

# A C T S

OF THE

## General Assembly of Pennsylvania,

Passed at a Session which commenced the 1st and ended  
the 23d of September, 1780.

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JOSEPH REED, PRESIDENT OF THE EXECUTIVE COUNCIL,  
JOHN BAYARD, SPEAKER OF THE GENERAL ASSEMBLY.

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1778.

### CHAPTER DCCCCVIII.

*An ACT to alter and amend an act, entitled An Act for the effectual suppression of public auctions and vendues, and to prohibit male persons, capable of bearing arms, from being hawkers and pedlars.*

**WHEREAS** it appears to be necessary, in the present situation of the trade and commerce of this state, that the sale of goods at public vendue should be enlarged and extended.

**II.** *Be it therefore enacted, and it is hereby enacted,* That, from and after the publication of this act, it shall and may be lawful for the President or Vice-President in Council to appoint and licence three auctioneers, one for the city of Philadelphia, one for the Northern-Liberties, and one for the district of Southwark, who shall continue for and during the will and pleasure of the said President and Council, and shall give bond to the President and his successors, with two sufficient sureties, in the sum of twenty thousand pounds, for the faithful discharge of their duties, and for well and truly performing the terms and payments in and by this act directed and required.

President and council to appoint three auctioneers, who are to give bond.

**III.** *And be it further enacted,* That the said auctioneers, and no other, shall, from and after the publication of this act, have full power and authority to set up and expose to sale, by public outcry and vendue, all and any houses, lands, goods, wares and merchandizes, and property whatsoever, negroes and mulatto slaves excepted, rendering and paying to the State Treasurer, for the use of the commonwealth, one *per centum* of the gross amount of the sale

Sales admitted by public auction.

1780. so by him or them made as aforesaid, in manner following: that is to say, that each and every of the said auctioneers shall, once in every three months, render an account upon oath to the said Treasurer (which oath he is hereby empowered to administer, and is directed to file the said account with the said oath in his office) of all the effects and property by him or them sold at any time before the said time of rendering the same account, and since his last settlement, and shall then immediately pay to the same Treasurer the full amount of the said one pound in the hundred pounds upon the same account; and upon any failure in rendering the same account upon oath, or of payment of the said sum of one *per centum*, any auctioneer so failing or neglecting shall be discharged from his place, and the said bond put immediately in suit. And if any person or persons, other than the said auctioneers, shall be found selling or disposing of any lands, tenements, goods, wares, merchandizes, or property whatsoever, within the city of Philadelphia, the Northern-Liberties, or the district of Southwark, except as herein after is excepted, by way of vendue or auction, such person or persons, so offending, and being thereof legally convicted, shall, for every such offence, forfeit the sum of twenty thousand pounds, to the use of the poor of the city, liberties or district, where such offence shall be committed. And moreover, it shall and may be lawful for any Justice of the Peace of the said city, liberties or district, respectively, upon his own view, or on the testimony and information of one or more credible witnesses to him given, of any person selling lands, tenements, goods, wares, merchandize, or other property whatever, by way of vendue or auction as aforesaid, except as by this act is excepted, within the said city, district or liberties, to cause such person or persons so offending to be apprehended, and may oblige him, her or them, to find sureties for his, her or their good behaviour, and appearance at the next Court of Quarter Sessions of the Peace to be held for the said city, liberties or district respectively. *And it is further declared,* That if the party so bound over shall, during the continuance of his, her and their recognizances, presume again to sell or expose to sale, by way of vendue as aforesaid, any lands, tenements, goods, wares, merchandize, or other property whatsoever, within the said city, liberties or district, such selling or exposing to sale shall be deemed, and is hereby declared to be a breach of the said recognizance.

IV. *Provided always, and it is hereby further enacted,* That nothing herein contained shall extend or be construed to extend to hinder any lawful executor or executors, administrator or administrators, to expose to sale, by way of public auction, vendue or otherwise, any lands, tenements, goods or chattels of their respective testators or intestates, or to hinder any Sheriff, Constable, Lieutenant or Sub-Lieutenant, or other officer, to sell and dispose of, by way of vendue, any lands, tenements, goods or chattels, taken in execution, and liable to be sold by order of law; or to hinder any person or persons from selling or exposing to sale, by way of vendue, any goods or chattels of any kind whatsoever, taken and distrained for rent in arrear; but that all and every such person or per-

Auctioneers shall pay one *per cent.* into the state treasury once a quarter.

Penalty for neglect.

Penalty on selling by auction without a licence.

Proviso. [Ante. pa. 179.]

sons may do therein as they might have done, any prohibition in this or any former law contained to the contrary notwithstanding. 1780.

V. And whereas the crime of horse stealing is become so frequent in this and the neighbouring states, as to render every precaution and remedy necessary and proper.

VI. *Be it therefore enacted*, That each and every of the said auctioneers shall keep a register of the horses, mares or geldings, by them respectively exposed to sale, in their respective offices, wherein shall, before sale, be inserted the colour, size, and principal marks, natural and artificial, of every horse, mare or gelding, by him exposed to sale, and the age, as the intended vender shall declare it, the name or names of the persons offering the same for sale, and after the sale, the name of the person to whom the same is sold, which said register is hereby declared to be so far a public record, as that every person shall be entitled to a view thereof, and a copy, if demanded, paying for such inspection the sum of two dollars, and for such copy the sum of six dollars, and shall be read in evidence on any trial respecting the property of such horse, mare or gelding.

Auctioneer shall keep a register of horses sold.

Register to be a public record subject to inspection.

VII. *And be it further enacted*, That no sale of any stolen horse, mare or gelding, by virtue of this act, shall be deemed a public sale in market overt, so as to change the property thereof.

VIII. [*And be it further enacted*, That no vendue shall be held by the said auctioneers, or any of them, out of the city or district for which he or they shall be appointed, and that their fees or recompence for selling at public auction, collecting the money, and paying over the same, without loss or waste, shall be as follows; for household goods, cattle and live stock, five *per centum*; for horses two and a half *per centum*; for ships, houses and lands, an half *per centum*; for rum, sugar, tea, coffee, and all other groceries, two and an half *per centum*; for European and American manufactures, in such lots or proportions as are usually sold in wholesale stores, five *per centum*.]

[Repealed, and part supplied, see note to this act.]

Passed 23d September, 1780.—Recorded in Law Book vol. I. page 402. (h)

(h) The original act was passed on the 26th day of November, 1779 (chap. 359,) and expired by its own limitation, at the end of the war. It provided, that no goods, wares or merchandizes, or other property whatsoever (except &c.) should be sold by auction, in any place within the territories of the commonwealth, by any person whatever, upon forfeiture of a sum equal to the value of the goods, &c. recoverable by action of debt, or by indictment, one half to the informer, the other half to the Overseers of the poor of the place, &c. except sales by any Sheriff, or other officer, in the execution of his office, who was not specially restricted by that act; and except sales of real and personal estate, by Executors and Administrators, *bona fide* the property of Testator or Intestate, and sales of lands, houses and other real estate, and sales of household goods, (which had been in

wear and use) horses, cattle, and live stock, being, *bona fide*, the property of resident house-keepers, actually removing from any township or district of this state, to another, or out of the state.

The restraint introduced by this act was grounded, as stated in the preamble, on the embarrassed state of commerce, occasioned by the war between the United States and Great Britain, and because, as was alleged, the practice of selling goods by auction, or vendue, had been made use of as a device for enhancing the price of commodities, and of depreciating the bills of credit of this state and of the United States.

The act then provided, that all sales by auction, within the city, and within two miles of the Court House, of lands and other real estate, and of all other property permitted by the act to be sold by auction, other than sales by Sheriffs, &c. (as aforesaid) should be

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performed by a sold' auctioneer, to be appointed for that purpose by the executive council, to be styled the *Auctioneer of the city of Philadelphia*; any other person selling by auction to forfeit the value, &c. as aforesaid.

The security to be given, and the duties of the auctioneer were prescribed, and the commissions to be received by him.

The marshal of the admiralty was prohibited from selling by auction, except ships and perishable goods. But this section was repealed by the 10th section of an act passed September 22d, 1780, "a supplement to the act entitled "an act for regulating and establishing Admiralty Jurisdiction," (chap. 904.)

The act then repealed the act for regulating pedlars, vendues, &c. (chap. 308 ante. pa. 179) so far as the same related to vendues, and also the act to prohibit the sale of goods, wares, and merchandizes by public vendue, and to regulate pedlars and hawkers in this state, passed June 19th 1777, (chap. 750.)

The act is printed at large in *M. Kean's* edition, page 245.

By chap. 872 passed March 2d, 1780, (an act to alter and amend the act in the text, printed at large in *M. Kean's* edition, pa. 294.) Goods and merchandizes damaged, and in a perishable condition, and shipwrecked goods were permitted to be sold at auction, notwithstanding the act of November 1779. But before the auctioneer could proceed to sell, he was to be furnished with the licence of President, or Vice-President in Council, authorising such sale, the goods, &c. to be specified and particularized, and the licence to be grounded on the report, on oath or affirmation of persons to be appointed for that purpose, &c. Chap. 308, regulating auctions, and for the appointment of a vendue-master in the city of Philadelphia, is printed at large in Galloway's edition, pa. 154.

Hawkers and pedlars are regulated by the act of March 30th, 1784, (post. chap. 1079,) to which a supplement was passed March 28th, 1799, (post. chap. 2027.)

By the act in the text sales by auction are enlarged and extended.

By a supplement to the act in the text, passed April 13th 1783. (post. chap. 964,) the auctioneers are allowed for their expense and trouble in selling any property at public auction, collecting the money, and paying over the same without loss, viz. for houses, lands, tenements or real estates, and for ships or vessels, an half *per centum* ;

for wine, rum, sugar, coffee, tea, and all other groceries, sold by the pipe, hogshhead, tierce, barrel, bag, chest, or box one and a quarter *per centum* ; and for horses, cattle, and all other goods, wares and merchandizes, not before enumerated, or sold in smaller quantities than before mentioned, two and an half *per centum* ; but persons may contract with the auctioneers to pay them for their services, any less reward, which they may be willing to accept. The auctioneers to demand and receive an additional one *per centum* on the gross amount of sales, for the use of the commonwealth, over and above the sum mentioned in the act in the text, except for ships or vessels, houses and lots ; and pay the same to the Treasurer in the manner directed by the act in the text, and the bonds given for the faithful performance of their duties required by the said act, are declared to be a security for the payment of the one *per centum* imposed by the supplement ; and the revenue arising from auctions, is appropriated to the support of government, and the administration of justice within this commonwealth.

By an act passed December 9th, 1783, (post. chap. 1052) entitled "an act to revive and continue in force the acts of Assembly regulating sales by public auction, and for other purposes therein mentioned." The act in the text, so far as the same is not altered or supplied by the supplement of April 1782, and the present act of December 1783, and also the supplement of April 1782, are made perpetual ; and a penalty of £.500 is to be forfeited by any auctioneer, directly, or indirectly, purchasing for his own use, any goods, &c. at his auction ; one half for the use of the state, the other to the informer, and also rendered incapable thereafter to serve in any post of honour or profit in the state. The auctioneers to account once in three months, or oftener if required, and on failure or neglect, to be discharged from his place, and his bond put in suit. The old auctioneers continued by this act, until the end of the next session, or until the Legislature by their resolution, should otherwise direct, and so much of the act in the text hereby altered or supplied, is repealed.

By this act the appointment of auctioneers was taken from the Executive Council ; but it was revested by the act of April 4th, 1785, (chap. 1147.)

By a supplement to the several acts of Assembly respecting public auctions and auctioneers, passed March 19th, 1789, (post. chap. 1389) Provision is made for the appointing an additional auctioneer for the township of *Moya-*

mening, and it is therein declared, that no duty should be paid on the sale of any real estate, nor on the sale of any household furniture and wearing apparel, which has actually been in use, nor on any ship or vessel, the property of any citizen of the United States; and the provisions of the vendue laws were extended to all places within two miles of the state-house of Philadelphia.

And, by an additional supplement, passed March 27th, 1790. (post. chap. 1483.) Provision was made for appointing two additional auctioneers; one for the City, and one for the Northern Liberties; to give bond in £.3000 each, conditioned for the faithful discharge of their and every of their respective duties, and for well and truly performing the terms and payments, by the several acts directed and required; and to possess like powers, and be subject to the like penalties, as former auctioneers.

The duties to be paid to the Treasury, on sales at auction, are reduced to one per centum.

And by a further supplement, passed February 26th, 1791. (post. chap. 1518.) The restriction that each auctioneer should be confined to his own district, is taken off.

By the 11th section of an act passed April 5th, 1797, enjoining certain duties on the Comptroller-general, Register-general, and State Treasurer. The auctioneers of the city of Philadelphia, Northern Liberties, and Southwark, shall settle their accounts for duties received by them for the use of the state, quarter yearly, and pay the amount found due immediately into the state Treasury; and on refusal or neglect to discharge the same within one month after the expiration of such quarter, the commission of such auctioneer shall cease, determine, and become absolutely void, and another person be appointed in his place, and the auctioneer and his sureties shall be proceeded against for the recovery of the amount so found due, &c.

Finally, by an act entitled "An Act to authorize the Governor to appoint and commission an auctioneer for the express and sole purpose of selling horses, cattle and carriages, within the city of Philadelphia," such auctioneer shall be appointed exclusively for that purpose; who shall keep a book, and register in the same the names of the sellers and purchasers of all horses and cattle, and shall pay the same duties, give the same security, and be liable to

the same penalties, as other auctioneers are under the existing laws.

In the case of *Dallas, Secretary, v. Chalwer's Executors*, it was held, that in an action of debt on an auctioneer's bond, brought by the state, for duties, the state is entitled to the whole of the arrearages, though accruing for more than three months.

It was contended, that the state was not entitled to recover more than the duties accruing during a term of three months; and that the judgment rendered on an official bond, must enure to the benefit of those, who shall prove themselves injured and entitled. That the Testator failing in his public payments, at the expiration of three months, ought to have been removed and sued; the lien of the state on the bond then ceased; and if she afterwards suffered, it was by her own laches.

By *M'Kean, C. J.* This is an action brought upon the official bond of a public auctioneer, to recover the amount of the duties payable to the state. It is true that the law directs auctioneers to be displaced, and their bonds to be put in suit, if they do not once in three months, pay the duties into the treasury, but there is no provision for annulling the bonds, or forfeiting the remedy of the state upon them, in case that direction should not be complied with. As to the delinquent himself, such a provision would have been absurd; and as to his sureties, it is enough to observe, that their case is not at present before the court; nor is the objection made with a view to their relief.

Let the judgment be entered in favour of the commonwealth, for the amount of the duties, with interest from the time when the money ought to have been paid into the treasury. 3 Dallas, 500.

The condition of an auctioneer's bond, under the act of 27th March, 1790, is a security to the employers, whose property is sold at vendue, as well as to the public. *Lea, Executrix v. Yurd*, and *Hazlehurst v. Dallas, Secretary*. 4 Dallas, 95.

Where several suits have been brought to the same term, on an auctioneer's bond, the penalty whereof has been paid into court before judgment, and proceedings stayed, the person first suing is entitled to be paid his whole demand, and the surplus shall be divided among the other suitors, *pro rata*. *M'Kean, Governor, v. Shannon & al.* March, 1808. Sup. Court, MSS. Reports—And see 4 Dallas, 106, (note 2.)

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The appointment of auctioneers is now vested by the existing constitution, in the Governor

By the 8th section of the act of March 4th, 1807, (chap. 2757,) it is enacted, " That the Governor be and he is authorized and required to appropriate annually the amount of the duties on sales at auction, which shall be paid each year into the state treasury, in the purchasing of Bank or other profitable stock, as he may judge proper, until the stock so purchased shall amount to three hundred thousand dollars, which stock is pledged for the payment of the sum granted to the canal company by the seventh section of the said act, and the interest arising from the stock so purchased from time to time shall be

paid into the state treasury, subject to the disposition of the legislature: Provided always, that if the said canal shall not be completed within twenty years from the passing of the said act, the state shall not be considered as pledged for the payment of the aforesaid three hundred thousand dollars.

But this latter was repealed by an act passed March 20th, 1810, and in lieu of the provisions of the said 8th section, Bank stock was pledged, and the Governor authorized to sell so much thereof as will satisfy the demands which may be made under the said act, or to negotiate a loan for that purpose, if the sale of the stock should be injurious to the interests of the commonwealth.