

Hon. Mr. Rolleston.

AUCTIONEERS.

ANALYSIS.

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A BILL INTITLED

AN ACT to make Better Provision with respect to the Licensing of Title.
and the Conduct of Business by Auctioneers.

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

No. 35—1.

Short Title and commencement.

1. This Act may be cited as the Auctioneers Act, 1928, and, except as otherwise provided herein, shall come into force on the first day of April, nineteen hundred and twenty-nine.

Interpretation.

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

“Auctioneer” means a person licensed under this Act to carry on business as an auctioneer, and, where the context requires, includes a person authorized by a license under this Act to conduct sales by auction: 5

“District” means any portion of New Zealand under the administration of a local authority as herein defined: 10

“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 there is no County Council, means the Road Board of any road district in such county:

A town district, for the purposes of this Act, shall be deemed not to form part of the county wherein it is comprised: 15

“Minister” means the Minister of Internal Affairs:

“Outcry” includes any request, inducement, puff, device, or incitement made or used by means of signs, speech, or otherwise in the presence of not less than six people by any person for the purpose of selling any property offered or available for sale, whether such property is or is not the same as that shown or referred to by him when making or using such request, inducement, puff, device or incitement: 20 25

“Prescribed” means prescribed by regulations under this Act:

“Sales by auction” or “sell by auction” means the selling of property of any kind, 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; and shall be deemed to include the selling of any property by outcry in any public place, as the same is defined in the Police Offences Act, 1927, or in any room, or mart, or place to which the public are admitted or have access, whether or not the sale of the goods has been advertised to take place. 30 35 40

Licensing of Auctioneers.

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No person to carry on business as an auctioneer unless licensed.

3. (1) No person shall, except as hereinafter provided, carry on business as an auctioneer unless he is the holder of an auctioneer’s license under this Act.

(2) Where two or more persons carry on business as auctioneers in partnership it shall be sufficient compliance with this section if one of those persons is the holder of a license applied for and issued on behalf of the partnership firm as provided by this Act. 50

(3) Where a company carries on the business of an auctioneer it shall be sufficient compliance with this section if some person appointed in writing by the general manager or pursuant to a resolution of the directors is the holder of a license under this Act.

5 (4) The holder of an auctioneer's license shall not thereby be authorized to conduct sales by auction unless he is specified in the license as the person authorized thereunder to conduct sales by auction.

4. No license shall be issued under this Act to—

Disqualification of applicants.

(a) The holder of a publican's license under the Licensing Act, 1908 :

10 (b) The holder of a pawnbroker's license under the Pawnbrokers Act, 1908 :

(c) A bankrupt who has not obtained his order of discharge, or whose order of discharge is suspended for a term not yet expired or is subject to conditions not yet fulfilled.

15 5. (1) Every auctioneer's license issued under the Auctioneers Act, 1908, after the first day of January and before the thirty-first day of December, nineteen hundred and twenty-eight, shall, subject to the provisions of that Act as to cancellation and subject also to the payment of a fee of *ten* pounds in the case of a license issued elsewhere than in a special district and of a fee of *two* pounds *ten* shillings in the case of a license issued in such a district, continue in force until the thirty-first day of March, nineteen hundred and twenty-nine.

Duration of licenses issued before commencement of this Act.

20 (2) Every auctioneer's license issued under the Auctioneers Act, 1908, after the thirty-first day of December, nineteen hundred and twenty-eight, and before the commencement of this Act shall be issued for the period ending on the thirty-first day of March, nineteen hundred and twenty-nine, and, unless sooner forfeited or cancelled pursuant to the first-mentioned Act, shall continue in force only until that date :

30 Provided that, notwithstanding anything to the contrary in the Auctioneers Act, 1908, the fee payable in respect of any such license shall be *ten* pounds in the case of a license issued elsewhere than in a special district, and *two* pounds *ten* shillings in the case of a license issued in such a district.

35 (3) This section shall come into force on the date of the passing of this Act.

6. Every license issued to take effect after the commencement of this Act shall, unless sooner terminated in accordance with this Act, continue in force until the thirty-first day of March then next following, and may from time to time be renewed for the period ending on the 40 thirty-first day of March next after the commencement of an order for renewal.

Duration of licenses issued after commencement of this Act.

7. (1) Every person who desires to obtain a license under this Act shall make application therefor in the form prescribed by regulations.

Application for license.

(2) Every application under this section shall state—

45 (a) The place or places of business of the applicant, and, where he has two or more places of business, which of those places is his principal place of business, and the name or style under which he proposes to carry on business as an auctioneer if such business is not to be carried on in his own name ; and

50 (b) Where the application is for a license on behalf of two or more persons carrying on business as partners—

(i) The name and address of each of the partners ;

(ii) The name under which the partnership business is carried on ;

(iii) The name of one of the partners to whom it is desired the license shall be issued on behalf of all the partners ;
and

(c) Where the application is for a license on behalf of a company—

(iv) The name of the company ;

(v) The name and address of the person to whom it is desired the license shall be issued on behalf of the company ;
and

(d) In every case (whether the application is on behalf of an individual, or partners, or a company) the name and address and place of business of a person (being the holder of the license or any other person) who it is desired shall be authorized to conduct auction sales under the license, such place of business being in every case the usual postal address of such person for the purposes of his business ; and

(e) Such other particulars as may be prescribed.

(3) Where the applicant desires that more than one person shall conduct auction sales as aforesaid, it shall be necessary to apply for a separate license in respect of each such person.

(4) Every application under this section shall be filed in the Magistrate's Court nearest by the most convenient route to the place of business named in the application as the place of business, or the principal place of business, of the applicant.

(5) Any application under this section for a license for the period ending on the thirty-first day of March, nineteen hundred and *thirty*, may be filed and heard and determined in accordance with the provisions of this Act at any time after the first day of January, nineteen hundred and twenty-*nine*, but no license issued as a result of such application shall take or be expressed to take effect before the commencement of this Act.

Applicants to give security by approved bond.

8. (1) With every application for the grant of an auctioneer's license under this Act there shall, save as hereinafter provided in this section, be filed in the Magistrate's Court an approved fidelity bond to His Majesty in the sum of *five* hundred pounds. In the case of an application on behalf of a partnership such bond shall be conditioned to secure the fidelity of each of the partners named in the application.

(2) Every such bond shall be in the form in the Schedule hereto or to the like effect. Such form may be varied to such extent as may be necessary where the application for a license is made on behalf of partners or a company.

(3) Where any person, firm of partners, or company makes more than one application for an auctioneer's license it shall be sufficient compliance with the requirements of this section if a fidelity bond as aforesaid, so expressed as to bind the surety or sureties in respect of any one license that may be granted to the applicant, is filed with any one of such applications, and notice in the prescribed form of the filing of such bond is filed with every other application for an auctioneer's license made by the applicant.

(4) The sum of *five* hundred pounds named in a fidelity bond under this section shall not be deemed to be a penalty, but shall be liquidated damages, and shall accordingly be recoverable in full as a debt due by

Application of moneys recovered under bond.

the surety or sureties to His Majesty unless the surety or sureties prove performance of every condition upon breach of which the bond is defeasible.

5 (5) Every sum so recovered shall be paid into the Consolidated Fund, and the residue, after the deduction of costs and other expenses, may, with the approval of the Governor-General, and without further appropriation than this Act, be applied—

10 (a) In compensating any client or customer of the auctioneer or other person for any loss sustained by reason of the acts, defaults, or omissions of the auctioneer; and

(b) In refunding to the surety or sureties any balance left after payment of such compensation.

15 (6) For the purpose of enabling a proper application to be made of any sum recovered as aforesaid under any bond, a Magistrate shall, on the application in writing of the Minister, order that any person appointed by the Minister shall have access to the books, papers, and accounts of the auctioneer named in such bond.

20 9. (1) A fidelity bond given under this Act may, if so provided therein, enure not only during the term of the license in respect of which it is originally given, but during the term of any license to the same person issued in renewal of a license under this Act.

Fidelity bond may enure so as to apply to renewals of license.

25 (2) If a fidelity bond is so given as to enure in respect of the renewal or further renewal of a license it shall be lawful for the surety or sureties, by notice in writing addressed to the Clerk of the Magistrate's Court, at any time before the issue of a license in renewal, to determine his or their liability under the bond in respect of any act or default that may be done or made after the thirty-first day of March next following the date of such notice, and in any such case the Magistrate shall not issue a license in renewal until another approved bond

30 has been lodged by the applicant.

10. (1) Notice in the prescribed form of every application for a license under this Act shall be published by the applicant twice at least in some newspaper to be approved for the purpose by the Clerk of the Magistrate's Court in which the application for a license is filed, and

35 the application for the license shall not be heard before the expiry of one month after the first publication of such notice.

Notice of application for license.

40 (2) Any person who objects to the issue of a license under this Act may, within one month after the first publication of the notice of application pursuant to the *last preceding* subsection, file in the Magistrate's Court in which the application for a license is filed a notice in the prescribed form of his objection to the application and of the grounds thereof.

45 (3) No such objection shall be considered unless and so far as the grounds thereof affect the character or financial position of the applicant, or, in the case of an application by or on behalf of a firm, the character or financial position of the partners, or, in the case of an application by or on behalf of a company, the financial position of the company or the character of the directors or of the general manager, or, in any case, the character of the person who it is proposed shall

50 be authorized to conduct auction sales under the license.

11. (1) Every application for a license under this Act and the objections thereto (if any) shall be heard by a Stipendiary Magistrate exercising jurisdiction in the Court in which the application is filed;

Hearing of application.

and the Magistrate, if satisfied that the provisions of this Act have been complied with, and that the applicant is fit to be the holder of an auctioneer's license, and that the person who it is proposed shall be authorized to conduct auction sales under the license is a fit and proper person for that purpose, shall, on payment of the fees hereinafter specified, issue to the applicant a license in the prescribed form. 5

(2) The fee payable in respect of the issue of a license, other than a license available only in a special district under section *twenty-eight* hereof, shall be *forty* pounds if the license is issued to take effect after the thirty-first day of March and not later than the thirtieth day of September in any year, and *twenty* pounds in every other case. The fee payable in respect of a license available only in a special district shall be *ten* pounds in the case of a license issued to take effect within the aforesaid period, and *five* pounds in every other case. The said fee of *forty* pounds or *ten* pounds, as the case may require, shall be payable in respect of every renewal of such license. 10 15

Magistrate to require evidence as to character and financial position.

12. (1) Before granting an application for an auctioneer's license the Magistrate shall require the production of sufficient evidence to satisfy him that the character and financial position of the applicant are such that he is, in the opinion of the Magistrate, having regard to the interests of the public, a fit and proper person to hold such a license, and that the character of the person who it is proposed shall be authorized to conduct auction sales under the license is such that he is a fit and proper person for the purpose. 20

(2) Where application for a license is made by or on behalf of two or more persons in partnership the Magistrate may, in the exercise of his powers under this section, require the production of evidence as to the character and financial position of each of the partners. 25

(3) Where application for a license is made by or on behalf of a company the Magistrate may, in the exercise of his powers under this section, require the production of evidence as to the financial position of the company, and as to the character of the directors and general manager, and of any other person in respect of whom application to hold the license on behalf of the company has been made. 30

Where applicant is also applying for license as land-agent.

13. In any case where an applicant for an auctioneer's license also files in the same Court an application for a license under the Land Agents Act, 1921-22, the notice required by section *ten* hereof may, in the prescribed form, be combined with the notice required by section nine of the aforesaid Act, and both applications may be heard and determined together. 35 40

Endorsements on licenses.

14. (1) Every auctioneer's license shall have endorsed thereon—
 (a) The name and address and place of business of the person authorized to conduct auction sales under the license; and
 (b) In the case of a license issued to two or more persons carrying on business as partners, the name and description of each of the partners. 45

(2) The person whose name and address and place of business are endorsed on the license pursuant to paragraph (a) of the *last preceding* subsection may from time to time be changed on application in that behalf to a Magistrate by the holder of the license. On the hearing of any such application, and on payment of a fee of *ten* shillings the Magistrate, if satisfied as to the character of the person in respect of whom such application is made, shall cancel the former endorsement and make a further endorsement on the license according to the tenor of the application. 50 55

(3) Any person whose name is endorsed on a license pursuant to this section shall have authority to conduct auction sales on behalf only of the holder of such license.

5 15 (1) No licensee shall during the currency of his license carry on business as an auctioneer under any name or style (not being his own name) other than the name or style stated in the license, save with the consent of a Magistrate exercising jurisdiction in the Court in which the license was issued. Auctioneer carrying on business under trade name not to change same without consent of Magistrate.

10 (2) Every application for such consent shall be in the prescribed form and shall be accompanied by the prescribed fee.

(3) The Magistrate may in his discretion grant or refuse such application, and where it is granted the Clerk of the Court shall make the necessary alteration in the license and notify the change of name or style to the Minister.

15 16. (1) Application for the renewal of a license may be made not earlier than the first day of January and not later than the last day of February preceding the date of the expiry of the license, and shall be filed by the applicant in the same manner as if it were an application for the grant of a license. Renewal of licenses.

20 (2) Every person who objects to the renewal of a license under this Act may, at any time before the seventh day of March in any year, file in the Magistrate's Court in which application for the renewal of the license has been filed a notice in the prescribed form of his objection to the application and of the grounds thereof.

25 (3) No such objection shall be considered unless and so far as the grounds thereof affect the character or financial position of the applicant, or, in the case of an application by or on behalf of a firm of partners, the character or financial position of the partners, or, in the case of an application by or on behalf of a company, the financial position of the company or the character of the directors or of the general manager, or, in any case, the character of the person who it is proposed shall be authorized to conduct auction sales under the license.

30 (4) Where any objection is lodged to the renewal of a license, the Magistrate shall hear and determine the application for renewal in the same manner as if it were an application for the issue of a license.

35 (5) In the absence of any objection to an application for the renewal of a license the Magistrate may, on payment of the appropriate fee, grant a renewal without further inquiry as to the fitness of the applicant to hold an auctioneer's license, or the fitness of the person who it is proposed shall conduct auction sales under the license.

40 (6) The Magistrate may, in his discretion, hear and determine any application for the renewal of a license, or any objection to such renewal, notwithstanding that such application or objection may not have been filed within the times limited by this section in that behalf.

45 (7) If application for the renewal of a license has been filed, but is not determined on or before the thirty-first day of March in any year, the license shall, notwithstanding anything to the contrary in this Act, be deemed to be extended until the application is disposed of by a Magistrate in accordance with this Act; and the Clerk of the Court shall in the prescribed form forthwith give to the Minister notice of such non-determination.

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Magistrate may
award costs.

17. On the hearing of any application for a license or for the renewal of a license under this Act the Magistrate shall, if any objection to the application has been filed, have jurisdiction to determine what costs (if any) shall be paid to or by the objector or the applicant respectively, and to adjudge that such costs be paid.

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Notice of issue or
renewal of licenses
to be given.

18. Within ten days after the issue of a license under this Act, or the renewal of any such license, or the refusal to issue or renew a license, or the transfer of a license, or the further endorsement of a license pursuant to subsection *two* of section *fourteen* hereof, or the change of the name or style under which an auctioneer carries on business, the Clerk of the Magistrate's Court shall, in the prescribed form, notify the Minister of the fact of such issue or renewal or endorsement or change of name or style, and of such other matters in relation thereto as may be prescribed.

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Register of
Auctioneers.

19. The Minister shall cause to be kept a Register of Auctioneers, in which shall be recorded—

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(a) The name and description of every person to whom a license is issued under this Act, and of every person who is authorized to conduct auction sales under the license, and the name or style (if any) other than his own name under which the licensee carries on business :

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(b) The amount of the fees paid in respect of each such license :

(c) The date of the issue of the license :

(d) In the case of a license issued to a person as representative of a firm of partners or a company, the name of that firm or company, and also the name and description of the partners of such firm :

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(e) Particulars as to the place or places of business of the licensee, and, in cases where a licensee has two or more places of business, his principal place of business, and as to the place of business of any person who is authorized to conduct auction sales under the license :

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(f) Such other particulars as may be prescribed.

Inspection of
register.

20. The register shall, on payment of the prescribed fee, be open to inspection within ordinary business hours by any person desirous of inspecting the same.

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Publication of list of
auctioneers.

21. (1) A list (herein referred to as the main list) of the names and descriptions of all persons holding auctioneers' licenses as on a date to be therein specified, together with such of the relevant particulars appearing in the register as the Minister thinks fit, shall be published in the *Gazette* during the month of May of each year. Supplementary lists may be published in like manner as the Minister may from time to time direct.

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(2) The production of copies of the *Gazette* containing the main list and all supplementary lists for any year shall, until the contrary is proved, be sufficient evidence in all judicial proceedings of the contents of the register ; and the absence of the name of any person from the main list and the supplementary lists shall, until the contrary is proved, be sufficient evidence that such person is not registered as the holder of an auctioneer's license.

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(3) A certificate under the hand of the Under-Secretary of the Department of Internal Affairs that any person is or is not registered as the holder of an auctioneer's license on the date of that certificate,

or as to any other matter concerning the contents of the register, shall in all judicial proceedings be sufficient evidence of the fact or facts therein certified to, and judicial notice shall in all Courts be taken of the signature of the said official.

5 22. (1) A licensee, or the personal representative of a deceased licensee, or the assignee in bankruptcy of a licensee who has been adjudged bankrupt, or the liquidator of a company, being a licensee, may, on payment of a fee of *ten shillings*, transfer a license under this Act to any person approved by a Magistrate in that behalf. Transfer of licenses.

10 (2) Every application for a transfer under this section shall be filed and advertised, and objections may be received, and the application and objections (if any) shall be heard and determined in all respects as if the application for a transfer were an application for the grant of a license under this Act.

15 23. (1) Subject to the provisions of this section as to changing the registered office of an auctioneer, the place of business of an auctioneer mentioned in his application for a license, or, where an auctioneer has two or more places of business, his principal place of business, shall be deemed to be the registered office of the auctioneer. Auctioneer to have registered office.

20 (2) Any summons, notice, order, or other document required to be served upon an auctioneer may be served by leaving the same at his registered office, or by sending it through the post in a prepaid and registered letter addressed to him at that office.

25 (3) An auctioneer may by notice in writing, filed in the Magistrate's Court, change his registered office to any other place of business in which he carries on business as an auctioneer.

(4) Notice of the change of the registered office of an auctioneer shall be forthwith given by the Clerk of the Magistrate's Court to the Minister, who shall cause a memorandum of such change to be entered in the Register of Auctioneers and to be published in the *Gazette*.

30 24. Save as provided in section *twenty-eight* hereof with respect to special districts, a license under this Act shall authorize the holder thereof to carry on business as an auctioneer in any part of New Zealand during the currency of the license : Effect of license.

35 Provided that every licensed auctioneer who during the currency of his license ceases to carry on business at any place mentioned in his application for such license, or commences to carry on business at any additional or other place of business, shall, in the prescribed form, give notice thereof to the Clerk of the Court in which the license was issued, and the Clerk shall notify the Minister, who shall cause a memorandum thereof to be entered in the Register of Auctioneers and to be published in the *Gazette*.

40 25. (1) A license under this Act may be cancelled if the licensee or person authorized to conduct auction sales under the license,— Cancellation of licenses.

45 (a) Is convicted of an offence under section *forty* or section *forty-one* or section *forty-two* of this Act ; or

(b) Having been convicted of an offence against this Act (not being an offence referred to in the *last preceding* paragraph), is within twelve months after such conviction again convicted of an offence against this Act ; or

50 (c) Is convicted, whether summarily or on indictment, of any offence involving moral turpitude, or dishonouring him in the public estimation.

(2) The Court before which any person is convicted of any offence may of its own motion cancel the license in any case where such conviction is a ground for the cancellation of the license.

(3) Application for the cancellation of a license on any of the grounds aforesaid may be made by any person, and shall be made by filing the same in the Magistrate's Court nearest by the most convenient route to the place of business or the principal place of business of the licensee, and thereupon any Magistrate exercising jurisdiction in that Court shall have power to hear the application and to cancel the license.

Notice of
cancellation.

26. Forthwith after the cancellation of a license as herein provided, whether by a Court of its own motion or on application, the Registrar or the Clerk of the Court, as the case may be, shall send notice in writing of such cancellation and of the grounds thereof to the Minister.

Removal of name
from register on
cancellation of
license, &c.

27. The Minister shall cause to be removed from the register the name of every auctioneer whose license has been cancelled as aforesaid, and also the name of every auctioneer who—

- (a) Dies ; or
- (b) Is adjudged bankrupt ; or
- (c) Has not before the first day of May of any year obtained a renewal of his license pursuant to the provisions of this Act.

Special Districts.

Governor-General
may constitute
special districts.

28. (1) The Governor-General may from time to time, by Order in Council, declare special districts for the purposes of this Act, comprising any parts of New Zealand which are sparsely populated, and may in like manner revoke any such Order or alter the boundaries of any special district.

(2) An auctioneer's license issued in respect of any special district shall not entitle the holder thereof to sell by auction elsewhere than in such special district.

(3) All special districts declared under the Auctioneers Act, 1908, and in existence on the commencement of this Act, shall be deemed to be special districts declared pursuant to this section.

Sales by Auction.

Night auctions
prohibited.

29. An auctioneer shall not sell by auction any property save between the hours of *six* o'clock in the morning and *six* o'clock in the evening of the same day, except that—

Exceptions.

- (a) Any auction sale of live-stock 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 ;
- (b) 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 as to time ;
- (c) Tallow, wool, and books, sold only from catalogues after opportunity given for daylight inspection, may be sold without limit as to time ; and
- (d) All goods or articles of any kind being the *bona fide* property of any Church Committee, Hospital Board, or School Committee, or any exhibits of fruit, vegetables, or flowers exhibited at any horticultural show, may be sold by any auctioneer without limit as to time :

Provided that an auctioneer shall not be entitled to make any charge for conducting a sale under this paragraph at any time after *six* o'clock in the evening.

30. (1) Notwithstanding anything in this Act, or in any by-law made by any local authority, it shall be lawful for fishermen, or for any person appointed by them in that behalf, to sell newly caught fish or shell-fish of any kind by auction at any hour of the day or night, in the manner usual at auction sales, or in any other manner customary in the fish trade, or to hawk and carry such fish or shell-fish for sale at any private houses by retail, without taking out a license either as auctioneer or as hawker.

Fresh fish may be sold at auction at any time.

(2) Every person who in any way exceeds the authority granted by this section and sells any articles under colour of this section that are not hereby authorized to be sold in the manner provided by this section is liable to the penalties prescribed for selling goods without an auctioneer's license, or a hawker's license, as the case may be.

31. At any auction sale of fish, shell-fish, fruit, or vegetables, every lot shall be sold to the highest bidder, and it shall not be lawful for any auctioneer to refuse to accept a bid from any person present at the sale who is willing, or who states that he is willing, to pay cash for the goods on the fall of the hammer; and any condition or stipulation in conditions of sale in any manner violating this provision shall be void and of no effect.

• Lots to be sold to highest bidder at certain sales.

Duties of Auctioneers.

32. Every person to whom an auctioneer's license is issued under this Act shall exhibit and keep exhibited in a prominent place on his registered office, and on every branch office, so as to be easily read from outside that office, a notice of his name and of the fact that he is the holder of such a license, together with the name or style under which he carries on business as an auctioneer if such business is not carried on in his own name.

Auctioneer to display notice, on registered office, &c.

33. (1) Subject to subsection *three* hereof, every auctioneer shall within fourteen days after an auction sale, or within such longer period as the Minister may appoint, render to the person on whose behalf such sale took place a correct account of that sale, and shall, subject to the deductions authorized by section *thirty-four* hereof, within such period of fourteen days or such longer period as aforesaid, pay to such person the balance of the proceeds of such sale received by the auctioneer.

Account sales to be furnished within fourteen days or extended period authorized by Minister.

(2) Any extension of time allowed pursuant to the *last preceding* subsection shall be in writing under the hand of the Minister, and may apply in respect of the sale by auction of any specified class of property, or be limited to any particular transaction or transactions.

(3) Notwithstanding anything to the contrary in the foregoing provisions of this section, every auctioneer shall, within seven days after demand by any person on whose behalf a sale by auction has been made, render to such person such account as aforesaid, and pay to him the balance of the proceeds of the sale:

Provided that nothing in this section shall render it obligatory on an auctioneer to pay the proceeds of any sale of real property until seven days after the sale is completed according to the conditions of sale.

Proceeds of sales
to be paid into
trust account.

34. (1) The proceeds of every sale by auction shall when realized be paid by the auctioneer into a general or separate trust account, and shall be withdrawn therefrom only for the purposes of—

(a) Paying the expenses, commission, and other charges of or incidental to the sale; and

(b) Paying the balance (if any) to the person or persons lawfully entitled thereto.

(2) Save as herein provided, moneys paid into a trust account pursuant to this section shall not be available for payment of the debts of the auctioneer, or be liable to be attached or taken in execution under the order or process of any Court.

Offences.

Offence of selling by
auction without
authority.

35. Save as otherwise authorized by this Act, every person who, not being the holder of a license under this Act, carries on business as an auctioneer, or who not being a person authorized in that behalf under this Act conducts any sale by auction, commits an offence and is liable to a fine of *one hundred* pounds.

Holding out as
auctioneer without
license.

36. Every person not being the holder of an auctioneer's license under this Act commits an offence and is liable to a fine of *one hundred* pounds who describes himself in writing or holds himself out as an auctioneer.

Lending or hiring of
licenses.

37. Every person commits an offence and is liable to a fine of *fifty* pounds who lets out, or hires, or lends any license granted to him, or, except as authorized by this Act, trades with or under colour of any license granted to any other person.

Not exhibiting
license on demand.

38. (1) Every person who carries on business as an auctioneer, or describes himself or holds himself out as an auctioneer, commits an offence and is liable to a fine of *ten* pounds if on demand by any constable he does not produce and show to such constable a license under this Act authorizing him to carry on such business.

(2) Every person who conducts any sale by auction commits an offence and is liable to a fine of *ten* pounds if on demand by any constable he does not give to such constable his name and address and the name and address of the licensee on whose behalf he claims to be authorized to sell by auction.

Selling contrary to
Act.

39. Every licensed auctioneer who carries on his business, and every person who conducts sales by auction, at any time or in any manner contrary to this Act, commits an offence and is liable to a fine of *ten* pounds.

Neglect to render
account or to pay
over proceeds of
sale.

40. Every auctioneer commits an offence and is liable to a fine of *ten* pounds who fails to comply with the requirements of section *thirty-three* hereof with respect to rendering of accounts or payment of the proceeds of any sale of property by auction.

Breach of duty
with respect to trust
accounts, &c.

41. Every auctioneer commits an offence and is liable to a fine of *one hundred* pounds who fails to pay any moneys received by him into a trust account in accordance with the requirements of section *thirty-four* hereof.

Misappropriation,
theft, falsifying
accounts.

42. Every auctioneer commits a crime and is liable on conviction to *two* years' imprisonment with or without hard labour who—

(a) Fraudulently converts to his own use the balance of the proceeds of any property sold by auction by him, or any part of such proceeds, or fraudulently omits to pay such balance or any part thereof to the person entitled thereto :

(b) 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 material particular.

43. Every person who commits any breach of any of the provisions of this Act for which no penalty is provided elsewhere than in this section is liable to a fine of five pounds. General penalty.

44. Every person commits an offence and is liable to a fine of one hundred pounds who, having the custody or possession of any books, papers, or accounts of an auctioneer, refuses or fails to allow to have access thereto any person duly authorized in that behalf pursuant to any order of a Magistrate under subsection six of section eight hereof, or who obstructs any such authorized person in the exercise of his powers under such order. Penalty for failing to give access to books, papers, and accounts of auctioneers in certain cases.

45. All proceedings in respect of offences against this Act (not being indictable offences) shall be heard and determined summarily by a Magistrate sitting alone. Recovery and application of fines.

Miscellaneous.

46. After deducting therefrom such amount as may be prescribed in respect of the cost of administering this Act, every fee received under this Act shall, without further appropriation than this section, be paid to the local authority of the district in which the person whose name is endorsed on the license as the person authorized to conduct auction sales thereunder has his place of business, or, where there is no such local authority, into the Public Account to the credit of the Consolidated Fund. Disposal of fees.

47. (1) The Governor-General may from time to time, by Order in Council, make regulations under this Act— Regulations.

- (a) Prescribing forms of licenses, of applications for licenses, and renewals thereof, and of objections to the granting or renewal of licenses under this Act :
- (b) Prescribing forms of advertisements and other notices under this Act :
- (c) Prescribing the amounts that may be deducted from the fees paid under this Act in respect of the expenses of administering this Act and providing for the disposal of such amounts :
- (d) Providing for an annual audit of the trust accounts of every licensed auctioneer, and the manner in which, and the persons or class of persons by whom, such audit shall be conducted, and for a report of the result of such audit :
- (e) Requiring the production to the auditor of books, papers, and accounts, subject to such conditions as are prescribed :
- (f) Prescribing the persons to whom the reports of auditors shall be sent for inspection, information, or record :
- (g) Prescribing a scale of fees to be paid to such auditors :
- (h) Prescribing that, in the absence of any agreement in writing to the contrary, the auditor's fees shall be paid by the auctioneer :
- (i) Generally to ensure that all such trust accounts shall be duly kept and audited :
- (j) Prescribing various maximum rates of commission which may be charged by auctioneers for their services in transactions of various natures defined in such regulations :

(k) Prescribing penalties, not exceeding *one hundred* pounds in any case, for the breach of any regulations under this Act :

(l) Generally for the purpose of carrying this Act into effect.

(2) All information obtained by an auditor in the course of the audit of any trust account under this Act shall be treated as confidential, subject only to such rights of publication as may be prescribed in furtherance of the proper purposes of the audit. 5

(3) All such regulations shall be laid before Parliament within fourteen days after the making thereof if Parliament is then in session, and if not, then within fourteen days after the commencement of the next-ensuing session. 10

(4) Any such regulations may, for the purpose of giving full effect to any of the provisions of this Act which come into force before the first day of April, nineteen hundred and twenty-nine, be made to take effect as from the first day of January, nineteen hundred and twenty-nine. 15

Sales exempted
from Act.

48. Nothing in this Act—

(a) Shall extend to any sale made by order of the Governor-General or of any Collector of Customs, or to any sale under any writ or process issued by or out of any Court of justice, or to any sale of animals sold under the law relating to public pounds, or to any sale held under any Act authorizing any person who does not hold an auctioneer's license to conduct a sale by auction; or 20

Saving of civil
remedies.

(b) Shall be deemed to take away or limit any civil right or remedy that any person has against an auctioneer in respect of any matter constituted an offence under this Act, or any liability of such auctioneer in respect of any such matter; or 25

(c) Shall be construed to repeal any enactment authorizing particular sales to be conducted without an auctioneer's license; or 30

(d) Shall render legal any sale that is contrary to law.

Repeals and savings.

49. (1) The Auctioneers Act, 1908, the Auctioneers Amendment Act, 1910, and the Auctioneers Amendment Act, 1915, are hereby repealed. 35

(2) All proceedings in respect of offences committed before the commencement of this Act against any of the Acts hereby repealed, or any regulations thereunder, may be instituted or continued as if this Act had not been passed.

SCHEDULE.

Schedule.

FIDELITY BOND.

Know all men by these presents that _____, of _____, is [are] held and firmly bound unto His Majesty the King in the sum of five hundred pounds (£500), for the payment of which sum to His Majesty the said _____ doth [do jointly and severally] bind itself and its successors [ourselves, our executors and administrators] firmly by these presents.

Whereas _____, of _____, has made application for the issue to him of a license under the Auctioneers Act, 1928 :

Now, the condition of the above-written bond is such that if such license shall be granted to the said _____, and if the said _____ shall during the currency of the term of such license (and during the currency of the term of every license granted to him in renewal of such license)—

(a) Always duly apply all moneys received by him in the manner required by the said Act ;

(b) Always duly render accounts in writing of all moneys received by him within the times and to the persons required by the said Act ;

then the above-written obligation shall be void, but otherwise shall remain in full force and effect.

Signed, sealed, and delivered, &c.