ANNO TRICESIMO OCTAVO

GEORGII III. REGIS.

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C A P. LXV.

An Act for preventing the Depaſturing of Foreſts, Commons, and Open Fields, with Sheep or Lambs infected with the Scab or Mange, in that Part of *Great Britain* called *England*. [21ſt *June* 1798.]

Preamble.

WHEREAS there are within this Kingdom ſeveral Foreſts, Chaſes, Woods, Moors, Marſhes, Heaths, Commons, Waſte Lands, and Open Fields, and other undivided and uninclosed Lands, capable of yielding great Profit, by breeding and maintaining Sheep and Lambs: And whereas ſeveral Perſons intereſted in ſuch Lands turn out, keep, and depaſture thereon Sheep and Lambs infected with a certain contagious Complaint or Diſorder, commonly called *The Scab* or *Mange*, by which Means ſuch Complaint or Diſorder has gradually increaſed, and will, if ſuch Practice be not reſtrained, become general, to the great Injury not only of divers Individuals, but of the Publick at large, ſuch Complaint or Diſorder rendering the Fleſh of ſuch Sheep and Lambs unwholeſome, and deſtroying the Wool: May it therefore pleaſe Your Majeſty that it may be enacted, and be it enacted by the King's moſt Excellent Majeſty, by and with the Advice and Conſent of the Lords Spiritual and Temporal, and Commons, in this preſent Parliament aſſembled, and by the Authority of the ſame, That, from and after the Twenty-fifth Day of *December* in the Year of our Lord One thouſand ſeven hundred and ninety-eight, if any Perſon or Perſons whoſoever ſhall turn out, keep, or depaſture, in or upon any Foreſt, Chaſe, Wood, Moor, Marſh, Heath, Common, Waſte Land, Open Field, or other undi-

From *Dec.* 25, 1798, if any Perſon ſhall turn out upon any Foreſt, &c. Sheep or Lambs having

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the Mange, or having been within Six Months infected therewith, he shall forfeit not more than 10*l* nor less than 20*s*.

vided or unincloſed Land, any Sheep or Lambs infected with ſuch Complaint or Diſorder called *Scab* or *Mange*, or ſhall wilfully and knowingly turn out, keep, or depaſture, in or upon any ſuch Foreſt, Chaſe, Wood, Moor, Marſh, Heath, Common, Waſte Land, Open Field, or other undivided or unincloſed Land, any Sheep or Lamb which, at any Time within the Space of Six Calendar Months immediately previous thereto, ſhall have been infected as aforeſaid, every ſuch Perſon, on being thereof convicted on the Oath of One or more credible Witneſs or Witneſſes, or on his or her Confeſſion, before any One or more Juſtice or Juſtices of the Peace for the County, Diſtrict, or Place, wherein ſuch Offence ſhall have been committed, ſhall forfeit and pay any Sum not exceeding Ten Pounds, nor leſs than Twenty Shillings, for every ſuch Offence, together with all reaſonable Coſts and Charges attending ſuch Conviction, ſuch Coſts and Charges to be aſcertained by the Juſtice or Juſtices before whom ſuch Conviction ſhall take place; and ſo *toties quoties* as often as any ſuch Sheep or Lamb ſhall be ſo turned out, kept, or depaſtured.

The Owner of every Sheep and Lamb Three Months old ſo turned out, ſhall cauſe them to be marked, on a Penalty not exceeding 2*s*. for each.

II. And be it further enacted, That, from and after the ſaid Twenty-fifth Day of *December* One thouſand ſeven hundred and ninety-eight, the Owner or Owners of each and every Sheep and Lamb of the Age of Three Months, which ſhall be turned out, kept, or depaſtured on any Foreſt, Chaſe, Wood, Moor, Marſh, Heath, Common, Waſte Land, Open Field, or other undivided or unincloſed Land, ſhall cauſe ſuch Sheep and Lambs to be marked with the Initial Letters of his, her, or their Chriſtian Name and Surname, or Chriſtian Names and Surnames, or with ſuch Marks with which ſuch Sheep or Lambs have for Three preceding Years been uſually marked, ſuch Letters or Marks not being leſs in Length than Three Inches; and in caſe of Neglect thereof, the Owner or Owners ſhall, for each and every ſuch Sheep and Lamb not ſo marked, forfeit and pay any Sum not exceeding Two Shillings, and ſo *toties quoties*, as often as any ſuch Sheep or Lamb not ſo marked ſhall have been ſo turned out, kept, or depaſtured.

Any Perſon depaſturing or having a Right to depaſture on ſuch Foreſts, &c. may apply to a Juſtice, who may order Sheep and Lambs to be examined, and if found to have been depaſtured not contrary to this Act, may order them back to the Place from whence taken, and award Damages to the Owner;

III. And be it further enacted, That for the better and more effectually diſcovering the Offenders, and puniſhing the Offences herein mentioned, it ſhall and may be lawful to and for any Perſon or Perſons having Sheep or Lambs actually depaſturing, or entitled to be depaſtured, on ſuch Foreſt, Chaſe, Wood, Moor, Marſh, Heath, Common, Waſte Land, Open Field, or other undivided or unincloſed Land, who ſhall perceive, or have reaſonable Ground or Foundation for believing, that there is or are any Sheep or Lambs, Sheep or Lamb, depaſturing or being in or upon the ſame, contrary to the Direction and Proviſions of this Act, to apply to any One or more Juſtice or Juſtices of the Peace of the County, Diſtrict, or Place, wherein ſuch Lands ſeverally do lie, who, upon Complaint on Oath made thereof before him or them, is and are hereby authorized and required to iſſue a Warrant or Warrants under his Hand and Seal, or their Hands and Seals, directed to the Keeper or Keepers of the ſaid Foreſts or Chaſes, or his or their Deputy or Deputies, or to the Petty Conſtable or Conſtables, Bailiff, Headborough, or Tything Man of any Pariſh, Hamlet, or Townſhip, within or near which any ſuch Foreſt, Chaſe, Wood, Moor, Marſh, Heath, Common, Waſte Land, Open Field, or other undivided or unincloſed Land, ſhall lie and be ſituate, or unto any other Perſon or Perſons, who ſhall conſent and be willing to be inſerted in ſuch Warrant

or

or Warrants, and ſhall command and empower him or them, or any of them, to take or drive all and every ſuch Sheep and Lambs, Sheep and Lamb, to the next Pound, or to ſome other convenient Place, there to be examined by the Perſon or Perſons who ſhall have made ſuch Application to ſuch Juſtice or Juſtices as aforeſaid, his, her, or their Servant or Agent, and by the Perſon or Perſons to whom the ſaid Warrant ſhall be directed, any or either of them, Notice being firſt given Six Hours at the leaſt before ſuch Examination ſhall take place, by the Perſon or Perſons making ſuch Complaint, or by his, her, or their Servant or Agent, to the Owner or Owners of ſuch Sheep or Lambs, Sheep or Lamb, or unto his, her, or their Hind, Bailiff, or Servant, or left at his, her, or their laſt or uſual Place of Abode, if any or either of them be known, and do reſide in the Pariſh or Pariſhes, Hamlet or Hamlets, Townſhip or Townſhips, where ſuch Sheep or Lambs, Sheep or Lamb, ſhall have been ſo found, deſcribing the Pound or Place the ſame have been taken or driven to, in order that he, ſhe, or they may, ſhould he, ſhe, or they, judge proper, be preſent at ſuch Examination; and if after ſuch Examination it ſhall be proved to the Satisfaction of the Juſtice or Juſtices granting ſuch Warrant or Warrants, that ſuch Sheep or Lambs, Sheep or Lamb, have or hath not been kept or depaſtured in or upon ſuch Lands and Grounds, contrary to the Directions and Proviſions of this Act, then and in ſuch Caſe each and every ſuch Sheep and Lamb ſhall be taken and driven back to the Place or Places from whence it was taken or driven previous to ſuch Examination, and ſuch Juſtice or Juſtices ſhall award ſuch Coſts, Charges, and Damages, to the Owner or Owners thereof, as to him or them ſhall ſeem reaſonable; and ſuch Coſts, Charges, and Damages, ſhall be paid by the Perſon or Perſons making ſuch Complaint, and ſhall be recovered in like Manner as any Forfeitures or Penalties are by this Act directed to be recovered.

but if found defective, *etc.* ſhall direct them to be marked, and on Demand delivered to the Owner, who ſhall pay the Expences and Penalty.

IV. Provided always, and be it enacted, That if upon any ſuch Examination it ſhall appear to ſuch Juſtice or Juſtices, that any ſuch Sheep or Lambs, Sheep or Lamb, have or hath been turned out, kept, or depaſtured, in or upon any ſuch Lands or Grounds, infected as aforeſaid, or which at any Time within the Space of Six Calendar Months immediately previous thereto ſhall have been infected as aforeſaid, then and in ſuch Caſe the ſaid Juſtice or Juſtices ſhall and may direct the ſame to be impounded, detained, and kept, and to be forthwith marked on both Sides with the Letter S, (the Length of ſuch Letter not being leſs than Five Inches), ſuch Marks to be made with Pitch or Tar, or ſome other adheſive Material, ſuch as Sheep have been uſually marked with in the Neighbourhood, and ſhall alſo cauſe the Left Ear of each ſuch Sheep and Lamb to be cut or ſlit in a horizontal Line, (ſuch Cut or Slit not exceeding the Length of One Inch), and the ſame, when ſo marked, ſhall be delivered, upon Demand, to the Owner or Owners thereof; and the Coſts, Charges, and Expences attending the taking, driving, keeping, impounding, and marking of the ſame, having been aſcertained by ſuch Juſtice or Juſtices, ſhall be paid by the Owner or Owners of ſuch Sheep or Lambs, Sheep or Lamb, together with the Penalties and Forfeitures impoſed by this Act, for each and every ſuch Sheep and Lamb, and ſuch Coſts, Charges, and Expences ſhall be recovered in like Manner as any Penalties or Forfeitures impoſed by this Act are directed to be recovered;

and any ſuch Mark or Marks, when made, ſhall be and be deemed Evidence of the Fact that ſuch Sheep or Lambs, Sheep or Lamb, have been turned out, kept, or depaſtured, contrary to the Directions and Proviſions of this Act, without any other Evidence whatſoever.

Penalty on Perſons deſtroying ſuch Marks, and on Owners not renewing them.

V. And be it further enacted, That if any Perſon or Perſons, at any Time within the Space of Six Calendar Months after any ſuch Sheep or Lambs ſhall have been ſo marked as directed by ſuch Juſtice or Juſtices, ſhall cut out, alter, or deſtroy the Mark herein directed to be made in the Ear of any ſuch Sheep or Lamb, or if the Owner or Owners of any ſuch Sheep or Lamb ſhall not immediately renew or cauſe to be renewed, in like Manner, the Mark or Marks herein directed to be made on the Side or Sides of every ſuch Sheep and Lamb, when and as often as ſuch Mark or Marks on the Side or Sides ſhall be defaced, altered, obliterated, or deſtroyed, by any Means whatſoever, every ſuch Perſon, for each and every Sheep and Lamb, the ſaid Mark in the Ear of which ſhall have been by him or her ſo cut out, altered, or deſtroyed, and ſuch Owner or Owners, for each and every Sheep and Lamb, not having the ſaid Mark or Marks on the Side or Sides thereof, immediately renewed as aforeſaid, ſhall forfeit and pay, on Conviction, any Sum not exceeding Twenty Shillings, nor leſs than Two Shillings; and the Juſtice or Juſtices before whom ſuch Conviction be had, ſhall, and he and they is and are hereby required to cauſe every ſuch Mark ſo cut out, altered, defaced, obliterated, or deſtroyed, to be immediately renewed, and the Sheep or Lambs, Sheep or Lamb, to be detained and impounded until every ſuch Mark ſhall have been renewed.

If Sheep be not demanded within Five Days after they are marked, they may be ſold, and the Produce paid to the Overſeers of the Poor, and if not claimed in 12 Months, applied in Aid of the Poor Rate.

VI. And be it further enacted, That if ſuch Sheep or Lambs, Sheep or Lamb, ſo detained or impounded, ſhall not be demanded and taken away by the Owner or Owners thereof within Five Days after the ſame ſhall have been ſo marked as aforeſaid, it ſhall and may be lawful to and for any Juſtice or Juſtices of the Peace of the County, Diſtrict, or Place, in which ſuch Sheep or Lambs, Sheep or Lamb, ſhall have been ſo detained or impounded, by Warrant under his or their Hand and Seal, or Hands and Seals, to direct the ſame to be ſold, and the Money ariſing by ſuch Sale, after deducting the Coſts, Charges, and Expences of taking, driving, keeping, detaining, impounding, and marking the ſame, ſhall be paid to the Overſeer or Overſeers of the Poor of the Pariſh, Hamlet, or Place where ſuch Sheep or Lambs, Sheep or Lamb, ſhall have been ſo detained or impounded; and in caſe the Owner or Owners of ſuch Sheep or Lambs, Sheep or Lamb, ſhall not claim ſuch Money within Twelve Calendar Months after ſuch Payment, the ſame ſhall be applied in Aid of the Poor Rate of ſuch Pariſh, Hamlet, Townſhip, or Place.

Penalties may be levied by Diſtreſs.

VII. And be it further enacted, That all Penalties and Forfeitures by this Act impoſed for any Offence againſt the ſame, ſhall be levied by Diſtreſs and Sale of the Goods and Chattels of the Offender or Offenders, by Warrant under the Hand and Seal of ſome Juſtice of the Peace for the County or Place where the Offence ſhall be committed, rendering the Overplus of the Money ariſing by ſuch Diſtreſs and Sale (if any) upon Demand, to the Owner of ſuch Goods and Chattels, after deducting the Coſts and Charges of making ſuch Diſtreſs and Sale; which

Warrant such Justice is hereby empowered and required to grant, upon Conviction of the Offender or Offenders, by Confession or upon the Oath of One or more credible Witness or Witnesses; and One Moiety of such Penalties and Forfeitures, when so levied, shall be paid to the Informer, and the other Moiety to the Overseer or Overseers of the Parish or Township where the Offence shall be committed, to be applied by him or them in Aid of the Poor Rate. Application of Penalties.

VIII. And be it further enacted, That in all Cases where any Conviction shall be had for any Offence or Offences committed against this Act, or against any Order of Sessions, or any Adjudication for the marking of Sheep or Lambs made, the Form of Conviction, and the Form of Adjudication for the marking of any Sheep or Lambs, shall be in the Words or to the Effect following; (that is to say), Convictions and Adjudications to be in the following Forms.

'to wit.' } 'BE it remembered, That on this Day of in the Year of the Reign 'of A. B. is convicted before 'of His Majesty's Justices of the Peace for the of 'by virtue of an Act of Parliament, made in the Thirty-eighth Year of 'the Reign of King *George* the Third, intituled, [*here set forth the Title 'of the Act, and specify the Offence, and the Time and Place when and 'where the same was committed*]; and I [*or*, we] the said 'do adjudge him [her, *or* them] to forfeit and pay for the same the Sum 'of Given under my Hand and Seal [*or*, our Hands 'and Seals] the Day and Year aforesaid.'

The FORM of ADJUDICATION.

'to wit.' } 'UPON the Report upon the Oath [*or*, Oaths] of this Day of in the Year 'of our Lord made unto 'of His Majesty's Justices of the Peace for the of 'respecting certain Sheep [*and*, Lambs] detained [*or*, impounded] in a ' in the Parish of in the said County, by 'virtue of a Warrant under our Hands and Seals [*or*, my Hand and 'Seal] do hereby adjudge that such Sheep [*and*, Lambs] 'belonging to *A. B.* [*or*, the Owner or Owners thereof being unknown] 'appearing to me [*or*, us] to be infected with the Scab or Mange [*or*, 'having within the Space of Months, immediately previous 'to the Date hereof, been infected with the Scab, or Mange] be marked 'forthwith according to the Directions of an Act, made in the Thirty-'eighth Year of the Reign of King *George* the Third, intituled, [*here set 'forth the Title of the Act.*] Given under our Hands and Seals, [*or*, 'my Hand and Seal], the Day and Year aforesaid.

IX. Provided always, and be it enacted, That if any Person or Persons shall think himself, herself, or themselves, aggrieved by any Thing done by or in pursuance of this Act, such Person or Persons may appeal to the Justices of the General Quarter Sessions of the Peace to be holden for the County or Place where such Matter of Appeal shall arise, next after the Expiration of Four Calendar Months from the Time such Matter of Appeal shall have arisen, and the Justices in such Sessions are hereby authorized and required to hear and determine the Matter of such Persons aggrieved may appeal to the Quarter Sessions.

Appeal in a ſummary Way, and to make ſuch Determination therein, and to award ſuch Coſts as they ſhall judge proper; and ſuch Determination ſhall be final, binding, and concluſive to all Parties, and to all Intents and Purpoſes whatſoever.

Diſtreſs not deemed unlawful on account of Want of Form in Proceedings, &c.

X. And be it further enacted, That where any Diſtreſs ſhall be made for any Sum or Sums of Money to be levied by virtue of this Act, the Diſtreſs itſelf ſhall not be deemed unlawful, nor the Party or Parties making the ſame be deemed a Treſpaſſer or Treſpaſſers on Account of any Defect or Want of Form in the Summons, Conviction, Warrant of Diſtreſs, or other Proceedings relating thereto, nor ſhall the Party or Parties making the ſame be deemed a Treſpaſſer or Treſpaſſers *ab initio*, on Account of any Irregularity which ſhall afterwards be done by the Party or Parties diſtraining; and the Perſon or Perſons aggrieved by ſuch Irregularity may recover full Satisfaction for the Special Damage in an Action on the Caſe: Provided always, That no Plaintiff or Plaintiffs ſhall recover in any ſuch Action for ſuch Irregularity, or for any Treſpaſs or other wrongful Proceeding, if Tender of ſufficient Amends hath been made to him, her, or them, or his, her, or their Attorney, or by or on the Behalf of the Defendant or Defendants, before ſuch Action brought; and in caſe no ſuch Tender ſhall have been made, it ſhall be lawful for the Defendant or Defendants in any ſuch Action, by Leave of the Court, after ſuch Action ſhall have been brought, at any Time before Iſſue joined, to pay into Court ſuch Sum of Money as he, ſhe, or they, ſhall think fit, whereupon ſuch Proceedings, Order, and Judgement, ſhall be made and given in and by ſuch Court, as in other Actions where the Defendant is allowed to pay Money into Court.

Limitation of Actions.

XI. Provided always, and be it enacted, That no Action or Suit ſhall be commenced againſt any Perſon or Perſons for any Thing done in purſuance of this Act, unleſs Ten Days Notice in Writing, ſigned by the Attorney for the Plaintiff or Plaintiffs, be thereof given to the Defendant or Defendants, ſpecifying the Cauſe of ſuch Action or Suit, hath been given to the Party or Parties aggrieved, or after Six Calendar Months next after the Fact committed; and every ſuch Action or Suit ſhall be brought and tried in the County where the Cauſe of ſuch Action ſhall ariſe, and not elſewhere; and the Defendant or Defendants in every ſuch Action or Suit ſhall or may, at his, her, or their Election, plead ſpecially, or the General Iſſue, and give this Act and the ſpecial Matter in Evidence at any Trial to be had thereupon, and that the ſame was done in purſuance and by the Authority of this Act; and if the ſame ſhall appear to be ſo done, or ſuch Action or Suit ſhall be brought before Ten Days Notice ſhall be given as aforeſaid, or after the Time limited for bringing the ſame as aforeſaid, or ſhall be brought in any other County than as aforeſaid, then the Jury ſhall find for the Defendant or Defendants; and upon ſuch Verdict, or if the Plaintiff ſhall be nonſuited, or diſcontinue his or her Action or Suit after the Defendant or Defendants ſhall have appeared, or if upon Demurrer Judgement ſhall be given againſt the Plaintiff, then the Defendant or Defendants ſhall recover Treble Coſts, and have ſuch Remedy for the ſame as any Defendant or Defendants hath in other Caſes by Law.

General Iſſue.

Treble Coſts.

No Proceedings to be quaſhed for

XII. And be it further enacted, That no Order, Verdict, Judgement, or other Proceedings made, touching or concerning any of the Matters aforeſaid,

aforeſaid, or touching or concerning the Conviction of any Offender or Offenders againſt this Act, ſhall be quaſhed or vacated for Want of Form only, or be removed or removeable by *Certiorari*, or any other Writ or Proceſs whatſoever, into any of His Majeſty's Courts of Record at *Weſtminſter*, any Law or Statute to the contrary thereof in anywiſe notwithſtanding. Want of Form, or removeable into any Court of Record at *Weſtminſter*.

XIII. Provided always, and be it enacted, That nothing herein contained ſhall extend, or be conſtrued to extend, to that Part of *Great Britain* called *Scotland*. Act not to extend to *Scotland*.

XIV. And be it further enacted, That this Act ſhall be deemed and taken to be a Publick Act; and ſhall be judicially taken Notice of as ſuch, by all Judges, Juſtices, and all Perſons whomſoever, without ſpecially pleading the ſame. Publick Act.

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