act, 1536 (c. 15), p. 479, *ante*.

Benefit of clergy. This was abolished as to commons and clergy by the Criminal Law Act, 1827 (c. 28), s. 6, p. 630, *post*, and as to peers by the Felony Act, 1841 (c. 22), title Peerages and Dignities, Vol. 17.

Act of 11 & 12 Will 3. The Act referred to is 11 Will. 3 c. 7 (1698-9), p. 516, *ante*.

Act of 28 Hen. 8. The Act referred to is the Offences at Sea Act, 1536 (c. 15), p. 479, *ante*.