

Hon. Mr. Reynolds.

## AUCTIONEERS AND BROKERS.

### ANALYSIS.

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| <p>Title.</p> <ol style="list-style-type: none"><li>1. Short Title.</li><li>2. Interpretation.</li><li>3. No person to sell by auction unless licensed. Penalty.</li><li>4. Application for license.</li><li>5. Applicants' names to be published.</li><li>6. Resident Magistrate to hear application, and may grant certificate for license.</li><li>7. Licenses issued by and fees paid to local authority.</li><li>8. Licenses to be issued where place of business situate.</li><li>9. Penalty for Treasurer improperly issuing a license.</li><li>10. Form of license.</li><li>11. Governor to provide for issue of licenses in certain parts of the colony.</li><li>12. Duration of license.</li><li>13. List of licensed auctioneers to be published.</li><li>14. Saving as to existing licenses.</li><li>15. License to extend over the colony.</li><li>16. Partners to take out separate licenses. Exception.</li><li>17. Substitute may be appointed during illness, &amp;c.</li><li>18. Subject to certificate of character.</li><li>19. Substitute to be subject to Act as if licensed.</li><li>20. Principal not to act during time substitute is acting.</li><li>21. License may be transferred in case of death.</li><li>22. Auctioneers may have wholesale licenses under Licensing Act.</li><li>23. Publicans not to be auctioneers.</li><li>24. No uncertificated bankrupt to hold a license.</li><li>25. Night auctions prohibited.</li></ol> | <ol style="list-style-type: none"><li>26. Account sales to be rendered within seven days. Penalty.</li><li>27. Misappropriation, larceny. Falsifying accounts, misdemeanour.</li><li>28. No music nor riotous conduct allowed in saleroom.</li><li>29. Penalty on unlicensed person pretending to be an auctioneer.</li><li>30. Penalty for not exhibiting license on demand.</li><li>31. Penalty for selling contrary to Act.</li><li>32. License improperly obtained to be forfeited.</li><li>33. Penalty for forging, &amp;c., licenses.</li><li>34. Penalty for lending or hiring, &amp;c., license.</li><li>35. Non-production of license.</li><li>36. Licenses may be cancelled.</li><li>37. Recovery of fines, &amp;c., to be paid to Public Account.</li><li>38. Expenses of Act to be paid by local authority.</li><li>39. Saving of civil remedies.</li><li>40. Sales excepted from Act.</li><li>41. Illegal sales prior to this Act not validated.</li></ol> <p style="text-align: center;">APPRAISERS, AGENTS, AND BROKERS.</p> <ol style="list-style-type: none"><li>42. All appraisers, agents, land brokers, and sharebrokers, to be licensed.</li><li>43. Licensed auctioneers may act as appraisers, &amp;c.</li><li>44. Sharebrokers to keep books and accounts of sales.</li><li>45. Penalty for not keeping proper books.</li><li>46. Sharebrokers to have but one office.</li><li>47. Sharebrokers not to buy or sell for themselves.</li></ol> <p style="text-align: center;">REPEALS.</p> <ol style="list-style-type: none"><li>48. Acts and ordinances repealed. Schedules.</li></ol> |
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### A BILL INTITULED

AN ACT to regulate the Licensing of Auctioneers, Appraisers, Title.  
Brokers, and Others.

5 BE IT ENACTED by the General Assembly of New Zealand in Parliament assembled, and by the authority of the same, as follows:—

1. The Short Title of this Act is "The Auctioneers and Brokers Short Title.  
Act, 1884."

It shall come into force on the first day of *January*, in the year one thousand eight hundred and *eighty-five*.

Interpretation.  
Otago Ord., 1862,  
No. 99, s. 1.

2. In this Act, if not inconsistent with the context,—

“Auctioneer” means and shall apply to any person who sells or attempts to sell, or offers for sale or resale, property of any kind whatever, or any interest or supposed interest in any such property, by way of auction as herein defined: 5

“District” means any portion of the colony under the administration of a local authority as herein defined:

“District Fund” means the fund of a district as herein defined, and where the Governor is the local authority it means the Consolidated Fund: 10

“Local authority” means and includes the Council or Board of any borough or town district; and outside of such places means the Council of a county, or such Boards as may be administering the functions of a County Council; and in the absence of such Boards within any county where “The Counties Act, 1876,” is not in force, and also in all parts of the colony not included in any borough, town district, or county, means the Governor: 15 20

A town district, for the purposes of this Act, shall be deemed not to form part of the county wherein it is comprised.

“Public notification,” “public notice,” “publicly notify,” respectively mean the insertion of a notice in one or more newspapers having general circulation in the district or place affected by the matter contained in such notification or notice: 25

“Sales by auction” or “to sell by auction” means the selling of property of any kind whatever, or any interest or supposed interest in any such property, by outcry, knocking down of hammer, candle, lot, parcel, instrument, machine, or any other mode whereby the highest or the lowest bidder is the purchaser, or whereby the first person who claims the property submitted for sale at a certain price named by the person acting as auctioneer is the purchaser, or where there is a competition for the purchase of any property or any interest therein in any way commonly known and understood to be by way of auction: 30 35

“Sharebroker” means any person who, whether on commission or for any fee or reward, exercises or carries on the business of buying, selling, transferring, or dealing in shares as hereinafter defined, but shall not include auctioneers who shall sell any such shares by public auction only. 40

“Shares” means and includes shares in any company incorporated under “The Companies Act, 1882,” or any Acts amending the same, or registered under or incorporated by virtue of “The Mining Companies Limited Liability Act, 1872,” or any Acts amending the same, or in any incorporated company, or shares or interests in any mining company, claim, venture, or association, and shall also mean the debentures of either the General Government or of any Provincial Government, or the debentures of any Corporation or body of persons 45 50

authorized to raise money by debentures, and also shares in any bank or insurance company.

5 "Treasurer" means the person acting as the Treasurer for a local authority as herein defined, and includes the person who may be appointed by the Governor to receive fees and issue licenses in all parts of the colony where the Governor is the local authority.

10 3. No person whatever, except as hereinafter mentioned, shall exercise the trade or business of an auctioneer or seller by commission at any sale by auction, or act in either such capacity at any sale by auction, unless he shall be duly licensed in manner hereinafter provided.

No person to sell by auction unless licensed.  
Otago Ord., 1862, No. 99, s. 2.

15 Every person offending against this provision shall for every such offence be liable to a penalty not exceeding *one hundred* pounds, and shall be incapacitated from holding an auctioneer's license for the space of three years.

Penalty.

20 4. Any person desirous of obtaining an auctioneer's license shall give not less than one month's public notice thereof, and also shall lodge with the Clerk of the Resident Magistrate's Court of the district wherein he may propose to carry on the business of an auctioneer, not less than thirty days before the intended application, a notice in writing of his intention to apply for the same in the form in the *First* Schedule hereto, stating in such notice his true name and place of abode, and that he proposes to have his principal place of business as an auctioneer in such district; and shall also deliver with such last-mentioned notice a certificate of character in the form attached to the said Schedule, signed by six householders resident not less than six months in the district.

Application for license.  
Ib., s. 3.

30 5. The Clerk of such Court shall cause a list of all applicants for auctioneers' licenses, with their places of abode respectively, and the names and residences of the householders signing the aforesaid certificate, to be posted in some conspicuous place inside and outside of the courthouse for at least fourteen days before the applications shall be heard. Any person may lodge objections to any application at any

Applicants' names to be published.  
Compare Otago Ord., 1862, No. 99, s. 4.

35 6. At some time during the third week of the months of December and June in each year the Resident Magistrate of the district shall hear and dispose of such applications, and inquire into any objections thereto, and may examine on oath any witnesses he may think necessary, and after such examination, or without hearing any such evidence, may either refuse any such application, or grant a certificate to the applicant authorizing the issue of the license.

Resident Magistrate to hear application and may grant certificate for license.  
Ib., s. 5.

40 Such certificate need not be of any particular form, but shall be signed by the Resident Magistrate granting the same, and sealed with the seal of his Court.

45 7. Auctioneers' licenses shall be granted in any county, town district, or borough, by the local authority thereof, and issued on its behalf by the Treasurer thereof, to any person who shall deposit with such Treasurer the certificate mentioned in the *last preceding* section, on payment into his office of the sum of *forty* pounds.

Licenses issued by and fees paid to local authority.  
Ib., s. 6.

50 All sums received as license-fees under this Act shall belong to the local authority granting the license, and shall be paid by the Treasurer receiving the same into its district fund.

Licenses to be issued where place of business situate.

8. No Treasurer shall issue any such license to any person whose principal or sole place of business is not within the district for which such Treasurer is appointed.

Penalty for Treasurer improperly issuing a license.

9. Every Treasurer who improperly issues a license contrary to the provisions of this Act shall be liable to a penalty not exceeding 5 the amount of any license-fee payable in respect of the license so issued by him.

Form of license.

10. All licenses as aforesaid shall be signed by the principal officer of the local authority of the district wherein the same are issued, and countersigned by the Treasurer of such district, in the 10 form in the *Second Schedule* hereto.

Governor to provide for issue of licenses in certain parts of the colony.

11. In all parts of the colony outside of any county, borough, or town district, and where "The Counties Act, 1876," is not in operation or not wholly in force, or is suspended, the Governor may appoint persons to grant licenses and to receive the fees for the same, and may 15 prescribe the form of application for such licenses, and by whom they shall respectively be issued, signed, and countersigned.

Duration of license.

12. All licenses shall take effect on the first day of January or the first day of July which shall first ensue after the issue of the license, and shall be in force from such day for twelve months inclusive. 20

List of licensed auctioneers to be published.

13. Every Treasurer shall, within ten days after the *first* day of *January* and *July* in each year, publicly notify a list of the persons to whom he shall have granted such license, setting forth their names, places of abode, and callings.

Saving as to existing licenses.

14. Every auctioneer's license in force at the commencement of this Act shall be deemed to have been granted under and shall be subject 25 to the provisions of this Act, and shall remain in full force and effect until its expiration by effluxion of time or forfeiture.

If any such license shall expire at any time between the periods herein respectively appointed for the renewing of licenses, such license 30 may be extended in force until the thirtieth day of June or the thirty-first day of December first ensuing after the expiration thereof, by an indorsement to that effect by the principal officer of the local authority of the district, on payment, in respect of such extension, of a part of the fee of *forty* pounds proportionate to the time for which 35 the license is extended.

License to extend over the colony.

15. Every auctioneer's license, for so long as it is in force, shall authorize the holder thereof to conduct auction sales in any part of the colony.

Partners to take out separate licenses.

16. Where two or more persons carrying on business, or pur- 40 posing to carry on business, in partnership together as auctioneers apply to be licensed, each of such person shall be liable to pay the same license-fee as he would have been liable to pay if he had applied to be licensed separately.

Exception.

But where certain members only of a partnership intend to con- 45 duct sales by auction, it shall be sufficient if such members only become licensed as auctioneers.

Substitute may be appointed during illness, &c.

Compare Auckland Act, 1870, No. 2.

17. In the event of the illness or absence of any licensed auc- 50 tioneer from the provincial district in which such person usually carries on his business, he may notify publicly his intention to refrain from conducting auction sales for a limited period to be specified in such notice, not exceeding *six months*, and in such notice may nominate any partner or servant of his partnership firm to conduct such auction sales for him as his substitute during such period.

18. On such substitute depositing with the Clerk of the Resident Magistrate's Court of the district wherein the original license was issued a certificate of character in the form attached to the *First Schedule* hereto, such substitute may lawfully conduct sales by auction for such period.

Subject to certificate of character.

19. Every person so acting as a substitute for a licensed auctioneer under the foregoing provisions shall, during the continuance of his authority to act as such substitute, be deemed to be a licensed auctioneer within the meaning of this Act to all intents and purposes, and liable to the same penalties as auctioneers may be liable to under this Act.

Substitute to be subject to Act as if licensed.

20. No person so nominating a substitute shall be capable himself of holding any sale by auction, or of carrying on any part of the business of an auctioneer in any part of the colony, until the expiry of *fourteen* days after the publication of a notice intimating his intention of personally resuming his business as auctioneer; whereupon the right to conduct sales by auction, so far as regards his substitute, shall absolutely cease and determine.

Principal not to act during time substitute is acting.

21. In the event of the death of any holder of an auctioneer's license, his executors or administrators shall have the power to transfer the license to any person, subject to the approval of the Resident Magistrate of the district wherein the original license was issued.

License may be transferred in case of death.

22. Notwithstanding anything contained in "The Licensing Act, 1881," a wholesale license to sell intoxicating liquors may be granted under the said Act to any person who may be a licensed auctioneer.

Auctioneers may have wholesale licenses under Licensing Act.

23. No person holding a publican's license, nor any person in partnership with any such person, shall be competent to hold an auctioneer's license under this Act.

Publicans not to be auctioneers.  
Otago Ord., 1862,  
No. 99, s. 12.

24. No person adjudicated a bankrupt shall, unless such adjudication be annulled, be entitled to receive a license or renewal of a license under this Act until he receives a certificate of discharge under the provision of the laws for the time being in force respecting bankruptcy or insolvency.

No uncertificated bankrupt to hold a license.

25. No auctioneer shall conduct any sale by auction by artificial light or after the hour of five o'clock in the afternoon from April to September inclusive, or after the hour of seven o'clock in the evening during the residue of the year; but, in the case of any sale of live-stock or farming implements in open yards or premises, such sale may be continued in the evening of the day whereon it was commenced, for not more than one hour after sunset, for the purpose of concluding such sale.

Night auctions prohibited.  
N. Z. Ord., 1842,  
No. 13.

26. Every auctioneer who conducts any sale shall, within seven clear days after the termination of such sale, render an account of the proceeds of such sale to every person entitled thereto who shall require the same, and on failure to do so shall be deemed to have committed an offence against this Act, and shall be liable for each such offence to a penalty not exceeding *twenty* pounds.

Account sales to be rendered within seven days.

27. Any auctioneer who conducts any sale, and  
(1.) Fraudulently converts to his own use the proceeds of such sale or any part of such proceeds, or fraudulently omits to pay such proceeds or any part thereof to the person entitled thereto, shall be deemed guilty of larceny.

Penalty.

Misappropriation, larceny.

Falsifying accounts,  
misdemeanour.

(2.) With intent to defraud, renders any account of the proceeds of any sale, knowing the same to be false in any particular, shall be deemed guilty of a misdemeanour, and, on conviction thereof, shall be liable to imprisonment for any time not exceeding two years, with or without hard labour. 5

No music nor riotous  
conduct allowed in  
saleroom.

Otago Ord., 1862,  
No. 99, s. 10.

28. Any auctioneer who permits any music to be played in any premises used as a saleroom within one half-hour previous to the time of any intended sale by auction, or during the time any sale may be going on, or at the intervals thereof, excepting such as may be necessary for the trial of any instrument about to be sold or offered for sale, or shall hold a sale in any unsuitable room or building, of which the adjudicating Justices shall be the judges, or shall permit any riotous or disorderly conduct in any such saleroom, shall be liable to any penalty not exceeding *ten* pounds. 10

Penalty on  
unlicensed person  
pretending to be an  
auctioneer.  
Ib., s. 11.

29. Any person, not being a licensed auctioneer, who shall have any words written, painted, or inscribed, or which may have been written, painted, or inscribed, and not thoroughly obliterated, over or about his house, window, or premises, which shall lead to the belief or supposition that such person is an auctioneer, or who shall place or cause to be placed any placard, board, writing, matter, or thing in the public view, to the intent that it may be believed or supposed that such person is an auctioneer, or that any property of any kind whatever or any interest therein is to be sold by auction by such person, shall be liable to a penalty not less than *twenty* pounds and not exceeding *one hundred* pounds. 15 20 25

Penalty for not  
exhibiting license  
on demand.  
Auck. Act, 1863,  
No. 9, s. 9.

30. If any person acting as a licensed auctioneer does not at the time of any sale by auction, on demand of any police officer or constable, produce and show to such officer or constable a proper license granted or deemed to be granted to him under this Act, such person shall be liable to a penalty not exceeding *fifty* pounds. 30

Penalty for selling  
contrary to Act.

31. If any licensed auctioneer shall exercise his business at any time or in any manner contrary to the provisions of this Act, he shall for every such offence be liable to a penalty not exceeding *fifty* pounds.

License improperly  
obtained to be  
forfeited.

32. Every licensed auctioneer who has improperly obtained a license contrary to the true meaning of this Act shall, in the discretion of any two Justices of the Peace, forfeit his license, and thereafter shall be deemed to be unlicensed. 35

Penalty for forging,  
&c., licenses.

33. Every person who shall forge, counterfeit, or alter, or cause to be forged, counterfeited, or altered, any license, or any seal or signature to any license, or shall use or tender in evidence any such forged, counterfeited, or altered license, or seal or signature, knowing the same to be forged, counterfeited, or altered, shall be guilty of felony, and being convicted thereof shall be liable, at the discretion of the Court, to be kept in penal servitude for the term of three years, or to be imprisoned for any term not exceeding two years, with or without hard labour. 40 45

Penalty for lending  
or hiring, &c., license.  
1871, No. 41, s. 12,  
amplified.

34. Every person shall be liable to a penalty not exceeding *fifty* pounds for every separate offence who shall let out or hire or lend any license granted to him, or shall trade with or under colour of any license granted to any other person whomsoever, or of any license in which his own name shall not be inserted as the name of the person to whom the same is granted. 50

35. In all proceedings against any person for having acted as an auctioneer without a license, such person, unless he shall produce his license or bring other satisfactory proof of his having been licensed at the time at which the offence was committed, shall be deemed to have been unlicensed. Non-production of license.  
Cant. Ord., 1855,  
No. 3, s. 8.
36. If any auctioneer holding a license under this Act shall be convicted of an offence under this Act, and thereafter be convicted of a second or any subsequent offence of any kind under this Act, the convicting Magistrate or Justices may, in addition to any other penalty, cancel his license. Licenses may be cancelled.
37. All offences under this Act, except under sections *twenty-seven* and *thirty-three*, may be heard and determined, and all fines and penalties may be recovered, in a summary way before a Resident Magistrate or any two or more Justices of the Peace, and shall be paid into the public account, and form part of the Consolidated Fund. Recovery of fines, &c., to be paid to Public Account.
38. All expenses and costs incident to the administration of this Act in any district shall be defrayed by the local authority receiving the license-fees in such district. Expenses of Act to be paid by local authority.
39. Nothing in this Act contained shall be deemed to take away or limit any civil remedy which any person may have against an auctioneer in respect of any matter which is constituted an offence under this Act. Saving of civil remedies.
40. Nothing in this Act contained—  
 (1.) Shall extend to any sale made by order of the Governor or of any Collector or Sub-Collector of Customs, or to any sale ordered by virtue of or in obedience to any writ or process issued by or out of any Court of law or justice, nor to any sale of any animals sold under the law relating to public pounds, nor to any sales of Crown lands, or of the leases or occupation licenses of any such lands;  
 (2.) Shall be construed to repeal any enactment authorizing particular sales to be conducted without an auctioneer's license. Sales excepted from Act.  
N. Z. Ord., 1842,  
No. 13, s. 14.
41. Nothing in this Act contained shall be taken to render legal and valid any sale which before the commencement of this Act was contrary to law. Illegal sales prior to this Act not validated.
- 35 APPRAISERS, AGENTS, AND BROKERS.
42. No person shall exercise the trade or business of an appraiser, valuator, commission agent, land broker, or sharebroker, or act as such, or value or appraise or sell by commission otherwise than by auction any estate or property, real or personal, or any interest therein, for or in expectation of hire, reward, or valuable consideration, without previously having obtained a license in that behalf under this Act. All appraisers, agents, land brokers, and sharebrokers to be licensed.
- (1.) Every such license shall be applied for and be issued in the same manner in every respect as auctioneers' licenses are authorized to be issued, except that the fee to be paid in respect of every license under this section shall be *twenty* pounds.
- (2.) All the foregoing sections of this Act shall, *mutatis mutandis*, apply to licenses issued under this section, and to the holders of such licenses, and to the recovery of penalties in respect thereof, and in respect of offences against any



of the succeeding sections of this Act; and the aforesaid sections shall be read with the necessary changes for the purpose of giving due effect to this enactment; and the forms in the Schedule may be varied to apply to licenses issued under this section.

Licensed auc-  
tioneers may act as  
appraisers, &c.,

43. All persons who shall be duly licensed to act as auctioneers may act as appraisers, valuers, commission agents, land brokers, and sharebrokers, without taking out any separate license.

Sharebrokers to keep  
books and accounts  
of sales.

1871, No. 41, s. 7.

44. Every person who shall be licensed as a sharebroker—

(1.) Shall keep a book to contain entries of all shares and the amount of every sale to every person, and the price at which the same shall be sold;

(2.) Shall, every time he shall sell to any person any shares, give to the person for whom he sold the same an account in writing, signed with his name, of the number of shares so sold, to whom the same were sold, and the true rate of purchase or price paid for the same, and shall enter in the said book to be kept by him a like account, together with the name of the person for whom he sold the same;

(3.) Shall, at the request of the person for whom such shares shall have been sold, show to him or her the entry therein relative to the shares sold for such person.

Penalty for not  
keeping proper  
books.

Ibid.

45. If any licensed sharebroker—

Shall sell for any person any such shares, and shall not give such account in writing as aforesaid to the person for whom he shall have sold the same, or

Shall not keep such book and make such entries therein as aforesaid, or

Shall not, at such request as aforesaid, permit the person for whom he shall have sold such shares to inspect the entries therein of the account of shares so sold, or

Shall insert in the said account or in the said book any false account of the price at which such shares were sold or bought, or a false entry of any of the matters hereby required to be entered in the said book,

every such sharebroker shall, for every such offence, be liable to a penalty not exceeding *one hundred* pounds nor less than *twenty* pounds, and be disqualified from ever after acting as a sharebroker in New Zealand.

Sharebrokers to  
have but one office.  
Ib., s. 11.

46. No licensed shareholder shall, by virtue of one license, keep more than one office, house, or place of business; and for every separate office or place of business which any person shall keep for the purposes of his business a separate and distinct license shall be taken out.

Sharebrokers not to  
buy or sell for them-  
selves.

47. No person, during the time he shall continue to be licensed as a sharebroker, shall buy or sell any shares for himself or on his own account, except through another broker.

Every person offending against this provision shall, for every such offence, be liable to a penalty not exceeding *one hundred* pounds, to be recovered by any person who may sue for the same.

#### REPEALS.

Acts and ordinances  
repealed.

48. The several enactments enumerated in the *Third* Schedule hereto are hereby repealed.



## SCHEDULES.

Schedules.

FIRST SCHEDULE.  
APPLICATION FOR LICENSE.

To the Resident Magistrate of \_\_\_\_\_ District.  
I [A.B.], now residing at \_\_\_\_\_, do hereby give notice that it is my intention, at the expiration of *thirty* days from this date, to apply for an auctioneer's license.  
Given under my hand, this \_\_\_\_\_ day of \_\_\_\_\_, 18 \_\_\_\_ .  
A.B.

*Form of Certificate of Character to be attached to the above, to be signed by six respectable householders resident in the district.*

WE hereby certify that we are well acquainted with A.B., the above applicant, and know him to be a respectable person, and fit to be intrusted with an auctioneer's license.

[Names and Residences.] { 1. 4.  
2. 5.  
3. 6.

## SECOND SCHEDULE.

## FORM OF LICENSE.

WHEREAS A.B., of \_\_\_\_\_, hath deposited in this office a certificate from the Resident Magistrate of the district authorizing the issue of an auctioneer's license to the said A.B.: And whereas the said A.B. has this day paid into my office the sum of *forty* pounds: Now I do hereby declare that the said A.B. is licensed to exercise the business or calling of an auctioneer, and to hold auction-sales in any part of the colony.

This license shall continue in force until the *thirty-first* day of *December* or *thirtieth* day of *June* ensuing next after the date hereof, and no longer, provided it be not forfeited in the meantime.

Mayor [or Chairman].  
Treasurer.

## THIRD SCHEDULE.

## SCHEDULE OF ACTS AND ORDINANCES REPEALED.

- (1.) *Ordinances of the Governor and the Legislative Council of New Zealand.*  
Sess. II., 1842, No. 13.—An Ordinance for licensing Auctioneers.  
Sess. III., 1843, No. 10.—An Ordinance to amend an Ordinance for licensing Auctioneers.
- (2.) *Act of the General Assembly.*  
1871, No. 41.—The Sharebrokers Act, 1871.
- (3.) *Acts of the Province of Auckland.*  
Sess. XV., No. 9.—The Auctioneers Licensing Act, 1863.  
Sess. XXVI., No. 2.—The Auctioneers Licensing Act 1863 Amending Act, 1871.  
Sess. XXIX., No. 13.—The Auctioneers Licensing Act 1863 Amending Act, 1874.
- (4.) *Ordinance of the Province of Taranaki.*  
Sess. VI., No. 6.—The Auctioneers Licensing Ordinance, 1858.
- (5.) *Acts of the Province of Nelson.*  
Sess. V., No. 5.—The Auctioneers Licensing Act, 1858.  
Sess. IX., No. 4.—The Auctioneers Licensing Amendment Act, 1862.  
Sess. XV., No. 1.—The Auctioneers Licensing Amendment Act, 1867.
- (6.) *Act of the Province of Marlborough.*  
Sess. I., No. 6.—The Auctioneers Licensing Act, 1860.
- (7.) *Ordinance of the Province of Canterbury.*  
Sess. III., 1854, No. 3.—The Auctioneers Ordinance, Sess. III., No. 3.
- (8.) *Ordinances of the Province of Otago.*  
Sess. XVI., No. 99.—The Licensed Auctioneers Ordinance, 1862.  
Sess. XXV., No. 283.—The Licensed Auctioneers Ordinance 1862 Amendment Ordinance, 1869.  
Sess. XXVIII., No. 335.—The Auction Ordinance 1862 (Southland) Repeal Ordinance, 1870.

All former rates to  
be refunded.

All proceedings for the recovery of rates under the District Railways Acts by the company owner of any railway shall cease from the date of the passing of this Act.

All rates recovered by the company owner of any railway leased under this Act up to the date of the lease, shall be repaid to the persons who have paid the same immediately after the Governor has contracted to lease such railway, and if not so paid may be recovered at any time in a summary manner by the persons entitled thereto respectively in any Court of competent jurisdiction.

No new district  
railway to be  
authorized.

24. After the passing of this Act no railway shall be authorized to be constructed under the District Railways Acts.

### SCHEDULE.

#### RAILWAYS CONSTRUCTED UNDER THE DISTRICT RAILWAYS ACTS.

THE Duntroon and Hakateramea Railway.  
The Rakaia and Ashburton Forks Railway.  
The Thames Valley and Rotorua Railway.  
The Waimate Railway.  
The Waimea Plains Railway.