

Referred (misde scripta) No.
No 16d 1851 433,88,
S. 3.



ANNO DECIMO QUINTO

VICTORIÆ REGINÆ.

No. 16.

An Act for regulating the trade or business of Pawnbrokers in South Australia.

[Assented to 2nd January, 1852.]

WHEREAS it is necessary and expedient to regulate the trade of Pawnbrokers in the Colony of South Australia: Preamble.

Be it therefore Enacted, by the Lieutenant-Governor of South Australia, with the advice and consent of the Legislative Council thereof, that from and after the tenth day of March now next ensuing it shall not be lawful for any person to carry on the trade or business of a Pawnbroker in the said Colony without having previously obtained a licence to carry on such trade or business in manner and form as hereinafter directed. No person to carry on the business of a Pawnbroker without a licence.

2. And be it Enacted, That every person who shall carry on business, or shall seek his livelihood in or by advancing upon interest, or for or in expectation of profit, gain, or reward, any sum of money upon security (whether collateral or otherwise) of any article whatsoever, taken by such person by way of pawn, pledge, or security, shall be deemed and taken to be a Pawnbroker, and shall be deemed and taken to have carried on the trade or business of a Pawnbroker, within the intent and meaning of this Act. Who shall be deemed Pawnbrokers.

Y

3. And

Manner of obtaining licence, and what shall be paid for same.

3. And be it Enacted, That any person wishing to obtain any such licence, shall deliver to the Clerk of the Bench of Magistrates an application in the form in the Schedule to this Act annexed, marked A, recommended by five householders residing in the district in which such applicant may reside; and it shall be lawful for the Justices at their general yearly or quarterly meeting, next after ten days from the delivery of such notice, if they shall be satisfied with the character of the person so applying, to grant a licence to such person under their hands, in the form in the Schedule to this Act annexed, marked B, which licence shall be in force for one year from the date thereof, and shall be delivered to the person so applying for it on payment of Ten Pounds, to be paid to the Colonial Treasurer for the public uses of the said Colony.

Application to be heard in open Court.

4. And be it Enacted, That the matter of all such applications shall be heard and determined in open Court.

Clerk of Petty Sessions to keep record of licence.

5. And be it Enacted, That the Clerk of the Bench of Magistrates shall keep an alphabetical record of the names of all persons to whom any such licence shall be granted, and such names shall be published in the *South Australian Government Gazette* next after the grant thereof.

Manner of proving Licence.

6. And be it Enacted, That in any proceeding under this Act against any person alleged to be a licensed Pawnbroker, the production of the alphabetical record hereinbefore directed to be kept shall be evidence both of the personal identity of the person therein named, and that the said person is a licensed Pawnbroker under this Act, until the contrary be shown: Provided always, that in the absence of such record other proof as to the fact of any person holding such licence may be given in any such proceeding.

Pawnbroker to be deemed unlicensed until contrary shown.

7. And be it Enacted, That in all proceedings under this Act against any person acting as a Pawnbroker without a licence such person shall be deemed to be unlicensed, unless the licence authorising such person to carry on such trade or business shall be produced, or other proof shall be given to the satisfaction of the Justice or Justices hearing the case of his being licensed under the provisions of this Act.

Pawnbrokers' names, &c., to be painted on their premises under a penalty.

8. And be it Enacted, That every person who shall hold a Pawnbroker's licence under this Act, shall have his name at length painted in legible characters at least two inches deep with the words "Licensed Pawnbroker" constantly and permanently remaining, and plainly to be seen and read over the door of the shop or other place by him kept, or made use of for carrying on the trade or business aforesaid.

9. And be it Enacted, That if any person not actually holding a
Pawnbroker's

Pawnbroker's licence, shall keep up any signs, writing, painting, or other mark on or near to his house, shop, or premises, which may imply or give reasonable cause to believe that such shop, house, or premises is or are the house, shop, or premises of a licensed Pawnbroker, he shall, for every such offence, forfeit and pay on conviction any sum not exceeding Ten Pounds.

Unlicensed persons keeping up signs, &c. to be fined.

10. And be it Enacted, That no Pawnbroker, licensed by authority of this Act, shall, by virtue of one licence, keep more than one house, shop, or other place, but that for each house, shop, or other place which any person shall keep for the purposes aforesaid, a separate and distinct licence shall be taken out and paid for by such Pawnbroker.

Not to keep more than one shop by virtue of one licence.

11. Provided always, that persons in Partnership, and carrying on the trade or business of a Pawnbroker in one house, shop, or tenement only, shall not be obliged to take out more than one licence in any one year, for the carrying on any such trade or business.

Persons in partnership need take out one licence only.

12. And be it Enacted, That every licensed person taking in pawn any article or articles whatsoever, whereon shall be lent any sum of money, shall forthwith (before advancing any money thereon) cause to be entered in a fair and legible manner, in some book kept for that purpose, a reasonable and sufficient description of every such article, and the sum of money in the whole advanced thereon, with the rate of interest to be charged on the same by the week or month (as the case may be), and the true date at which, and the name of the party by or for whom all such articles are pawned, and his or her place of residence, according to the statement of the person so pawning, into which last-mentioned circumstances the Pawnbroker is hereby enjoined to enquire of the party so pawning before any money shall be lent or advanced to him or her.

Articles pledged to be entered in books, under a penalty.

13. And be it Enacted, That unless a longer time shall be expressly agreed upon, the period for redemption of any article so taken in pawn shall be three months, at the expiration of which period (or the expiration of any such longer period as may have been so agreed upon) every such article shall be deemed forfeited, and may be sold: Provided always, that in every case where a longer time for redemption than the said term of three months shall have been agreed upon, such time shall be specified in the entry so to be made as aforesaid, or at the foot thereof, and shall be mentioned in like manner in the duplicate of such entry hereinafter required to be given to the party pawning: Provided also, that any agreement for the forfeiture of any article in any case before the expiration of three months, shall be wholly void.

Period for the sale of pledges.

14. And be it Enacted, That all articles forfeited, on which, in the whole, any sum above five shillings shall have been lent, shall be

Mode of sale.

be sold by public auction, and not otherwise ; and a notice of every such sale, containing a catalogue of all such articles, and the time when the same were respectively taken in pawn, shall be twice inserted in some public newspaper, published in the said Province, four days at least before the proposed day of sale, upon pain of forfeiting to the owner of any articles sold contrary to the provisions of this section, a sum not exceeding Twenty Pounds, to be paid by the Pawnbroker, in any such case offending ; and to be recovered by such owner from such Pawnbroker by action of debt in any Court of competent jurisdiction ; and no purchase or pretended purchase by any Pawnbroker, or person on his behalf, of any articles pawned with him shall be lawful, or, if made, shall be valid against the owner in any case ; and, until such sale, it shall be lawful for the owner of any article pledged to redeem the same, upon payment of the amount advanced and interest thereon, at the rate originally agreed, with the expenses, if any, to the date of such payment.

Entries to be numbered, and duplicate given.

15. And be it Enacted, That every such entry as aforesaid shall be numbered consecutively throughout the year—the first pledge received by any Pawnbroker after the commencement of this Ordinance being numbered 1, the second 2, and so on, until the end of the year ; and the first pledge received on or after any succeeding first day of January being respectively numbered 1, and so on, progressively throughout each year ; and every Pawnbroker, at the time of taking any article in pawn, shall give to the person pawning the same a duplicate of every such entry fairly and legibly written, or partly written and partly printed, with the signature of such Pawnbroker thereto attached, containing every particular inserted in the original entry, and corresponding therewith in number ; and no Pawnbroker shall receive or retain any pledge, unless such duplicate shall be or shall have been accepted at the time by the party pawning ; and every such duplicate shall be delivered at a charge not exceeding one penny, and shall be produced to the Pawnbroker before he shall be obliged to re-deliver the articles mentioned therein, or any of them.

Holders of duplicates to be deemed owners of goods pawned.

16. And be it Enacted, That every person who shall at any time produce any such duplicate as aforesaid to the Pawnbroker who gave the same, and shall require delivery of the articles therein specified, representing himself to be the owner, or to be authorised by the owner thereof, shall be deemed to be such owner, or to be so authorised, and shall be entitled to redeem such articles accordingly, unless such Pawnbroker shall previously have had notice from the real owner, that such duplicate hath been lost by him, or fraudulently taken or obtained from him, or shall have been informed by some credible person that such articles have been stolen : Provided always, that in every case where the Pawnbroker shall refuse to deliver the articles to the party producing such duplicate, he shall give immediate information of such refusal, and of the particular grounds thereof, to a Justice of the Peace, or to some constable

stable, together with a description of the person of such party, or (if known to the Pawnbroker) such party's name and place of residence.

17. And be it Enacted, That in case any Pawnbroker's duplicate should be lost or mislaid by, or fraudulently taken or obtained from the owner thereof, and the articles mentioned therein shall remain unredeemed, the Pawnbroker who gave such duplicate shall, at the request of any person representing himself to be such owner, deliver to such person a copy of such duplicate, for which he shall be entitled to charge two pence, such person previously producing to, and leaving with such pawnbroker a written declaration, in the form of Schedule C hereto annexed, duly taken before and authenticated by some Justice of the Peace, setting forth the circumstances of such loss, or otherwise satisfactorily accounting for the nonproduction of such duplicate.

When duplicate is lost, a copy may be obtained.

18. And be it Enacted, That every Pawnbroker shall, from time to time, enter in a book, to be kept by him for that purpose, a true and just account of the sale or disposition of every article which shall have been pawned, and shall be sold, or otherwise disposed of by him, specifying the date when such article was pledged, and the true number of the entry then made thereof, and the name of the person who pledged the same, and the day when, and the amount for which every such article was sold; and in case any such article shall have been sold for more than the full amount of the principal money and interest thereon, which was due at the time of such sale, then the overplus (deducting the necessary charges of each sale) shall, if claimed within twelve months next after such sale, be paid upon demand to the person by or for whom such article was pawned, or his agent or assigns, or (in case of death) to his executor or administrator.

Entry to be made of all articles sold.

19. And be it Enacted, That every person by or for whom any such article as last aforesaid shall have been pawned, shall be permitted to inspect the entry of such sale thereof.

Every such entry may be inspected.

20. And be it Enacted, That it shall be lawful for any Justice of the Peace to require the production before him of any book, note, voucher, entry, memorandum, licence, or other paper, by this Act directed to be kept by, or which ought to be in the custody of any Pawnbroker, and every Pawnbroker shall, upon being duly summoned, attend and produce every such book, duplicate, note, voucher, entry, memorandum, licence, or other paper before such Justice accordingly.

Any Justice may compel a Pawnbroker to produce books, vouchers, &c., under a penalty.

21. And be it Enacted, That no licensed Pawnbroker shall receive or take in, or permit or suffer to be received or taken in, any articles by way of pawn, pledge, or in exchange before eight of the clock in the forenoon, or after nine of the clock in the evening, excepting only until eleven of the clock on the evenings of Saturday throughout the year, and the evenings next preceding Good Friday and Christmas Day.

Hours between which Pawnbrokers are allowed to take in pledges.

Pawnbrokers not to carry on business on any Sunday, Christmas Day, or Good Friday.

22. And be it Enacted, That no Pawnbroker shall in any way exercise or carry on his trade or business as such Pawnbroker on any Sunday, Christmas Day, or Good Friday.

Justices to order delivery of goods fraudulently pawned, &c.

23. And be it Enacted, That if any articles, goods, or chattels shall be stolen or unlawfully obtained from any person, or being lawfully obtained shall be unlawfully deposited, pawned, pledged, sold, or exchanged, and complaint shall be made thereof to any Justice of the Peace, and that such goods are in the possession of any licensed Pawnbroker, it shall be lawful for such Justice to issue a summons or warrant for the appearance of such licensed Pawnbroker before any two Justices, and for the production of the goods; and such two Justices may order such goods to be delivered up to the owner thereof, either without any payment, or upon payment of such sum, and at such time as the said Justices shall think fit; and every licensed Pawnbroker, who, being so ordered, shall refuse or neglect to deliver up the goods, or who shall dispose of, or make away with the same, after notice that such goods were stolen, or unlawfully obtained as aforesaid, shall pay to the owner of the goods the full value thereof, to be determined by the said Justices: Provided always, that no such order shall bar any such licensed Pawnbroker from recovering possession of such goods, by suit or action at law, from the person into whose possession they may come by virtue of the order of the said Justices, so that such action be commenced within three calendar months next after such order shall be made.

Persons not giving a good account of themselves on offering to pawn goods, liable to punishment.

24. And be it Enacted, That in case any person who shall offer by way of pawn, pledge, exchange, or sale, any articles, to any Pawnbroker or his servant, shall not be able, or shall refuse to give a satisfactory account of himself, or of the means by which he became possessed of such article, or shall wilfully give any false information as to whether such articles are his own property or not, or of his name or place of abode, or of the name and place of abode of the owner or owners of the said articles; or if there should be any reason to suspect that such articles are stolen or unlawfully obtained, or if any person not entitled, nor having any color of title by law to redeem any articles in pledge or pawn, shall attempt to redeem the same, it shall be lawful for any Pawnbroker, or his servant, to whom such articles shall be so offered, or with whom such articles are in pledge, to seize and detain such person and the said articles, and to deliver such person immediately into custody of a constable or other peace officer, who shall, as soon as may be, convey such person, and the said articles so offered, before some Justice of the Peace near to the place where such person may be apprehended; and if such Justice shall, upon examination, have cause to suspect that the said articles were stolen or unlawfully obtained, or that the person attempting to redeem the same, hath not any color of right to redeem the same, it shall be lawful for such Justice to commit such person into safe custody, for such reasonable time as shall be necessary for obtaining proper information on the subject,

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in order to be further examined; and if it shall be made to appear to the satisfaction of any two Justices of the Peace that the said articles were stolen or unlawfully obtained, or that the person attempting to redeem the same hath not any color of right so to do, the said Justices shall commit the person so offending to any common gaol, there to be dealt with according to law, where the nature of the offence shall authorise such commitment by any other law; and where the nature of the offence shall not authorise such commitment by any other law, then such commitment shall be for any time not exceeding three calendar months, at the discretion of such Justice or Justices.

25. And be it Enacted, That if any person shall forge, counterfeit, or alter or procure to be forged, counterfeited, or altered, any licence as aforesaid, or shall knowingly produce or shew any such forged, counterfeited, or altered licence, to any person authorised to demand the production thereof, or shall knowingly pawn, pledge, exchange, or otherwise dispose of any article belonging to any other person without the consent or authority of the owner, and with a fraudulent intent to deprive the owner (whether wholly or temporarily) of the use of such article, or shall forge, counterfeit, or alter, or cause to be forged, counterfeited, or altered, any Pawnbroker's duplicate, or shall knowingly utter, sell, or dispose of any forged, counterfeited, or altered duplicate, or shall steal or unlawfully take any duplicate with intent to defraud the owner thereof of any article named therein, every such person shall be deemed guilty of a misdemeanor, and shall suffer punishment by fine or imprisonment, with or without hard labor, for any period not exceeding two years, or both, as the Court may determine.

Offences against this Act—Forging any licence.

Pledging any property without authority of owner:

Forging a duplicate, or stealing the same:

Misdemeanor; punishment—fine, or imprisonment not exceeding two years.

26. And be it Enacted, That if any person who shall hold a licence under this Act, shall not have his name and business painted and maintained as hereinbefore provided, or shall not upon demand produce his licence to any Justice of the Peace or Police-constable, without some reasonable excuse in that behalf, or shall fail to keep such books as hereinbefore provided, and to insert therein the description of every article pawned, or to give a duplicate of such entry, or to enter therein particulars of the sale of any article, or shall refuse to permit the inspection of any such last-mentioned entry, or to produce the book containing the same as hereinbefore provided, or shall purchase or take in pledge any article from a person apparently under the age of fourteen years, or apparently intoxicated, or shall when the sum agreed to be advanced upon any pledge is under Ten Pounds, make any part of such advance in anything but money, or sell or exchange any article for any part of the money agreed to be advanced upon such pledge, or shall without reasonable and lawful excuse refuse or neglect to attend upon any summons by a Justice of the Peace, and produce any books, documents, or papers mentioned in such summons, or shall take in pledge any article excepting within the hours hereinbefore specified, or shall carry on his business on any Sunday, Christmas Day,

Licensed person not having name and business painted:

Not producing licence:

Not keeping books, or making entries, or refusing to permit inspection:

Purchasing articles from persons under 14 years, or intoxicated:

Advancing other thing than money:

Or taking pledge not within hours, or on Sunday, &c.:

Day, or Good Friday, every such person, or any servant or agent of such person, offending in any of the above particulars, shall, for each and every such offence, upon conviction thereof, forfeit and pay any sum not exceeding Ten Pounds: Provided that any sum so forfeited by a servant or agent of any licensed Pawnbroker may, at the discretion of the convicting Justice or Justices, be levied by distress and sale of the goods and chattels of such licensed Pawnbroker.

Fine, £10.

Person not licensed acting as Pawnbroker:

Or being licensed, selling articles before forfeiture:

Or offending in any matter not specifically punished:

Penalty, £20.

27. And be it Enacted, That if any person shall, without having obtained such licence as aforesaid, carry on the business of a Pawnbroker; or having obtained such licence, shall sell, or otherwise dispose of any article pledged with him before the period of forfeiture of the same; or having obtained a licence as aforesaid, shall in any other respect offend against this Act (where no other penalty is by this Act in that behalf specifically imposed), such person shall, for every such offence, forfeit and pay, on conviction, a sum not exceeding Twenty Pounds.

Penalty on person lending licence.

28. And be it Enacted, That if any person having obtained any licence as aforesaid, shall lend the same to any other person for the purpose of carrying on such business as aforesaid, under color thereof, he shall forfeit and pay on conviction for every such offence any sum not exceeding Twenty-five Pounds; and on conviction it shall be lawful for the Justice or Justices so convicting, to declare his said licence void, and no such licence shall thereafter be granted to such person so convicted for the period of two years from the date of such conviction.

Manner of proceeding for recovery of penalties.

29. And be it Enacted, That all offences against this Act not otherwise provided for, may be heard and determined, and every forfeiture and penalty in respect thereof be awarded and imposed by or before any two or more Justices, or (where this Act so directs) by and before any one Justice, in a summary way: Provided always, that, in all proceedings under this Act, the informer or party prosecuting shall be deemed and taken to be a competent witness.

Appropriation of fines and penalties.

30. And be it Enacted, That all fines, forfeitures, and penalties imposed by this Act shall be paid, one moiety to Her Majesty, her heirs and successors, for the public uses of the said Province, and the other moiety to the use of the informer, or party prosecuting, who shall be entitled to his costs and charges over and above such fines, forfeitures, and penalties, to be ascertained and assessed by the Justice before whom the case is heard.

Explanation of terms.

31. And be it Enacted, That the term "article," used in this Act, shall be considered to include every species of chattel and goods whatsoever; and throughout this Act, every word and term used in the singular number, or masculine gender only, shall be construed equally to imply and include the plural number, and

and females as well as males, and *vice versá*, unless there be something in the context repugnant to such construction.

32. Provided always, and be it Enacted, that nothing in this Act shall be held or construed to apply to loans or advances made on any goods, chattels, live stock, wool, bonds, bills, title deeds, or other security, by merchants, bankers, commission agents, brokers, or licensed auctioneers, in the ordinary and *boná fide* course of mercantile or banking transactions.

Not to apply to advances, &c., by merchants, bankers, &c.

33. And be it Enacted, That this Act shall come into operation on the first day of January next. Commencement.

JOHN MORPHETT, Speaker.

*Passed the Legislative Council this Twenty-third }
day of December, One Thousand Eight }
Hundred and Fifty-one.*

WM. B. GILBERT,
Pro Clerk of Council.

In the name and on the behalf of Her Majesty I assent to this Act.

H. E. F. YOUNG,
Lieutenant-Governor.

Government House, Adelaide,
2nd January, 1852.

SCHEDULES REFERRED TO.

A.

Form of Application for a Pawnbroker's Licence.

To the Worshipful the Justices of the Peace acting in and for the
(District of Adelaide) in the Province of South Australia.

I, A.B., (state the trade or occupation), now residing at
in _____ or district of _____
, do hereby give notice that it is my intention
to apply to the Bench of Magistrates, to be holden (for this
district), on the _____ day of _____
next, for a licence to carry on the trade or business of a Pawn-
broker, in the house and appurtenances thereunto belonging,
situated at _____ (here describe the house
proposed to be licensed, specifying the situation of it, the person
of whom rented, the present occupier, and whether now licensed),
and which I intend to keep as a Pawnbroker's shop.

Given under my hand at _____ this _____
day of _____ one thousand eight hundred and _____

Form of Householders' Certificate to be appended to the above.

WE, the undersigned, householders within the _____
, do hereby certify that the above A. B.
is a person of good fame and reputation, and fit and proper to be
licensed to carry on the trade or business of a Pawnbroker.

Witness our hands this _____ day of _____
one thousand eight hundred and _____ .

One _____

Two _____

Three _____

Four _____

Five _____

B.

South Australia (district }
of) to wit.

WHEREAS A.B., of the district of
, has applied to us, the Justices assembled in
Quarterly Meeting holden at , this
day of , in the year of our Lord one
thousand eight hundred and fifty- , for a licence to carry on
the business of a Pawnbroker in the house and premises now
occupied by him, situate in street, in the
of : Now, we the said Justices so as-
sembled as aforesaid, having inquired into the character of the
said A.B., and being satisfied that he is a fit person to have such
licence granted to him, do hereby authorise and empower him to
carry on the trade or business of a Pawnbroker in the said house
and premises, and not elsewhere; and this licence shall continue in
force for the space of twelve months from the date hereof, and not
longer.

Granted by the Bench of Magistrates, at aforesaid
the day of , one thousand eight
hundred and .

(Signed) C.D. Chairman.

Registered
A.B.

Clerk of the Bench.

C.

I, A.B., of , do hereby solemnly and
sincerely declare that I am justly and truly entitled to (here state
the particulars of the goods referred to in the lost or missing du-
plicate), and that the same was (or were) pledged by me with C.D.,
(Pawnbroker), on the day of last, as a security for
the sum of , then advanced to me, and is (or are) still un-
redeemed; and that I have not sold, or otherwise disposed of, the
duplicate of such property, or of my interest therein; and that the
duplicate of such property hath been (here state whether lost or
misaid, or fraudulently obtained or taken).

A.B.

Declared before me this day
of , one thousand eight
hundred and .

E.F.,
Justice of the Peace.