# THE GAME LAWS

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The Game Laws by  G. Shaw Lefevre

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# PREFACE.

Apology is scarcely needed for presenting to the public, at the present time, any observations on the Game Laws, inasmuch as the numerous Bills brought before Parliament in successive Sessions, and the Report of the recent Committee of the House of Commons, shew that while there is great and pressing desire for legislation, there is still greater diversity of views as to the best mode of giving relief from the evils complained of, and which to a great extent are admitted on all hands.

Whatever may be thought of the conclusions at which I arrive, I hope that the historical and legal illustrations may not be without their value in determining the views of those who are interested in this subject.

I have dealt mainly with the law of England and Wales, and have only mentioned incidentally

some of the points in respect of which the law of Scotland differs. There are other points of difference in the Scotch law, but I believe that substantially the general scope of my observations and conclusions will apply equally to Scotland as to England.

The question, however, of Deer Forests is a distinct one, and is not touched upon in the following pages.

G. S. L.

The group of statutes which constitute the present Game Law of England dates no further back than the year 1831, when, with one exception, all previous enactments relating to Game were repealed, and the right to take or sell game was based on a new principle. Previous to that year no person was permitted to kill game unless qualified either by the possession of freehold or leasehold property of the annual value of £100, or by holding the status of esquire. Landowners by virtue of this qualification and irrespective of agreement, practically exercised the exclusive right of sporting over their lands let to farming tenants. Lords of Manors still claimed the right to game on the lands of the copyhold tenants of their manors, and the sale of Game was wholly illegal, and was punishable by severe penalties.

These laws may be traced without difficulty to the feudal principles which were introduced into this country by the Norman conquerors.

Under the older Saxon law every freeholder had the full liberty of sporting over his land, provided he abstained from the King's forests. The Royal forests were, doubtless, even then of great extent, but the prerogative of the Sovereign did not extend beyond their limits, and in no way interfered with the free exercise of rights by other landowners. We find, for instance, that Canute set bounds and limits to the Royal forests, and the

better to have his own preserved from offenders, he made this law at Winchester in the first year of his reign:—

"Volo ut omnis liber homo pro libito habeat venerem sive viridem in planis suis super terras suas sine chaceâ tamen et devitent omnes meam ubicunque eam habere voluero."

This was also the ancient law of the Scandinavian continent whence Canute probably derived it:

"Cuique enim in proprio fundo quamlibet feram quo modo venari permissum."

And in the laws of Edward the Confessor it is laid down:—

"Sit quilibet homo dignus venatione mea in sylva et in agris propriis et in dominio suo; et abstineat omnis homo a venariis regiis ubicumque pacem eis habere voluerit."

After the Norman conquest, however, a new doctrine was asserted, and the right of taking all beasts of chase or venary, wherever they might be found, and without regard to the ownership of the soil, was claimed by the Sovereign for himself, or for such only as he should duly authorize.

These restrictive laws relating to forests and game had been introduced generally in Europe, at the same time and by the same people, who were the authors of the feudal system. The conquering Generals of the northern invaders, when they settled the economy of the countries they had subdued, and partitioned them among their chiefs and feudatories upon the condition of military service, found it necessary to keep the natives of these countries in as low a condition as possible, and especially to prohibit them the use of arms. Hunting

and sporting were therefore prohibited, and the generals reserved these rights to themselves or to those chiefs immediately below them, to whom they thought it safe to entrust such rights.

The Norman kings introduced this principle to England after the conquest, and being themselves mighty hunters, carried it out not only as matter of state policy but of personal enjoyment.

In later times the Norman lawyers vindicated this claim of the Sovereign, partly on the principle that the King was the ultimate proprietor of all the lands in the kingdom, which were held of him as Lord paramount of the fee, and that therefore he had the right to enter on any estate and take all wild creatures at his pleasure, and partly on a maxim of the law that such creatures were "bona vacantia," and having no other owner, belonged to the King by virtue of his prerogative. Bracton states the Royal prerogative thus:—

> "Habet etiam Rex de jure gentium in manu suâ quæ de jure naturali deberunt esse communia; sicut feras bestias et aves non domesticos."

And Manwood, an early writer on the Forest Laws, says:—

> "In like manner wild beasts of venary and beasts and fowls of chase and warren being things of great excellency, they are meetest for the dignity of a prince for his pastime and delight, and therefore they do most properly belong unto the king only."

It is probable, however, that these were rather the after-thoughts of lawyers anxious to obtain royal favour, than the true explanation of the origin of the claim asserted by the feudal sovereigns,

and that the more probable cause is that already alluded to, namely, that as conquerors of new territory, they found it expedient as matter of state policy to enforce this claim, a policy which also coincided with their predilections for the chase.

Whatever its origin, the prerogative thus claimed on behalf of the Crown was exerted with the utmost vigour by the earlier Norman Kings, not only in the ancient forests, but in new forests which the Conqueror and his sons made, by laying together large tracts of country, depopulated for this purpose, and without the consent of the owners or any compensation for the damage done. In these forests great oppression and tyranny were exercised by virtue of special forest laws, for the sake of preserving the beasts of chase, and the killing of any animal was punishable in the same manner as the killing of a man. In the Anglo-Saxon Chronicle of the year 1087 there is a piteous description of the result of the Forest laws of William the Conqueror :—

> "He made large forests for the deer, and enacted laws therewith, so that whoever killed a hart or a hind should be blinded. As he forbade killing the deer, so also the boars; and he loved the tall stags as if he were their father. He also appointed concerning the hares that they should go free. The rich complained, and the poor murmured; but he was so sturdy that he recked nought of them. They must will all that the King willed, if they would live or would keep their lands, or would hold their possessions or be maintained in their rights."

Ordericus Vitalis, in the time of Henry I., said of that monarch, "Omnem ferarum venationem totius Angliæ sibi peculiarem vindicavit et vix