

Mr. Levin.

AUCTIONEERS.

ANALYSIS.

Title.	14. Partnership licenses.
Preamble.	15. License to auctioneer's clerk.
1. Short Title.	16. Uncertificated bankrupt cannot receive license.
2. Interpretation.	17. Penalty.
3. License to act as auctioneer compulsory.	18. No publican may hold an auctioneer's license.
4. Description of licenses.	19. Registry.
5. Application for license.	20. Registry to be open to inspection.
6. List of applicants to be posted.	21. Certificate of ownership necessary.
7. Issue of license.	22. Auctioneer complying with provisions as afore- said exempt.
8. Objections.	23. Informations.
9. List of licensees to be forwarded to Colonial Treasurer.	24. Penalties, how recoverable and applicable.
10. License fee to be paid to Colonial Treasurer.	25. Appeals.
11. Annual meeting for the licensing of auctioneers.	26. As to licenses granted before this Act is enforced.
12. Adjournment of general meeting.	27. Saving as to previous sales.
13. Adjournment of annual auctioneers' licensing meeting.	28. Repeals.
	29. Commencing operation of Act. Schedules.

A BILL INTITULED

AN ACT to consolidate the Law relating to Sales by Auction. Title.

WHEREAS it is expedient to amend the law relating to sales by auction : Preamble.

BE IT THEREFORE 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 Act, 1881." Short Title.

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

"Sales by auction," or "to sell by auction," when used in this Act, mean and apply to the selling of any goods, chattels, articles, or things, or of any lands or real estate, or any interest or supposed interest in any goods, chattels, articles, or things, or any lands or other real estate, 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 goods or articles submitted for sale at a certain price, named by the person acting as auctioneer, is the purchaser; or where there shall be a competition for the purchase of any article, goods, chattel,

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matter, or thing, or any real estate or any interest therein, in any way commonly known and understood to be by way of auction :

“Auctioneer” means and applies to any person who shall sell or attempt to sell, or offer for sale or resale, any goods, chattel, article, matter, or thing, or any lands or other real estate, or any interest or supposed interest in any goods, chattel, article, matter, or thing, or in any lands or other real estate, by way or auction as herein defined :

“Cattle” means and includes horses, mares, fillies, foals, geldings, colts, bulls, bullocks, cows, heifers, steers, calves, sheep, ewes, rams, lambs, swine, mules and asses.

3. Any person who, not being an auctioneer's clerk, licensed as hereinafter provided, shall act in the capacity of an auctioneer without having obtained a license in the manner hereinafter provided, shall, upon conviction, for each offence be liable to a penalty of not less than *fifty pounds* nor more than *two hundred pounds*, and to be incapacitated from holding an auctioneer's license for the space of *three years*.

4. There shall be two descriptions of licenses, one termed a “general auctioneer's license,” the other a “county auctioneer's license.” For the general auctioneer's license a fee of *fifty pounds* shall be paid, and for the county auctioneer's license, a fee of *thirty pounds* shall be paid.

A general auctioneer's license shall authorize any person obtaining the same to follow the occupation of an auctioneer within any part of New Zealand.

A county auctioneer's license shall authorize any person obtaining the same to follow the occupation of an auctioneer within the county in which the application for such license shall have been made :

Provided that no such county auctioneer's license shall apply to or be in force in or within ten miles of the chief corporate towns of each county : And provided also that no auctioneer, having obtained a general license as aforesaid, shall exercise or follow his occupation as such auctioneer in any other city or county than that in which he has taken out his license until he shall have registered his name, usual place of residence, and the particulars of his license, in the Resident Magistrate's Court of the city or county in which he may propose to follow the occupation of an auctioneer, nor until a certificate of such registration having been made shall have been indorsed by the Resident Magistrate or Clerk of such Court on the license of such auctioneer.

5. Any person desirous of obtaining an auctioneer's license for any year shall, on or before the *first Tuesday* in the month of *February* preceding such year, deliver to the Clerk of the Resident Magistrate's Court for the chief corporate city or town of each county in which such application is about to be made a notice in writing of his intention to apply for the same, in the form in the *First Schedule* to this Act ; and every such applicant, whether for a general or county license, shall also deliver to such Clerks of such Courts respectively, with such notice, a certificate of character in the form attached to the said last-mentioned Schedule, signed by *six* respectable householders resident in the county for which such Courts respectively shall be held.

License to act as auctioneer compulsory.

Description of licenses.

Application for license.

6. The Clerk of such Resident Magistrate's Court shall cause a list of all applicants for licenses under this Act, together with their places of abode respectively, and the names and residences of the householders signing the certificates required as aforesaid, to be posted up in some conspicuous place inside and also outside every building in which such Resident Magistrate's Court shall be held, *fourteen* clear days at the least before such applications shall be disposed of at such Court.

List of applicants to be posted.

7. The Resident Magistrate and two or more Justices of the Peace acting for and usually resident or having a place of business within the city or county in which such Resident Magistrate's Court shall be held, may issue in manner hereinafter mentioned a certificate, authorizing the issue of a general auctioneer's license or of a county auctioneer's license, as the case may be, and requiring the Treasurer of New Zealand, or other person authorized in that behalf by the Governor in Council, on sight thereof, and on payment of the fee as hereinbefore set forth, to issue a license to carry on and exercise the occupation of an auctioneer according to the nature of the license applied for; which license shall be in the form and to the effect set forth in the *Second* Schedule to this Act. And every license to be issued under the provisions of this Act shall be dated the day of its issue, and shall continue in force, unless previously forfeited as hereinafter provided, until the *thirty-first* day of *March* in the year succeeding the year in which the application shall have been considered at the annual meeting as hereinafter mentioned.

Issue of license.

8. Every such Resident Magistrate's Court for issuing certificates for licenses shall be held in the usual manner, with open doors; and it shall be lawful for any person to object to any application for any certificate; and the Resident Magistrate or Justices assembled at and forming such Court shall inquire into such objections, and for that purpose summon or call or examine on oath such witnesses as they may deem necessary; and after such examination, or without hearing any such evidence, such Justices shall either refuse or grant any such application as they shall in their discretion deem fit and proper, and shall, when such application has been granted, issue the required certificate authorizing such license as aforesaid.

Objections.

9. Such Resident Magistrate or Justices shall, within *fourteen* days after the granting such certificates as aforesaid, transmit to the Treasurer of New Zealand, or to such other person as may be appointed by the Governor in Council for the purpose of issuing licenses under this Act, a list, signed by the Resident Magistrate or two at least of the said Justices, specifying the names and residence of every person to whom any such certificate shall have been so granted, and the nature of the license authorized by each certificate.

List of licensees to be forwarded to Colonial Treasurer.

10. Each such certificate as aforesaid shall be null and void unless the same and the sum required to be paid for such license be lodged in the office of the Treasurer of New Zealand, or of such other person who may be appointed by the Governor in Council in that behalf, on or before the *twenty-eighth* day from the date of such certificate.

License fee to be paid to Colonial Treasurer.

And the said Treasurer or other person as aforesaid shall be and he is hereby authorized and required, forthwith after the receipt of

every such certificate and payment being made of the authorized fee, to issue and register in his office a license according to the tenor of each such certificate respectively. And, upon the issue of any such license, the Treasurer or other person acting in that behalf shall cause a notice of the same to be immediately sent for insertion in the Government *Gazette*, specifying in such notice the name of the person and the nature of the license issued. But such period of *twenty-eight* days herein appointed for the payment of the license fee and lodgment of the certificate with the Treasurer, or other person appointed in that behalf, may be extended, for any period not exceeding *six weeks*, by special application made to and approved of by the Governor in Council. 5

Annual meeting for the licensing of auctioneers.

11. A general meeting of the Resident Magistrate and Justices actually resident in each city or county, to be called "the annual meeting for the licensing of auctioneers," shall be holden in the respective Courthouses, or usual places of meeting, on the *fourth Tuesday* in the month of *February* in every year, for the special purpose of taking into consideration applications for licenses; and the Resident Magistrate of the city or county and two such Justices shall be sufficient to constitute such meeting. And the Clerk of the Resident Magistrate's Court, or person acting as such, shall cause notice of such meeting to be inserted in the Government *Gazette*, and placed outside in some conspicuous place of the Courthouse, or usual place of meeting in the city or county, one month at least before the time of holding such meeting. But no neglect or omission in regard to any such notice shall invalidate any proceedings of any such annual meeting held in pursuance of this Act, and conformably in other respects to its provisions. 15 20 25

Adjournment of general meeting.

12. The Resident Magistrate and Justice (if only one in attendance) may adjourn such meeting, or the consideration of any applications made thereto, to such other day or days as such Resident Magistrate, Justices, or Justice shall decide upon; but no such adjournments, in the whole, shall exceed one month from the original day appointed for such annual meeting. 30

Adjournment of annual auctioneers' licensing meeting.

13. Whenever, at any annual auctioneers' licensing meeting to be holden as aforesaid, or any adjournment thereof, the Resident Magistrate and two Justices resident in such city or county shall not be present by one o'clock of the day, the Resident Magistrate, or any one Justice, may adjourn the said meeting from time to time, so that, in the whole, such adjournments do not exceed *one* month from the day originally appointed for the holding of such annual meeting; and notice shall be given to the Justices resident in the district of such adjourned meetings; and if at the last of such adjourned meetings there shall not be present, by one o'clock in the day, the Resident Magistrate and two Justices resident within such district, it shall be lawful for such Resident Magistrate, or such one Justice, to do all such acts as an annual meeting is by this Act empowered to do. 35 40 45

Partnership licenses.

14. When more than two persons in partnership as auctioneers, constituting *bond fide* and in fact one firm, shall apply in manner aforesaid to be licensed as partners, the proper officer shall, on compliance with the provisions of this Act, and on payment of *fifty* pounds each by two of the partners for their licenses, issue partnership 50

licenses to the other member or members of such firm, on payment of the sum of *ten* pounds each.

15. When any duly licensed auctioneer shall be desirous of obtaining a license to authorize his known clerk to act in his stead at sales by auction, the Resident Magistrate of the city or county in which the application is made shall, if satisfied as to the character of the clerk, issue a certificate for a license, and, on payment of the annual sum of *ten* pounds sterling, in addition to the license-money payable by such auctioneer as aforesaid, the Treasurer of New Zealand, or other person duly authorized in that behalf, shall issue a license in the form set out in the *Third* Schedule to this Act: Provided always that in every such case such auctioneer shall, from time to time, as occasion may require, enter the name of such clerk at the office of the Clerk of the Resident Magistrate's Court, who shall register the same, on payment for every such registration of a fee of *ten* shillings; and all provisions in this Act applying to auctioneers shall apply to any clerk so licensed.

License to auctioneer's clerk.

16. No person adjudicated a bankrupt shall, unless such adjudication be annulled, be entitled to receive a license until he shall receive a certificate of discharge under the provisions of the laws for the time being in force within the colony respecting bankruptcy.

Uncertificated bankrupt cannot receive license.

17. 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, on, 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 article, matter, or thing, or any real estate or interest therein, is to be sold by auction by such person, shall, on conviction of any such offence, forfeit a penalty of not less than *twenty* pounds nor more than *one hundred* pounds.

Penalty.

18. 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.

No publican may hold an auctioneer's license.

19. Every auctioneer licensed under this Act shall keep a registry or book, in the form of the *Fourth* Schedule to this Act annexed, of all the cattle sold by such auctioneer; and a copy of every registry or entry made in such book for the week ending each Saturday shall be transmitted, by ten o'clock in the morning of each Monday, to the Resident Magistrate's Court nearest to the place of sale of any such auctioneer; and if there shall be no Resident Magistrate's Court within two miles of such place, then such time for the forwarding of such returns shall be allowed as the distance may reasonably require.

Registry.

And if any auctioneer shall fail to insert in such registry or book any cattle he may have sold during such week, or shall not correctly and truly insert all the particulars required by the form set forth in the last mentioned Schedule, or shall not transmit a correct copy of such registry or book as hereinbefore directed, every such person shall forfeit a penalty not exceeding *one hundred* pounds.

20. Every such registry or book and copies thereof, whether in the said Court or in any central office, shall be open to the inspection

Registry to be open to inspection.

of any constable or officer of police, and to every Justice of the Peace, at any reasonable time free of cost, and to every other person within the usual hours of business upon payment of the fee of *two shillings and sixpence* for every such search: Provided however, that, for such fee, such person shall be at liberty to take an extract from any such book of any cattle that may have been entered therein. 5

Certificate of ownership necessary.

21. Every auctioneer licensed under this Act receiving any cattle for sale, shall at the same time require from the owner or possessor of such cattle a certificate from some known and respectable person that such owner or possessor of such cattle is of good repute, and that he believes such owner or possessor of such cattle would not commit a felony, but that he has become possessed of such cattle honestly. 10

And if any auctioneer shall sell any cattle for any person without such certificate, every such auctioneer shall forfeit a penalty not exceeding *twenty* pounds. 15

And if it shall be made to appear to any Resident Magistrate's Court that the auctioneer to whom such license shall have been granted has been convicted of having committed a second or subsequent offence against any of the provisions of this Act, or has not taken due and proper means to ascertain and record the particulars herein required to be ascertained and recorded, or that he has been guilty of such carelessness as to facilitate the disposal of any stolen cattle or the escape of any person unlawfully or feloniously obtaining any cattle, or has improperly obtained a license contrary to the true intent and meaning of this Act, such Court may in their discretion order that the license of any such auctioneer shall be cancelled; and such auctioneer shall from thence be deemed and taken to be unlicensed accordingly. 20 25

Auctioneer complying with provisions as aforesaid exempt.

22. Every auctioneer who shall well and truly comply with the provisions of this Act in reference to any cattle that may, after having been sold by any auctioneer, be recovered under the provisions of any Act now or hereafter to be in force enabling Justices to order and enforce repayment by any vendor of the amount paid to him as the purchase-money of cattle adjudged to have been stolen, shall be exempt from the operation of such provisions. But if any such auctioneer shall have exhibited any neglect or carelessness in respect to any such cattle so recovered as aforesaid, the said provisions shall remain in full operation as against such auctioneer; and the decision of whether such auctioneer shall be so liable or not shall rest with the Resident Magistrate, Justice, or Justices before whom the case may be brought. 30 35 40

Informations.

23. Any person may lay information for any offence under this Act.

Penalties, how recoverable and applicable.

24. All penalties under this Act shall be recovered in a summary way before any Resident Magistrate or two Justices of the Peace, and when recovered shall go and be distributed, as to one moiety thereof to the informer or person who shall sue for the same, and as to the other moiety, and all other moneys recovered under this Act, it and they shall go to and form part of the consolidated revenue of the colony. 45

Appeals.

25. Any person whose application for a license has been refused, or whose license shall have been cancelled by the order or judgment of any Resident Magistrate or Justices, who shall feel himself aggrieved 50

by the order or judgment of the Resident Magistrate or Justices adjudicating, may appeal from any such order or judgment to the Supreme Court of the district which shall be held nearest to the place where such judgment shall have been given. And the cancelling
 5 of every such license shall be suspended in case such person shall, with two or more sufficient sureties, immediately before such Resident Magistrate or Justices, enter into a bond or recognizance to Her Majesty, her heirs and successors, in such sum as the Resident Magistrate or adjudicating Justices shall consider reasonable, which
 10 bond or recognizance respectively such Resident Magistrate or Justices are hereby authorized and required to take; and such bond or recognizance shall be conditioned to prosecute such appeal with effect, and to be forthcoming to abide the determination of the said Supreme Court, and to pay such costs as the said Court shall award on such
 15 occasion. And such Court is hereby authorized and required to hear and determine the matter of the said appeal; and the decision of such Court shall be final between the parties to all intents and purposes.

26. Every auctioneer's license in force at the time of the commencement and coming into operation of this Act shall remain in full force and effect, according to its respective class, until its expiration by effluxion of time or its forfeiture, but shall be deemed to be a license granted under this Act; and all the provisions and enactments herein contained shall apply as fully to every auctioneer so
 25 holding any existing license, and also to such license, as if such license had been granted under this Act.

As to licenses granted before this Act is enforced.

27. Nothing in this Act regulating sales by auction shall be taken to render legal and valid any sale which before the passing of this Act was contrary to law.

Saving as to previous sales.

28. The several Ordinances and Provincial Ordinances mentioned
 30 in the *Fifth* Schedule hereto are hereby repealed.

Repeals.

29. This Act shall commence and come into operation immediately on the passing hereof.

Commencing operation of Act.

SCHEDULES.

Schedules.

FIRST SCHEDULE.

To the Resident Magistrate and Justices of the Peace acting in and for the City [County or District] of
 I , now residing at , in New Zealand, do hereby give notice that it is my intention to apply, at the next annual meeting for the licensing of auctioneers to be holden for this district, for an auctioneer's general [or county, as the case may be] license.

Given under my hand, this day of , 18 .

E.F.

FORM OF CERTIFICATE to be attached to the above, to be signed by six respectable householders resident in the city or county, as the case may be.

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

(Signatures.)

SECOND SCHEDULE.

FORM OF AN AUCTIONEER'S LICENSE.

WHEREAS E.F., of _____, hath deposited in this office a certificate from the Resident Magistrate and Justices of the Peace assembled in Court at _____, on the day of _____ [or of a single Justice, as the case may be] authorizing the issue to the said E.F. of a general [or county, as the case may be] auctioneer's license under authority of "The Auctioneers Act, 1881:" And whereas the said E.F. has paid to me the sum of _____ pounds: Now I, _____ the Treasurer of New Zealand [or other such officer as may have been appointed in that behalf, as the case may be], do hereby license the said E.F. to act as an auctioneer in New Zealand [or for the County of _____ in New Zealand, as the case may be]: And this license shall continue in force until and inclusive of the thirty-first day of March, 18____, provided it be not forfeited in the meantime according to the provisions of the said Act.

Given under my hand at _____, this _____ day of _____, 18____.
(Signature.)

THIRD SCHEDULE.

FORM OF LICENSE TO AUCTIONEER'S CLERK.

WHEREAS E.F. hath deposited in this office a certificate from the Resident Magistrate of the District of _____, dated the _____ day of _____, 18____, authorizing the issue to G.H., the duly-authorized and known clerk of the said E.F., of a general [or county, as the case may be] auctioneer's license, under authority of "The Auctioneers Act, 1881:" And whereas the said E.F. has paid to me the sum of ten pounds: Now I, _____, the Treasurer of New Zealand [or such other officer as may have been appointed in that behalf, as the case may be], do hereby license the said G.H. to act as an auctioneer in the stead of the said E.F., in New Zealand [or in the City or County of _____, in New Zealand, as the case may be]: And this license shall continue in force until and inclusive of the thirty-first day of March, 18____, provided it be not forfeited in the meantime according to the provisions of the said Act.

Given under my hand, at _____, this _____ day of _____, 18____.
(Signature.)

FOURTH SCHEDULE.

REGISTRY of Cattle Sold* by _____, Licensed Auctioneer, at _____.

Name and Residence of Owner or Person on whose account Sold.	Name and Residence of Person to whom such Owner known, and by whom Certificate given.	Brand of Cattle and Where Placed.	Mark, Colour, or other Peculiarity of each Animal, so that its Identity may be easily Recognized.

(Signature.)

[* In case of sale of any number of cattle exceeding three, belonging to one owner, a general description only of such cattle need be registered.]

FIFTH SCHEDULE.

SCHEDULE OF ACTS AND ORDINANCES REPEALED.

(1.) *Ordinances of the Governor and Legislative Council of New Zealand.*

Sess. II., 1842, No. 13.—An Ordinance for licensing Auctioneers.

Sess. III., 1844, No. 10.—An Ordinance to amend an Ordinance for licensing Auctioneers.

(2.) *Acts of the Province of Auckland.*

Session XV., No. 9.—The Auctioneers Licensing Act, 1863.

Session XXVI., No. 2.—The Auctioneers Licensing Act 1863 Amending Act, 1871.

Session XXIX., No. 13.—The Auctioneers Licensing Act 1863 Amending Act, 1874.

(3.) *Ordinance of the Province of Taranaki.*

Sess VI., No. 6.—The Auctioneers Licensing Ordinance, 1858.

(4.) *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.

(5.) *Act of the Province of Marlborough.*

Sess. I., No. 6.—The Auctioneers Licensing Act, 1860.

(6.) *Ordinance of the Province of Canterbury.*

Session III., 1854, No. 3.—The Auctioneers Ordinance, Sess. III., No. 3.

(7.) *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.