

SEC. 5. That upon the trial of any scire facias herein directed to issue, the defendant shall be allowed to plead and prove that the defendant in the original action was insolvent at the time said bail was given, and if that fact be proven, it shall be adjudged a good defence.

SEC. 6. In all cases whenever a right of action against bail in any suit may have heretofore accrued, the party to whom the same shall have so accrued may have his election to proceed by an action on the bail-bond or by a scire facias as above provided, so that the same be adapted to the circumstances of the case.

Approved January 17, 1840.

[Chap. 83.]

AN ACT relating to auctioneers and auction sales.

SECTION 1. *Be it enacted by the Council and House of Representatives of the Territory of Iowa,* That the governor of this territory shall appoint, upon application from any county within the same, one or more persons as auctioneers for such county; such auctioneer so appointed shall be liable to any tax the county commissioners may think proper, not exceeding one hundred dollars per annum, upon payment of which tax a license shall be granted by said county commissioners to any person appointed as above to act as auctioneer within the county.

SEC. 2. Any person who shall act as auctioneer without appointment and license as provided above, shall be liable to the county in a penalty not exceeding two hundred dollars, to be collected by action of assumpsit in the proper court.

SEC. 3. If any auctioneer shall receive for sale by auction any goods from any minor or servant, knowing him to be such, or shall sell by auction any goods except books, before sunrise or after sunset, he shall forfeit to the county a sum not exceeding two hundred dollars, to be recovered by action of debt or indictment.

SEC. 4. Every auctioneer shall keep a fair and particular account of all goods and chattels sold by him, of the names of the persons of whom the same were received, and the names of the persons to whom the same shall have been sold.

SEC. 5. Nothing in this act shall prevent any person from selling his own property by public sale or

auction, nor permit sheriffs, deputy sheriffs, coroners, constables, collectors of taxes, executors, administrators, guardians or any other person required by law to sell any real or personal estate from selling such property by public sale or auction.

SEC. 6. No appointment as above mentioned shall continue in force for more than one year from the date thereof.

Approved January 17, 1840.

NOTE.—The word "permit" is in the enrolled bill as printed here, in second line of fifth section, probably intended "prevent."—[Supervisor.]

[Chap. 84.]

AN ACT to incorporate the city of Du Buque.

Boundaries.

SECTION 1. *Be it enacted by the Council and House of Representatives of the Territory of Iowa*, That the city of Du Buque shall be bounded as follows: Beginning at a point in the middle of the main channel of the river Mississippi east and parallel with the south line of the town of Du Buque as surveyed and laid off by the commissioners appointed under an act of congress to lay off the towns of Fort Madison, Burlington, and Du Buque, &c. and running westwardly with the said line to a stone which marks the southwest corner of said town, thence northwardly to a stone which marks the northwest corner of said town; thence, with the line of said town, to the slough; thence east-north-east to the middle of the main channel of the Mississippi river; thence with said channel to the place of beginning. All the inhabitants resident within the aforesaid limits are hereby declared to be incorporated by the name of "The Mayor and Aldermen of the City of Du Buque."

Incorporation.

Election of city council.

SEC. 2. There shall be elected on the first Monday of April one thousand eight hundred and forty, and annually thereafter, one mayor and six aldermen, who shall hold their offices for one year and until their successors are elected and qualified, and they shall be the judges of their own elections, and the mayor and aldermen shall constitute the city council, a majority of whom shall constitute a quorum to do business. The said election shall be ballot, and each free white male citizen of the age of twenty-one years, who has been a resident of said city three months prior to the day of election, shall be entitled to vote at all elections for city officers.

Corporate powers.

SEC. 3. That the mayor, aldermen and inhabitants thereof shall be a body politic and corporate,