

# WESTERN AUSTRALIA.

ANNO TERTIO

VICTORIÆ REGINÆ,

No. 1.

---

## An Act to regulate the Licensing of Auctioneers, and the collection of Duties on Property sold by Auction.

**W**HEREAS it is expedient to establish Regulations relative to Preamble.  
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 the Governor of Western Australia and its Depen-  
dencies, by and with the advice and consent of the Legislative Coun-  
cil thereof, that from and after the passing of this Act, no person who Auctioneers required to  
take out a license.  
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 according to the form contained in the schedule  
hereunto annexed; in which license shall be set forth, the true name  
and real place of abode of the person taking out the same; such per-

## Anno Tertio Vict. Reg., No. 1.

son immediately upon taking out of such license, paying down for the same the sum of Ten Pounds sterling for selling by auction in any and every part of the colony, and the sum of Five Pounds sterling for selling in any part of the said Colony except in the towns of Perth and Fremantle.

Manner of applying for a License, and sureties to be given by persons obtaining a License.

II. AND be it further 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, 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 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, 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, or such other officer as aforesaid, a bond to Her Majesty, Her Heirs and Successors, with two sufficient sureties, in manner following,—that is to say,—to any person for a license to sell in any part of the colony, himself in the sum of Two Hundred Pounds, and his sureties in the sum of One Hundred Pounds each, and for a license to sell by auction in any other part of the said colony except in Perth or Fremantle, himself in One Hundred Pounds, and his sureties in the sum of 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, under a penalty.

III. 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 of the first license, before he presumes 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 a like sum as at first 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 the manner aforesaid, such person shall forfeit, for every such offence, the sum of Fifty Pounds.

A duty of 2½ per cent on proceeds of all sales by auction.

IV. AND be it further enacted, that there shall be raised, levied, collected, and paid, in such manner as hereinafter is mentioned, to

## Anno Tertio Vic. Reg., No. 1.

and for the use of Her Majesty, Her Heirs and Successors, in aid of the Colonial Fund, for and upon all manner of sales by auction within the said colony, the duty hereinafter expressed,—that is to say, at the rate of Two Pounds Ten Shillings for each and every One Hundred Pounds arising from the sale by auction of any estate, goods or effects whatsoever, the said 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.

V, AND be it further enacted, that the said 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 of the bidding, at every sale by way of auction, and that the duty so charged shall be paid by every such Auctioneer, or seller by commission, in manner and at the times hereinafter mentioned.

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

VI. 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 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 Her Majesty in pursuance of, and according to, the true intent and meaning of this Act, which sum or sums of money the said 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 and subscribe a solemn written declaration of the truth of each and every such account before the said Collector, or such person as shall be so appointed as aforesaid, or before any Justice of the Peace, who are hereby respectively authorised to receive the same: and in case any such Auctioneer shall neglect to deliver in his account at the time

Account of all sales to be rendered within fourteen days after the expiration of every month.

Auctioneer is authorised to retain the above duty from the proceeds of sale. To make declaration of the truth of his account.

## Anno Tertio Vic. Reg., No. 1.

In case of judgment being had against an Auctioneer in a suit upon his bond, his license shall become void, except where the Judge certifies.

and in manner aforesaid, or to make payment of the duty as hereinbefore 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, 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 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 Act, was intended by such Auctioneer, and a certificate to such effect shall be granted by such Court or Judge respectively.

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

VII. AND whereas it may sometimes happen that sales at auction of estates or good 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 the estates, goods or effects so sold, or for the person or persons for whose benefit the same were sold, to apply to the said Collector, 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, or other person appointed as aforesaid, is hereby empowered to administer, and thereupon to report the case to the said 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 to such Auctioneer, or such other person on whose behalf the same shall have been originally paid to such Collector, or other person appointed as aforesaid; anything in this Act to the contrary notwithstanding.

In case the owner of any goods shall become the purchaser, a remission of the duty arising by this Act, will be made.

VIII. 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

## Anno Tertio Vict. Reg., No. 1.

sale, without fraud or collusion, then, and in such case, the Collector, or other person appointed to receive the duty, is respectively hereby authorised and empowered to make a remission to such owner of the duty 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 written declaration 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 remission shall be made as aforesaid.

IX. 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 Civil Court of the said colony in pursuance of its equitable jurisdiction, or by order of the Collector or any acting Collector of Revenue within the said Colony, nor to sales by auction of Government land by any of its public officers, nor to sales or purchases made by or on account of the Government, nor to sales by auction of any goods distrained for rent, or goods sold by distress by order of any Justice of the Peace; anything hereinbefore to the contrary notwithstanding.

This Act not to extend to goods sold by order of the Court; of Collector of Revenue; nor to sales of Government Land; nor to sales or purchases made by Government; nor to goods distrained for rent; or sold by order of Justice of the Peace.

X. 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 duty any estate, goods or chattels sold at execution 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 assigness of such bankrupt, legally appointed; nor to any ships, vessels or boats, 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 duty any ships, vessels, boats, 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 insurers or proprietors thereof, or which may be sold free of duty to defray the

This Act not to extend to any sales for the benefit of creditors; of shipping condemned as prizes; of vessels wrecked; or of goods from vessels foundered at sea.

## Anno Tertio Vict. Reg., No. 1.

charges of salvage; any thing herein contained to the contrary notwithstanding.

Mode of rendering the accounts of sales made under the authority of the Sheriff, or by order of any Court.

XI. AND 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 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, 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 the sum of Twenty Pounds.

## Anno Tertio Vict. Reg., No. 1.

XII. 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 recoverable by action of debt, bill, or information in the Civil 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 be paid; and the money arising by all such fines, penalties, and forfeitures, respectively, when recovered, shall be as to one moiety thereof to and for the use of our Sovereign Lady the Queen, Her 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 said Government thereof; and be as to the other moiety of such fines, penalties and forfeitures, to and for the use of such person or persons as shall inform or sue for the same.

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

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

XIII. AND be it further enacted, that this Act shall commence and take effect from the date of its passing the Legislative Council, and shall be and continue in force for three years, and from thence to the end of the next sitting of the Legislative Council.

Act in force for three years

JOHN HUTT,  
GOVERNOR AND COMMANDER-IN-CHIEF.

Passed the Legislative Council }  
the 28th day of October, 1839. }

WALKINSHAW COWAN,  
Clerk of the Council.

---

## SCHEDULE.

### LICENSE TO SELL BY AUCTION.

THESE are to certify (in pursuance of an Act of Council passed on the 28th day of October, 1839, and intituled "*An Act to regulate the Licensing of Auctioneers, and the Collection of Duties on Property sold by Auction*") that A. B., of &c., is duly licensed until the expiration of one twelve month from the date hereof to sell by public auction any estate, goods or effects in (any part of the said colony except the towns of Perth and Fremantle, as the case may be.) And these are further to certify, that the said has paid into my hands the sum of (£10 or £5; as the case may be) on account of such License.

(Signed)

Collector of Internal Revenue.

(Countersigned)

Auditor of Civil Accounts.