

[SECT. 3.] And the jurors' verdict, being returned by the hand of the sheriff to the next court of quarter sessions of the county where such mill or pond is, being allowed and recorded, shall be a sufficient bar against any action to be brought for any damages occasioned by the flowing of any such lands as aforesaid: *save, only*, an action of debt, which the complainant may bring for the recovery of such yearly sum or sums of money, from the owner or occupant of such mill, assest as aforesaid, during the time of such flowing.

[SECT. 4.] But if the jury find no damage for the complainant, then he or they to be at the cost of the jury, as shall be allowed by the justices of the said court. [*Passed February 22; published February 27, 1713-14.*]

CHAPTER 16.

AN ACT FOR THE BETTER REGULATION OF SWINE GOING AT LARGE; IN ADDITION TO THE ACT FOR THE REGULATING OF FENCES, CATTLE, &c., AND FOR THE EXPLANATION THEREOF.

Be it enacted by His Excellency the Governour, Council and Representatives in General Court assembled, and by the authority of the same,

Town to choose persons to see to the observance of the laws about swine. 1693-4, chap. 7. Penalty for not serving.

[SECT. 1.] That every town or precinct within this province, at their annual meeting in March to chuse other town officers, shall chuse two or more meet persons to see to the due observance of the laws relating to swine, who shall be sworn, as other town officers, to the faithful and impartial discharge of their office; and if any person so chosen shall refuse to serve, or neglect his duty therein, he shall forfeit and pay the sum of twenty shillings, to the use of the poor of the said town; and, upon his refusal, another shall forthwith be chosen in his room, to be under the like penalty; and so, till others shall accept the said service.

Fee for yoking and ringing.

[SECT. 2.] And every person, from time to time so chosen and sworn to the said office, upon complaint made to him of any person or persons, within his precinct neglecting or refusing to yoke and ring his or their swine, as the law directes, shall give notice to him or them, forthwith, to cause his or their swine to be yoked and ringed; and if the owner or owners of them neglect or refuse to do it twenty-four hours after notice given, then the said officer shall yoke and ring them, and have twelvenpence for each swine he shall so yoke and ring, besides the sixpence per head, which the law allows him, for every swine found unyoked and unringed.

Sixpence per head for swine unyoked or unringed, and twelvenpence for both.

[SECT. 3.] And further, the said officers are obliged to take their opportunity, several times in the year, to pass through their precincts, to see whether the law be attended; and for every swine that they shall find going at large, either unyoked or unringed, they may demand and receive of the owner sixpence per head; and for every swine that is both unyoked and unringed, twelvenpence. And if the owner of the said swine refuseth to pay the said sums, then the said officer or officers may impound them, and proceed with them as the law hath directed in the case of impounding; or sue for and recover the same, as is hereafter provided.

And be it further enacted by the authority aforesaid,

Swine going at large to be yoked from the first of April to the last of October, and ringed all the year.

[SECT. 4.] That, for the future, all swine going at large shall be sufficiently yoked, from the first of April to the last of October, yearly; and sufficiently ringed in the nose, all the year, so as to prevent damage by their rooting.

And, to the intent all persons may know what a sufficient yoking doth mean,—

It is hereby declared,

[SECT. 5.] That no yoke shall be accounted sufficient, which is not ^{A sufficient yoke.} the full depth of the swine's neck, above the neck, and half so much below the neck; and the sole or bottom of the yoke to be three times so long as the breadth or thickness of the swine's neck.

[SECT. 6.] All penalties or forfeitures arising by virtue of this act, ^{Penalties, how to be recovered.} may be recovered by action, bill, plaint or information, in any court proper to try the same.

[SECT. 7.] This act to continue in force until the end of the ses- ^{Limitation.} sion of this court in May, anno, [1716] [*one thousand seven hundred and sixteen.*] [*Passed February 24; published February 27, 1713-14.*]

NOTES.—The engrossments of all the acts of this year are preserved, except of chapter 8; and the following chapters were printed; viz., 4, 5, 6, 7, 8, 9, 10, 11, 14, 15 and 16.

No action appears to have been taken by the Privy Council upon the acts of this year. See NOTES to 1707, *ante*.

Chap. 4. In England public notaries were officers of the civil law and were appointed by the Archbishop of Canterbury; their appointment being, also, registered and subscribed by the "clerk of the faculties" in chancery. Under the Colonial charter the Governor and Company assumed the power of appointment, prescribed the form of oaths to be taken by them and fixed their fees. Following this example, after the arrival of the Province charter, the Governor and Council appointed these officers until 1720, when, it appearing that a notary in Boston claimed to act by virtue of the ecclesiastical commission, the House of Representatives asserted their right, under the charter, to join with the Governor and Council in the election of notaries, which, after mature deliberation, was conceded, thus establishing the rule ever afterwards practised in the Province and the Commonwealth until, by the fourth article of amendment of the Constitution, in 1821, the appointing power was vested in the Governor and Council.

The following extracts, showing some of the facts above stated are inserted as appropriate to this chapter:—

"July 20th 1720. In the House of Representatives July 19, 1720, It appearing to this House, That the Office of Notary Publick is not among those Enumerated in the Royal Charter of this Province, as reserved to be otherwise Appointed; Voted that a sufficient Number of suitable Persons in proper Places; Viz, Two at Boston, One at Salem, One at Plymouth, One at Newbury, One at Bristol, & One at Kittery be Elected by this Court to Discharge the said Office, And that the Choice be made on Thursday next After Noon. In Council; Read, & Voted that the Consideration of the Matter of Publick Notary be refer'd to the Session of this Court in Autumn next. In the House of Represent^{es} Read & Non-Concur'd."—*Council Records, vol. XI., p. 22.*

"July 21st 1720. A Message came up from the House of Represent^{es} by Oliver Noyes & Henry Somersby Esq^s with the Vote for Proceeding to y^e Choice of Publick Notaries, And that the House do insist on their said Vote."—*Ibid., p. 26.*

"July 21st 1720. A Message came up from the House by D^r Clark &c, To Enquire Whether the Board are ready to proceed to the Choice of publick Notaries.

In Council; The several Votes relating to Publick Notarys were Read, And thereupon, Voted that the Board insist on their Vote for Deferring the Consideration of the Choice of Publick Notaries till the Fall Sessions, It being a Matter of Consequence, And the Method proposed for Chusing being in a different Way from what has been practiced ever since the arrival of the present Charter

A Message came up from the House of Represent^{es} by Elisha Cook and John Chandler Esq^s That the House propose to proceed to the Choice of Publick Notaries To Morrow at four a Clock in the After Noon. And they desire the Board to join with them in the said Choice."—*Ibid., pp. 26, 27.*

"July 22nd 1720. A Message came up from the House of Representatives by Cpt. John Foster and M^r William Clark with a Vote for Chusing publick Notarys And that such Gentlemen of the Board as are so minded may Joyn with them therein."—*Ibid., p. 29.*

"July 22nd 1720. The Vote of the House of Represent^{es} for Chusing Publick Notarys.

In Council; Read & Non-Concur'd; And Voted that the Board do adhere to their Vote pass'd Yesterday, for the Reasons therein mentioned."—*Ibid., p. 30.*

"July 22nd 1720. John Chandler Esq^r John Stoddard Esq^r and M^r William Clark brought up from the House of Representatives their Votes for Publick Notarys with a Message, To Enquire Whether the Board would join with them in the said Choice, To which It was Answered, That the Board did not at Present see Cause to Join therein."—*Ibid., pp. 30, 31.*

"Novem^r 9th 1720. A Message came up from the House of Represent^{es} That since the Hon^{ble} House Board did not see meet at their last Session to join with the House in the Choice of Publick Notarys (Wh^{ch} is the undoubted Privilege of this Court,) But to deliberate on the Matter till this Session, The House is now willing to proceed to a new Choice of those Officers, If the Board shall see meet to join with them in it."—*Ibid., p. 51.*

"Novem^r 10, 1720. A Message went down to the House of Represent^{es} by Benjamin Lynde & Jonathan Dowse Esq^s That the Board have consider'd the Message from the Hon^{ble} House yesterday relating to publick Notaries, And have determined to Join with them in the Choice of Publick Notarys, To Morrow Morning at ten a Clock."—*Ibid., p. 52.*

"Novem^r 11, 1720. A Message came up from the House of Represent^{es} by William Dudley, Esq^r That the House is now ready to proceed to the Choice of Publick Notarys, If the Board are disposed to Join with them in it.

A Message went down to the House of Representatives by Thomas Fitch Esq^r That the Board are now ready to Join with the House in the Choice of publick Notarys.