



ANNO SEXTO ET SEPTIMO

VICTORIÆ REGINÆ.

No. 9.—1843.

By His Excellency GEORGE GREY Esquire Governor and Commander-in-Chief of Her Majesty's Provinces of South Australia and its Dependencies and Vice-Admiral of the same by and with the advice and consent of the Legislative Council.

Assented to by George Grey
AN ORDINANCE further to Regulate Sales by Auction

*Amended by
No 6. 1843*

WHEREAS an Act or Ordinance of the Governor of South Australia with the advice and consent of the Legislative Council was passed in the Third Year of Her Majesty's Reign intituled "An Act to Regulate the Licensing of Auctioneers" and it is expedient to amend and extend the provisions of the same: 3rd Victoria No. 14.

BE IT THEREFORE ENACTED BY HIS EXCELLENCY the Governor of South Australia with the advice and consent of the Legislative Council thereof That from and after the first day of December next the before recited Act or Ordinance shall be and the same is hereby repealed and no license taken out according to the provisions thereof shall be of any force or effect: Provided always that every auctioneer so licensed who shall have paid to the Collector of Internal Revenue or other proper officer the license money thereby imposed of Fifty Pounds Sterling shall and may receive a proportional remission of such license-money at the rate of four pounds sterling for every entire month then remaining unexpired of the period during which

Repeal of former Act

Proviso as to holders of existing Licenses

which any such license would have been in operation if this Ordinance had not been passed which remission the Colonial Treasurer is hereby authorised and required to pay accordingly on delivery of such license to be cancelled.

Auctioneers must be licensed according hereto.

*Passed by
Dec 5. 7.*

II. And be it further enacted that no person who shall exercise the trade or business of an Auctioneer or Seller by Commission at any sale of any estate goods or effects whatsoever by outcry knocking down of hammer by candle lot parcel or any other mode of sale at auction or whereby the highest bidder becomes the purchaser or who shall act in that capacity shall deal in sell or put up to sale any estate goods or effects whatsoever by public sale or by way of auction as aforesaid without previously having taken out a Town or Country License in manner hereinafter mentioned in which license shall be set forth the true name and real place of abode of the person taking out the same he immediately upon taking out such license paying down for the same the sum of Twenty-five Pounds Sterling.

Mode of applying for a License.

III. And in order that the character of every person applying for a license should be carefully ascertained be it enacted that every person who shall be desirous of obtaining an Auctioneer's License (other than such as may be licensed according to the provisions of the recited Act or Ordinance) shall apply for the same to the Bench of Magistrates nearest to his usual place of residence at any of their stated Quarterly Meetings and shall lodge such application with the Clerk to the said Bench of Magistrates at least one week before the day of their respective meetings and such Bench of Magistrates three or more being present if they be satisfied that such applicant is a person of unexceptionable character shall and they are hereby authorised and required to deliver to such applicant a certificate under their hands to that effect and upon presenting such certificate (and in the case of Auctioneers holding licenses in force at the passing hereof on presenting such license) to the Collector of Internal Revenue or other proper officer in that behalf appointed by the Governor such Collector or proper officer shall issue and deliver to the person so applying such a license as is required by this Ordinance: Provided always that no Auctioneer's License shall be granted until the person applying for the same shall have lodged in the hands of the Collector of Internal Revenue or other officer aforesaid a bond to Her Majesty her heirs and successors with two sufficient sureties binding himself in the sum of Five Hundred Pounds and his sureties in the sum of One Hundred Pounds each that he will deliver every account of the Sales by him made and also make payment of every sum arising or becoming due for the Auction duty payable

Applicants for Licenses to give Bond to account for sales and pay auction duty.

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payable for or in respect of all such Sales in the manner hereinafter directed.

IV. And be it further enacted that when any person applying for a license in manner aforesaid shall not usually reside nor intend to exercise the business of an Auctioneer within the City of Adelaide the proper officer shall on payment of the sum of Ten Pounds issue and deliver to such person a License to act as Auctioneer in the country districts: Provided that no such Country License shall authorise the party licensed to act as an Auctioneer within the City of Adelaide or in any place within ten miles thereof. Country Licenses.

V. And be it further enacted that where any two persons and not more usually residing within one and the same district and having *bona fide* and in fact one and the same ordinary place of business only and carrying on business or purposing to carry on business together in partnership as Auctioneers shall apply in manner aforesaid to be licensed as such partners the proper officer shall on compliance with the provisions hereof issue a License to such two persons as partners accordingly on payment of the annual sum of Ten Pounds Sterling in addition to the license money payable by any single Auctioneer as aforesaid: Provided always that in every such case the bond taken in manner aforesaid shall be expressed to be applicable to both partners so to be licensed. Partnership Licenses

VI. And be it further enacted that when any such Auctioneer shall apply for a License to authorise his known clerk to act in his stead at Sales by Auction which he may be prevented by necessary causes from conducting in person the proper officer shall issue such a License accordingly on payment of the annual sum of ten pounds sterling in addition the License-money payable by such Auctioneer as aforesaid: Provided always that in every such case the bond taken in manner aforesaid shall be expressed to be applicable to the known clerk for the time being of such Auctioneer and that such Auctioneer shall from time to time as occasion may require enter the name of such clerk at the office of the Collector of Internal Revenue who is hereby authorised and required to register the same on the back of the bond on payment for every such registration of a fee of ten shillings. Auctioneer's Clerks.

VII. And be it further enacted that every person who shall take out any such License as aforesaid is hereby required to take out a fresh License ten days at least before the expiration of twelve calendar months after the taking out the first License, before he act as an Auctioneer as aforesaid and in the same manner to renew every such License from year to year paying the same regulated dues for each

each and every new and renewed License and if any person shall act as an Auctioneer contrary to the provisions hereof without taking out such License or renewing the same yearly in manner aforesaid such person shall forfeit and pay for every such offence the sum of one hundred pounds.

A duty of 4d. in the pound to be levied on the proceeds of all Sales by Auction.

VIII. And be it further enacted that there shall be raised levied collected and paid in such manner as hereafter is mentioned to and for the use of Her Majesty her heirs and successors for and upon all manner of Sales by Auction within the said Province the rate and duty hereinafter expressed that is to say the sum of four pence for every twenty shillings and so on in proportion for every greater or less sum of the purchase money arising from the Sale by Auction of any estate goods or effects whatsoever the said rate and duty to be paid by every such Auctioneer or Seller by Commission out of the monies arising at each and every such Sale or Auction as aforesaid.

That the same duty shall be paid on all goods sold in the Auction Room subsequent to the Auction.

IX. Provided always and be it enacted and declared that the provisions hereof shall extend and apply to all estates goods or effects which may subsequently to any auction be sold by commission in the auction-room and to all property sold with reference to the prices at any previous auction or for which the benefits of an auction have been obtained whether sold by any such auctioneer or any person employed on his behalf.

To be a charge upon the Auctioneer from the closing of the bidding at every sale.

X. And be it further enacted that the said rate and duty by this Ordinance imposed shall be and is hereby declared to be a charge upon every Auctioneer or Seller by Commission immediately from and after the knocking down of the hammer or other closing the bidding at every Sale by way of Auction and that the rates and duties so charged shall be paid by every such Auctioneer or Seller by Commission in the manner and at the times hereinafter mentioned.

Account of all sales to be rendered within fourteen days.

XI. And be it further enacted that each and every person so acting as Auctioneer as aforesaid shall and he is hereby required within fourteen days after the expiration of every calendar month to deliver or cause to be delivered to the Collector of Internal Revenue for the time being or at his office or to such other person as shall from time to time be authorised by the Governor to receive the same an exact and particular account in writing of the total amount of money that shall have been bidden at each and every Sale together with a return of the daily amount of the Sales which shall have been had and holden by such Auctioneer during the said month together with the time or times when and the place or places where such Sale

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Sale or Sales shall have been had and holden which account and returns shall be certified as correct under the hands of the respective clerks who shall have acted at such sales and every such Auctioneer shall at the same time make payment to the said Collector of Internal Revenue of all such sum and sums of money as shall be due and payable to Her Majesty in pursuance of and according to the true intent and meaning of this Ordinance which sum or sums of money such Auctioneer is hereby authorised and empowered to retain out of the produce arising by such Sale or deposit made at such Sale or otherwise to recover the same by Action at Law against the person or persons by whom such Auctioneer shall have been employed or on whose account such goods shall have been so sold and every person so acting as Auctioneer at such Sale or Sales if any shall make oath or solemn declaration to the truth of each and every such account and return before the said Collector of Internal Revenue or such person as shall be so appointed as aforesaid or before any Justice of the Peace who are hereby respectively authorised to administer the same And the Collector of Internal Revenue or other proper officer in that behalf appointed by the Governor is also hereby authorised at any time on giving twelve hours notice to inspect the books of any such Auctioneer and to compare the same with the accounts and returns aforesaid and to administer to such Auctioneer an oath or solemn declaration that he has not kept any other books relating to the sales for the period embraced by such accounts and returns than the books so inspected And such Collector or proper officer shall monthly publish in the *Government Gazette* the aforesaid accounts and returns or an abstract thereof and in case any such Auctioneer shall neglect to deliver in his accounts and returns at the time and in manner aforesaid or to make payment of the rates and duties as herein directed or if it shall appear that the accounts and returns delivered in by such Auctioneer are not true and just or that the said Auctioneer hath acted contrary to the true intent and meaning of this Ordinance it shall and may be lawful for the said Collector of Internal Revenue or other person so to be appointed as aforesaid to cause the bond or bonds of such Auctioneers and his sureties to be put in suit and in case of a judgment being thereupon had against the defendant such License shall thenceforth become void to all intents and purposes and such Auctioneer shall be and he is hereby declared to be for ever after disqualified for holding any License as an Auctioneer unless it shall appear to the satisfaction of the Court or Judge before whom the trial of such bond shall have been had that no fraud or wilful delay contrary to the true meaning of this Ordinance was intended by such Auctioneer and a certificate to such effect shall be granted by such Court or Judge respectively.

Auctioneer authorised to retain the duty from proceeds of sale.

To make oath or declaration to the truth of his account.

In case of judgment being had against an Auctioneer his License shall become void.

Exception.

XII. And whereas it may sometimes happen that Sales at Auction If Sales by Auction of are rendered null and

void the duty paid thereon is to be returned.

of estates or goods may be rendered null and void by reason that the person or persons for whose benefit the same shall be sold had no title to or no right to dispose of the same be it therefore enacted that if any Sale by Auction of any estate goods or effects shall be rendered void by reason that the person for whose benefit the same was sold had no title to the same or no right to dispose thereof then and in every such case it shall and may be lawful for the Auctioneer who paid the duty for estates goods or effects so sold or for the person or persons for whose benefit the same was so sold to apply to the said Collector of Internal Revenue or to the person who shall be appointed as aforesaid for a return of the duty so paid and the said Collector or the person so appointed as aforesaid shall and is hereby required to hear and investigate all such applications and examine the witnesses upon oath who shall be produced on the part of the party or parties making such application which oath the said Collector of Internal Revenue or other person appointed as aforesaid is hereby empowered to administer and thereupon to report the case to the said Governor or Acting Governor who upon being satisfied as to the justness of the application may order the amount of duty which shall have been so paid as aforesaid to be refunded and paid to such Auctioneer or such other person on whose behalf the same shall have been originally paid to such Collector of Internal Revenue or other person appointed as aforesaid anything in this Ordinance to the contrary notwithstanding.

In case the owner of any goods shall become the purchaser an allowance of the duty arising by this Ordinance will be made.

XIII. Provided also and be it further enacted that in case the real owner of any estate goods or effects put up to Sale by way of Auction shall become the purchaser thereof by means of his own bidding or the bidding of any other person on his behalf or for his use at such Sale without fraud or collusion then and in such case the said Collector or other person appointed to receive the duties is and are respectively hereby authorised and empowered to make an allowance to such owner of the duties arising by this Ordinance upon such bidding provided notice be given to the Auctioneer before such bidding both by the owner and the person intended to be the bidder of the latter being appointed by the former and having agreed accordingly to bid at the Sale for the use and behoof of the seller and provided such notice be verified if required by the oath of the Auctioneer as also by evidence to be given of the fairness and reality of the transaction according to the best of his knowledge and belief and in case any dispute shall arise whether such purchase by the owner was not made by collusion or in order to lessen the full sum appointed by this Ordinance to be paid or concerning the fairness of such transaction then and in such cases the proof thereof shall lie upon the person acting as Auctioneer and

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and on failure therein or in case of any unfair practice then no such allowance shall be made as aforesaid.

XIV. And be it further enacted that all fines penalties and forfeitures imposed by this Ordinance if exceeding the sum of fifty pounds shall be recovered by Action of Debt Bill or Information in the Supreme Court and if not exceeding the said sum shall be recovered summarily before any two or more Justices of the Peace according to the Law of the Province regulating summary proceedings before Justices and the money arising by all such fines penalties and forfeitures respectively when recovered shall be applied two thirds thereof to our Sovereign Lady the Queen her Heirs and Successors for the public uses of the Province and support of the Government thereof and the other third to the use of the person informing and suing for the same. Recovery and application of Penalties.

GEORGE GREY,
Governor and Commander-in-Chief.

*Passed in the Legislative Council, this First
day of November, 1843.*

W. L. O'HALLORAN,
Clerk of Council.