

Tenant Right: Devonshire and the 1880 Ground Game Act

By J H PORTER

THERE has been a considerable overestimate of the benefit to farmers from the 1880 Ground Game Act since Professor Thompson noted in 1963 that it 'authorised tenants to destroy rabbits and hares on their farm without seeking their landlords' permission'. His generous interpretation has been accepted by successive writers. Thus contributors to *The Victorian Countryside* largely repeat this with approval though Professor Thompson had by then modified his own views for he noted that 'protests against crop damage and loss were reduced but not stilled by the Gladstonian 1881 Ground Game Act'.¹

Similar assumptions that legislative enactment means effective implementation have been made by political historians. Barker believes that the act was one of the early successes of Gladstone's ministry while E J Feuchtwanger thought it became 'obligatory to include in all land leases a clause leaving it to the tenant to deal with ground game'. Clearly there has not been a close examination of the terms of the act. On one point, however, there is general agreement; the Liberals were seeking the farmers' vote.²

The question of ground game was a part of the wider question of tenant right which was 'of all the issues within the agricultural community that agitated the British farmer during the reign of Queen Victoria . . . the

most durable and significant'. Tenant right took on a new militancy with the flood of cheap imports after 1873 and in the general election of 1880 the Liberals captured an increasing share of county seats. McQuiston has concluded that 'The struggle over compulsion . . . demonstrated that rural England was no longer bound together, if only superficially by the deference of the tenant and the benevolence of the landlord.' This view has recently been challenged by J R Fisher who has not only concluded that statutory tenant right was essentially irrelevant to agricultural progress but also that 'At no point in the nineteenth century did the agricultural community seek to challenge the nature of the existing social and political structure of rural England' and that any opposition of yeomen and tenant farmers to landlords was shortlived not because of dependence but from their perception that in most circumstances they shared a common interest. This is directly challenged by Mutch's recent work on Lancashire where he concludes that farmers wanted a share in the leadership of rural society, that their organizations developed in the 1890s on a class basis and that the hostility of landlords showed how seriously they took the threat to their authority. It was evidence of the continued fragmentation of rural society.³

¹ F M L Thompson, *English landed society in the nineteenth century*, 1963, pp 141, 196; D C Moore, 'The Gentry', p 392; T W Beastall, 'Landlords and tenants', pp 436-7; F M L Thompson, 'Landowners and the rural community', p 460; R Carr, 'Country sports', p 483, all in G E Mingay (ed), *The Victorian Countryside*, Vol 2, 1981. P J Perry, *British Farming 1870-1914*, Newton Abbot, 1974, pp 87, 134.

² Michael Barker, *Gladstone and Radicalism*, Hassocks, 1975, p 13; E J Feuchtwanger, *Gladstone*, 1975, p 199; D A Hamer, *John Morley*, Oxford, 1968, p 140; *The Political correspondence of Mr Gladstone and Lord Granville 1876-1886*, Vol 1, Oxford, 1962, p 166.

³ J R McQuiston, 'Tenant Right: farmer against landlord in Victorian England 1847-1883', *Ag Hist*, 47, 1973, 95-113; P J Perry (ed), *British Agriculture 1875-1914*, 1973, XXIX-XXXVI; J R Fisher, 'Landowners and English tenant right 1845-1852', *Ag Hist Rev*, 31, 1983, pp 15-25; J R Fisher, 'The limits of deference: agricultural communities in a mid-nineteenth century election campaign', *Journal of British Studies*, 21, 1981, pp 90-105; Alistair Mutch, 'Farmers' Organisations and agricultural depression in Lancashire 1890-1900', *Ag Hist Rev*, 31, 1983, pp 26-36.

In the light of contemporary and current controversies over tenant right the purpose of this article is to examine the attitudes of the aristocracy, gentry and tenant farmers of Devon towards the Ground Game Act; to see if Devon's rural relationships were retaining their cohesion or subject to fragmentation, and to examine the Act's implementation in Devon through a study of prosecutions for breaches of the Act before the County petty sessions. It will be argued that the opinions of those in authority expressed on the question of tenant right and on the 1880 Act in particular made it unlikely that the Act would give any considerable measure of relief to tenant farmers.

I

The economic and political issues emerged during the debate on the 'Hares and Rabbits Bill' introduced by Sir William Harcourt after the election. In the dying parliament P A Taylor, Liberal MP for Leicester, had introduced a resolution calling for the dramatic amendment of the game laws which he regarded as part of 'the old feudal principle of class privilege' by which the landlord permitted vermin to feed on the tenants' crops. Rabbits, he felt, should be classed as vermin and treated as such. Strong objection to the proposal came from Sir Walter B Barttelot (Sussex W) and Earl Percy (Northumb N). They objected that such a measure ignored country feeling, would attract thousands of trespassers from the towns to the detriment of crops and discourage gentlemen from taking an interest in local affairs if their sporting pleasures were removed.

After the election in April had returned a Liberal administration Harcourt introduced his bill (Bill 194) 'for the better protection of land against injury to crops from hares and rabbits'. At each stage of its progress through Commons and Lords the Bill was attacked by those who saw it as hostile to the landlord's interest. The original bill would

have given any tenant the right to kill hares and rabbits on their own land without restriction and with no power to divest the right. It was strongly supported by John Bright, and by James Howard (Beds County). For radicals like Henry Labouchere and P A Taylor, however, the measure was too limited. They wished it to be extended to all game since winged game also damaged crops. Harcourt must have feared that such a wide measure would have upset his own Liberal landowners as well as the Conservatives and he agreed to modifications in the opposite direction, to limit shooting and trapping and to exclude common land.⁴

Liberals like H R Brand of Stroud, while sympathetic to reform of the game laws, were opposed to interference with freedom of contract as 'there was no practical inequality between landlord and tenant'. Conservative critics such as Sir Henry Selwyn Ibbetson (Essex W) feared that the consequence would be discontent and that farmers would use poachers as their agents. Indeed Sir Walter Barttelot, rather perversely, thought it would turn all labourers into poachers. It was also pointed out that keepers would have an impossible task if guns were discharged in all directions and further, said Lord Elcho, civil disobedience might occur if the ownership of guns were to become too widespread. Similar arguments were advanced by other Conservatives, such as Admiral Sir John Hay, Ruggles Brise, Newdegate and Stanhope. They and Henry Chaplin also opposed the principle of confiscation of a right without compensation and felt the aim of the bill was not to promote good husbandry but vote catching. The amended bill received its third reading on 27 August 1880, still opposed by Newdegate, Barttelot and Chaplin. It was further amended in the Lords at the instigation of Redesdale and Ilchester but the changes were rejected when the bill returned

⁴ *Hansard*, Commons, 2 March 1880, 160-206; 27 May 1880, 594-608; 10 August 1880, 798.

to the Commons. The Royal Assent was given on 7 September.⁵

The contributions to the debate by Devon members were generally hostile; their objection also being that the Bill would interfere with 'freedom of contract'. The one exception was Viscount Lymington, the Liberal member for Barnstaple and a South Molton justice. Lymington devoted his maiden speech to defending the bill for he believed that 'the Bill would insure arrangement being dictated by mutual advantage, and not compulsory and one sided as was too often the case . . . hitherto the landlord had an important advantage over the tenant, that he stood in a vastly superior position for making a bargain . . .' Surprisingly the only intervention by that idiosyncratic Liberal Sir Thomas Acland was to 'hope that nothing would be done hastily to destroy stag hunting'.⁶

More typical was the response of Devon's members who represented the Tory interest; in particular Sir John Kennaway and Sir Massey Lopes. Kennaway, who had 4045 Devon acres, believed that 'this measure as introduced, was a tremendous interference with what had been the law and custom and habit of country life . . . the Bill would destroy much good feeling between landlords and tenants and in that way might do more harm than good'.⁷ Sir Massey Lopes of Maristowe with 11,977 acres feared that if sporting rights were taken from the landlord and given to the tenant then either of two things would happen. The tenant would kill all the ground game and so all sport would be lost, or the farmers and their sons would so prefer the sport that they would neglect the farming. In either instance the landlord would lose his sport. He also took the opportunity to praise his own estate

management on light land particularly suitable for rabbits, as 'he found that by giving the tenants the right of netting and ferreting the rabbits all the year round, and trapping them during three or four months of the year, there was no property of the same extent so free of ground game'.⁸

Two minor interventions in the debate were made by Sir Stafford Northcote. He attacked the government as merely wanting to appear friends of the farmers so as to 'throw odium on the Conservative side of the House' and later regretted that the Bill interfered with freedom of contract which he believed should only be interfered with when injurious to third parties.⁹ In all the argument over 'freedom of contract' the Conservative defenders of that principle assumed an equality of bargaining power between the two parties, just as the higher judiciary assumed an equality between employer and employee in industrial accident cases, an assumption which was of material advantage to the employer.¹⁰

II

The debate in the county reflected the speeches in the Commons, a debate which became increasingly acrimonious. As early as 1864 the question of tenant right and the rabbit had arisen when the grand jury at the Devon County quarter sessions complained about the use of county policemen to watch preserves¹¹ but it was a decade later that the question generated more inflammatory statements as economic conditions worsened for the farmer and the Liberals sought the farmers' vote. The *Devon Weekly Times* was at the radical end of Liberal thought and it launched an attack in March, 1874: 'The constitution of the present government is all against the farmers of England . . . the rabbits rejoice.' Moreover

⁵ *Ibid.*, 29 July 1880, 1681-1711, 10 August 1880, 798-858, 11 August 1880, 877-952, 19 August 1880, 1583-1699, 25 August 1880, 394; Lords, 30 August 1880, 635; Commons, 3-4 September 1880, 1268-9.

⁶ *Hansard*, Commons, 29 July 1880, 1692-4, 20 August, 1880, 1820. Acland held 15,018 acres in Devon: *Return of Owners of Land 1873*, c1097, 1875, Vol. 1. All other holdings quoted are from this source.

⁷ *Hansard*, Commons, 10 August 1880, 815.

⁸ *Ibid.*, 843.

⁹ *Ibid.*, 10 August 1880, 843, 20 August 1880, 1820.

¹⁰ P W J Bartrip and S B Burman, *The Wounded Soldiers of Industry*, Oxford, 1983, *passim*.

¹¹ *Devon Weekly Times*, 28 October 1864.

this general attack was linked to the practice of a local landlord and politician: 'Then there is the Judge Advocate and Paymaster General of the Government, Mr Cave . . . at Sidbury. Is it true that . . . no farmer is allowed to carry a gun to destroy a rabbit? . . . There is no tyranny greater than landlordism. The farmers know it . . . Yet they vote Tory to a man.'¹²

This was the recurrent theme of the paper's editorials, the criticism of national policy and its linking to a local Tory landlord. Thus in May 1874, 'In the farms of Bicton, Woodbury, Christow, Mamhead and Sidbury . . . rabbits are the farmers' plague. By what law can property be claimed by one man in an animal which feeds everywhere?' and 'Our landlords may be characterised as game and rabbit merchants, carrying on trade on false pretences, and with capital not their own.'¹³ The editor claimed there was a third party interest which overrode the principle of freedom of contract for 'The land of a county is given to the people of that county to maintain them, and not that it may be used for sport. Any practice or power that materially diminishes or prevents the proper supply of food calls immediately for legislative interference as much as stealing, arson or murder.'¹⁴

Equal vehemence was expressed from the opposite side by Sir Massey Lopes, Sir John Kennaway and Earl Fortescue; each supported the existing disposition of economic power in speeches made in 1874.¹⁵ An unusually direct confrontation occurred at the Devon Chamber of Agriculture's meeting in Exeter in April 1875 when a Mr May of Bramford Speke read a paper in favour of tenant right and the consequential interference with freedom of contract. He was strongly criticized by both Lord Fortescue and Sir Thomas Acland. Fortescue

reiterated that he 'did not think it desirable that contracts between adults of full age should be rendered impossible unless there was some very strong and urgent public reason for doing so'. Those farmers attending the meeting showed on this occasion little sign of deference for they subsequently voted 16 to 12 in favour of May's proposals.¹⁶

During discussion on the Bill which became the Agricultural Holdings Act of 1875 the question of tenant rights became more sharply focused. The *Devon Weekly Times* continued to attack both landlords and tenants. Nothing in the Act dealt with the depredations of game and 'It shall bind the tenant to the most stringent conditions as in a Sidbury lease' while Sir Massey Lopes was attacked for claiming to support the bill but not adopting its conditions on his own estate. The editorials were laced with personal abuse; Lopes was accused for being like 'his money grubbing ancestor' and Sir Stephen Cave of Sidbury was 'like the ancient Egyptians he worships vermin' for he too had told his tenants that their leases would be unchanged by the Act. Equally criticized were the tenants who voted Conservative: 'If the tenantry of England will insist on supporting the landlords in their parliamentary pretensions they will be treated as serfs and laughed at as fools.'¹⁷

Leaving aside party political abuse the 1875 Act did not provide a remedy for game grievances and tension intensified in 1877. Initially it seemed that the preservers would dominate the debate when Sir Lawrence Palk was elected Chairman of the Devon Chamber of Agriculture. Palk had an estate of 10,109 acres in Devon and the *DWT* 'welcomed' his election: 'His wholesale trade in rabbits peculiarly qualifies him for the post. We have heard that he and Lady Rolle are the biggest rabbit merchants in the West of England. The endowment of the

¹² *DWT*, 6 March 1874. A further attack was made on Cave on 22 January 1875: 'while such leases as the Sidbury leases exist no farmer is safe in his tenancy'.

¹³ *DWT*, 22 May 1874.

¹⁴ *DWT*, 5 January 1875.

¹⁵ *DWT*, 26 June, 16, 23 October, 18 December 1874.

¹⁶ *DWT*, 9 April 1875.

¹⁷ *DWT*, 19 March, 25 June, 3, 17 December 1875, 21 April, 21 May 1876, 14 May, 15, 25 June 1875, 21 April 1876.

Bishopric of Cornwall is the embodiment of rabbits . . .¹⁸ However, when in January the general meeting of the Devon and Cornwall Chamber assembled at Devonport under the presidency of George Soltau-Symons JP it condemned the 1875 Act as useless and a joint meeting of the two chambers in October overrode the strenuous opposition of Sir Lawrence Palk, who was presiding, and carried unanimously a resolution of J D Pratt of the Devon and Cornwall chamber that tenants needed better security and an end to the landlord's right to game. Pratt was speaking from personal experience; he had formerly farmed at Sprattshays, near Exmouth. J C Moore Stevens, a Tory justice from Torrington, had objected that 'Landlords and Tenants were to be the only persons in the county who were not to be permitted to make contracts between themselves' and Francis Drummond Fulford, JP, of Great Fulford, Exeter, went so far as to say he would evade such legislation.¹⁹

The question continued to dominate discussion. During 1879 Sir John Walrond told Tiverton farmers there was no need for 'sweeping laws' to change the position of the landlord; while Earl Morley told the Chudleigh Farmers' Association that the landlord needed security just as much as the tenant. The same group were advised by Sir John Kennaway to 'all pull together'. At Fremington Ploughing Society Sir Thomas Acland considered the issue and conceded that letting out the shooting to strangers and their keepers caused genuine grievance.²⁰

As the debate on the eventual Ground Game Act progressed it became an issue in the East Devon election of that year. Col W H Walrond was adopted as Tory candidate to succeed Sir Lawrence Palk and become junior member to Sir John Kennaway. In his address to electors Col Walrond claimed that the landlords' aid to distressed

tenants 'shows that there still exists an attachment between landlord and tenant, as there did before agitators came round trying to stir up class against class'. At Moretonhampstead he asserted that 'between landlord and tenant there ought to be perfect freedom'; he was supported by the Rev H G Hayter Hames, rector of Chagford and veteran chairman of the Crockernwell bench, a scourge of poachers. The Liberals hoped their candidate, Col Sterling, would gain support by promising to support the tenant's exclusive right to ground game. To illustrate the point he cited the case of Woodbury farmer Benjamin Butter Bastin who was driven out by rabbits and who regularly complained in the Liberal press that the landlords' monopoly meant no freedom of contract. Sterling, however, failed to sway the voters from their traditional allegiance; the final vote was Kennaway 4501, Walrond 4457, Sterling 3847.²¹

In the face of growing tension between landlord and tenant the Chamber of Agriculture sought a compromise and when it met in May 1880 under Fortescue's presidency, the proposal was adopted 'That no contract should be binding which deprived the tenant of the right to kill ground game on his farm *in any way he pleases*. This committee, by the foregoing resolution do not wish in any way to limit the right of landlords to reserve to themselves the concurrent right of killing ground game.' In permitting the tenant to kill ground game in any way the proposal would have gone further than the eventual Ground Game Act. Sir Massey Lopes too modified his position; also in May at Totnes he said he would not object to seeing the power to kill ground game shared by landlord and tenant (though he did not say in what proportion this power should be divided) but he feared that if all the rights were given to the tenant he might find the breeding of rabbits more profitable than

¹⁸ DWT, 26 January 1877.

¹⁹ DWT, 27 October, 2 November 1877.

²⁰ DWT, 7 November, 5 December 1879. Examples of the last point may be found in Section III.

²¹ DWT, 2, 9 April 1880. See also J H Porter, 'The Revolt of the Field: The Devon Response', *Southern History*, 7, 1985, pp 163-78.

breeding sheep. The next month Sir Stafford Northcote confided in his diary his plans for the Commons debates: 'I must speak early, declaring myself personally ready to vote for one of the Whig amendments, and enlarging upon the importance of upholding the doctrine of freedom of contract, in view especially of the formidable invasions of the rights of property with which we are threatened . . . eg in the matter of rent.'²²

The original Hares and Rabbits Bill introduced by Sir William Harcourt would have given the tenant the concurrent right to kill ground game without restriction and would have voided any lease which prevented it. The Ground Game Act was a much weaker version of the original bill; even so it was denounced and its evasion urged by the Conservative *Exeter Flying Post*: 'The Ground Game Act would vitiate and suppress the right of private contract between landlord and tenant, a legislative sample of Radical tyranny, that can be set aside and nullified by indirect means, which will baffle detection by any local court.' The usually conciliatory Sir Stafford Northcote seemed in distress when he told Torquay Conservatives the Act 'was mischievous in that it was aimed at the one object of bringing discord between classes. The principle of the bill was to bring disagreement between landlord and tenant.' Viscount Lymington denied this charge when speaking to the Witheridge Farmers' Association; he believed that where relations were good the Act would not be needed but it would help farmers where the game was virtually a second rent.²³

Sir John Kennaway and Sir Massey Lopes now found they could agree with the Act; the former told Chudleigh Farmers that he 'heartily agreed' with it and 'had always desired that the property of the tenant should

be protected against the ravages of ground game'. Sir Massey went so far as to say he had never opposed the bill, but only a part of it, and that now the use of the gun was restricted he was happy. 'He thought that was reasonable and would be appreciated by farmers, in whom the love of sport still existed, but of which such an unlimited use of the gun would soon deprive them.'²⁴

The fact that the two knights felt the Act was reasonable would hardly increase its appeal to the editor of the *Devon Weekly Times*. In 1876 he had written: 'The law of England belongs primarily to the people of England, and any custom or law that diminishes or checks its producing power is an abuse to be removed . . . vermin must be kept under, and it is a pity that landlordism by its tyranny should reduce itself to the level of the vermin that ought to be destroyed.' Liberals were told their vision was equally obscured by landlordism and in 1879 the editorial message was revolutionary: 'Property is the creation of law, and what law has created it can uncreate to the extent of declaring that arrangements prejudicial to the welfare of the state shall no longer be continued . . . The lesson landowners have to learn is that they have not the absolute right to do what they will with their own . . .'²⁵

III

The Ground Game Act gave to the occupier concurrently with others so entitled the right to kill and take ground game (hares and rabbits), but subject to many limitations. The principal restrictions were that only one person besides the occupier was permitted to use firearms and only members of his resident household or regular employees or one other person specifically employed could take it by other permitted means. Each had to have an authorization in writing to be produced on request. Existing tenancy

²² *DWT*, 21 May 1880; Andrew Lang, *Life, Letters and Diaries of Sir Stafford Northcote, first Earl of Iddesleigh*, Edinburgh, 1891, pp. 324-5.

²³ *EFP*, 20 October 1880, *DWT*, 1 October 1880. For the principal restrictions in the Act see below, section III. For the original bill see *BPP* (194) III, 371 and *Hansard*, Commons, 27 May 1880, 594-608.

²⁴ *DWT*, 29 October, 12 November 1880.

²⁵ *DWT*, 10 March 1876, 27 July 1877, 5 December 1879.

contracts had to run to their expiry, which could be a matter of years, existing closed seasons remained in force and firearms could only be used in daytime. Additionally traps could only be set at rabbit holes and poison was expressly prohibited.²⁶

The number of restrictions in the Act and the attitudes of the County politicians and justices already outlined suggest that the Act might be restrictively interpreted in Devon. In the context of game prosecutions as a whole the Act is of minor importance but does provide a key to the changing relationship between farmer and landlord. An analysis of the petty session reports of the *Devon Weekly Times* from 1880–99 shows a total of 6289 prosecutions for game and fishery offences; of the 3238 cases where the occupation of the defendant was known 290 were farmers or their sons. In this context the ninety prosecutions of farmers, their sons and labourers under the Ground Game Act may at first sight appear insignificant; in practice they are a microcosm of the conflict between tenant and landlord over game and specifically illustrate the conflict over tenant right.²⁷ Furthermore the pressure of prosecution for the poaching of ground and winged game by the preservers continued.

TABLE I
Annual prosecutions in Devon:
Ground Game Act

1880	0	1885	4	1890	5	1895	4
1881	6	1886	2	1891	0	1896	8
1882	1	1887	1	1892	6	1897	4
1883	20	1888	1	1893	1	1898	7
1884	6	1889	3	1894	2	1899	9

There were farmers who were immediately eager to use the Act to suppress the rabbit. Thus in 1881 farmer James Moore of Bittadon, deciding that the new Act

permitted him to take the game, invited three fellow farmers to a shoot. However, his existing lease had not expired, the game was reserved to the landlord and so the Barnstaple bench fined each £5 and costs with the alternative of one month's hard labour. Similarly in 1883 farmer Kennard invited a large number of Okehampton tradesmen to shoot rabbits at Okehampton Park in November; he too discovered the shooting was still reserved and twelve were convicted under the Act.²⁸

The strict interpretation of the terms of leases remained a steadfast policy of the county benches when considering breaches of the Act. For example although William Balcher claimed the right to kill game under the Act, in December 1883 the Wonford bench, sitting at the Castle, Exeter, found he had just stepped over his boundary and so convicted him. Two years later two labourers were each fined 18s 2d at Moretonhampstead for although they had the occupier's written permission his old lease had not expired. At Honiton an unexpired lease caused equal difficulty for the Sumption family. The keeper to Lady Drake prosecuted Mary Sumption under the Act, complaining that 'her husband had poached and now she has taken to it'. Her husband came to court to protest and to support her; but to no avail, she was fined 10s inclusive of costs.²⁹ In 1887 James Rowe was particularly unfortunate when he invited other farmers to come and shoot over his land, for the right still lay with the shooting tenant, T Beadle JP, and his landlord was Col Chichester who sat on the same bench.³⁰ The lengths to which strict interpretation could go are indicated by a case before the Crockernwell bench in 1890. Farmer James Grendon invited three neighbouring farmers of South Tawton and Drewsteignton to rabbit on his land. His old lease which had reserved the game had expired but his new

²⁶ Ground Game Act 43 & 44 Vict c47 1880.

²⁷ I am grateful to Caroline Dabrowska and Gill Skinner for data processing assistance. The newspaper reports are more reliable, for Devon, than the Registers of Summary Convictions, DRO QS 11/4–13, for identifiable game cases in the Register total 4966 for 1860–99 and it is clear that some magistrates were lax in making returns.

²⁸ *DWT*, 25 November 1881, 30 November 1883.

²⁹ *DWT*, 4 January 1884, 6 November 1885, 15 January 1886.

³⁰ *DWT*, 25 November 1887.

lease had not been signed so the bench convicted him with a nominal fine of 1s.³¹

Farmer James Harding regularly gave a known poacher named Samuel Lendon permission to shoot over his farm and this enraged the shooting tenant who told him he must stop; he refused. Consequently the shooting tenant prosecuted Lendon for game trespass. Though Harding claimed the right, Lendon was not in his service or employed as a trapper and so the Wonford bench convicted Lendon in 1890 with a fine of 20s and 17s 6d costs.³² In another case the shooting tenant who shot over Henry Cleeve's farm at Kenn prosecuted him for setting traps in the open. Cleeve openly admitted the offence to the Wonford justices in 1897 for the rabbit holes were not on his farm; the rabbits came off the neighbouring Haldon hills and so he had either to set traps in their runs or shoot them. He was fined 17s. The following year a small allotment holder of Dawlish was also fined after he had set traps just over his boundary.³³

The setting of traps other than at rabbit holes was the most common offence against the Act committed by farmers, their sons and agents. Thus Daniel Love of Axmouth was caught by the keeper to W T Hallett JP in May 1881. Farmer Love denied the offence and had the temerity to tell the bench that their fellow magistrate's prosecution was malicious. As it was their first case brought under the Act the bench said they would be lenient and imposed 10s and costs. Two years later farmer Thomas Elliott of Holne committed the same offence but trapped a pheasant, to the distress of Sir Robert Torrens JP who prosecuted and the Ashburton sessions imposed a heavy penalty of £3 10s. In 1884 at Dartmouth Enoch Wyatt of Mount Boone farm set traps (to catch rats) and was prosecuted and fined; so too was Domenico Bailey in 1887 and again in 1889 which cost him £4 and costs altogether. At

Malborough in 1896 Edward Prowse set over 100 traps in the open and was prosecuted on the evidence of the local constable as a warning to others. Two farmers' sons had been prosecuted in 1890 for setting traps in the open on their father's instructions. He came to court to protest that 'the rabbits were eating everything'. After another farmer's son had been acquitted by the Honiton division in 1893 a tenant farmer complained to the *Devon Weekly Times* that rabbit-preserving landlords set out to harass tenants who took their rights under the Act.³⁴

Not having written permission could catch either the farmer's son or his employee. Thus Alfred Denner of Sidmouth, a farmer's son, was successfully prosecuted at Ottery in 1885 and when in 1884 labourer George Summerhayes produced his written authority from the occupier the Honiton bench chaired by Lord Sidmouth flatly refused to believe it and fined him 20s for trespass on Lord Sidmouth's lands. Two other convictions for not having written permission were also recorded before the Axminster and Crediton benches in that year.³⁵

Farmers' employees and trappers were more commonly convicted for not setting traps at rabbit holes. For example the Totnes sessions in 1882 fined a Dittisham trapper £2 4s 3d, a case before the Wonford bench cost an Ashton trapper 16s and a Dunsford trapper 20s before the Crockernwell sessions in 1883 where another trapper paid 20s in 1886. That same year two Woodbury trappers were also convicted.³⁶ The prosecutions continued till the end of the decade when Seale Smerdon was successfully prosecuted at Honiton. In the eighteen-nineties there is some evidence of an increasing desire to prosecute under the Act.

³¹ *DIWT*, 7 February 1890.

³² *DIWT*, 27 December 1895.

³³ *DIWT*, 28 May 1897, 18 November 1898.

³⁴ *DIWT*, 10 June 1881, 26 January 1883, 29 August 1884, 10 June 1887, 8 November 1889, 2 October 1896, 5 September 1890, 3 November 1893.

³⁵ *DIWT*, 8 May 1885, 11 January, 22 August, 5 September 1884.

³⁶ *DIWT*, 13 October 1882, 30 March, 7 December 1883, 1 October, 19 November, 17 December 1886.

In 1892 William Cousins was convicted at Ilfracombe while James Hoare of Doddiscombeleigh managed to trap a spaniel and paid 35s. Lustleigh trapper Samuel Squires paid £2 13s 5d at Ashburton in 1895. The Crockernwell sessions had a clutch of cases over 1895-6, convicting Samuel Hill, Thomas Hearn, Samuel Hill and James Courtier.³⁷ Some had narrow escapes. William Gammon of Braunton managed to prove the traps were in the *slope* of the fence while George Yeoman of Broadclyst remained unconvicted because the keepers could not prove they were his traps.³⁸

Such escapes were rare. Charles Gay was convicted of setting fifty traps in the open in 1896; he told the constable 'all trappers do the same'. Two trappers of Ide were also caught that year and in 1898 trapper Charles Gore of Bampton paid a £2 fine. Over 1898-9 a Bickleigh labourer, two from Braunton and trappers at Kenton and Moretonhampstead were also convicted. Obviously this was an important restrictive clause in the Act. There is also a suggestion that the county police were becoming more involved in initiating prosecutions. The matter of 'rate-financed gamekeepers' was a contentious topic. Thus when the Wonford bench tried John Gay for setting traps in the open at Netherexe on the evidence of Constable Hannaford the tenant defended Gay and told the bench that neither he nor the landlord objected to the traps, that Hannaford was trespassing and that neither landlord nor tenant had given permission for the prosecution. The bench fined Gay 2s 6d and costs, a relatively nominal fine but with costs it would probably amount to a week's wage.³⁹

IV

Thus, contrary to previous claims, the Ground Game Act of 1880 provided no remedy for the depredations of ground game where the tenant had a landlord who was a strict preserver. In particular the limitation of traps to rabbit holes was a serious restriction as rabbits were most readily trapped in their runs and it is clear that trappers continuously breached this clause with the willing connivance of the farmers and occasionally even of a landlord. The attitude of the county's leaders before the Act was passed suggested they would be unsympathetic to defendants and this has now been shown to be the case. The debate over the issue in the Chambers of Agriculture suggests an increasing fragmentation of the rural interest and prosecutions under this Act reveal the continuing underlying tensions between landlord and tenant over ground game in Devon. Whether the Liberals gained electoral advantage in Devon from the passing of the act remains unclear. In the 1874 election seven Liberal MPs were returned to the Conservatives' eleven; in 1880 the result was eight and nine respectively but the two seats lost by the Conservatives were urban seats in Exeter and Plymouth. The result in 1885 was six seats for the Liberals and seven for the Conservatives. However, an analysis of the eight rural county constituencies (that is excluding Devonport, Plymouth and Exeter) shows the Liberals to have 54 per cent of the vote to the Conservatives' 46 per cent.⁴⁰ It would, however, be unwise to attribute that to the passing of one Act.

How far Devon's experience provides a guide to the experience of other counties must at present remain an imponderable, for an analysis of petty session decisions for the late nineteenth century has not been undertaken for other counties. There is, however, evidence that the 1880 Act

³⁷ DIWT, 8 November 1889, 22 July, 29 December 1892, 7 February 1894, 28 June, 10 May, 16 August 1895, 6 November 1896.

³⁸ DIWT, 14 February 1896, 29 January 1897.

³⁹ DIWT, 2, 16 October 1896, 15 April, 28 October, 16 December 1898.

⁴⁰ McCalmonts' *Parliamentary Poll Book*, eds J Vincent and M Stenton, Brighton, 1971.

continued to be in contention, for important leading cases were tried in the High Court in 1900 and 1910, for example, and the Act was amended in 1906 to relax the restrictions on occupiers taking ground game on unenclosed moorlands with effect from 1 January 1907.⁴¹

⁴¹ *Oke's Game Laws*, 5th edn, 1912, pp 96-118; Ground Game (Amendment) Act 1906 6 Edw 7 c21.