

This PUBLIC BILL originated in the HOUSE OF REPRESENTATIVES, and, having this day passed as now printed, is transmitted to the LEGISLATIVE COUNCIL for its concurrence. House of Representatives, 31st July, 1891.

Hon. Mr. Seddon.

AUCTIONEERS.

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A BILL INTITULED

AN ACT to regulate the Licensing of Auctioneers.

Title.

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

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1. The Short Title of this Act is "The Auctioneers Act, 1891."

Short Title.

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

Interpretation.

"Auctioneer" means any person who sells or attempts to sell by auction, or offers for sale or resale by auction, property of any kind whatever, or any interest or supposed interest in any property :

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"Clerk" means the Clerk of any local authority, 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 :

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

“Local authority” means and includes the Council or Board of any borough or town district, and the Council of a county; and, within any county where “The Counties Act, 1886,” is suspended, means the Road Board or Town Board; and within counties which are excepted from the operation of “The Counties Act, 1886,” and also in all parts of the colony not included in any borough, town district, or county, means the Governor: 5

A town district, for the purposes of this Act, shall be deemed not to form part of the county wherein it is comprised: 10

“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: 15

“Sales by auction” or “sell by auction” means the selling of property of any kind whatever, or any interest or supposed interest in any property, by outcry, by the auctioneer saying, “I’ll take,” and commencing at a higher figure and going to a lower figure, by what is known as Dutch auction, knocking-down of hammer, candle, lot, parcel, instrument, machine, or any other mode whereby the highest, the lowest, or any 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. 20 25 30

No person to sell by auction unless licensed. Penalty.

3. No person, except as hereinafter mentioned, shall sell by auction unless he shall be the holder of an auctioneer’s license as hereinafter provided; and every person offending against this provision shall be liable to a penalty of not less than *ten* pounds and not exceeding *one hundred* pounds for every such offence. 35

Application for certificate.

4. Any person who is desirous of obtaining an auctioneer’s license shall lodge with the Clerk of the local authority in the district within which such person resides or has his place of business a notice, in the form in the *First* Schedule hereto, that he intends at the first meeting of such authority to apply for a certificate for an auctioneer’s license; but 40

Any person holding an auctioneer’s license at the time of the passing of this Act shall, on the expiry of the said license by effluxion of time, be entitled on application to receive from the local authority of the district in which he resides or has his place of business a certificate for the issue of a new license. 45

Local authority to hear application.

5. At such meeting of the said local authority such application shall be dealt with and granted, unless the members of such local authority, by resolution of a two-thirds majority, decide that the applicant is not a fit and proper person to receive such license.

Certificate.

6. If such application be granted, the Chairman, Acting Chairman, or Mayor of the said local authority, as the case may be, shall sign a certificate in the form in the *Second* Schedule hereto, and hand the same to the Clerk of the local authority, and, upon payment to the said Clerk of 50

the sum of forty pounds as license-fee, or such proportionate part of such sum as hereinbefore mentioned, he shall issue to such applicant a license in the form in the *Third* Schedule, signed by such Clerk, which shall, for the period of its continuance, authorise the person therein named to sell by auction in any part of the colony, subject to forfeiture as hereinafter provided.

7. Every license shall take effect from the date of the issue thereof, and shall expire on the thirty-first day of December next following such date. Every license granted under this Act which shall have a currency of less than eleven months before its expiry shall be charged only a part of the fee of forty pounds proportionate to the time of the currency of the license.

8. The Governor from time to time, by Order in Council, may declare special districts for the purposes of this Act, comprising respectively any parts of the colony which are sparsely populated, or are excepted from the operation of "The Counties Act, 1886," or are not within any county; and the Governor may appoint persons to grant auctioneers' licenses for such special districts upon payment of a license-fee not exceeding *ten* pounds, and may prescribe the mode of applying for and issuing such licenses.

9. All sums received as license-fees or registration-fees under this Act shall be paid by the Clerk receiving the same into the Public Account, and shall be paid out of the said Account according to the ratio of two-thirds to the local authority of the district wherein the licensee has his principal or sole place of business, and one-third to the local authority of the district wherein he resides.

All sums as aforesaid received in any special district shall be paid into the Public Account, and, after deducting therefrom all expenses incident to the administration of this Act in such part of the colony, shall be paid to the local authority of the district wherein the licensee has his principal place of business; and if there be no such local authority shall form part of the Consolidated Fund.

10. Every Clerk or person appointed by the Governor to issue auctioneers' licenses shall, within *ten* days after the issue of any license by him, publicly notify that the same has been so issued in the form in the *Fourth* Schedule hereto.

11. Every auctioneer's license in force at the commencement of this Act, issued under any of the Acts and Ordinances hereby repealed, shall be deemed to have been issued under and be subject to the provisions of this Act, and shall remain in force until its expiration by effluxion of time or forfeiture.

12. In case of the illness of any licensed auctioneer, whose license has not been forfeited or cancelled, or of his absence or intended absence from the district in which his principal or sole place of business shall be situated, he may give notice in writing to the Clerk who has issued such license that he intends to appoint one other specified person to sell by auction as his substitute for a period in such notice mentioned, not exceeding six months; and such substitute may, if approved of in writing by the Clerk by whom such license was issued, be registered by the Clerk who has issued such license upon payment of a registration-fee of ten shillings, and may act as such substitute accordingly, and shall whilst so acting be deemed

License.

Duration of licenses.

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

License and other fees to be paid to local authority.

Exception.

Issue of license to be notified.

Existing licenses.

Licensed auctioneer may appoint substitute.

the holder of such license and a licensed auctioneer within the meaning of this Act.

Auctioneer not to sell after appointing substitute until after notice.

13. No licensed auctioneer who shall have appointed another person to sell by auction as his substitute shall sell by auction until *ten* days after he shall have delivered to the Clerk by whom his license was issued a notice in writing that he intends to resume business personally as an auctioneer, and upon the expiration of such period of *ten* days his substitute shall cease to be a licensed auctioneer, and his right to sell by auction shall absolutely cease and determine.

In case of death or bankruptcy of auctioneer, license may be transferred.

14. If any licensed auctioneer shall die or be adjudicated a bankrupt his executors or administrators, or the Official Assignee in Bankruptcy of his property, as the case may be, shall be entitled to transfer the auctioneer's license to any other person, with the previous consent in writing of the local authority having jurisdiction in the district in which such license was issued, and after paying to the Clerk who issued the license a registration-fee of ten shillings, and delivering to the said Clerk a notice in writing of such intended transfer, describing the name, occupation, and principal or sole place of business of the intended transferee, and immediately after such transfer the transferee shall be deemed to be the holder of such license, and a licensed auctioneer within the meaning of this Act.

Auctioneer may hold a wholesale license under "The Licensing Act, 1881," but not a publican's license.

15. Notwithstanding anything contained in "The Licensing Act, 1881,"—

- (1.) A wholesale license within the meaning of that Act may be granted to any licensed auctioneer, subject otherwise to the provisions thereof; but no person holding a publican's license thereunder shall be competent to become a licensed auctioneer;
- (2.) An auctioneer shall not by reason only of owning the freehold of any land upon which any house or premises are erected be deemed to be directly or indirectly interested in such house or premises within the meaning of subsection four of section twenty-eight of the last-named Act.

Night auctions prohibited, saving as to cattle-sales.

16. No auctioneer shall sell by auction any property between the hours of *six* o'clock in the morning and *six* o'clock in the evening of the same day; saving that any auction sale of live stock which shall have been commenced at any time not later than *two* o'clock in the afternoon of any day may be continued until *eight* o'clock in the evening of the same day, but not any later: Provided that land, plans of which have been exhibited in the auction-room for at least two clear days prior to the date of sale, may be sold without limit to time; also the tallow, wool, and books sold only from catalogues, after daylight inspection, may be sold without limit as to time.

Pawnbroker not to hold auctioneer's license.

17. No person holding a pawnbroker's license under any Act in reference to pawnbrokers shall be competent to hold an auctioneer's license.

Account-sales to be rendered within one month.

18. Every auctioneer shall, within *fourteen* days after receiving a demand in writing from the vendor of any property sold by auction by him so to do, render an account of and pay over the proceeds of the sale of such property, 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 *ten* pounds.

Penalty.

Proceeds of sales-moneys to be kept separate from other moneys.

19. Every auctioneer shall keep all moneys arising from sales by auction apart from other moneys of his business, and such first-mentioned moneys shall not be capable of being attached or taken in execution under the process of any Court for any debt or liability of such auctioneer, and shall, less the auctioneer's cost, fees, and charges, and advances, if any, made by such auctioneer, be available only for payment to the person on whose behalf the property was sold; and any auctioneer who wilfully and knowingly neglects to keep all moneys arising from sales by auction apart from other moneys of his business shall, for every such offence, be liable to a penalty not exceeding *one hundred* pounds: Provided that this clause shall not apply to sales of property belonging to the auctioneer himself, or to any firm in which he is a partner.

20. Any auctioneer who—

Misappropriation, larceny; falsifying accounts, misdemeanour.

(1.) Fraudulently converts to his own use the proceeds of any property sold by auction by him, 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:

(2.) With intent to defraud, renders any account of the proceeds of any property sold by auction by him, 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.

21. 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 exceeding *one hundred* pounds.

Penalty on unlicensed person pretending to be an auctioneer.

22. If any person acting as a licensed auctioneer does not at the time of any sale by auction, or within *three* days thereafter, 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 *ten* pounds.

Penalty for not exhibiting license on demand.

23. 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 *ten* pounds.

Penalty for selling contrary to Act.

24. Every person who shall forge, counterfeit, or alter, or cause to be forged, counterfeited, or altered, any license, or any signature to any license, or shall use or tender in evidence any such forged, counterfeited, or altered license, or signature, knowing the same to be forged, counterfeited, or altered, shall be guilty of felony, and being convicted thereof shall be liable to be imprisoned for any term not exceeding two years, with or without hard labour.

Forging licenses, felony.

Penalty for lending or hiring, &c., a license.

25. 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, except as hereinbefore provided, 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. 5

Onus of proof of license on person charged with offence.

26. 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. 10

Licenses may be cancelled.

27. If any auctioneer holding a license under this Act shall be convicted of an offence under sections *nineteen*, *twenty*, and *twenty-four* of this Act, his license shall be *ipso facto* forfeited; and any auctioneer convicted of an offence under any other sections of this Act, and thereafter be convicted within twelve months of a second or any subsequent offence of any kind under this Act, the convicting Magistrates or Justices may, if they think fit, in addition to any other penalty, cancel his license. 15

Summary jurisdiction as to certain offences.

28. All offences under this Act, except under sections *nineteen* and *twenty-four*, 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. 20 25

Fines to be paid into Public Account.

Saving of civil remedies.

29. 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.

Sales exempted from Act.

30. Nothing in this Act contained— 30

(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 Warden's Court or other 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; 35

(2.) Shall be construed to repeal any enactment authorising particular sales to be conducted without an auctioneer's license. 40

Illegal sales not validated.

31. 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.

Acts and ordinances repealed.

32. The several enactments enumerated in the *Fifth* Schedule hereto are hereby repealed. 45

SCHEDULES.

Schedules.

FIRST SCHEDULE.

APPLICATION FOR AUCTIONEER'S LICENSE.

To the Clerk of the
I, A.B., residing at _____, and whose occupation is that of a _____, hereby
give notice that I intend to apply, at the next meeting of the said County Council
[Borough Council or Town Board], for a certificate for an auctioneer's license, and
that my residence [or sole or principal place of business as an auctioneer] is within
the said county [borough or town district]; and that my sole or principal place of
business [or residence] is in the County [Borough or Town District] of _____.

SECOND SCHEDULE.

CERTIFICATE FOR ISSUE OF LICENSE.

District of _____

I, THE Chairman [Acting Chairman or Mayor] of the _____ County [borough or town
district], do hereby certify that the said local authority has ordered that A.B., who
resides [or has his sole or principal place of business] within the District of _____,
and has his sole or principal place of business [or residence] in the County [Borough
or Town District] of _____, is a fit and proper person to receive an auctioneer's
license.

Dated at _____, this _____ day of _____, 18 _____.
Chairman [Mayor or Acting Chairman].

THIRD SCHEDULE.

FORM OF LICENSE.

District of _____

I, THE undersigned, Clerk of the local authority, do hereby, in pursuance of "The
Auctioneers Act, 1891," license A.B., whose residence [or place of business] is
within this district, and whose place of business [or residence] is within the County
[Borough or Town District] of _____, to sell by auction in any part of the Colony.

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

Dated the _____ day of _____, 18 _____.
Clerk, Local Authority.

FOURTH SCHEDULE.

LIST OF LICENSED AUCTIONEERS.

District of _____

I HEREBY give notice that A.B., whose residence [or place of business] is within
this district, has been duly licensed to sell by auction for twelve months, to be com-
puted from the _____ day of _____, 18 _____.

Clerk, Local Authority.

FIFTH SCHEDULE.

ACTS AND ORDINANCES REPEALED.

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

1842, Sess. 2, No. 13.—An Ordinance for licensing Auctioneers.

1843, Sess. 3, No. 10.—An Ordinance to amend an Ordinance for licensing
Auctioneers.

(2.) Acts of the Province of Auckland.

1863, Sess. 15, No. 9.—The Auctioneers Licensing Act, 1863.

1871, Sess. 26, No. 2.—The Auctioneers Licensing Act 1863 Amending Act, 1871.

1874, Sess. 29, No. 13.—The Auctioneers Licensing Act 1863 Amending Act, 1874.

(3.) Ordinance of the Province of Taranaki.

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

(4.) Acts of the Province of Nelson.

1858, Sess. 5, No. 5.—The Auctioneers Licensing Act, 1858.

1862, Sess. 9, No. 4.—The Auctioneers Licensing Amendment Act, 1862.

1867, Sess. 15, No. 1.—The Auctioneers Licensing Amendment Act, 1867.

(5.) Act of the Province of Marlborough.

1860, Sess. 1, No. 6.—The Auctioneers Licensing Act, 1860.

(6.) Ordinance of the Province of Canterbury.

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

(7.) Ordinances of the Province of Otago.

1862, Sess. 16, No. 99.—The Licensed Auctioneers Ordinance, 1862.

1869, Sess. 25, No. 283.—The Licensed Auctioneers Ordinance 1862 Amendment Ordinance, 1869.

1870, Sess. 28, No. 335.—The Auction Ordinance 1862 (Southland) Repeal Ordinance, 1870.