

imported, whether minors or adults, and was thought to be mutually beneficial to the colony, and to the emigrant. But no such necessity existed as to the children who were already in the province, and the custom never extended to them. The overseers of the poor have no authority to bind out minors as *servants*, even such as are the objects of public charity. They must be bound apprentices to some "art, trade, occupation or labour." No parent, under any circumstances, can make his child a *servant*. Though he is entitled to the service of his child, he cannot enforce it, as a master can that of his servants; he cannot commit him to gaol if he runs away; he cannot demand the penalty of five days service, for every day of absence; and therefore it is impossible that he can transfer such right to another.

For the law respecting apprentices, see the 12th section of the act establishing the Orphans' Court, passed in 1713, (post chap. 197.) The act for regulat-

ing apprentices within this province, passed 29th Sept, 1770, (post chap. 616.) The 8th section of the act for the relief of the poor, before cited. The supplement to the act of Sept. 1770, passed April 11th, 1799, (post chap. 2074.) The different local acts for establishing poor-houses—and the 2d section of the act of April 2d, 1803, (post chap. 2377,) for the confinement of runaway and disorderly apprentices in Philadelphia.

By the 7th section of the act against adultery and fornication, passed in 1705, (post chap. 122,) if any single woman, being a servant by indenture or covenant, have a bastard child within the time of her servitude, she shall serve such further time, beyond the term in her indenture or covenant mentioned, as the Sessions shall think fit, as a compensation to her master or mistress, for the loss and damage they had sustained by reason thereof; *provided*, it be not more than two years, nor less than one.

1700.

CHAPTER LVI.

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, *Be it enacted*, That all corn-fields and grounds kept for inclosures, within the said province and counties annexed, shall be well fenced with fence, at least five feet high, of sufficient rail or logs, and close at the bottom; and whosoever, not having their grounds enclosed with such sufficient fence as aforesaid, shall hurt, kill or do damage to any horse, kine, sheep, hogs or goats, of any other persons, 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 session, entitled, "An act for restraining of swine from running at large," shall not fall nor 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 offence single damages only, and ever after double the damages 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 neighbours inclosures.

How fences shall be made.

Swine running at large not within this act.

Damages to be paid for trespasses.

1700.

Division
ences how
be main-
ained.

II. And for the better ascertaining and regulating of partition fences, *Be it further enacted*, That where any neighbours 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 costs and charges shall be levied upon the offender's goods and chattels, by warrant from the said Justice, by distress and sale thereof, the overplus, if any be, to be returned to the party offending.

ifferences
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nted.

Passed in 1700.—Recorded A. vol. 1. p. 51. (h)

(h) By the act for regulating party walls, buildings and partition fences in the city of *Philadelphia*, passed February 24th, 1721, (post. chap. 242,) particular provision is made for the regulation of partition fences, and for recovering the costs of erecting and repairing them in the city: which act is amended and rendered effectual, by the act of 15th April, 1782, (post. chap. 971,) and by the 9th section of the act for the better regulation of the city of *Philadelphia*, and districts adjoining, and preserving the navigation of the river *Schuylkill*, passed March 25th, 1805, (post. chap. 2569,) if any person shall erect or make any fence, beyond the common low water mark into the said river, without licence from the wardens, being legally convicted thereof, he, she, or they, for every such offence, shall forfeit and pay a fine not exceeding 20 dollars, &c.

By the 6th section of the act for "erecting of pounds in each township

of this province," passed May 10th, 1729, (post. chap. 301,) All fences shall be esteemed lawful or sufficient, though they be not close at the bottom, so that the distance from the ground to the bottom thereof exceed not 9 inches, and that they be four feet and an half high, and not under. And by the act of March 4th, 1763, (post. chap. 490,) entitled "An act concerning cattle, horses and sheep trespassing within this province," it is provided, that if any stray horse, mare, colt, cattle or sheep, shall trespass into any inclosure made according to the act of May 10th, 1729, the same may be seized and restrained, and the proceedings thereon are regulated.

These acts of May 10th, 1729, and March 4th, 1763, were repealed by the act of March, 27th, 1784, (post. chap. 1078,) entitled "An act to regulate fences, and to appoint appraisers in each township in the counties of Bedford, Northumberland, Westmoreland-

Washington and Fayette, and to encourage the raising of swine," so far as respected the counties named in the title; and it is enacted that all fences within the limits of the said counties, shall be made and erected in the following manner: All worm fences shall be four feet and an half high, with sufficient stakes and riders added thereon, and that the under rail in each pannel shall not exceed five inches wide between the rails, and that the said fences shall have at least four feet worm; and that all post and rail fences shall be four feet and an half high, and the distance between the rails as aforesaid; and appraisers are to be elected annually in each township, to view and appraise the damages done by "the trespassing of swine or any other creature or creatures," and the mode of proceeding in such case is directed and regulated. The said appraisers are to view all partition fences, &c. This act, therefore, as far as it extends, supersedes the power of the court to appoint viewers of fences.

But, by an act passed March 7th, 1800, (post. chap. 2109,) the act of 27th March, 1784, is repealed so far as it respects the county of *Northumberland*, agreeably to the (then) limits of the said county; and by the act of April 1st, 1805, (post. chap. 2578,) so far as respects the county of *Luzerne*. By the operation of which repealing acts, the power of the courts to appoint viewers, and the two acts of May 10th, 1729, and March 4th, 1763, are revived in the counties of *Northumberland* and *Luzerne*.

The act of March 28th, 1808, (post. chap. 2981,) also repeals the act of March 27th, 1784, (except the repealing clause) so far as respects the counties of *Washington* and *Allegheny*. And it is provided therein, "That all fences shall be deemed lawful which are four and an half feet high (in said counties) if in the judgment of the referees (to be appointed, &c. as is directed in the act,) the fence or fences viewed by them, shall be such, in other respects, as are generally constructed, and deemed a sufficient fence within their respective township; and damages occasioned by horses, horned cattle or swine, trespassing in the said counties, are to be determined by the said referees, upon actual view, and recovered as is directed in the act.

By the provisions of this act (of 1808,) and by the operation of the exception in the repealing clause, the acts of 1729 and 1763, are not in force in these two counties. But as no provision is made for the regulation of partition fences, it would seem that recourse can be had,

in disputes respecting them, only to the act in the text.

By the act concerning strays, passed April 13th, 1807, (post. chap. 2865,) the acts of May 10th, 1729, and March 4th, 1763, are also repealed, so far as respects the counties of *Philadelphia*, *Bucks*, *Chester*, *Lancaster*, *Northampton*, *Wayne*, and *Delaware*. And, by an act passed, March 20th, 1810, so far as respects the counties of *Montgomery* and *York*; and new regulations are made for ascertaining and recovering damages done by trespassing cattle, horses or sheep.

The result of these various acts, seems to be, that the fences in the counties of *Philadelphia*, *Bucks*, *Chester*, *Lancaster*, *Northampton*, *Wayne*, *Delaware*, *Montgomery*, and *York*, are subject to the provisions of the act in the text: and the remedy for trespassing cattle, &c. is under the act concerning strays of April 13th, 1807—The acts of May 10th, 1729, and March 4th, 1763, being no longer in force in those counties.

The fences in the counties of *Berks*, *Dauphin*, *Cumberland*, *Franklin*, *Adams*, *Mifflin*, *Northumberland*, and *Luzerne*, are to be made according to the sixth section of the act of 10th May, 1729. And, the act concerning strays not extending to these counties, damages by trespassing cattle, &c. are to be compensated by the acts of 1729 and 1763; and partition fences regulated under the act in the text.

The remaining part of the state was, on the 27th March, 1784, included in the counties named in the act of that date, and all fences, and trespasses, must be regulated and compensated by that act, except in the counties of *Washington* and *Allegheny*, which are governed by the local regulations prescribed in the act of March 28th, 1808, except as to partition fences, as above stated.

It also appears that all that follows the proviso in the first section of the act in the text, is altered by the existing acts relative to trespasses by cattle, &c. above cited. And the act for restraining of swine from running at large, referred to in the proviso, (chap. 77,) was repealed by vote of Assembly, October 17th, 1701. See Votes of Assembly, vol. 1, page 159. For the existing laws respecting swine, see post. chap. 158 and 303, and the notes thereto.

The act to improve the breed of horses, and regulate rangers, passed May 9th, 1724, (chap. 279,) a supplement thereto, passed Dec. 9th, 1719, (chap. 1467,) and a further supplement passed April 23d, 1794, (chap. 1763,) were repealed by an act passed March 20th, 1810.

1700.

By a supplement to the act in the text, passed March 20th, 1810, it is enacted, that any three of the fence viewers appointed by the different Courts of Common Pleas, in the several counties of this Commonwealth, shall be a *quorum* for doing business; and any view or order which they may make in pursuance of, or in discharge of the duties enjoined on them in the original act, shall be as firm and valid in law, as if

the whole number appointed in any of the counties aforesaid, had viewed or adjudged the same, according to the true intent and meaning of the said act. And each viewer shall receive one dollar for every day on which he shall be engaged in any view, which cost or expense shall be borne by both, or either parties, as the said viewers shall direct, according to the provisions of the original act.

CHAPTER LXX.

An ACT concerning bills of exchange. (i)

BE it enacted, That if any person or persons, within this province and territories, shall draw or indorse any bill or bills of exchange, upon any person or persons in England, or other parts of Europe, and the same be returned back unpaid, with a legal protest, the drawer thereof, and all others concerned, shall pay and discharge the contents of the said bill or bills, together with twenty pounds per cent. advance, for the damage thereof; and so proportionable for greater or less sums, in the same specie as the said bill or bills were drawn, or current money of this province, equivalent to that was first paid to the drawer or indorser.

Passed in 1700.—Recorded A. vol. I. page 64.

(i) A bill of exchange protested for non-acceptance, on which the drawer pays principal and damages, he cannot afterwards recover back the damages, because there was not, likewise, a protest for non-payment. *Morris v. Tavin*: 1 Dallas, 147. Query, whether a protest for non-acceptance only, is sufficient to recover the money from the drawer? *Ibid.*

The court will allow the plaintiff in an action upon a bill of exchange to strike out a special, as well as a general, indorsement on the bill. *Morris v. Foreman*: 1 Dallas, 193. A protest for non-payment must appear under a notarial seal; but it is not necessary that the non-acceptance should be certified in the protest; for, that may be sufficiently established by other evidence. *Ibid.* The possession of a bill of exchange is evidence of an authority to demand payment of its contents. *Ibid.* Unless a bill of exchange is in its origin expressly made payable to order, an indorsement, subsequent to the acceptance, cannot vary or enlarge the engagement of the acceptor, so as to subject him, by the law merchant, to an action at the suit of the indorsee. *Gerard v. La Coste, et al.* 1 Dallas, 194.

Where a bill is neither paid nor received, in satisfaction of a precedent

debt, but upon the condition of its being honoured, if the bill is not honoured, but protested, the parties are in the same situation, as if it had never been drawn; and the plaintiff cannot be entitled to recover damages. *Chapman v. Steinmetz*. 1 Dallas, 261.

Reasonable notice of protest is to be given in the case of a bill of exchange. *Steinmetz et al. v. Currie*: 1 Dallas, 234, 270. And, also, in the case of a promissory note. *Robertson et al. v. Vogle*: *ibid.* (Note to former edition.)

See, *Bank of North America v. Vardon*, 2 Dallas, 78. And in a suit against an indorser of a promissory note, the Chief Justice said, before the revolution, it was not usual to give notice to the indorser, or even to call on the drawer, as soon as a note became due; it would have been considered as harsh and unreasonable. But since the establishment of a bank, a rule has been introduced; and as these notes, lodged in the bank, were often accommodation notes, it was highly reasonable notice should be given in a short time. What that time ought to be, has not been determined. Two or three months would certainly be too long, and a day may be too short. It was therefore left to the jury, with a direction to take into consideration the usual practice of that

Twenty per cent. on protested bills of exchange.