

general assembly made in the fourth year of the late Queen Anne nor the act passed in the nineteenth year of his late Majesty's reign nor anything therein or in either of them, but that every clause, article and sentence in the said acts or either of them contained, except what is hereby expressly altered or supplied, shall be and remain in full force and virtue as the same were before the making of this act.

[Section XI.] Provided also, and be it further enacted by the authority aforesaid, That this act shall continue in force for the term of seven years, and from thence to the end of the next sessions of assembly and no longer.

Passed March 4, 1763. Referred for consideration by the King in Council, December 9, 1763, and allowed to become a law by lapse of time in accordance with the proprietary charter. See Appendix XXIV, Section II, and the note to the Act of Assembly passed March 11, 1752, Chapter 396. Repealed by the Act of Assembly passed February 8, 1766, Chapter 539.

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## CHAPTER CCCCXC.

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### AN ACT CONCERNING CATTLE, HORSES AND SHEEP TRESPASSING WITHIN THIS PROVINCE.

Whereas the laws of this province heretofore made to prevent horses, cattle and sheep from trespassing and breaking into lawful inclosures have proved ineffectual.

For remedy whereof:

[Section I.] Be it enacted by the Honorable James Hamilton, Esquire, Lieutenant-Governor under the Honorable Thomas Penn and Richard Penn, Esquires, true and absolute Proprietaries of the Province of Pennsylvania and counties of Newcastle, Kent and Sussex upon Delaware, by and with the advice and consent of the representatives of the freemen of the said Province in General Assembly met, and by the authority of the same, That if any horse, mare, colt, cattle or sheep after the publication of this act shall trespass by breaking into the inclosure of any person or persons within this province, the same

being made according to the act, entitled "An act for erecting pounds in each township of this province,"<sup>1</sup> every such person being injured by such trespass may seize and distrain such horse, mare, colt, cattle or sheep, and the same so seized and distrained may retain until he shall recover and receive the damages sustained by such trespass, together with the costs of advertising and reasonable charges for keeping such distress in manner hereinafter directed.

[Section II.] And be it further enacted by the authority aforesaid, That every person or persons making such distress shall, within the space of forty-eight hours after the same shall be made, give notice thereof to the owner or owners of such horse, mare, colt, cattle or sheep if he, she or they can be conveniently found, but if not then such person or persons seizing or distraining such creature shall, within three days after such distress taken as aforesaid, cause an advertisement of the marks, brands, stature and color thereof and of the place where the same may be found, to be affixed at the most frequented and public place of his, her or their township; and if, upon such notice or advertisement, such owner or owners shall appear but neglect or refuse to make or tender a reasonable satisfaction to the party injured for the damages sustained by such trespass and in keeping the said creature, or if the said person or persons so making such distress shall not accept the said satisfaction, it shall and may be lawful for either of the parties aforesaid to complain and apply to any justice of the peace of the county where such creature shall [shall] be seized and distrained as aforesaid, who shall, upon such complaint and application, issue his warrant, directed to two reputable and honest freeholders of the neighborhood, commanding and enjoining them forthwith to view the said trespass and to value, appraise and ascertain the injury and damage done to or within the inclosure aforesaid (having regard to the lawfulness of said fence), with the expense and costs of keeping the said creature, and to make report thereof to [him], the said justice, with all convenient speed; which said valuation and appraisement and return they, the said freeholders, are hereby enjoined and required to make accord-

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<sup>1</sup> Passed May 10, 1729, Chapter 301.

ingly. And if the said valuation and appraisement shall not amount to more than the sum of money tendered to the party injured as a recompense for the damage done as aforesaid before such complaint made, then the said justice shall give judgment for the same only to the party refusing such tender and award reasonable [costs and] charges to the other party for the unjust vexation; but if the said valuation shall amount to more than the sum tendered or if no such tender be made, then and in that case the said justice shall award and give judgment for the valuation aforesaid to the party injured, with reasonable costs and charges for keeping the said creature so trespassing against the other party, and shall award execution upon every such judgment, with costs of suit accordingly.

[Section III.] And be it further enacted by the authority aforesaid, That if no owner or owners shall appear and make out his or their property in the said creatures within two weeks after such advertisements shall be published in the townships aforesaid, the person or persons making such distress shall forthwith, under the penalty of five pounds, publish the like advertisement as aforesaid three times in the Pennsylvania Gazette, and shall and may make application at the expiration of two months after the publication of the same advertisements to the said justice of the peace, who is hereby authorized and required to issue his warrant to two honest and reputable freeholders and cause them, upon their oath or affirmation, which he is hereby empowered and required to administer to them, to view, value and appraise the creature or creatures so distrained and to ascertain the damage so done as aforesaid, with reasonable charges for keeping the said creature, and to make return thereof to him as aforesaid; upon which valuation and return the property of and in the said creatures so valued shall become and be held and taken to be and is hereby vested in the person so making such distress; but so nevertheless that he shall be answerable and accountable to the owner or owners aforesaid for the valuation money aforesaid at any time afterwards within the space of one year next after the publication of such advertisements last aforesaid, having first deducted thereout the costs of such proceedings, advertisements and charges of keeping the

said creature with the damages so ascertained; but if the said owner or owners shall not appear and demand the same within the time limited last aforesaid, then the said person or persons so making such distress shall, upon demand made, pay all such overplus money to the overseers of the poor of the township where he, she or they shall reside for the use of the poor thereof, under the penalty of double the sum detained in his, her or their hands contrary to the direction of this act.

[Section IV.] And be it further enacted by the authority aforesaid, That if any such person or persons so distraining shall neglect to give such notice as hereinbefore is directed or shall neglect to set up and publish such advertisements in the most public place of his, her or their township, he, she or they shall forfeit and lose all right or title or pretense of right to a recovery of any sum or sums of money for such trespass, or any recompense for the same; but shall deliver up the said creature so distrained to the owner or owners thereof without any recompense, fee or reward whatsoever; and that one-half of all the fines imposed by virtue of this act shall be to the use of the owner or owners of such creature and the other half thereof to the overseers of the poor of the said township for the use of the poor thereof, to be recovered by them, or either of them, in a summary way as debts not exceeding five pounds are by law directed to be recovered.

[Section V.] And be it further enacted by the authority aforesaid, That if any person or persons shall knowingly and wittingly keep and retain any horse, mare, colt, cattle or sheep within his, her or their inclosures for the space of forty-eight hours without giving notice and publishing the advertisements aforesaid, every such person or persons shall forfeit and pay the sum of five pounds for every such offense, to be recovered and applied in manner aforesaid.

Passed March 4, 1763. Referred for consideration by the King in Council, December 9, 1763, and allowed to become a law by lapse of time in accordance with the proprietary charter. See Appendix XXIV, Section II, and the notes to (the two acts of) November 27, 1700, Chapters 56, 77; January 12, 1705-6, Chapter 158; May 9, 1724, Chapter 279; (the two acts of) May 10, 1729, Chapters 301, 303; and see the Acts of Assembly passed April 5, 1779, Chapter 842; March 13, 1780, Chapter 892; April 2, 1781, Chapter 934; March

27, 1784, Chapter 1089; March 7, 1800, Chapter 2120; April 1, 1805, P. L. 194; April 13, 1807, P. L. 236; March 28, 1808, P. L. 163; March 20, 1810, P. L. 160; March 25, 1813, P. L. 170; March 29, 1813, P. L. 230; February 25, 1814, P. L. 66; March 14, 1814, P. L. 96; January 25, 1816, P. L. 8; February 17, 1816, P. L. 69; March 5, 1819, P. L. 87; March 28, 1820, P. L. 171; April 2, 1821, P. L. 206; March 29, 1824, P. L. 126; April 1, 1831, P. L. 342; January 10, 1832, P. L. 12; May 4, 1832, P. L. 480; April 15, 1834, P. L. 537; February 24, 1807, P. L. 164; April 18, 1853, P. L. (1854) 825; April 26, 1855, P. L. 316; April 27, 1855, P. L. 351; March 26, 1857, P. L. 124; April 15, 1857, P. L. 196; March 5, 1858, P. L. 78; February 25, 1859, P. L. 79; February 15, 1860, P. L. 55; February 22, 1860, P. L. 68; March 25, 1861, P. L. 204; April 17, 1861, P. L. 323; April 5, 1862, P. L. 250; April 11, 1862, P. L. 496; April 11, 1863, P. L. 322; April 14, 1863, P. L. 453; April 15, 1863, P. L. 501; April 9, 1864, P. L. 369; May 7, 1864, P. L. 885; March 21, 1865, P. L. 444; March 23, 1865, P. L. 675; February 9, 1866, P. L. 23; March 27, 1866, P. L. 332; (the three acts of) April 11, 1866, P. L. 562, 703, 737; June 26, 1866, P. L. 1114; April 2, 1867, P. L. 638; April 3, 1867, P. L. 691; April 8, 1867, P. L. 940; (the five acts of) April 10, 1867, P. L. 996, 1021, 1071, 1082, 1128; April 13, 1867, P. L. 1224; March 12, 1868, P. L. 301; March 18, 1868, P. L. 376; March 24, 1868, P. L. 443; April 1, 1868, P. L. 573; April 2, 1868, P. L. 627; (the two acts of) April 4, 1868, P. L. 702, 707; April 14, 1868, P. L. 865; (the two acts of) April 14, 1868, P. L. 1121, 1122; March 17, 1869, P. L. 379; March 27, 1869, P. L. 550; (the two acts of) April 2, 1869, P. L. 670, 672; April 9, 1869, P. L. 800; April 10, 1869, P. L. 832; April 13, 1869, P. L. 892; (the two acts of) April 17, 1869, P. L. 1137, 1152; February 18, 1870, P. L. 158; February 24, 1870, P. L. 230; (the two acts of) March 15, 1870, P. L. 431, 433; March 18, 1870, P. L. 489; (the three acts of) March 28, 1870, P. L. 564, 576, 580; (the two acts of) April 1, 1870, P. L. 743, 773; (the three acts of) April 4, 1870, P. L. 838, 844, 862; (the three acts of) April 5, 1870, P. L. 878, 896, 905; (the two acts of) April 13, 1870, P. L. 1125, 1137; April 14, 1870, P. L. 1170; (the two acts of) February 18, 1871, P. L. 102, 105; March 9, 1871, P. L. 205; March 17, 1871, P. L. 411; (the two acts of) May 6, 1871, P. L. 598, 600; (the two acts of) May 20, 1871, P. L. 1022, 1042; (the two acts of) May 20, 1871, P. L. 1118, 1119; May 26, 1871, P. L. 1194; (the two acts of) May 29, 1871, P. L. 1279, 1281; (the three acts of) June 2, 1871, P. L. 1293, 1295, 1323; February 21, 1872, P. L. 128; (the two acts of) March 9, 1872, P. L. 280, 295; March 19, 1872, P. L. 438; (the two acts of) March 23, 1872, P. L. 510, 550; March 30, 1872, P. L. 672; (the two acts of) April 3, 1872, P. L. 811, 895; April 9, 1872, P. L. 1052; (the two acts of) February 19, 1873, P. L. 132, 134; February 27, 1873, P. L. 171; (the two acts of) February 28, 1873, P. L. 185, 187; (the two acts of) March 18, 1873, P. L. 305, 310; March 27, 1873, P. L. 437; (the three acts of) March 28, 1873, P. L. 458, 459, 460; April 8, 1873, P. L. 565; (the seven acts of) April 10, 1873, P. L. 621, 650, 651, 665, 700, 733, 818; May 11, 1874, P. L. 294; May 16, 1878, P. L. 55; (the two acts of) May 22, 1878, P. L. 96, 99; June 8, 1881, P. L. 75; April 26, 1889, P. L. 64; May 31, 1893, P. L. 185.