ANNO VICESIMO SEXTO ET VICESIMO SEPTIMO

VICTORIAE REGINAE.
A.D. 1863.

No. 3.

An Act to regulate the Licensing of Hawkers.

[Assented to, 12th November, 1863.]

WHEREAS it is expedient to make provision for the licensing of Hawkers—Be it therefore Enacted by the Governor-in-Chief of the Province of South Australia, with the advice and consent of the Legislative Council and House of Assembly of the said Province in this present Parliament assembled, as follows:

1. There shall be raised and paid to the Treasurer, for the public uses of the said Province, the rates and duties following, that is to say, by every hawker, pedlar, petty chapman, and every other trading person going from town to town or to other men's houses, and travelling either with or without a horse, ass, mule, or other beast bearing or drawing burden, or with a cart, waggon, or any other wheeled vehicle in the said Province, and carrying to sell, or exposing to sale any goods, wares, or merchandise, save as herein mentioned, a duty of One Pound for each year: Provided that the duty to be paid by any person carrying a pack only, shall be the sum of Two Shillings and Sixpence.

2. There shall be payable for the use aforesaid, for every servant employed by any person to travel as aforesaid, the further sum of Ten Shillings for every year beyond the sum payable as aforesaid.

3. Before any person shall receive any licence to trade or travel as aforesaid, every such person shall produce to the Treasurer, or some one authorized by him for licensing hawkers, pedlars, petty chapmen, and other trading persons as aforesaid, a certificate signed
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signed by two reputable inhabitants of the said Province, attesting that the person so applying is of good character and reputation, and is a fit person to exercise the trade of a hawker, pedlar, or petty chapman.

4. The certificate so to be produced as aforesaid shall be in the form or to the effect following—

We C. D. and E. F., being two householders residing at in the Province of South Australia, do hereby certify that G. H. hath been known to us for the space of last past, and during all that time hath usually resided at aforesaid, and is a person of good character and reputation, and is a fit person to be licensed to receive a licence under the Licensed Hawkers Act, 1863.

Dated the day of 18

C. D. 
E. F. 
Householders.

5. The Treasurer, or person authorized by him, upon receiving such certificate, may issue to any person applying for the same, upon payment of the duty aforesaid, a licence in the form in the Schedule to this Act annexed, to be called a Hawker’s Licence, authorizing the person to whom the same shall be granted to trade and carry about goods for sale with or without any cart, carriage, waggon, or other vehicle, or with or without a horse, ass, mule, or other beast of burden, and such licence shall be in force until the twenty-fifth day of March next following the date thereof.

6. The person named in the licence aforesaid shall be in actual charge of the cart, carriage, waggon, or other vehicle, or beast of burden aforesaid, with which he shall travel with goods by virtue of the licence; and any unlicensed person who shall with or without any cart, carriage, waggon, or other vehicle, or beast of burden as aforesaid, trade, or carry about goods for sale, shall be liable to a penalty of not less than Ten Pounds, nor more than Fifty Pounds.

7. Every person to whom any such licence as aforesaid shall be granted, and who shall trade with or under color of such licence, shall cause to be written, painted, or printed in large legible Roman capitals, upon the most conspicuous part of every pack, box, trunk, case, cart, or waggon, or other vehicle or conveyance in which he shall carry his goods, wares, and merchandise, and likewise upon every handbill or advertisement which he shall give out, distribute, or publish, the words “licensed hawker,” together with the number, name, or other mark or marks of distinction so written or printed upon his licence as aforesaid; and every such person in any respect making default herein shall forfeit for every offence the sum of Ten Pounds.

8. If at any time any person, other than one to whom such licence shall
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shall have been so granted as aforesaid, shall write, paint, or print, or cause to be written, painted, or printed upon any pack, bag, box, trunk, case, cart, wagon, or vehicle for conveyance of any goods, wares, or merchandise the words licensed hawker, or licensed pedlar, or any other word or words to that effect, such person shall forfeit for each offence the sum of Ten Pounds.

9. No licensed hawker or his licensed servant shall carry any spirituous, malt, vinous, or fermented, or intoxicating liquors; and any licensed hawker or servant who shall carry any such liquors, shall be deemed to be carrying such liquors about for sale, and be liable to be punished accordingly.

10. If any hawker, pedlar, petty chapman, or other trading person as aforesaid, shall be convicted under the provisions of this Act of knowingly dealing in, vending, or selling any kind of smuggled, contraband, or prohibited goods, wares, or merchandise, or knowingly dealing in, vending, or selling any goods, wares, or merchandise fraudulently or dishonestly procured, either by himself or through the medium of others, with his privity and knowledge, every such hawker, pedlar, or petty chapman, or trading person shall forfeit and pay a penalty of not less than Twenty Pounds, or more than One Hundred Pounds, and from and after such conviction shall forfeit his licence, and for ever thereafter be incapable of obtaining or holding any new licence, or dealing, trafficking, or trading under the same, over and above all such forfeitures and incapacities, fines, and penalties to which he is or shall be by law subject and liable for such illicit and illegal trafficking and dealing.

11. If any such hawker, pedlar, or petty chapman, or other trading person so travelling as aforesaid, or any servant hired under this Act, shall trade as aforesaid without, or contrary to, or otherwise than as shall be allowed by such licence, such person shall for each and every such offence forfeit the sum of Ten Pounds; and if any person trading or travelling with goods for sale under or by virtue of any licence to him granted as aforesaid, upon demand made by any person authorized or appointed to demand any such licence by the Treasurer, and upon producing or showing such authority or appointment to such person so trading as last aforesaid, or upon demand made by any Justice of the Peace, Mayor, constable, or other officer of the peace, or by any officer of the Customs, or by any person to whom such hawker, pedlar, or petty chapman, or person licensed as aforesaid shall offer any goods for sale, shall refuse to produce and show his licence for so trading as aforesaid, or shall not have his licence ready to produce and show unto such person authorized or appointed as last aforesaid, or unto such Justice of the Peace, Mayor, constable, or other officer of the Peace, or officer of the Customs, or person to whom such goods shall be offered for sale, then the person so refusing or not having his licence ready to produce and show as aforesaid, shall forfeit Ten Pounds, to be recovered as hereinafter mentioned.

12. Any
12. Any Justice of the Peace, or person authorized in writing by any Justice of the Peace to make searches under this clause, or any Inspector of Police, constable, or other peace officer or officer of the Customs, may at any time search any pack, box, trunk, case, cart, or other vehicle under the charge of a licensed hawker or his servant.

13. If any person shall be found in charge of a vehicle or any beast of burden carrying goods of a description usually carried about for sale, except the goods hereinafter excepted, he shall be deemed, in the absence of proof to the contrary, to be carrying such goods about for sale, and be liable accordingly.

14. If any person whatsoever shall forge or counterfeit any licence by this Act directed to be granted, or travel with or produce or show any such forged or counterfeited licence for any of the purposes aforesaid, such person shall for every such offence forfeit the sum of Three Hundred Pounds.

15. In case any person shall let out or hire or lend any licence to him granted as aforesaid, or shall trade with or under color of any licence granted unto any person whatsoever, or of any licence in which his own real name shall not be inserted as the name of the person to whom the same is granted, the person letting out to hire or lending any such licence, and the person trading with or under color of any licence granted to any other person, or any licence in which his own real name shall not be inserted as the name of the person to whom the same is granted, such person shall forfeit the sum of Forty Pounds, to be recovered and applied as hereinafter mentioned; and in case any person shall be convicted or have judgment against him for lending his licence to any other person contrary to this Act, such licence shall be from thenceforth forfeited and void, and he shall be utterly incapable of having any licence again granted to him to trade as aforesaid.

16. It shall be lawful for any person whatsoever to seize and detain any hawker, pedlar, petty chapman, or other trading person as aforesaid who shall be found trading without a licence, contrary to this Act, or who being found trading shall refuse or neglect to produce to such person a licence according to this Act, after being required to do so after a reasonable time in order to give notice to a constable or other peace officer, who is hereby required to carry such person so seized, unless he shall in the meantime produce his licence, before some Justice of the Peace, which said Justice of the Peace is hereby authorized and strictly required to examine into the fact or facts charged; and upon proof, either by confession of the party offending or by the oath of one, credible witness (which the said Justice is hereby empowered to administer), that the person so brought before him had so traded as aforesaid, and no such licence being produced by such offender before the said Justice, to convict the offender so trading without a licence, and thereupon it shall be
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be lawful for such Justice, and he is hereby required by warrant under his hand and seal to cause the said sum of Forty Pounds to be levied by distress and sale of the goods, wares, or merchandize of such offender, or of the goods with which such offender shall be found trading as aforesaid, rendering the overplus, if any be, to the owner thereof after deducting the reasonable charges for making such distress, and out of the said sale to pay the said respective penalties and forfeitures aforesaid, and in the mean time to commit such offender to any public gaol for the said Province, there to remain until the said penalties and forfeitures and the reasonable charges of taking the said distress shall be levied by such distress and sale as aforesaid, or until the same shall be otherwise paid or satisfied by such offender.

17. If any constable or other officer of the peace shall refuse or neglect upon due notice, or in his view to the aiding and assisting in the execution of this Act being thereunto required; and every such officer being thereof convicted upon his confession or by the oath of one or more credible witness, before any Justice of the Peace, shall forfeit for each and every such offence the sum of Twenty Pounds.

18. Nothing in this Act shall extend to prohibit any person from selling any printed papers, or any fish, fruit, or victuals, timber, fuel, vegetables, hay, straw, or other food for cattle, nor to hinder the real worker or maker of any goods, wares, or manufactures of the said Province, or his children, apprentices, or known agents, or servants usually residing with such real worker or maker only from carrying abroad or exposing to sale and selling by retail or otherwise any of the said goods, wares, or manufactures of his own making, excepting liquors as hereinbefore provided, nor any tinker, cooper, glazier, plumber, harness mender, or other person usually trading in mending kettles, tubs, household goods, or harness whatsoever from going abroad and carrying with him proper material for mending the same, nor any person himself, or by his children, or known agents, carrying about for sale any wine, cider, or perry the produce of his own vineyard or orchard for sale in such quantities as shall be allowed by law.

19. Every proceeding under this Act against licensed or unlicensed persons for omissions, defaults, neglects, acts, or offences, to which forfeitures or other penalties attach, shall, except when otherwise provided herein, be heard and determined in a summary way by any Special Magistrate or two Justices of the Peace, under the provisions of an Ordinance of the Governor and Legislative Council No. 6 of 1850, "To facilitate the performance of the duties of Justices of the Peace out of Sessions with respect to summary convictions and orders," or of any Act hereafter to be in force relating to the duties of Justices of the Peace with respect to summary convictions and orders.

20. There
20. There shall be an appeal from any conviction by any Special Magistrate or Justices of the Peace for any offence against this Act, or from any order declaring the forfeit of any licence as hereinbefore mentioned, or from any order dismissing any information or complaint, or from any order for payment of costs or otherwise, which appeal shall be to the Local Court of Adelaide of Full Jurisdiction only, and the proceedings on such appeal shall be conducted in manner appointed by the said Ordinance for appeals to Local Courts; but the Local Court of Adelaide aforesaid may make such order as to payment of the costs of appeal as it shall think fit, although such cost may exceed Ten Pounds: Provided always, that in all cases of appeal against any order or conviction of any Special Magistrate or Justices of the Peace declaring any licence granted under this Act to be forfeited, the appellant shall, within four days of the date of such order or conviction, give to the Clerk of the Court in which the case was heard, or if there should be no Clerk, then to the Special Magistrate or Justices of the Peace adjudicating, notice in writing stating his intention so to appeal, which notice shall be in addition to the notices required to be given by the said Ordinance.

21. The Local Court of Adelaide, upon the hearing of any appeal, may state one or more special case or cases for the opinion of the Supreme Court, and the Supreme Court shall hear and decide such special case or cases according to the practice of the Supreme Court on special cases, and the Supreme Court shall make order as to costs of any special case as to the said Court shall appear just; and any two or more Justices of the Peace, or the Local Court of Adelaide, shall make an order in respect to the matters referred to the Supreme Court, in conformity with the certificate of the said Supreme Court, or of any Judge thereof; which order of the Justices or Local Court shall be expressed in manner provided for the enforcement of orders of Justices of the Peace under the said Ordinance; and save as herein provided, no order or proceeding of any Special Magistrate or Justices, or of any Local Court, made under the authority of this Act, shall be appealed against, or removed by certiorari, or otherwise, into the Supreme Court.

22. All actions and prosecutions to be commenced against any person for anything done in pursuance of this Act shall be commenced within three calendar months after the act was committed; and notice, in writing, of such action, and the cause thereof, shall be given to the defendant one calendar month at least before the commencement of the action; and the defendant in any such action may plead the general issue, and give this Act and the special matter in evidence at any trial; and the plaintiff shall not recover in such action if tender of sufficient amends shall be made before action brought, or if after action brought the defendant shall pay into Court sufficient amends, but in such last-named case the plaintiff shall recover his costs of suit up to the time of payment into Court, and if a verdict shall pass for the defendant, or the plaintiff
plaintiff become nonsuit or discontinue, the defendant shall recover full costs as between attorney and client, and have his remedy for the same in the usual way.

23. This Act may be cited as the "Licensed Hawkers Act, Short title to Act. 1863."

In the name and on behalf of the Queen I hereby assent to this Act.

D. DALY, Governor.
THE SCHEDULE.

South Australia—Whereas A.B., of , hath paid the sum of One Pound [or Ten Shillings, as the case may be] to me as fee for a hawker’s licence [or licence as servant to A.B., a licensed hawker, as the case may be], now I, the undersigned, Treasurer of South Australia, do hereby authorize the said to hawl and carry about any goods, except intoxicating liquors, for sale, in any part of the said Province, in any cart, waggon, or other vehicle, or with any horse, ass, mule, or other beast of burden of which he shall be in the actual charge, until the thirtieth day of June now next ensuing, or until this licence shall be forfeited.

Dated this day of , 186.

C.D., Treasurer.