

No. XIII.

An Act to regulate the licensing of Auctioneers
and the collection of Duties on Property Sold
by Auction. [9th August, 1828.]

LICENSED
AUCTIONEERS.

WHEREAS by a certain Order of the Governor of the Colony of Preamble.
New South Wales dated the fifteenth day of January in the
year of our Lord one thousand eight hundred and one a duty of one
and one-half per centum was imposed upon the amount of the proceeds
of sales by auction and all persons were prohibited from exercising
the trade or business of an Auctioneer unless duly licensed for that
purpose. And whereas it is expedient to establish regulations relative
to the licensing of Auctioneers and the collection of duties on all kinds
of property which shall from and after the passing of this Act be sold
by auction in the said Colony. Be it therefore enacted by His Excellency Duty on the proceeds
of sales by auction
repealed.
the Governor of New South Wales by and with the advice of the
Legislative Council That so much of the said Order of the Governor
dated the fifteenth day of January one thousand eight hundred and one
as

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as authorizes and imposes the said duty shall and the same is hereby revoked and repealed.

Auctioneers are required to take out a license.

2. And be it further enacted That from and after the passing of this Act 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 is deemed to be 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 license in manner herein-after mentioned in which license shall be set forth the true name and real place of abode of the person or persons taking out the same he or they immediately upon taking out of such license paying down for the same the sum of two pounds sterling.

Manner of applying for a license.

3. And whereas in consideration of the peculiar circumstances of this Colony it is expedient that the character of every person applying for a license under this Act should be carefully ascertained be it enacted That every person who shall be desirous of obtaining an Auctioneer's license shall apply for the same in writing to the Bench of Magistrates nearest to his usual place of residence 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 authorized and required to deliver to such applicant a certificate under their hands to that effect and upon presenting such certificate to the Collector of Internal Revenue of the said Colony or to such other officer as the Governor or Acting Governor shall from time to time appoint such Collector of Internal Revenue or other officer so appointed shall issue and deliver to the person so applying such a license as is required by this Act Provided always that no such license shall be granted until the person applying for the same shall have lodged in the hands of such Collector of Internal Revenue or such other officer as aforesaid a bond to His Majesty His Heirs and Successors with two sufficient sureties in manner following that is to say himself in the sum of five hundred pounds and his sureties in the sum of two hundred and fifty pounds each that he shall and will deliver every account of the sales by him made and also make payment of all and every sum and sums arising or becoming due for the auction duty payable for or in respect of all such sales in the manner hereinafter directed.

License to be renewed every year.

4. And be it further enacted That every person who shall take out 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 or they do presume to vend or sell by way of auction as aforesaid and in the same manner to renew every such license from year to year paying down the sum of two pounds for each and every new or renewed license as aforesaid and if any person shall presume or offer to vend or sell by way of auction as aforesaid without taking out such license or renewing the same yearly in manner aforesaid such person shall forfeit and lose for every such offence the sum of One Hundred Pounds.

Penalty £100.

A duty of one and a half per cent. on the proceeds of all sales by auction.

5. 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 His Majesty His Heirs and Successors in aid of the Colonial Fund for and upon all manner of sales by auction within the said Colony the rate and duty hereinafter expressed that is to say the sum of one pound ten shillings for each and every one hundred pounds 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

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or seller by commission out of the monies arising at each and every such sale or auction as aforesaid.

6. And be it further enacted That the said rate and duty by this Act 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 manner and at the times hereinafter mentioned.

7. 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 authorized 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 and of the several articles lots or parcels with the price at which every such article lot or parcel shall have been sold at each and every sale 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 or sales shall have been had and holden 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 His Majesty in pursuance of and according to the true intent and meaning of this Act which sum or sums of money such Auctioneer is hereby authorized 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 to the truth of each and every such account 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 authorized to administer the same And in case any such Auctioneer shall neglect to deliver in his account 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 account delivered in by such Auctioneer is not a true and just account or that the said Auctioneer hath acted contrary to the true intent and meaning of this Act 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 Auctioneer and his sureties to be put in suit and in case of a judgment be 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 Act was intended by such Auctioneer and a certificate to such effect shall be granted by such Court or Judge respectively.

8. And whereas it may sometimes happen that sales at auction of estates of 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

The above duty a charge upon the Auctioneer from the closing of the bidding at every sale.

Account of all sales to be rendered within fourteen days.

Auctioneer authorized to retain the above duty from the proceeds of sale.

To make oath to the truth of his account.

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

Exception.

If sales by auction are rendered null and void the duty paid thereon is to be returned.

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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 any thing in this Act to the contrary notwithstanding.

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

9. 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 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 authorized and empowered to make an allowance to such owner of the duties arising by this Act 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 Act 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 on failure therein or in case of any unfair practice then no such allowance shall be made as aforesaid.

This Act not to extend to goods sold by order of Court of Collector of the Customs or distrained for rent.

10. Provided always and it is hereby further enacted That nothing in this Act contained shall extend to any sale or sales by way of auction of estates or chattels made by any rule order or decree of the Supreme Court of the said Colony in pursuance of its equitable jurisdiction or by order of the Collector or Acting Collector of the Customs within the said Colony nor to the sale by auction of any goods distrained for rent any thing hereinbefore to the contrary notwithstanding.

This Act not to extend to any sales for the benefit of creditors of ships condemned as prizes of ships wrecked or ships foundered out at sea.

11. Provided also and it is hereby further enacted That nothing in this Act contained shall extend or be construed to extend to charge with the said rate or duty any estate goods or chattels sold at auction by or under the authority of the Sheriff or Under Sheriff of the said Colony for the benefit of creditors in execution of any judgment had or obtained or any estate or effects of bankrupts or insolvents sold by order of the assignee or assignees of such bankrupt or insolvent legally appointed nor to any ships or their tackle apparel and furniture or the cargoes thereof which may be taken and condemned as prizes and which shall be sold in the said Colony by or for the benefit of the captors thereof nor to charge with the said rate or duty any ships or goods which may be wrecked or stranded on any of the coasts in this Colony or found derelict at sea and sold by auction for the benefit of the

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the insurers or proprietors thereof or which may be sold free of duty to defray the charges of salvage any thing herein contained to the contrary notwithstanding.

12. And for the better and more effectual preventing frauds which may be practised by Auctioneers selling estates goods or chattels under the authority of the Sheriff of the said Colony or under the order and direction of the trustees under any declaration of insolvency be it further enacted That every Auctioneer who shall sell at auction any estate goods or chattels that have been seized by the Sheriff or by his authority and by him taken for the benefit of creditors in execution of any judgment had and obtained shall specify and enumerate in the catalogue as well as in the monthly accounts by him to be delivered under the directions of this Act the exact sum to be levied under such execution as also the particular estates and effects to be sold together with the time and place when and where such effects were sold and the exact amount bid at such sale and the Sheriff or his Under Sheriff shall and is hereby required to subscribe and sign every such catalogue and to certify at the foot thereof that all and every the estate goods and effects sold at such sale and in such catalogue respectively specified and enumerated were really and truly the property of the person against whom such judgment was had and obtained and that the same and every part thereof were actually seized in execution of the same judgment and every Auctioneer who shall be employed by the trustees under any declaration of insolvency to sell the effects of any insolvent shall likewise specify and enumerate in the said catalogue and in such monthly account to be delivered by him as aforesaid the particular goods and effects sold the time and place when and where such goods and effects were sold also the exact sum bid at such sale and the trustees or trustee if only one under such declaration shall and he and they is and are hereby required to subscribe and sign such catalogue and to certify at the foot thereof that all and every the estate goods chattels and effects in such catalogue respectively specified and enumerated were sold at such sale and were really and truly the property of the said insolvent at the time of his being declared insolvent which respective catalogue so signed and certified as aforesaid shall be produced by every such Auctioneer to the person to whom such Auctioneer is by this Act directed to deliver his account before such Auctioneer shall be permitted to pass his accounts or have the same allowed and if the said Sheriff or Under Sheriff or trustees or trustee respectively shall insert or suffer or permit to be inserted in any such catalogue so to be subscribed signed and certified as aforesaid any sum or sums as bidden for any estate goods chattels or effects whatsoever other than such as were really and truly the property of the above debtor or debtors insolvent or insolvents as aforesaid respectively or if the Sheriff or Under Sheriff shall omit or neglect to certify on such catalogue the true sum to be levied or shall certify thereon any false sum then and in every such case the party offending shall for every such offence forfeit and lose the Penalty £20. sum of Twenty Pounds.

13. And be it further enacted That all fines penalties and forfeitures imposed by this Act which shall exceed the sum of twenty pounds shall be recovered by action of debt bill or information in the Supreme Court of the said Colony and that all fines penalties and forfeitures imposed by this Act which shall not exceed the sum of twenty pounds shall be recovered before any two or more Justices of the Peace in a summary manner and shall if not paid within six days after conviction be levied by distress and sale of the offender's goods and chattels and for want of sufficient distress by imprisonment of such offender for any time not exceeding six calendar months or until such fine

Any sum above £20
to be recovered by
action at law and any
sum not exceeding
£20 before two or
more Justices.

Public Entertainments.

All fines penalties and forfeitures to be paid half to the Colonial Fund and half to the person informing or suing for the same.

fine be paid and the money arising by all such fines penalties and forfeitures respectively when recovered and shall be as to one moiety thereof to and for the use of our Sovereign Lord the King His Heirs and Successors and be carried to and form part of the Colonial Fund of the said Colony and be applied to the public use and in support of the Government thereof and be as to the other moiety of such fines penalties and forfeitures to and for the use of such persons as shall inform or sue for the same.
