

and cartways, from the time they are so laid out and recorded as aforesaid.

[Section IV.] And be it further enacted by the authority aforesaid, That if any person or persons shall presume to stop or hinder any of the said highways or other roads heretofore laid out, or hereafter to be laid out and allowed of as aforesaid, and shall commit any nuisance therein, by felling of trees, making fences or any other way, and do not remove the same forthwith, such person or persons shall be fined in the sum of five pounds, to be levied by distress and sale of the offender's goods and chattels, to be employed by the county court for the clearing and removing of the said nuisances; and the remainder thereof shall be employed by the said court in repairing and clearing other roads within the township where the offense was committed, any law, custom or usage to the contrary hereof in anywise notwithstanding.

Passed November 27, 1700; allowed to become a law by lapse of time, in accordance with the proprietary charter, having been considered by the Queen in Council, February 7, 1705-6, and not acted upon. See Appendix I, Section II, and the Acts of Assembly, passed November 27, 1700, Chapter 57; February 20, 1735-36, Chapter 342; and February 8, 1785, Chapter 1126; repealed by the Act of Assembly passed April 6, 1802, P. L. 197.

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## CHAPTER LVI.

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### AN ACT FOR REGULATING AND MAINTAINING OF FENCES.

For preventing all disputes and differences that may arise through the neglect or insufficiency of fences in this province and counties annexed:

[Section I.] Be it enacted by the Proprietary and Governor, by and with the advice and consent of the freemen of this Province and Territories in General Assembly met, and by the authority of the same, That all corn fields and grounds kept for inclosures within the said province and counties annexed, shall be

well fenced with fence[s] at least five feet high, of sufficient rail or logs, and close at the bottom; and whosoever, not having their grounds inclosed with such sufficient fence[s] as aforesaid, shall hurt, kill or do damage to any horse, kine, sheep, hogs, or goats, of any other person, by hunting or driving them out of or from the said grounds, shall be liable to make good all damages sustained thereby to the owner of the said cattle.

Provided, That all sorts of swine going at large, contrary to the intent of an act made and passed this present sessions, entitled "An act for restraining of Swine from running at large," shall not fall or be deemed within the construction of this act. But if any horse, kine, sheep, hogs or goats, or any kind of cattle shall break into any man's inclosure, the fence being of the aforesaid height and sufficiency, and by the view of two persons for that purpose appointed by the county court found and approved to be such, then the owner of such cattle shall be liable to make good all damages to the owner of the inclosure; for the first offense single damages only, and ever after double the damage sustained. And all persons having any unruly horses, mares or cattle, that are not to be kept off by such fences as aforesaid, are ordered and shall be obliged to take effectual care to restrain the same from trespassing on their neighbors' inclosures.

And for the better ascertaining and regulating of partition-fences:

[Section II.] Be it further enacted by the authority aforesaid, That where any neighbors shall improve lands adjacent to each other or where any person shall inclose any land adjoining to another's land already fenced in, so that any part of the first person's fence becomes the partition-fence between them, in both these cases the charge of such division-fence (so far as inclosed on both sides) shall be equally borne and maintained by both parties. To which end, and the others in this act mentioned, each county court within this province shall nominate, and is hereby empowered and required to nominate and appoint, so many honest and able men as they shall think fit, for each county respectively, to view all such fence and fences about which any difference may happen or arise; and

that the aforesaid persons, in each county respectively, shall be the sole judges of the charge to be borne by the delinquent, or by both or either party, and of the sufficiency of all fences, whether partition-fences or others; and where they judge any fence to be insufficient, they shall give notice thereof to the owners or possessors; and if any one of the said owners or possessors, upon the request of the other, and due notice given by the said viewers, shall refuse to make or repair the said fence or fences, or to pay the moiety of the charge of any fence before made (being a division-fence) within ten days after notice given, that then, upon proof thereof before two justices of the peace of the respective county, it shall be lawful for the said justices to order the person aggrieved and suffering thereby to repair the said fence or fences, who shall be reimbursed his cost and charges from the person so refusing to make good the said partition-fence or fences; and that the said cost and charges shall be levied upon the offender's goods and chattels, by warrant from the said justices, by distress and sale thereof, the overplus (if any be) to be returned to the party offending.

Passed November 27, 1700; allowed to become a law by lapse of time, in accordance with the proprietary charter, having been considered by the Queen in Council, February 7, 1705-6, and not acted upon. See Appendix I, Section II; Section I, repealed by the Act of Assembly, passed April 4, 1889, P. L. 27; Section II, supplied by the act of March 11, 1842, P. L. 62; and see the acts passed January 12, 1705-6, Chapter 158; (the two acts of) February 24, 1721-22, Chapters 241 and 242; (the two acts of) May 10, 1729, Chapters 301 and 303; March 4, 1763, Chapter 490; April 15, 1782, Chapter 982; March 27, 1784, Chapter 1089; March 7, 1800, Chapter 2120; April 1, 1805, P. L. 194; April 13, 1807, P. L. 286; March 28, 1808, P. L. 163; (the two acts of) March 20, 1810, P. L. 160, 161; February 25, 1814, P. L. 66; March 28, 1820, P. L. 171; March 3, 1847, P. L. 199; April 3, 1851, P. L. 320; April 14, 1851, P. L. 612; May 2, 1853, P. L. 667; April 24, 1857, P. L. 309; March 11, 1862, P. L. 109; April 11, 1862, P. L. 496; March 22, 1865, P. L. 538; March 23, 1865, P. L. 42 (sic); February 28, 1868, P. L. 236; March 23, 1868, P. L. 424; March 28, 1868, P. L. 514; April 1, 1868, P. L. 570; April 9, 1868, P. L. 779; April 13, 1868, P. L. 1022; April 17, 1869, P. L. 1125; April 13, 1870, P. L. 1145; May 6, 1870, P. L. 1303; May 25, 1871, P. L. 1137; May 29, 1871, P. L. 1281; April 10, 1873, P. L. 665; June 23, 1885, P. L. 142 (declared unconstitutional, *Frost vs. Cherry*, 122 Pa. R. 417); May 23, 1887, P. L. 167; May 23, 1891, P. L. 108; and May 31, 1893, P. L. 185.