This PUBLIC BILL *originated in the* LEGISLATIVE ASSEMBLY, *and, having this day passed, is now ready for presentation to the* LEGISLATIVE COUNCIL *for its concurrence.*

W. R. McCOURT,
Clerk of the Legislative Assembly.

Legislative Assembly Chamber,
Sydney, 27 *March,* 1941.

New South Wales.

ANNO QUINTO

GEORGII VI REGIS.

* *

Act No. , 1941.

An Act to provide for the licensing of auctioneers, stock and station agents and real estate agents, and for the regulation of their operations; to make provision for the constitution of a council of the auctioneers, stock and station agents and real estate agents; to make provision for the control and regulation of real estate dealers and real estate salesmen; to repeal the Auctioneers' Licensing Act, 1898, and certain other Acts; to amend the Business Agents Act, 1935, and certain other Acts in certain respects; and for purposes connected therewith.

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Auctioneers, Stock and Station and Real Estate Agents.

BE it enacted by the King's Most Excellent Majesty, by and with the advice and consent of the Legislative Council and Legislative Assembly of New South Wales in Parliament assembled, and by the authority of the same, as follows :—

PART I.

Preliminary.

Short title.

1. (1) This Act may be cited as the "Auctioneers, Stock and Station and Real Estate Agents Act, 1941."

(2) This Act shall commence on a day to be appointed by the Governor and notified by proclamation published in the Gazette.

Division into Parts.

2. This Act is divided into Parts as follows:—

PART I.—Preliminary—*ss.* 1–5.

PART II.—The Council of the Auctioneers, Stock and Station Agents and Real Estate Agents—*ss.* 6–19.

PART III.—Auctioneers, Stock and Station Agents and Real Estate Agents—*ss.* 20–50.

Division 1.—*Licenses*—*ss.* 20–31.

Division 2.—*Licensees generally*—*ss.* 32–43.

Division 3.—*Auctioneers*—*ss.* 44–50.

PART IV.—Real Estate Dealers and Real Estate Salesmen—*ss.* 51–63.

Division 1—*Interpretation*—*s.* 51.

Division 2.—*Real Estate Dealers*—*ss.* 52–55.

Division 3.—*Real Estate Salesmen*—*ss.* 56–63.

PART V.—Amendment of the Business Agents Act, 1935—*s.* 64.

PART VI.—The Auctioneers, Stock and Station and Real Estate Agents Fidelity Guarantee Fund—*ss.* 65–83.

PART VII.—General—*ss.* 84–92.

SCHEDULE.

3. (1) In this Act, unless the context otherwise indicates or requires— Definitions.

"Auctioneer" means any person who exercises the trade or business of an auctioneer or seller by commission at any auction sale or who sells or attempts to sell or offer for sale or resale any estate, goods or effects by way of auction.

"Auction sale," "sale by auction," "sell by way of auction," and expressions of a similar character mean the selling of any estate, goods, or effects whatsoever by outcry, by what is known as Dutch auction, by knocking-down of hammer, candle, lot, parcel, instrument, machine, or by 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 whereby there is a competition for the purchase of any estate, goods, or effects whatsoever in any way commonly known and understood to be by way of auction, and shall be deemed to include the selling by outcry or in any other manner before mentioned in any public place or in any room, or mart, or place to which the public are admitted or have access, whether or not the sale has been advertised to take place. cf. Act No. 44, 1936, s. 4.

"Council" means the council of the auctioneers, stock and station agents and real estate agents constituted under this Act.

"Employee" includes any person employed whether on salary, wages, bonus, commission, fees, allowance or other remuneration and includes a director or member of the governing body of a corporation.

"Individual" means a natural person and does not include a corporation.

"License" means a license issued under this Act.

"Licensee" means the holder of any license issued under this Act and includes any employee of a corporation in respect of whom the corporation has taken out any such license.

"Live

"Live stock" means horses, cattle, asses, mules, sheep, swine, camels or goats.

"Prescribed" means prescribed by this Act or the regulations.

"Real estate agent" means a person (whether or not such person carries on any other business) who for reward (whether monetary or otherwise) carries on business as an agent for—

(a) the sale, purchase, exchange, letting or taking on lease of land, other than land used for agricultural or pastoral purposes; or

(b) the collection of rents payable in respect of any lease or letting of land other than land used for agricultural or pastoral purposes.

"Registrar" means the registrar appointed under this Act.

"Regulations" means regulations made under this Act.

"Stock and station agent" means a person (whether or not such person carries on any other business) who, for reward (whether monetary or otherwise), carries on business as an agent for—

(a) the sale, purchase, exchange, letting or taking on lease of land used for agricultural or pastoral purposes;

(b) the collection of rents payable in respect of any lease or letting of land used for agricultural or pastoral purposes;

(c) the sale, purchase or exchange of live stock;

(d) the provision of agistment for live stock or the collection of fees for such agistment.

(2) Without prejudice to the generality of the definition of "licensee" in subsection one of this section, a reference to a licensee in any of the provisions contained in

in Divisions 2 and 3 of Part III of this Act may in any case where a corporation has taken out a license on behalf of an employee be read, deemed and taken to refer to the corporation which has taken out such license, or to the employee in respect of whom such license has been so taken out or to both such corporation and such employee at the same or at different times as the case may require.

Act not to apply to any Government department, etc.

cf. Act No. 7, 1935, s. 3.

4. (1) This Act shall not be construed as requiring—

(a) any Minister of the Crown whether a Minister of the State of New South Wales or of the Commonwealth of Australia; or

(b) any Government department of the said State or Commonwealth (including the Rural Bank of New South Wales and any statutory corporation representing the Crown); or

(c) the Municipal Council of Sydney or any council within the meaning of the Local Government Act, 1919; or

(d) any public statutory authority prescribed by the regulations; or

(e) any officer or employee of the Crown or of any such Minister, department, corporation, council or authority in the exercise of his functions as such officer or employee,

to hold a license under this Act.

(2) Nothing in this Act shall be construed—

(a) as requiring—

(i) the Public Trustee or any executor, administrator, trustee, liquidator, official receiver, master in equity or in lunacy, trustee in bankruptcy of a bankrupt's estate, trustee under a composition or scheme of arrangement or under a deed of arrangement or under a deed of assignment, committee of the estate of an insane person, or manager of the property of an incapable person, for the purpose of performing his functions, exercising his powers or carrying out his duties as such; or

(ii)

(ii) any person for the purposes of any sale made of Crown lands or other Crown property or for the purposes of any sale of any property made by virtue of any writ or process issued out of any Court or made in obedience to any process issued by any Court or judge or justice for the recovery of any fine, penalty or award, or under any rule, order or decree of any competent Court or made pursuant to the Impounding Act, 1898,

to hold a license under this Act:

Provided that notwithstanding anything in this paragraph it shall not be lawful for any of the persons referred to in subparagraph (i) of this paragraph in whom is vested the management of the business of any auctioneer, stock and station agent or real estate agent to carry on such business at any time after the expiration of one month from the date upon which the management thereof was so vested, unless such person holds a license under this Act; or

Vict. Act No. 4,117, s. 6.

(b) as prohibiting any person for the time being entitled to practise as a solicitor from performing any function, exercising any power or carrying out any duty which if this Act had not been passed he might lawfully have performed, exercised or carried out as such solicitor; or

(c) as rendering any such person liable to any proceedings or to any penalty for performing any such function or exercising any such power or carrying out any such duty.

(3) Nothing in this Act shall be construed as relieving any person from the obligation to take out a license from any Department of the Government or under any Act (other than this Act) for the performance of any function the exercise of any power or the carrying out of any duty for which a license would have been required if this Act had not been passed or to pay the fees payable in respect of any such license.

(4)

(4) This Act shall not apply to a sale by auction made for the purposes of or in the course of an appeal for support of a charity where such appeal for support is made under and in accordance with the provisions of the Charitable Collections Act, 1934, and where the gross proceeds of the sale are devoted to the charity or charitable purpose for which the appeal for support is made. Act not to apply to sale at appeal for support of a charity.

5. (1) After the commencement of this Act no license or renewal of license under the Auctioneers' Licensing Act, 1898-1934, shall be granted. Operation of Auctioneers' Licensing Act, 1898-1934.

(2) The provisions of the Auctioneers' Licensing Act, 1898-1934, shall, after the commencement of this Act, apply only with respect to licenses issued under that Act and in force immediately before the commencement of this Act, and for that purpose shall continue in force, in relation to any such license, only until such time as such license has expired.

(3) As from the first anniversary of the date of the commencement of this Act, the Acts mentioned in the Schedule to this Act are hereby repealed.

(4) Notwithstanding anything in subsections two and three of this section, every auctioneer shall keep the written record referred to in section eleven of the Auctioneers' Licensing Act, 1898-1934, for a period of not less than three years after the date upon which it was made.

PART II.

The Council of the Auctioneers, Stock and Station Agents and Real Estate Agents.

6. (1) There shall be constituted a council which shall have and may exercise and perform the powers, authorities, duties and functions conferred and imposed upon the council by or under this Act. The council.

(2) The council shall be a body corporate with perpetual succession and a common seal, and shall, for the

the purposes and subject to the provisions of this Act, be capable of purchasing, holding, granting, demising, disposing of or otherwise dealing with real and personal property, and of doing and suffering all such other acts and things as bodies corporate may by law do and suffer.

(3) The corporate name of the council shall be "The Council of the Auctioneers, Stock and Station Agents and Real Estate Agents."

First council.

7. (1) The council first constituted under this Act shall consist of ten members who shall be appointed by the Governor.

(2) Of the members so appointed—

(a) three shall be auctioneers who are holders of auctioneers' licenses under the Auctioneers' Licensing Act, 1898-1934;

(b) three shall be stock and station agents;

(c) three shall be real estate agents;

(d) one shall be a practising solicitor of the Supreme Court of New South Wales.

(3) The members appointed pursuant to paragraphs (a), (b) and (c) of subsection two of this section are in this Act referred to as "appointed members."

The member appointed pursuant to paragraph (d) of subsection two of this section is in this Act referred to as the "official member."

(4) The council shall appoint one of its members to be chairman of the council.

(5) The members of the council first constituted under this Act shall, subject to this Act, hold office until the thirtieth day of June, one thousand nine hundred and forty-two, and shall be eligible for reappointment or for election as members of the council.

(6) (a) If any member of the council appointed pursuant to paragraph (a) of subsection two of this section neglects or fails to obtain a license under this Act (whether on his own behalf or as the employee of a corporation) as an auctioneer, upon the expiration of the license held by him under the Auctioneers' Licensing Act, 1898-1934, he shall be deemed to have vacated his office on the day upon which such license expired.

(b)

(b) If any member of the council appointed pursuant to paragraph (b) or paragraph (c) of subsection two of this section neglects or fails to obtain a license under this Act (whether on his own behalf or as the employee of a corporation) as a stock and station agent or as a real estate agent, as the case may be, within a period of three months from the commencement of this Act, he shall, upon the expiration of that period, be deemed to have vacated his office.

(7) Where any vacancy occurs in the office of a member of the council first constituted under this Act the Governor may appoint a person to the vacant office.

Constitution of subsequent councils.

8. (1) On and from the first day of July, one thousand nine hundred and forty-two, the council shall consist of ten members of whom nine shall be elected members and one shall be an official member.

(2) (a) The elected members shall be elected as provided in this section.

(b) Of the elected members—

(i) three shall be auctioneers;

(ii) three shall be stock and station agents;

(iii) three shall be real estate agents.

(3) The official member shall be appointed by the Governor and shall be a practising solicitor of the Supreme Court of New South Wales.

(4) (a) The council shall cause separate rolls to be prepared and revised in the prescribed manner of—

(i) auctioneers;

(ii) stock and station agents;

(iii) real estate agents.

(b) Any person shall be eligible for enrolment—

(i) on the roll of auctioneers, if he holds an auctioneer's license;

(ii) on the roll of stock and station agents, if he holds a stock and station agent's license;

(iii) on the roll of real estate agents, if he holds a real estate agent's license:

Provided that if any person possesses the qualification for enrolment on more than one such roll he shall be

be eligible for enrolment on only one such roll; and any such person may, by instrument in writing addressed to the council, elect on which such roll he shall be enrolled.

(c) No person shall be qualified to vote at an election of, or to become a candidate for election as, a member of the council—

(i) as an auctioneer—unless his name is on the roll of auctioneers;

(ii) as a stock and station agent—unless his name is on the roll of stock and station agents;

(iii) as a real estate agent—unless his name is on the roll of real estate agents.

(d) Each such roll shall be divided into two parts to be known respectively as Part I and Part II.

In Part I of each such roll shall be entered the names of all persons eligible for enrolment on such roll whose places of business are situated within the county of Cumberland or the county of Northumberland.

In Part II of each such roll shall be entered the names of all persons eligible for enrolment on such roll whose places of business are situated in any other part of New South Wales.

(e) The persons whose names are on Part I of the roll of auctioneers shall elect two members of the council, and the persons whose names are on Part II of that roll shall elect one member of the council.

The persons whose names are on Part I of the roll of stock and station agents shall elect one member of the council and the persons whose names are on Part II of that roll shall elect two members of the council.

The persons whose names are on Part I of the roll of real estate agents shall elect two members of the council and the persons whose names are on Part II of that roll shall elect one member of the council.

(5) Elections of elected members shall be held during the month of May in the year one thousand nine hundred and forty-two, and in each third year thereafter.

The persons elected at any such election shall assume office as elected members on the first day of July next after

after their election, and, subject to this Act, shall hold office for a period of three years and shall be eligible for re-election.

(6) All elections of elected members shall be held and conducted in the manner prescribed.

(7) The council shall appoint one of its members to be chairman of the council.

Vacation of office.

9. A member of the council shall be deemed to have vacated his office if—

(a) he becomes bankrupt within the meaning of the law in force for the time being relating to bankruptcy or compounds with his creditors; or

(b) he becomes an insane person or patient or an incapable person within the meaning of the Lunacy Act of 1898; or

(c) he is absent from three consecutive ordinary meetings of the council without leave granted by the council; or

(d) he dies; or

(e) he resigns his office by writing under his hand delivered to the registrar; or

(f) he is removed from office by the Governor; or

(g) being an elected member, his license is suspended or cancelled or he neglects or fails to renew the same upon its expiry.

Removal of member.

10. The Governor may, for any cause which appears to him to be sufficient, remove any member of the council from office.

Filling of vacancy.

11. Where a vacancy occurs in the office of an elected member the vacancy shall be filled by appointment by the council of a person whose name is on the same roll as the person in whose office the vacancy occurred.

Any person appointed to fill a vacancy shall hold office for the residue of the term for which his predecessor was elected and shall, for the purposes of this Act, be deemed to be an elected member.

Deputies.

12. (1) If a member of the council (other than the official member) is, through illness or any other just cause, likely to be absent from meetings of the council for more than three months, such member may appoint

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a deputy (who shall have the same qualification as the member making the appointment) to act for such member during such absence.

(2) If the official member is, through illness or any other just cause, likely to be absent from meetings of the council for more than three months, such official member may, with the consent of the Governor, appoint a deputy (who shall be a practising solicitor of the Supreme Court of New South Wales) to act during his absence.

(3) Any deputy appointed under this section, whilst acting as such deputy, shall have the like powers, authorities, duties and functions as the member for whom he is appointed to act.

Vacancies.

13. In any of the following cases, that is to say—

(a) where no proper election of elected members or of any elected member takes place upon the date appointed for the holding of an election of members; or

(b) where a vacancy occurs in the office of an elected member and such vacancy is not filled within two months after the occurrence thereof,

the Governor may appoint to the vacant office or offices such person or persons as are qualified to be elected members of the council and are necessary to constitute the council. Any person so appointed shall, for the purposes of this Act, be deemed to be an elected member.

Fees and expenses.

14. (1) The chairman and members of the council may be paid such travelling and sustenance expenses as are approved by the Governor.

(2) The office of chairman or of member of the council shall not, for the purposes of the Constitution Act, 1902, or the Sydney Corporation Act, 1932-1940, or of any Act amending or replacing those Acts, be deemed to be an office or place of profit under the Crown.

Quorum.

15. (1) Six members shall form a quorum at any meeting of the council.

(2) Any duly convened meeting of the council at which a quorum is present shall be competent to transact the business of the council.

(3)

(3) The procedure for the calling of meetings of the council and for the conduct of business at meetings shall, subject to any regulations made in relation thereto, be as determined by the council.

Powers of chairman and casting vote.

16. (1) The chairman shall preside at any meeting of the council at which he is present.

(2) If the chairman is absent from any meeting of the council the members present shall elect one of their number to preside at the meeting.

(3) The chairman or member presiding, as the case may be, shall have a deliberative vote and, if the voting is equal, a second or casting vote.

Registrar.

17. (1) The Governor may, under and subject to the Public Service Act, 1902, as amended by subsequent Acts, appoint a registrar.

(2) The registrar shall have and may exercise and perform the powers, authorities, duties and functions conferred and imposed upon the registrar by or under this Act.

Validity of acts and proceedings. cf. Act No. 37, 1938, s. 12.

18. (1) No act or proceeding of the council shall be invalidated or prejudiced by reason only of the fact that at the time when such act or proceeding was done, taken or commenced there was a vacancy in the office of any member of the council.

(2) All acts and proceedings of the council shall, notwithstanding the subsequent discovery of any defect in the appointment or election of any member thereof, or that any member was disqualified to act, be as valid as if such member had been duly appointed or elected, as the case may be, and was qualified to act and had acted as a member of the council, and as if the council had been properly and fully constituted.

Annual report.

19. The council shall each year furnish to the Minister for presentation to Parliament a report giving information as to its work and as to its general decisions in the course thereof.

PART

PART III.

Auctioneers, Stock and Station Agents and Real Estate Agents.

Division 1.—*Licenses.*

No person or partner in a firm to act without a license.

20. (1) No person shall act as an auctioneer unless he is the holder of an auctioneer's license issued under the Auctioneers' Licensing Act, 1898-1934, or under this Act.

(2) Subject to this Act, from and after the expiration of three months after the commencement of this Act no person (either by himself or as a member of a partnership)—

(a) shall act as or carry on or advertise, notify or state that he acts as or carries on or is willing to act as or carry on the business of a stock and station agent unless he is the holder of a stock and station agent's license;

(b) shall act as or carry on or advertise, notify or state that he acts as or carries on or is willing to act as or carry on the business of a real estate agent unless he is the holder of a real estate agent's license.

(3) Where a corporation carries on the business of an auctioneer or of a stock and station agent or of a real estate agent, as the case may be, the corporation shall take out one license on its own behalf and may take out one or more licenses in respect of employees nominated by it for the purpose.

Amendment of Act No. 24, 1898, ss. 3 and 19.

(4) The Auctioneers' Licensing Act, 1898-1934, is amended by omitting sections three and nineteen.

Each separate place of business to be in charge of licensee.

21. (1) (a) No person shall, by virtue of one stock and station agent's license, keep more than one place for the conduct of his business as a stock and station agent.

(b) Where a person (other than a corporation) conducts his business as a stock and station agent at more than one place of business he shall employ at each such place, other than the place at which he is himself in charge, a person holding a stock and station agent's license who shall be in charge at that place.

(c)

(c) Where a corporation conducts its business as a stock and station agent at more than one place of business it shall employ at each such place a person in respect of whom it has taken out a license, and such person shall be in charge at that place.

(2) (a) No person shall, by virtue of one real estate agent's license, keep more than one place for the conduct of his business as a real estate agent.

(b) Where a person (other than a corporation) conducts his business as a real estate agent at more than one place of business he shall employ at each such place, other than the place at which he is himself in charge, a person holding a real estate agent's license who shall be in charge at that place.

(c) Where a corporation conducts its business as a real estate agent at more than one place of business it shall employ at each such place a person in respect of whom it has taken out a license, and such person shall be in charge at that place.

Licenses.

22. (1) A license under this Act shall be one of the following, namely:—

(a) an auctioneer's license; or

(b) a stock and station agent's license; or

(c) a real estate agent's license.

(2) (a) An auctioneer's license shall be either—

(i) a general license which shall be in force for all parts of New South Wales; or

(ii) a country license which shall be in force for all parts of New South Wales outside the counties of Cumberland and Northumberland; or

(iii) a district license which shall be in force for the police district only for which the same is taken out; or

(iv) a primary products license which shall be in force only at the market within the metropolitan police district which is specified in the license.

(b) No person shall act as an auctioneer in the metropolitan police district unless he has taken out a

a general license or unless he has taken out a primary products license and acts as an auctioneer only for the sale of firewood, coal, coke, fish, or any products within the meaning of the Marketing of Primary Products Act, 1927-1938, as amended by subsequent Acts, at the market specified in his license.

(3) A license shall be in the form prescribed and shall set forth the name and place of abode of the person taking out the same, and, where the license is taken out by a corporation in respect of an employee, the name and place of abode of such employee and the name and the address of the registered office of the corporation.

A stock and station agent's license or a real estate agent's license shall, in addition, set forth the address of the place of business in respect of which it is taken out.

(4) (a) Subject to this Act a license shall be in force for a period of twelve months from the date of its issue:

Provided that a license of any class which is issued to a person who is already the holder of a license of any other class shall be in force for a period expiring on the day upon which the license of such other class expires.

(b) A license may be renewed and on each renewal shall, subject to this Act, be in force for a further period of twelve months.

(5) An auctioneer shall not be required to hold a license under the Farm Produce Agents Act, 1926-1932, by reason only of the fact that he sells farm produce (as defined in that Act), outside a radius of ten miles from the General Post Office, Sydney, and not within such radius, and so sells only by auction.

Nothing contained in the Farm Produce Agents Act, 1926-1932, shall be construed as exempting any such auctioneer from the obligation to comply with the requirements of this Act.

(6) The Farm Produce Agents Act, 1926-1932, is amended by omitting paragraph (c) of subsection (3A) of section seven.

Amendment of Act No. 7, 1926, s. 7. (Consequential.)

23. (1) An application for a license or for the renewal of a license shall be made in triplicate in the form prescribed.

Procedure cf. Act No. 24, 1898, s. 5.

(2)

(2) Such application shall—

(a) contain such particulars as are prescribed;

(b) specify the class of license desired by the applicant.

(3) (a) Where the application is for an auctioneer's license and the applicant resides in New South Wales, the application shall be lodged with the clerk of the court of the petty sessions district within which the applicant resides, or, if there is more than one such court, then with the clerk of the court within such district nearest to the place where the applicant resides.

(b) Where the application is for a stock and station agent's license or for a real estate agent's license and the applicant resides in New South Wales the application shall be lodged with the clerk of the court of the petty sessions district within which the applicant proposes to carry on business, or if there is more than one such court then with the clerk of the court within such district nearest to the place where the applicant proposes to carry on business.

(c) Where any such application is made by a corporation in respect of an employee the application shall be lodged with the clerk of the court of the petty sessions district within which such employee resides, or, as the case may be, of the petty sessions district within which is situated the place of business at which such employee is to be in charge.

(4) (a) Where the application is for an auctioneer's license and the applicant resides in any other State of the Commonwealth of Australia the application shall be lodged with the clerk of any court of petty sessions.

(b) Where the application is for an auctioneer's license and the applicant resides in the Australian Capital Territory then—

(i) if the application is for a general license it shall be lodged with the clerk of any court of petty sessions;

(ii) if the application is for a district license it shall be lodged with the clerk of any court of petty sessions within the police district in respect of which the application is made.

(c) Where the application is for a stock and station agent's license or for a real estate agent's license and the applicant resides outside New South Wales the application shall be lodged with the clerk of any court of petty sessions.

(5) Upon the receipt of an application for the grant or the renewal of a license by any person, the clerk shall forthwith forward one copy of the application to the officer in charge of police at the nearest police station and one copy of the application to the registrar.

Thereupon the officer in charge of police and the council shall severally inquire into and report upon the character of the applicant, or, where the application is made by a corporation in respect of an employee, the character of such employee.

(6) (a) Where an application is made for the renewal of a license or where an application for a license of any class is made by a person who is already the holder of a license of the same or any other class, the clerk shall, on payment to him of the prescribed fees and the prescribed contribution, issue to such person a provisional license.

Any such provisional license shall take effect as from the date of its issue or from a later date to be specified therein.

(b) When a provisional license is issued under this subsection the holder thereof shall, for all purposes of this Act, be deemed to be the holder of a license of the class specified in his application until such time as a license or renewal of license is issued to him pursuant to this section or until his application for a license or renewal of license is refused.

(c) If a license or renewal of license is so issued to a person to whom a provisional license has been issued under this subsection such license or renewal of license shall take effect as from the date upon which the provisional

provisional license took effect, and the prescribed fees and the prescribed contribution paid under this subsection shall be applied in or towards payment of the prescribed fees and the prescribed contribution for the license or renewal of license.

(7) If the officer in charge of police or the council objects to the grant of the application, such officer or the council, as the case may be, shall include in the report furnished pursuant to subsection five of this section, a statement setting out the nature of the objection proposed to be made.

(8) Where neither the officer in charge of police nor the council objects to the grant of the application, the clerk with whom the application was lodged shall, on payment to him of the prescribed fees and the prescribed contribution, issue the license.

(9) Where the officer in charge of police or the council objects to the grant of the application—

(a) the clerk of the court shall notify the applicant and, where the application is made by a corporation in respect of an employee, shall also notify such employee that the grant of the application will be objected to, and shall set out shortly in the notice the nature of the objection proposed to be made;

(b) the application shall be heard and determined by the court, which for that purpose shall be constituted by a stipendiary or police magistrate or two or more justices;

(c) such hearing shall not take place until after the expiration of seven days after the lodging of the application;

(d) the hearing of the application shall be in open court and the consideration of the application shall be deemed to be a judicial proceeding;

(e) where the council has objected to the grant of the application it may appear at the hearing by any member of the police force or by counsel or attorney;

(f) where the application is made by a corporation in respect of an employee, the employee as well as the corporation may appear at the hearing.

If the court grants the application, the clerk of the court shall, on payment to him of the prescribed fees and the prescribed contribution, issue the license

(10) A license or a renewal of a license shall not be granted—

(a) to a corporation in respect of an employee where the employee is disqualified from holding a license under this Act, or is of bad or doubtful character; or

(b) to an applicant who is disqualified from holding a license under this Act or who is of bad or doubtful character; or

(c) to a corporation whether on its own behalf or in respect of an employee, where the court is satisfied that the corporation is substantially owned or controlled by a person who is disqualified from holding a license under this Act.

(11) An auctioneer's license or a renewal of an auctioneer's license shall not be granted to an applicant who is the holder of a license under the Pawnbrokers Act, 1902.

(12) Notwithstanding anything in the foregoing provisions of this section payment of the prescribed contribution shall not be required in the case of an auctioneer who is the holder of a license under the Farm Produce Agents Act, 1926-1932, and who sells farm produce (as defined in that Act) by auction, within a radius of ten miles from the General Post Office, Sydney, but who does not in any other way whatsoever exercise the trade or business of an auctioneer.

Nothing contained in this Act shall be construed as exempting any such auctioneer from the obligation to comply with the requirements of the Farm Produce Agents Act, 1926-1932.

Variation of license.

24. (1) The court of petty sessions may upon the application of a corporation which has taken out a license in respect of an employee, vary such license by substituting the name of some other employee nominated by the corporation for the purpose.

(2) The provisions of section twenty-three (other than the provisions relating to payment of the prescribed contribution) of this Act shall, mutatis mutandis, apply to and in respect of an application for the variation of a license in all respects as if the same were an application for a license or a renewal of a license.

Fees payable for license.

25. (1) The following fees shall be payable in respect of the several matters hereinafter referred to:—

(a) for an auctioneer's license—

(i) being a general license—fifteen pounds;

(ii) being a country license—five pounds;

(iii) being a district license—two pounds;

(iv) being a primary products license—two pounds;

(b) for a stock and station agent's license—one pound;

(c) for a real estate agent's license—one pound;

(d) for an auctioneer's license (being a general license) and either a stock and station agent's license or a real estate agent's license or both—fifteen pounds;

(e) for an auctioneer's license (being a district license or a primary products license) and either a stock and station agent's license or a real estate agent's license or both—three pounds;

(f) for a stock and station agent's license and a real estate agent's license—two pounds;

(g) for the variation of a license—ten shillings;

(h) for a duplicate license—five shillings;

(i) for renewal of any license or licenses—the same fee as that payable upon the issue of the license or licenses.

(2) The fees referred to in paragraphs (d) (e) and (f) of subsection one of this section shall be the fees payable

payable for the several licenses referred to in the respective paragraphs whether the applications upon which the licenses are issued were made at different times or at the same time.

(3) There shall also be payable upon the grant of each application for a license or for renewal of a license a fee of one pound which fee shall be transmitted by the clerk of petty sessions who receives the same to the registrar.

Power to grant auctioneers' licenses to persons resident in reciprocating States.

cf. Act No. 7, 1935, s. 10.

26. (1) Where the Governor is satisfied that in any State of the Commonwealth of Australia (other than New South Wales) an Act is in force under which any person resident in New South Wales and holding an auctioneer's license (being a general license) may obtain a license to follow the occupation of an auctioneer in all parts of such other State, the Governor may by notification published in the Gazette declare that on and after a date to be specified in the notification, and while the notification remains in force, this Act shall extend and apply to the granting in New South Wales of auctioneers' licenses (being general licenses) to residents in such other State.

(2) The Governor may, if he thinks fit, revoke any such notification.

(3) Any notification declaring that the Auctioneers' Licensing Act, 1898, as amended by subsequent Acts, shall extend and apply to the granting in New South Wales of general licenses to residents in any other State, which was published pursuant to section six of that Act and which was still in force immediately before the commencement of this Act, shall, as from such commencement and until revoked by a notification published pursuant to this Act, have and take effect as if it were a notification published pursuant to subsection one of this section declaring that, as from such commencement and while the notification remains in force, this Act shall extend and apply to the granting in New South Wales of auctioneers' licenses (being general licenses) to residents in such other States as is mentioned in such notification.

(4)

(4) (a) In the case of a resident in any State of the Commonwealth of Australia with respect to which a notification under this section is in force an auctioneer's license (being a general license) shall be granted to such resident only if he holds a license to follow the occupation of an auctioneer in all parts of that State.

(b) An auctioneer's license (being a district license or a primary products license) shall not in any case be granted to any person resident in any State of the Commonwealth of Australia, other than New South Wales.

Grant of auctioneers' licenses to persons resident in the Australian Capital Territory.

27. The provisions of this Act (other than section twenty-six) shall extend and apply to the granting in New South Wales of auctioneers' licenses (being general licenses or district licenses) to persons resident in the Australian Capital Territory:

Provided that an auctioneer's license (being a general license or a district license) shall not be granted to a person resident in the Australian Capital Territory unless—

(a) such person is the holder of an auctioneer's license for the Australian Capital Territory granted in accordance with the law for the time being in force in that Territory; and

(b) under the law for the time being in force in that Territory, any resident of New South Wales who is the holder of an auctioneer's license (being a general license or a district license) may obtain an auctioneer's license for that Territory.

Applicant for auctioneer's license to be resident in New South Wales or reciprocating State.

Act No. 28, 1924, s. 2 (a).

28. Save as provided in sections twenty-six and twenty-seven of this Act, a person who is not a resident of New South Wales shall not be entitled to obtain an auctioneer's license or a renewal thereof under this Act.

Cancellation of license.

cf. Act No. 7, 1935, s. 14.

29. (1) Upon complaint being made to him by a member of the police force of or above the rank of inspector or by the council any justice of the peace may summon a licensee to appear before a court of petty sessions

sessions holden before a stipendiary or police magistrate to show cause why the license held by him or, in the case of a corporation, held by it either on its own behalf or in respect of an employee, should not be cancelled and why such licensee or, as the case may be, such employee, should not be disqualified either permanently or temporarily from holding a license on the ground—

(a) that the license was improperly obtained contrary to the provisions of this Act; or

(b) that he is not a fit and proper person to continue any longer to hold a license, or to have a license held in respect of him as an employee, by a corporation, or that the corporation is not a fit and proper person any longer to continue to hold a license on its own behalf or in respect of an employee; or

(c) that he has been guilty of such conduct as renders him unfit to continue any longer to hold a license, or to have a license held in respect of him as an employee, by a corporation, or that the affairs of the corporation have been so conducted as to render it unfit to continue any longer to hold a license on its own behalf or in respect of an employee.

Where the licensee named in the summons is a corporation which holds the license in respect of an employee, a copy of the summons shall be served personally or by post on such employee.

(2) If upon the day and at the time and place appointed by the summons issued in accordance with the provisions of subsection one of this section the licensee or, as the case may be, the employee named therein does not appear then upon proof of the due service of the summons upon him a reasonable time before the time appointed for his appearance, such court of petty sessions may proceed to hear and determine the matter of such complaint in the absence of such licensee, or, as the case may be, such employee.

Service of the summons may be proved by the oath of the person who served it or by affidavit or otherwise.

(3)

(3) Upon being satisfied of the truth of any of the grounds aforesaid the court may order that the license of such licensee be delivered up to the court forthwith and cancelled and that such licensee or such employee, or both, be disqualified either permanently or for such period as the court specifies from holding a license under this Act, and upon the making of such order such license shall thereafter be deemed and taken to be cancelled.

Register to be kept by registrar.

30. (1) The clerk of petty sessions shall, within seven days after the issue of a license or renewal thereof or after the variation or cancellation thereof under this Act, notify the registrar of such issue, renewal, variation or cancellation.

(2) The registrar shall keep a register of all such licenses and of all renewals, variations and cancellations of licenses, which register shall be available for perusal by any member of the public upon payment of the prescribed fee.

Appeal.

31.(1) Where the court refuses any application under section twenty-three or under section twenty-four or makes an order under section twenty-nine of this Act the person making the application or the licensee, as the case may be, may appeal in accordance with the rules of court of the District Court to the District Court exercising jurisdiction in the district within which the court refusing such application or making such order is situated.

(2) Every such appeal shall be in the nature of a rehearing.

(3) Notice of appeal shall be given to such persons as may be prescribed by rules of court of the District Court, or as the District Court may direct.

(4) (a) An appeal shall lie to the Supreme Court either by special case or upon notice of motion against any ruling, order, direction or decision of the District Court in point of law or upon the admission or rejection of any evidence.

(b) The provisions of Part VI of the District Courts Act, 1912-1936, shall, mutatis mutandis, extend to and in respect of any such appeal.

For

For the purposes of such extension the word "party" where used in that Part shall be deemed to include any of the following persons:—

(i) the person making the application or the licensee, or employee, as the case may be;

(ii) the officer in charge of police who objected to the grant of the application—in any case where the appeal is in proceedings arising out of an application to the granting of which such officer in charge of police had objected;

(iii) the member of the police force who made the complaint—in any case where the appeal is in proceedings arising out of a complaint made by him under section twenty-nine of this Act;

(iv) the council—in any case where the appeal is in proceedings arising out of an application to the granting of which the council had objected, or out of a complaint made by the council under section twenty-nine of this Act.

DIVISION 2.—*Licensees generally.*

Effect of disqualification on membership, etc., of corporation.
cf. Act No. 7, 1935, s. 24.

32. A person disqualified under this Act shall not, while his disqualification continues, be capable of becoming or continuing a director or manager of any corporation or a partner in any partnership carrying on business in New South Wales as an auctioneer, a stock and station agent or a real estate agent, and no corporation shall obtain or continue to hold a license in respect of any such person as an employee.

Failure to deliver up license.

33. Where the court has made an order that a license be delivered up to the court the holder of such license shall, if he refuses, neglects or fails to comply with such order, be guilty of an offence against this Act.

Registered office and address.
cf. *Ibid.* s. 15.

34. (1) Every licensee shall have a registered office within New South Wales.

(2) All writs, summonses, notices or other documents required or authorised to be served on or given to a licensee shall be deemed to be duly served or given if left for him at his registered office.

(3)

(3) The address specified in the application as the address at which the applicant proposes to carry on business shall, upon the grant, renewal or transfer of the license, be deemed to be the registered office of the licensee:

Provided that where a corporation takes out a license in respect of an employee the address of the corporation and not that of the employee shall be so deemed to be the registered office of the licensee.

(4) Notice of any change in the situation of the registered office shall be lodged by the licensee with the court from which the license issued within the prescribed time, and the clerk of such court shall record such notice and advise the registrar who shall enter such change in the register.

(5) If any licensee carries on business without complying with the requirements of this section he shall be liable to a penalty not exceeding five pounds for every day during which he so carries on business.

35. (1) Every licensee shall paint or affix and keep painted or affixed his name and description as a licensee on the outside of his registered office, and, where the business is carried on at any place other than such registered office, on the outside of each place in which his business as a licensee is carried on, in a conspicuous position, in letters easily legible. **Publication of name of licensee.** cf. Act No. 33, 1936, s. 76.

(2) It shall be a sufficient compliance with the requirements of subsection one of this section if, in any case where a license is taken out by a corporation in respect of an employee the name of the corporation and the name of the employee in respect of whom the license is taken out and who is in charge at the registered office or place of business is painted or affixed as provided in that subsection.

(3) Any person shall be guilty of an offence against this Act who— cf. Act No. 7, 1935, s. 16.

(a) commits any contravention of or fails to comply with any of the provisions of subsection one of this section; or

(b)

(b) after the expiration of three months after the commencement of this Act, keeps up or exhibits or allows to remain unobliterated on or near to his office, house or place of business or exhibits anywhere any sign, writing, painting or other mark implying that such office, house or place of business is that of a person licensed—

(i) as an auctioneer—unless he is the holder of an auctioneer's license granted under the Auctioneers' Licensing Act, 1898-1934, or under this Act;

(ii) as a stock and station agent—unless he is the holder of a stock and station agent's license;

(iii) as a real estate agent—unless he is the holder of a real estate agent's license.

Payment into bank. cf. Act No. 22, 1898, s. 41.

36. (1) All moneys received for or on behalf of any person by any licensee shall be held by the licensee exclusively for such person, to be paid to such person, or to be disbursed as he directs, and until so paid or disbursed the moneys shall be paid into a bank in New South Wales to a trust account, whether general or separate.

In any case where a license is held by a corporation in respect of an employee the trust account shall be in the name of the corporation.

(2) The moneys shall not be available for the payment of the debts of the licensee to any other creditor of the licensee, or be liable to be attached or taken in execution under the order or process of any court at the instance of any such other creditor.

(3) Nothing in this section shall be construed to take away or affect any just claim or lien which any licensee may have against or upon any of the moneys.

(4) Any licensee who neglects or fails to comply with any of the provisions of this section shall be guilty of an offence against this Act.

Relief to bankers. cf. *Ibid.* s. 44.

37. (1) Subject to the provisions of this section no bank shall, in connection with any transaction on any account of any licensee kept with it or with any other bank

bank, incur any liability or be under any obligation to make any enquiry or be deemed to have any knowledge of any right of any person to any money paid or credited to any such account which it would not incur or be under or be deemed to have in the case of an account kept by a person entitled absolutely to all the money paid or credited to it:

Provided that nothing in this subsection shall relieve a bank from any liability or obligation under which it would be apart from this Act.

(2) Notwithstanding anything in subsection one of this section a bank at which a licensee keeps an account for clients' money shall not, in respect of any liability of the licensee to the bank, not being a liability in connection with that account, have or obtain any recourse or right whether by way of set-off, counter-claim, charge or otherwise, against moneys standing to the credit of that account:

Provided that nothing in this subsection shall deprive a bank of any right existing at the time of the commencement of this Act.

38. (1) Every licensee (being an auctioneer or a stock and station agent) shall keep in a legible manner a written record containing full particulars of all transactions by or with him as licensee. **Record to be kept.** cf. Act No. 7, 1935, s. 22.

(2) The written record shall be preserved by the licensee for a period of not less than three years after the date upon which it was made.

(3) The written record shall be open to inspection at all reasonable times by a member of the police force of or above the rank of sergeant, and every licensee, upon being required so to do, shall produce the written record kept by him for inspection by such officer.

(4) Every entry in the written record kept at the registered office of a licensee shall be deemed, unless the contrary is proved, to have been made by or with the authority of the licensee.

(5) Any person who contravenes any of the provisions of this section shall be guilty of an offence against this Act.

39.

Certain persons not to be employed by licensees. cf. Act No. 7, 1935, s. 25.

39. (1) A licensee shall not, except with the approval of a court of petty sessions holden before a stipendiary or police magistrate, and subject to such conditions as the court may impose, knowingly employ in any way whatever in connection with his business any person—

(a) who is for the time being disqualified under this Act from holding a license or disqualified under the Business Agents Act, 1935, from holding a license under that Act; or

(b) whose application for a license under this Act, or the Auctioneers' Licensing Act, 1898-1934, or the Business Agents Act, 1935, as the case may be, has been refused, unless such an application has been subsequently granted.

(2) Subject to this section no such person shall participate or be in any way concerned in the business of a licensee.

(3) A licensee who holds a license as a real estate agent or on whose behalf (if a corporation) a license as a real estate agent is held shall not, from and after the expiration of three months after the commencement of this Act, employ, in connection with his or its business as a real estate agent, any real estate salesman who is not registered as such under this Act.

(4) Any licensee or any person aforesaid who commits any contravention of or fails to comply with any of the provisions of this section shall be guilty of an offence against this Act.

Production of license. cf. *Ibid.* s. 36.

40. Every licensee shall on demand, at the premises upon which he carries on his business, produce his license to any member of the police force of or above the rank of sergeant, or to any person with whom such licensee is transacting or attempting to transact any business as an auctioneer, a stock and station agent or a real estate agent, as the case may be.

Licensee not to lend license. *Ibid.* s. 37.

41. Any licensee who lets out, hires or lends any license held by him to any other person or permits any other person to use his license shall be guilty of an offence against this Act, and on conviction for such offence, and in

in addition to any penalty therefor, any license held by him shall thereupon become absolutely void and shall be delivered up to the court and cancelled.

Provisions as to commission, etc. Act No. 7, 1935, s. 38.

42. (1) Subject to this Act, no person shall be entitled to bring any proceeding in any court to recover any commission, fee, gain or reward for any service done or performed by him—

(a) as an auctioneer unless he was the holder of an auctioneer's license issued under the Auctioneers' Licensing Act, 1898-1934, or under this Act at the time of doing or performing such service;

(b) as a stock and station agent unless he was the holder of a stock and station agent's license at the time of doing or performing such service or such service was done or performed before the expiration of three months after the commencement of this Act;

(c) as a real estate agent unless he was the holder of a real estate agent's license at the time of doing or performing such service or such service was done or performed before the expiration of three months after the commencement of this Act.

(2) This section shall extend to and in respect of any licensee which is a corporation on whose behalf a license is held, and for such purpose the corporation shall be deemed to be the holder of any license held on its behalf.

Publication of name and place of business in advertisements. cf. *Ibid.* s. 41.

43. Any licensee who publishes (whether in a newspaper or otherwise) any advertisement relating to or in connection with his business (or in the case of a corporation or partnership or a person who holds a license on behalf of a corporation relating to or in connection with the business of the corporation or partnership) without specifying therein his or its name as a licensee and (if the business is not carried on in his or its own name) the name under which he or it or the partnership in which he

he or it is a partner is registered or deemed to be registered under any Act for the time being in force relating to the registration of business names, and his or its place of business, shall be guilty of an offence against this Act.

DIVISION 3.—*Auctioneers.*

44. (1) In this Division— Definitions.

"Cattle" means horses, mares, fillies, foals, geldings, colts, bulls, bullocks, cows, heifers, steers, calves, ewes, wethers, rams, lambs and swine. cf. Vict. Act No. 4323, 1935, s. 2.

"Farm produce" means cereals, grain, vegetables, potatoes, onions, other edible roots and tubers, tobacco leaf, fruit, hay, chaff, dairy produce, live or dead poultry and game, and eggs. cf. Vict. Act No. 4420, 1936, s. 2.

(2) Upon a day to be appointed by the Governor and notified by proclamation published in the Gazette, the meaning of the expression "farm produce," as defined in subsection one of this section, shall extend to include wool. cf. Vict. Act No. 4323, 1935, s. 3.

45. (1) Any person who induces or attempts to induce any other person to abstain from bidding at a sale by auction of cattle or farm produce either generally or for any particular lot, by means of a promise, express or implied, that he will if he is the successful bidder for the cattle or farm produce— Splitting of lots purchased at auction. cf. Vict. Acts Nos. 4323, 1935, s. 3, and 4420, 1936, s. 2.

(a) give such other person the right to elect to take over as purchaser through the auctioneer all or any of the said cattle or farm produce at the auction price; or

(b) agree to decide by tossing or the drawing of lots or other method who is to become the owner of all or any of the said cattle or farm produce,

shall be liable for a first offence to a penalty of not more than ten pounds and for a second or any subsequent offence to a penalty of not more than twenty-five pounds or to imprisonment for a term of not more than one month.

(2)

(2) Any person who abstains or agrees to abstain from bidding at a sale by auction of cattle or farm produce as the result of a promise, express or implied, given to him—

(a) that he shall have the right to elect to take over as purchaser through the auctioneer all or any of the said cattle or farm produce at the auction price; or

(b) that the ownership of all or any of the said cattle or farm produce shall be determined by tossing or the drawing of lots or any other method,

shall be liable for a first offence to a penalty of not more than ten pounds and for a second or any subsequent offence to a penalty of not more than twenty-five pounds or to imprisonment for a term of not more than one month.

Entry by auctioneer or employee in record or book kept by auctioneer as purchaser of cattle or farm produce sold by auction of any name other than the name of the actual successful bidder.

cf. Vict. Acts Nos. 4323, 1935, s. 4, and 4420, 1936, s. 2.

46. (1) Any auctioneer or any employee of an auctioneer who knowingly enters in any record or book kept or required to be kept by such auctioneer as the purchaser of any cattle or farm produce sold by auction any name other than the name of the actual successful bidder for such cattle or farm produce shall be liable for a first offence to a penalty of not more than ten pounds and for a second or any subsequent offence to a penalty of not more than twenty-five pounds or to imprisonment for a term of not more than one month.

(2) If the employee of any auctioneer enters in any record or book kept or required to be kept by such auctioneer as the purchaser of any cattle or farm produce sold by auction any name other than the name of the actual successful bidder for such cattle or farm produce the auctioneer shall, unless he proves to the satisfaction of the court that he did not know that a name other than the name of the actual successful bidder was entered as aforesaid, be guilty of an offence and shall be liable for a first offence to a penalty of not more than ten pounds and for a second or any subsequent offence to a penalty of not more than twenty-five pounds or to imprisonment for a term of not more than one month.

(3) Notwithstanding anything in subsection one or subsection two of this section, where the actual successful bidder at a sale by auction of any cattle or farm produce as soon as practicable after the auctioneer conducting such sale has indicated such actual successful bidder but not in any case later than the day of the sale informs such auctioneer—

Provision for entry in record or book of name other than name of actual successful bidder in certain cases.

(a) that he bid for such cattle or farm produce on behalf of another person; and

(b) of the name of such other person,

the said auctioneer or employee shall not be guilty of an offence against the provisions of subsection one or subsection two of this section by reason of the fact that he enters in the record or book aforesaid as purchaser of such cattle or farm produce the name of such other person.

47. (1) Every auctioneer shall before beginning any sale by auction of any cattle or farm produce read or recite aloud a statement of the material parts of sections forty-five and forty-six of this Act:

Material parts of sections to be read or recited aloud at sales by auction of cattle.

cf. Vict. Acts Nos. 4323, 1935, s. 5, and 4420, 1936, s. 2.

Provided that where on any day successive sales by auction of cattle or farm produce are held at the same selling place and the foregoing provisions of this subsection are complied with by the auctioneer conducting the first of such sales no auctioneer thereafter conducting any of such successive sales shall be required before commencing any of such sales to comply with such provisions.

Provided further that if the auctioneer exhibits before and keeps exhibited during the sale in a conspicuous position, a statement of the material parts of such sections printed in letters easily legible he shall not be required to so recite such statement aloud.

(2) Any auctioneer who fails to comply with the provisions of subsection one of this section shall be liable to a penalty of not more than ten pounds.

48.

48. Any auctioneer who knowingly misrepresents, or causes or permits to be misrepresented, the value, composition, structure, character or quality, or the origin of manufacture of any goods or chattels put up for sale at an auction sale conducted by him, shall be guilty of an offence against this Act. Misrepresentation as to quality, etc., of goods and chattels. Act No. 24, 1898, s. 10.

49. (1) Where a sale by auction is not notified in the conditions of sale to be subject to a right to bid on behalf of the seller, it shall not be lawful for the seller to bid himself or for the seller or the auctioneer to employ any person to bid at the sale, or for the auctioneer knowingly to take any bid from the seller or any such person. Bidding by seller. *Ibid.* s. 12.

(2) Whosoever contravenes the provisions of this section shall be guilty of an offence against this Act.

50. No auctioneer shall attempt to sell, offer for sale or sell by way of public auction any land, goods or effects except wool not being on the skin, after sunset or before sunrise of any day throughout the year and every such auctioneer who offends against this section shall be guilty of an offence against this Act. No auction sales after sunset (sales of wool excepted). *Ibid.* s. 18.

PART IV.

Real Estate Dealers and Real Estate Salesmen.

Division 1.—*Interpretation.*

51. In this Part— Interpretation.

"Allotment of land" means a parcel of land offered for sale as suitable or intended wholly or mainly for residential or retail commercial trade purposes but on which no building suitable for human occupation is erected.

"Real estate dealer" means a person not being the holder of a license as a real estate agent whose sole or principal business is the selling, as owner, of land in allotments.

"Real

"Real estate salesman" means a person who, for or on behalf of any real estate agent or real estate dealer, goes, whether by appointment or otherwise, from house to house or from place to place, for the purpose of inducing or attempting to induce or negotiating with a view to inducing any person—

(a) to buy, sell or otherwise dispose of any land; or

(b) to make any offer to buy, sell or otherwise dispose of any land; or

(c) to accept any offer to buy, sell or otherwise dispose of any land; or

(d) to enter into any contract for the purchase, sale or other disposal of any land.

DIVISION 2.—*Real Estate Dealers.*

Provisions as to employment of certain persons by real estate dealers.

52. (1) A real estate dealer shall not, except with the approval of a court of petty sessions holden before a stipendiary or police magistrate, and, subject to such conditions as the court may impose, knowingly employ, in any way whatever in connection with his business as a real estate dealer, any person—

(a) who is for the time being disqualified under this Act from holding a license or disqualified under the Business Agents Act, 1935, from holding a license under that Act; or

(b) whose application for a license under this Act, or the Auctioneers' Licensing Act, 1898-1934, or the Business Agents Act, 1935, as the case may be, has been refused, unless such an application has been subsequently granted.

(2) Subject to this section no such person shall participate or be in any way concerned in the business of a real estate dealer as such.

(3) A real estate dealer shall not, from and after the expiration of three months after the commencement of this Act, employ, in connection with his business as a real estate dealer, any real estate salesman who is not registered as such under this Act.

(4)

(4) Any real estate dealer or any person aforesaid who commits any contravention of or fails to comply with any of the provisions of this section shall be guilty of an offence against this Act.

Publication of name and place of business in advertisements. cf. Act No. 7, 1935, s. 41.

53. Any real estate dealer who publishes (whether in a newspaper or otherwise) any advertisement relating to or in connection with his business as a real estate dealer (or in the case of a corporation or partnership relating to or in connection with the business as a real estate dealer, of the corporation or partnership) without specifying therein his or its name and (if the business as a real estate dealer is not carried on in his or its own name) the name under which he or it or the partnership in which he or it is a partner is registered or deemed to be registered under any Act for the time being in force relating to the registration of business names, and his or its place of business, shall be guilty of an offence against this Act.

Real estate dealer to have registered place of business.

54. (1) Every real estate dealer shall have a registered place of business in New South Wales.

(2) (a) Every person who, immediately before the commencement of this Act, was carrying on business as a real estate dealer shall, within one month after such commencement, register his place of business by lodging with the registrar a notice specifying the address of such place of business.

(b) Every real estate dealer who commences to carry on business as such after the commencement of this Act shall, before so commencing, register his place of business by lodging with the registrar a notice specifying the address of such place of business.

(c) The registrar shall keep a register of all such registered places of business, which shall be available for perusal by any member of the public upon payment of the prescribed fee.

(d) Notice of any change in situation of his registered place of business shall be lodged with the registrar, who shall enter such change in the register kept by him pursuant to this subsection.

(3)

(3) All writs, summonses, notices or other documents required or authorised to be served on or given to a real estate dealer shall be deemed to be duly served or given if left for him at his registered place of business.

(4) If any real estate dealer carries on business as such without complying with the requirements of this section he shall be liable to a penalty not exceeding five pounds for every day during which he so carries on business.

Record to be kept. cf. Act No. 7, 1935, s. 22.

55. (1) Every real estate dealer shall keep in a legible manner a written record containing full particulars of all transactions by or with him as a real estate dealer.

(2) The written record shall be preserved by the real estate dealer for a period of not less than three years after the date upon which it was made.

(3) The written record shall be open to inspection at all reasonable times by a member of the police force of or above the rank of sergeant, and every real estate dealer upon being required so to do, shall produce the written record kept by him for inspection by such officer.

(4) Every entry in the written record kept at the place of business of a real estate dealer shall be deemed, unless the contrary is proved, to have been made by or with the authority of the real estate dealer.

(5) Any person who contravenes any of the provisions of this section shall be guilty of an offence against this Act.

DIVISION 3.—*Real Estate Salesmen.*

Real estate salesmen to be registered.

56. (1) Subject to this Act, from and after the expiration of three months after the commencement of this Act, no person shall, unless he is registered as a real estate salesman in accordance with this Act,—

(a) be or remain in the employment or service of any real estate agent or real estate dealer as a real estate salesman; or

(b) represent, whether expressly or impliedly, that he is a real estate salesman or that he is in the

the employment of a real estate agent or a real estate dealer as a real estate salesman; or

(c) act as or carry out any of the functions of a real estate salesman.

(2) Any person who commits any contravention of or fails to comply with any of the provisions of this section shall be guilty of an offence against this Act.

Procedure.

57. (1) An application for registration as a real estate salesman shall be made in triplicate in the form prescribed.

(2) The application shall be lodged with the clerk of the court of the petty sessions district within which the applicant resides, or, if there is more than one such court, with the clerk of the court within such district nearest to the place where the applicant resides.

(3) Upon receipt of the application the clerk shall forthwith forward one copy of the application to the officer in charge of police at the nearest police station and one copy to the registrar.

Thereupon the officer in charge of police and the council shall severally inquire into and report upon the character of the applicant.

(4) If the officer in charge of police or the council objects to the grant of the application such officer or the council, as the case may be, shall include in the report furnished pursuant to subsection three of this section, a statement setting out the nature of the objection proposed to be made.

(5) (a) Where an application is made by a real estate salesman who is the holder of a certificate of registration as such for the renewal of his registration the clerk may, on payment to him of a fee of five shillings, issue to such person a provisional certificate of registration.

Any such provisional certificate of registration shall take effect as from the date of its issue or from a later date to be specified therein.

(b) When a provisional certificate of registration is issued under this subsection the holder thereof shall, for all purposes of this Act, be deemed to be the holder of a certificate of registration until such time as a certificate of registration is issued to him pursuant to this section or until his application for a certificate of registration is refused.

(c) If a certificate of registration is so issued to a person to whom a provisional certificate of registration has been issued under this subsection such certificate of registration shall take effect as from the date upon which the provisional certificate of registration took effect, and the prescribed fee paid under this subsection shall be applied in or towards payment of the prescribed fee for the certificate of registration.

(6) Where neither the officer in charge of police nor the council objects to the grant of the application, the clerk shall, on payment to him of a fee of five shillings, issue to the applicant a certificate of registration as a real estate salesman.

(7) Where the officer in charge of police or the council objects to the grant of the application—

(a) the clerk of the court shall notify the applicant that the grant of his application will be objected to, and shall set out shortly in the notice the nature of the objection proposed to be made;

(b) the application shall be heard and determined by the court, which for that purpose shall be constituted by a stipendiary or police magistrate or two or more justices;

(c) such hearing shall not take place until after the expiration of seven days after the lodging of the application;

(d) the hearing of the application shall be in open court and the consideration of the application shall be deemed to be a judicial proceeding;

(e) where the council has objected to the grant of the application it may appear at the hearing by any member of the police force or by counsel or attorney.

If

If the court grants the application, the clerk of the court shall, on payment to him of a fee of five shillings, issue to the applicant a certificate of registration as a real estate salesman.

(8) A certificate of registration as a real estate salesman shall not be issued to an applicant who is of bad or doubtful character.

(9) (a) Subject to this Act a certificate of registration as a real estate salesman shall be in force for a period of twelve months from the date of its issue.

(b) A certificate of registration may be renewed and on each renewal shall, subject to this Act, be in force for a further period of twelve months.

Register to be kept by registrar.

58. (1) The clerk of petty sessions shall, within seven days after the issue or cancellation of a certificate of registration as a real estate salesman, notify the registrar of such issue.

(2) The registrar shall keep a register of all such certificates of registration, which shall be available for perusal by any member of the public upon payment of the prescribed fee.

Registered address.

cf. Act No. 7, 1935, s. 15.

59. (1) Every real estate salesman shall have a registered address within New South Wales.

(2) All writs, summonses, notices or other documents required or authorised to be served on or given to a real estate salesman shall be deemed to be duly served or given if left for him at his registered address.

(3) The address specified in the application as the address at which the applicant then resides, shall, upon the grant of the application, be deemed to be the registered address of the real estate salesman.

(4) Notice of any change in the situation of the registered address shall be lodged by the real estate salesman with the court from which the certificate of registration as a real estate salesman issued, within the prescribed time, and the clerk of such court shall record such notice and advise the registrar who shall enter such change in the register kept pursuant to section fifty-eight of this Act.

(5)

(5) If any real estate salesman acts as or carries out any of the functions of a real estate salesman without complying with the requirements of this section he shall be liable to a penalty not exceeding five pounds for every day during which he so acts or carries out such functions.

Cancellation of certificate of registration.

cf. Act No. 7, 1935, s. 14.

60. (1) Upon complaint being made to him by a member of the police force of or above the rank of inspector or by the council any justice of the peace may summon a real estate salesman to appear before a court of petty sessions holden before a stipendiary or police magistrate to show cause why his certificate of registration should not be cancelled and why he should not be disqualified either permanently or temporarily from holding a certificate of registration on the ground—

(a) that he improperly obtained his certificate of registration contrary to the provisions of this Act; or

(b) that he is not a fit and proper person to continue any longer to hold a certificate of registration; or

(c) that he has been guilty of such conduct as renders him unfit to continue any longer to hold a certificate of registration.

(2) If upon the day and at the time and place appointed by the summons issued in accordance with the provisions of subsection one of this section the real estate salesman named therein does not appear, then, upon proof of the due service of the summons upon him a reasonable time before the time appointed for his appearance, such court of petty sessions may proceed to hear and determine the matter of such complaint in the absence of such real estate salesman.

Service of the summons may be proved by the oath of the person who served it or by affidavit or otherwise.

(3) Upon being satisfied of the truth of any of the grounds aforesaid the court may order that the certificate of registration of such real estate salesman be delivered up to the court forthwith and cancelled and that such real estate salesman be disqualified either permanently

permanently or for such period as the court specifies from holding a certificate of registration under this Act, and upon the making of such order such certificate of registration shall thereafter be deemed and taken to be cancelled.

Appeal.

61. (1) Where the court refuses any application under section fifty-seven, or makes an order under section sixty of this Act, the person making the application or the real estate salesman, as the case may be, may appeal in accordance with the rules of court of the District Court to the District Court exercising jurisdiction in the district within which the court refusing such application or making such order is situated.

(2) Every such appeal shall be in the nature of a rehearing.

(3) Notice of appeal shall be given to such persons as may be prescribed by rules of court of the District Court, or as the District Court may direct.

(4) (a) An appeal shall lie to the Supreme Court either by special case or upon notice of motion against any ruling, order, direction or decision of the District Court in point of law or upon the admission or rejection of any evidence.

(b) The provisions of Part VI of the District Courts Act, 1912-1936, shall, mutatis mutandis, extend to and in respect of any such appeal.

For the purposes of such extension the word "party" where used in that Part shall be deemed to include any of the following persons—

(i) the person making the application or the real estate salesman, as the case may be;

(ii) the officer in charge of police who objected to the grant of the application—in any case where the appeal is in proceedings arising out of an application to the granting of which such officer in charge of police had objected;

(iii) the member of the police force who made the complaint—in any case where the appeal is in proceedings arising out of a complaint made by him under section sixty of this Act;

(iv) the council—in any case where the appeal is in proceedings arising out of an application to the granting of which the council had objected, or out of a complaint made by the council under section sixty of this Act.

62. Every real estate salesman shall, on demand, produce his certificate of registration to any member of the police force of or above the rank of sergeant, or to any person with whom such real estate salesman is transacting or attempting to transact any business as a real estate salesman.

Production of certificate of registration.

cf. Act No. 7, 1935, s. 36.

63. Any real estate salesman who lets out, hires or lends any certificate of registration held by him to any other person or permits any other person to use his certificate of registration shall be guilty of an offence against this Act, and on conviction for such offence, and in addition to any penalty therefor, any certificate of registration held by him shall thereupon become absolutely void and shall be delivered up to the court and cancelled.

Real estate salesman not to lend certificate of registration.

cf. *Ibid.* s. 37.

PART V.

Amendment of the Business Agents Act, 1935.

64. (1) The Business Agents Act, 1935, is amended—

Amendment of Act No. 7, 1935.

(a) by inserting in section two at the end of the definition of "auctioneer" the words "or an auctioneer's license under the Auctioneers, Stock and Station and Real Estate Agents Act, 1941";

Sec. 2. (Definitions.)

(b) by inserting in subparagraph (iii) of paragraph (a) of subsection two of section three after the words "subsequent Acts" the words "or under the Auctioneers, Stock and Station and Real Estate Agents Act, 1941";

Sec. 3. (Act not to apply to certain persons.)

(c) by omitting from subsection eleven of section seven all words after the words "issue the license" and by inserting in lieu thereof the following words:—

Sec. 7. (Application for license—bond.)

The fidelity bond shall be a bond in the prescribed form in the penal sum of five hundred pounds

pounds in the case of an individual or partnership or in the penal sum of one thousand pounds in the case of a corporation from the Colonial Treasurer, acting under the powers and authorities conferred by the Government Insurance Act, 1927-1941, or from some insurance company or person approved for the purpose by the Minister, conditioned for duly accounting to the persons entitled thereto for any trust funds received by the holder of the business agent's license or by the partnership in which he is a partner or by the corporation on whose behalf he holds the license, as the case may be, in the course of his or its business as a business agent:

Provided that where security approved by the Minister for the payment of an amount equal to the appropriate penal sum (which security shall be in addition to the bond hereinafter referred to) has been given to the Minister, the Minister may, in lieu of the bond referred to in the foregoing provisions of this subsection, accept a bond similarly conditioned from the licensee or from the members of the partnership in which the licensee is a partner or from the corporation on whose behalf the license is held.

(d) (i) by inserting in section nine after the words "subsequent Acts" the words "or under the Auctioneers, Stock and Station and Real Estate Agents Act, 1941"; Sec. 9. (License fee.)

(ii) by omitting from paragraph (ii) of the proviso to the same section the words "an auctioneer's district license" and by inserting in lieu thereof the words "any other license under that Act";

(e) (i) by inserting at the end of paragraph (a) of subsection one of section twenty-five the words "disqualified under the Auctioneers, Stock and Station and Real Estate Agents Act, 1941, from holding any license under that Act; or"; Sec. 25. (Certain persons not to be employed.)

(ii)

(ii) by inserting in paragraph (b) of the same subsection after the words "for the time being in force" the words "or for any license under the Auctioneers, Stock and Station and Real Estate Agents Act, 1941";

(f) by inserting next after section twenty-six the following new section:— New sec. 26A.

26A. (1) (a) Any fidelity bond given pursuant to this Act may be terminated by the Colonial Treasurer or the insurance company or surety, as the case may be, by notice in writing served personally or by post upon the licensee concerned, the Registrar-General and the clerk of the court by which the license was issued. Power to terminate bond.

(b) Such notice shall specify the date (not being earlier than thirty days after the date of the service of the notices) upon which the bond is to be terminated.

(c) The obligation of the Colonial Treasurer or the insurance company or surety, as the case may be, shall, as from the date so specified, be determined so far as it relates to transactions by the business agent, or by the partnership in which he is a partner, or by the corporation on whose behalf he holds the license, as the case may be, after such specified date, other than the duly accounting to the persons entitled thereto for any trust funds received by the licensee or by the partnership in which he is a partner or by the corporation on whose behalf he holds the license, as the case may be, before such specified date.

(2) If the bond given in respect of any business agent is terminated or if the obligation thereof is discharged during the period for which the license held by the business agent is in force, then, as from the date of such termination or discharge, and until a further bond has been lodged and is still subsisting, the license held by such business agent shall be suspended.

(g)

(g) by omitting subsection three of section twenty-seven and by inserting in lieu thereof the following subsection:— Sec. 27. (Inspection of bond and power to sue thereon.)

(3) Any such action shall be taken within two years after the date upon which the cause of such action arises.

(2) The amendments made by subsection one of this section shall not operate to release any party or surety to any bond given under the Business Agents Act, 1935.

(3) The Business Agents Act, 1935, as amended by this Act, may be cited as the Business Agents Act, 1935-1941.

(4) (a) The Government Insurance Act, 1927-1930, is amended by inserting next after paragraph (f) of section two the following new paragraph:— Amendment of Act No. 18, 1927.

(f1) to undertake and carry on all classes of insurance business under the Business Agents Act, 1935-1941.

(b) The Government Insurance Act, 1927-1930, as amended by subsequent Acts, including this Act, may be cited as the Government Insurance Act, 1927-1941.

PART VI.

The Auctioneers, Stock and Station and Real Estate Agents Fidelity Guarantee Fund.

65. (1) There shall be a fund called the Auctioneers, Stock and Station and Real Estate Agents Fidelity Guarantee Fund. The fund. Act No. 22, 1898, s. 46.

(2) The fund shall be the property of the council and shall be applied for the purposes set out in this Part.

66. All moneys belonging to the fund shall, pending the investment or application thereof, be paid into a bank in New South Wales to the credit of a separate account to be called the "Auctioneers, Stock and Station and Separate bank account, *Ibid.* s. 47.

and Real Estate Agents Fidelity Guarantee Account" and such account shall be operated upon in such manner as the council shall from time to time determine.

Moneys of the fund.

67. The fund shall consist of—

(a) all sums paid by way of contribution or levy by licensees in accordance with this Act; Act No. 22, 1898, s. 48.

(b) the interest from time to time accruing from the investment of the fund;

(c) the prescribed fees paid under subsection three of section twenty-five of this Act;

(d) any other moneys that may be lawfully paid into the fund.

Expenditure. *Ibid.* s. 49.

68. (1) There shall from time to time be paid out of the fund as required and in such order as the council deems proper—

(a) all legal expenses in connection with claims made against the fund or the council in respect of the fund or otherwise incurred in relation to the fund;

(b) the amount of all claims, including costs, allowed or established against the council in respect of the fund as provided in this Act;

(c) all refunds made to licensees or their personal representatives pursuant to this Act;

(d) the expenses involved in the administration of the fund including allowances to members of the council;

(e) the expenses incurred by the council in or in relation to appearances before courts of petty sessions with respect to applications for licenses or renewals or variations or cancellations of licenses under this Act;

(f) such amount as the Governor may determine in respect of remuneration or allowances payable to the registrar;

(g) any other moneys payable out of the fund in accordance with any of the provisions of this Act.

(2)

(2) The amounts payable under paragraph (f) of subsection one of this section shall be paid to the Colonial Treasurer to be carried by him to the Consolidated Revenue Fund.

Audit. Act No. 22, 1898, s. 50.

69. The accounts of the fund shall be audited annually by an accountant approved by the Minister and appointed for the purpose by the council.

Administration of fund.

70. The fund shall be administered by the council.

Contributions to fund. *Ibid.* s. 52.

71. (1) A contribution to the fund of three pounds shall, subject to this section, be paid annually by every licensee.

Where a person holds more than one class of license only one contribution shall be payable by him under this section in respect of all such licenses.

Where a corporation holds licenses taken out by it in respect of employees a separate contribution shall be payable in respect of each such license, and such contribution shall be in addition to the contribution in respect of the license held by the corporation on its own behalf.

(2) Such contributions shall be in addition to any fees prescribed.

(3) Where a person has paid by way of contributions or where a corporation has paid by way of contributions in respect of the license held on its own behalf and in respect of any license held by it in respect of an employee an amount of not less than nine pounds, and no claim has been made, or, if made, has been sustained against the fund in respect of such person or of such corporation or employee, as the case may be, and no refund of such contributions has been made under section eighty-two of this Act, such person shall not be required to pay any further amount by way of contributions under this section, and such corporation shall not be required to pay any further amount by way of contributions under this section in respect of the license held on its own behalf or of the license held in respect of such employee.

Levies. cf. *Ibid.* ss. 53 & 54.

72. (1) If at any time or times the fund is, in the opinion of the council, not sufficient to satisfy the liabilities of the council in relation thereto, the council may, subject

subject as hereinafter provided, by resolution, impose on every licensee, for payment into the fund, a levy of such amount as the council thinks fit not exceeding two pounds in any one year.

(2) The amount of the levy shall become payable on a date and in a manner to be fixed by the council. The council may, in any special case, allow time for the payment of any levy or part thereof.

(3) If a licensee does not, after the prescribed notice, pay any levy, the council shall report to the registrar that such licensee has not paid the levy.

The registrar shall make due record of the fact in the register and so long as the levy remains unpaid the licensee shall be deemed not to be the holder of a license under this Act.

(4) For the purposes of this section a corporation which has taken out a license or licenses in respect of an employee or employees shall be deemed to be a separate licensee under each such license.

Council may invest funds. cf. Act No. 22, 1898, s. 55.

73. Any moneys in the fund which are not immediately required for the purposes of the fund may be invested in any manner in which trustees are for the time being authorised to invest trust funds, or on deposit for such period not exceeding two years as the council deems proper with any bank or corporation prescribed by the rules of court as a bank or corporation to which trust moneys may be paid under section fifteen of the Trustee Act, 1925-1940.

Application of fund. cf. *Ibid.* s. 56.

74. (1) Subject to the provisions of this Act, the fund shall be held and applied for the purpose of reimbursing persons who may suffer pecuniary loss by reason of the theft or fraudulent misapplication by a licensee of any money or other valuable property intrusted to him or to his employee in the course of his business as an auctioneer or a stock and station agent or a real estate agent.

(2) No person shall have any claim against the fund in respect of any theft or fraudulent misapplication committed before the commencement of this Act.

(3)

(3) In respect of any theft or fraudulent misapplication that may be committed after such commencement no person shall have a claim against the fund unless notice of such theft or fraudulent misapplication is given in writing to the council as soon as reasonably practicable after the claimant has become aware of the theft or fraudulent misapplication but in any event within a period of six months after having become so aware, or within a period of two years from the date of the commission of such theft or misapplication, whichever is the shorter period.

(4) No person shall be entitled to claim against the fund in respect of any loss through such theft or fraudulent misapplication unless and until there shall have been a conviction of such licensee for such theft or fraudulent misapplication unless the Supreme Court or a judge thereof, for reasons which to such court or judge, shall be good and sufficient, shall have by an order certified that the person claiming to have suffered loss should be permitted to claim against the fund notwithstanding that such licensee has not been convicted in respect of such theft or fraudulent misapplication.

Claims against the fund.

cf. Act No. 22, 1898, s. 57.

75. (1) The council may receive and settle any claim against the fund at any time after the commission of the theft or fraudulent misapplication in respect of which the claim arose but no person shall be entitled, without the leave of the council, to commence any action in relation to the fund unless the council shall have disallowed his claim, and unless and until the claimant has exhausted all relevant rights of action and other legal remedies available against the defaulting licensee or any other person in respect of the loss suffered by him.

(2) No person shall be entitled to recover from the council out of the fund by action as aforesaid an amount greater than the balance of the loss suffered by him after deducting from the total amount of such loss the amount or value of all moneys or other benefits received or recovered or which in the opinion of the council might, but for his neglect or default, have been received or recovered by him from any source other than the fund in reduction of such loss.

(3)

(3) The total amount which any person shall be entitled to recover from the fund shall not in any case or in any event exceed five hundred pounds.

(4) The aggregate sum which may be applied in the reimbursement of all persons who suffer loss through theft or fraudulent misapplication by the same licensee shall not in any case or in any event exceed the sum of five hundred pounds.

(5) No amount shall be paid or be payable out of the fund as interest on the amount of any judgment obtained or of any claim allowed against the fund.

Advertisement relating to defaulting licensee and claims. cf. Act No. 22, 1898, s. 58.

76. The council may cause to be published a notice, in or to the effect of the prescribed form, in a newspaper published and circulating in the district in which the defaulting licensee, being an auctioneer, is or was residing, or being a stock and station agent or a real estate agent, is or was carrying on business, and also in a daily newspaper published and circulating in Sydney, and such notice shall fix a date not being earlier than three months after the publication, or the first publication, as the case may be, within which claims must be made.

Any claim not made in writing on or before the date so fixed shall be barred unless the council otherwise determines.

Council may distribute. cf. *Ibid.* s. 59.

77. After the date so fixed the council shall be at liberty to distribute the sum from time to time available to be applied in reimbursement under section seventy-five of this Act having regard only to judgments obtained and claims allowed against the fund.

Defences. *Ibid.* s. 60.

78. Any proceedings brought against the council in relation to any claim upon the fund shall be by action at law in the Supreme Court as for a debt due by the council, and in any such action all defences which would have been available to the licensee in relation to whom the claim arose shall be available to the council, and in any such action all questions of costs shall be in the discretion of the Court or the presiding judge.

Subrogation. *Ibid.* s. 61.

79. On payment out of the fund of moneys in settlement in whole or in part of any claim under this Act, the council

council shall be subrogated, to the extent of such payment, to all the rights and remedies of the claimant against the licensee in relation to whom the claim arose, or any other person.

Council may require production, etc., of documents. Act No. 22, 1898, s. 62.

80. The council may at any time and from time to time require production and delivery up of securities and documents necessary to support any claim made, or available for that purpose, or for the purpose of exercising its rights against any defaulting licensee and may in default of delivery up of any such securities or documents reject any claim.

Insufficiency of fund. *Ibid.* s. 63.

81. (1) No moneys or other property belonging to the council, other than the fund, shall be available for the satisfaction of any judgment obtained against the council in relation to the fund, or for the payment of any claim allowed by the council; and if at any time the fund is not sufficient to provide for the satisfaction of all such judgments and claims, they shall (subject to the limitations fixed by this Act) to the extent to which they are not so satisfied, be satisfied out of future accumulations of the fund.

(2) No proceedings based upon the enforcement of any such judgment shall be taken without leave of the Supreme Court.

(3) Where the total amount of the judgments obtained and claims allowed exceeds the aggregate sum which may be applied in reimbursement under section seventy-five of this Act, the council may, in its uncontrolled discretion, determine the division and allocation amongst the claimants respectively or any one or more of them, exclusively of the other or others of them, of the moneys for the time being payable out of the fund.

Refund to representative of deceased agent or retiring agent. cf. *Ibid.* s. 64.

82. In the event of the death or on the retirement from business of any licensee (being an individual) in respect of whom no claim has been made under this Act, or if any such claim has been made, in respect of whom such claim has not been sustained, the council may, in its discretion, pay to him or to his personal representatives, as the case may be, a sum not exceeding the aggregate amount of his contributions to the fund.

83.

83. (1) For the purpose of safeguarding the fund the council may at any time and from time to time appoint an accountant to examine the trust accounts of any licensee specified in the appointment and to furnish to the council a confidential report as to any irregularity or alleged or suspected irregularity in the accounts of such licensee that may be disclosed by such examination, or as to any other matter that in the opinion of such accountant should, in the interest of the fund, be further investigated. Examination of account. Act No. 22, 1938, s. 65.

A copy of the report shall forthwith be sent by post by the council to the licensee concerned.

(2) Every appointment made under this section shall be subject to the approval of the Prothonotary and shall be in writing signed by the chairman or two members of the council.

(3) Upon production by such accountant of the instrument of his appointment as aforesaid, he may require the licensee in respect of whom the appointment has been made, or in the absence of such licensee, any servant or agent of such licensee having the apparent control or charge for the time being of the office or business of such licensee to produce to the accountant and any assistant of the accountant all books, papers, accounts, securities or other documents relating to the business or accounts of such licensee, so far as the same relate to the trust accounts of such licensee, and to give all information in relation thereto and to furnish all authorities and orders to bankers and others that may be reasonably required of him or them, and if any such person without lawful justification or excuse, the proof whereof shall lie on him, refuses or fails so to do, or otherwise hinders, obstructs or delays the accountant in the performance of his duties or the exercise of his powers under this section, he shall be guilty of an offence against this Act.

(4) No accountant appointed to make any examination of accounts for the purposes of this section shall communicate that fact or any matter which may come to his knowledge in the course of the examination to any person except in the course of his report to the council.

No

No assistant of any such accountant shall communicate the fact of the appointment of such accountant or any matter which may come to his knowledge in the course of the examination to any person except to the accountant appointed to make the examination, or if so required, to the council.

(5) It shall not be lawful for any member of the council or any of its officers to publish, except to the court before which proceedings relating to the renewal, variation or cancellation of the license of the licensee are pending, any information disclosed in such report.

(6) Any person who commits a breach of any of the provisions of this section shall, in addition to any other proceedings, penalty or punishment to which he may be liable be guilty of an offence against this Act.

PART VII.

General.

Offences in connection with the sale of allotments of land.

84. (1) Any real estate agent or real estate dealer or any partner or employee of a real estate agent or real estate dealer shall be guilty of an offence against this Act if with the intention of inducing a prospective purchaser to buy an allotment of land or any interest in an allotment of land—

(a) he makes any false representation; or

(b) he states that he or some other person named by him will buy, at a profit to be received in the future by such prospective purchaser, the said allotment of land or any part thereof or any interest therein or any other land or chattel owned by the prospective purchaser; or

(c) he states that he or some other person named by him will at some future time obtain for the prospective purchaser a profit on the sale of such allotment of land or any part thereof or any interest therein.

(2)

(2) Any real estate agent or any partner or employee of a real estate agent shall be guilty of an offence against this Act if while the real estate agent is retained by any person as agent for the sale of any allotment of land at a stipulated price he, either on his own behalf of on behalf of some person other than the person by whom such agent is so retained, negotiates for or arranges the sale of such allotment of land at a price higher than such stipulated price.

(3) If any person is charged with an offence against this Act by reason of a contravention of paragraph (a) of subsection one of this section, it shall be a sufficient defence if the person charged proves—

(a) that he had reasonable grounds for believing and did in fact believe that the representation was true; and

(b) that otherwise he acted innocently.

Construction of certain agreements.

85. No term or provision of any agreement (whether entered into before or after the commencement of this Act) for the sale and purchase of an allotment of land or any interest therein shall be so construed as to prevent the purchaser from claiming or being awarded damages or any other relief in respect of any fraudulent misrepresentation in connection with the sale and purchase of such allotment of land or interest therein.

Furnishing incorrect particulars in applications. cf. Act No. 7, 1935, s. 39.

86. (1) Any person who in any application made pursuant to this Act makes any statement which is not correct or furnishes any particulars which are not correct or omits to furnish any particulars required to be furnished by or under this Act shall be guilty of an offence against this Act and shall be liable to a penalty not exceeding fifty pounds.

(2) If any person is charged with an offence against this Act by reason of any contravention of subsection one of this section, it shall be a sufficient defence if the person charged proves—

(a) where the charge relates to the making of a statement that is not correct or to the furnishing of particulars which are not correct—that he had

had reasonable grounds for believing and did in fact believe that the statement made or the particulars furnished were correct;

(b) where the charge relates to the omission to furnish particulars—that the omission was not made with intent to evade the requirements of this Act or, that he had reasonable grounds for believing and did in fact believe that he had furnished all particulars required to be furnished by or under this Act.

Offences against Act. Act No. 7, 1935, s. 40.

87. (1) Every person who commits any contravention of or fails to comply with any of the provisions of this Act shall be guilty of an offence against this Act.

(2) Where no penalty is specially provided for any offence against this Act any person guilty of such offence shall be liable, if a corporation, to a penalty not exceeding four hundred pounds, and, if an individual, to a penalty not exceeding two hundred pounds or to imprisonment for a period not exceeding two years or to both such penalty and imprisonment.

(3) Where any person is convicted of an offence against this Act the court may, in addition to any penalty or imprisonment imposed, order that the license or licenses (if any) or the certificate of registration (if any) held by such person be delivered up and cancelled, whereupon such license or licenses or certificate of registration shall thereafter be deemed and taken to be cancelled and/or that such person be disqualified, for such period as the court may think fit, from holding any license or certificate of registration under this Act.

(4) Any penalty imposed by this Act or by the regulations may be recovered in a summary manner in a court of petty sessions holden before a stipendiary or police magistrate.

(5) Where two or more persons commit or knowingly authorise or permit the commission of any offence against this Act each of such persons shall be liable therefor and the liability of each of them shall be independent of the liability of the other or others.

88. Without affecting the generality of the provisions of the Crimes Act, 1900, as amended by subsequent Acts, any licensee who— Wrongful conversion and false accounts. cf. Act No. 7, 1935, s. 20.

(a) fraudulently converts to his own use—

(i) any moneys received by him on behalf of any person in respect of any transaction in his capacity as an auctioneer or a stock and station agent or a real estate agent; or

(ii) any moneys so received which are held by him as a stakeholder or in trust pending the completion of any transaction,

or any part of any such moneys; or

(b) fraudulently omits to account for, deliver or pay—

(i) any such moneys received by him as aforesaid on behalf of any person or any part thereof to such person; or

(ii) any such moneys received by him as aforesaid which are or were held by him as a stakeholder or in trust as aforesaid pending the completion of the transaction or any part of such moneys to the person or persons entitled to such moneys; or

(c) fraudulently renders an account—

(i) of any moneys received by him as aforesaid on behalf of any person or any part of such moneys; or

(ii) of any moneys received by him as aforesaid which are or were held by him as a stakeholder or in trust pending the completion of any transaction or any part of such moneys; or

(iii) of expenses, commission or other charges incidental to any transaction or proposed or contemplated transaction as an auctioneer, or a stock and station agent or a real estate agent,

knowing such account to be false in any material particular,

shall

shall be guilty of a misdemeanour and shall be liable to imprisonment for a term of not more than ten years.

Facilitation of proof. cf. Act No. 7, 1935, s. 26.

89. When in any proceedings under this Act or the regulations against any person it is alleged in the information that such person is not the holder of a license of the class specified in the allegation, or, as the case may be, is not the holder of a certificate of registration, it shall, in the absence of proof to the contrary, be presumed that such person is not the holder of a license or of a certificate of registration, as the case may be.

Civil remedy not affected by proceedings for an offence. *Ibid.* s. 29.

90. Notwithstanding any proceedings against any person for an offence against this Act (whether resulting in a conviction or otherwise) such person shall remain liable to all civil proceedings in like manner as if the proceedings for an offence had not been taken.

Corporations.

91. (1) Exccept where special provision is made to the contrary, a corporation shall be liable for any offence against this Act as if such corporation were an individual and shall be subject to the same pecuniary penalties as if it were an individual.

(2) Where any act which by this Act is declared to be an offence and which is committed by a body corporate is proved to have been committed with the consent or approval of any director, manager, secretary or other officer of the body corporate, he, as well as the body corporate, shall be deemed to be guilty of the offence, and he may be proceeded against and shall be liable to the pecuniary penalty or imprisonment or both provided by this Act in the case of an offence by a person who is not a corporation.

Regulations.

92. (1) The Governor may make regulations not inconsistent with this Act prescribing all matters which by this Act are required or permitted to be prescribed or which are necessary or convenient to be prescribed for carrying out or giving effect to this Act.

(2) Without prejudice to the generality of the power conferred by subsection one of this section the Governor may, in and by the regulations—

(a) prescribe any forms to be used under this Act;

(b)

(b) prescribe the procedure to be followed on applications and other proceedings under this Act;

(c) prescribe the method of election of members of the council;

(d) prescribe the procedure to be followed at meetings of the council;

(e) prescribe the duties and functions of the registrar.

(3) The regulations may prescribe penalties not exceeding ten pounds for any breach thereof.

(4) All regulations shall—

(a) be published in the Gazette;

(b) take effect from the date of publication or from a later date to be specified in the regulations; and

(c) be laid before both Houses of Parliament within fourteen sitting days after the publication thereof if Parliament is then in session, and, if not, then within fourteen sitting days after the commencement of the next session.

If either House of Parliament passes a resolution of which notice has been given at any time within fifteen sitting days after such regulations have been laid before such House disallowing any regulation or part thereof, such regulation or part shall thereupon cease to have effect.

SCHEDULE. Sec. 5.

Auctioneers' Licensing Act, 1898, No. 24.

Auctioneers Licensing (Amendment) Act, 1924, No. 28.

Auctioneers Licensing (Amendment) Act, 1925, No. 9.

Auctioneers Licensing (Amendment) Act, 1934, No. 44.

Sydney: Thomas Henry Tennant, Government Printer—1941.

[3*s*. 9*d*.]

No. , 1941.

A BILL

To provide for the licensing of auctioneers, stock and station agents and real estate agents, and for the regulation of their operations; to make provision for the constitution of a council of the auctioneers, stock and station agents and real estate agents; to make provision for the control and regulation of real estate dealers and real estate salesmen; to repeal the Auctioneers' Licensing Act, 1898, and certain other Acts; to amend the Business Agents Act, 1935, and certain other Acts in certain respects; and for purposes connected therewith.

[MR. TREATT;—27 *February*, 1941.]

65579 429—A BE

Auctioneers, Stock and Station and Real Estate Agents (No. 2).

BE it enacted by the King's Most Excellent Majesty, by and with the advice and consent of the Legislative Council and Legislative Assembly of New South Wales in Parliament assembled, and by the authority of the same, as follows :—

PART I.

Preliminary.

Short title.

1. (1) This Act may be cited as the "Auctioneers, Stock and Station and Real Estate Agents Act, 1941."

(2) This Act shall commence on a day to be appointed by the Governor and notified by proclamation published in the Gazette.

Division into Parts.

2. This Act is divided into Parts as follows:—

PART I.—Preliminary—*ss.* 1–5.

PART II.—The Council of the Auctioneers, Stock and Station Agents and Real Estate Agents—*ss.* 6–19.

PART III.—Auctioneers, Stock and Station Agents and Real Estate Agents—*ss.* 20–53.

Division 1.—*Licenses*—*ss.* 20–32.

Division 2.—*Licensees generally*—*ss.* 33–45.

Division 3.—*Auctioneers*—*ss.* 46–52.

Division 4.—*Real Estate Agents*—*s.* 53.

PART IV.—Real Estate Dealers and Real Estate Salesmen—*ss.* 54–66.

Division 1.—*Real Estate Dealers*—*ss.* 54–58.

Division 2.—*Real Estate Salesmen*—*ss.* 59–66.

PART V.—Amendment of Business Agents Act, 1935—*s.* 67.

PART VI.—General—*ss.* 68–77.

SCHEDULE.

Definitions.

3. In this Act, unless the context otherwise indicates or requires—

"Allotment of land" means a parcel of land offered for sale as suitable or intended wholly or mainly for residential or retail commercial trade purposes but on which no building suitable for human occupation is erected.

"Auctioneer"

"Auctioneer" means any person who exercises the trade or business of an auctioneer or seller by commission at any auction sale or who sells or attempts to sell or offer for sale or resale any estate, goods or effects by way of auction.

"Auction sale," "sale by auction," "sell by way of auction," and expressions of a similar character mean the selling of any estate, goods, or effects whatsoever by outcry, by what is known as Dutch auction, by knocking-down of hammer, candle, lot, parcel, instrument, machine, or by 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 whereby there is a competition for the purchase of any estate, goods, or effects whatsoever in any way commonly known and understood to be by way of auction, and shall be deemed to include the selling by outcry or in any other manner before mentioned in any public place or in any room, or mart, or place to which the public are admitted or have access, whether or not the sale has been advertised to take place. cf. Act No. 44, 1936, s. 4.

"Council" means the council of the auctioneers, stock and station agents and real estate agents constituted under this Act.

"Employee" includes any person employed whether on salary, wages, bonus, commission, fees, allowance or other remuneration.

"Individual" means a natural person and does not include a corporation.

"License" means a license issued under this Act.

"Licensee" means the holder, whether on his own behalf or on behalf of a corporation, of any license issued under this Act and, in Divisions 2, 3 and 4 of Part III of this Act, includes a corporation on behalf of which any person has taken out a license.

"Live

"Live stock" means horses, cattle, asses, mules, sheep, swine, camels or goats.

"Prescribed" means prescribed by this Act or the regulations.

"Real estate agent" means a person (whether or not such person carries on any other business) who for reward (whether monetary or otherwise) carries on business as an agent for—

(a) the sale, purchase, exchange, letting or taking on lease of land, other than land used for agricultural or pastoral purposes; or

(b) the collection of rents payable in respect of any lease or letting of land other than land used for agricultural or pastoral purposes.

"Real estate dealer" means a person (whether or not such person carries on any other business) who, not being the holder of a license as a real estate agent, carries on the business of the selling, as owner, of land in allotments.

"Real estate salesman" means a person who, for or on behalf of any real estate agent or real estate dealer, induces or attempts to induce or negotiates with a view to inducing any person—

(a) to buy, sell or otherwise dispose of any land; or

(b) to make any offer to buy, sell or otherwise dispose of any land; or

(c) to accept any offer to buy, sell or otherwise dispose of any land; or

(d) to enter into any contract for the purchase, sale or other disposal of any land.

"Registrar" means the registrar appointed under this Act.

"Regulations" means regulations made under this Act.

"Stock

"Stock and station agent" means a person (whether or not such person carries on any other business) who, for reward (whether monetary or otherwise), carries on business as an agent for—

(a) the sale, purchase, exchange, letting or taking on lease of land used for agricultural or pastoral purposes;

(b) the collection of rents payable in respect of any lease or letting of land used for agricultural or pastoral purposes;

(c) the sale, purchase or exchange of live stock;

(d) the provision of agistment for live stock or the collection of fees for such agistment.

Act not to apply to any Government department, etc.

cf. Act No. 7, 1935, s. 3.

4. (1) This Act shall not be construed as requiring—

(a) any Minister of the Crown whether a Minister of the State of New South Wales or of the Commonwealth of Australia; or

(b) any Government department of the said State or Commonwealth (including the Rural Bank of New South Wales and any statutory corporation representing the Crown); or

(c) the Municipal Council of Sydney or any council within the meaning of the Local Government Act, 1919; or

(d) any public statutory authority prescribed by the regulations; or

(e) any officer or employee of the Crown or of any such Minister, department, corporation, council or authority in the exercise of his functions as such officer or employee,

to hold a license under this Act.

(2) Nothing in this Act shall be construed—

(a) as requiring—

(i) the Public Trustee or any executor, administrator, trustee, liquidator, official receiver, master in equity or in lunacy, trustee in bankruptcy of a bankrupt's estate,

estate, trustee under a composition or scheme of arrangement or under a deed of arrangement or under a deed of assignment, mortgagee, committee of the estate of an insane person, manager of the property of an incapable person, or receiver, for the purpose of performing his functions, exercising his powers or carrying out his duties as such; or

(ii) any person for the purposes of any sale made of Crown lands or other Crown property or for the purposes of any sale of any property made by virtue of any writ or process issued out of any Court or made in obedience to any process issued by any Court or judge or justice for the recovery of any fine, penalty or award, or under any rule, order or decree of any competent Court or made pursuant to the Impounding Act, 1898,

to hold a license under this Act:

Provided that notwithstanding anything in this paragraph it shall not be lawful for any executor, administrator or trustee of the estate of a deceased auctioneer, stock and station agent or real estate agent, as the case may be, to exercise or carry on the business of the deceased as such executor, administrator or trustee at any time after the expiration of twelve months after the death of the deceased unless such executor, administrator or trustee holds a license under this Act; or

Vict. Act No. 4,117, s. 6.

(b) as prohibiting any person for the time being entitled to practise as a solicitor from performing any function, exercising any power or carrying out any duty which if this Act had not been passed he might lawfully have performed, exercised or carried out as such solicitor; or

(c) as rendering any such person liable to any proceedings or to any penalty for performing any such function or exercising any such power or carrying out any such duty; or

(d)

(d) (without affecting the generality of the foregoing provisions of this subsection) as requiring any trustee company to hold a license under this Act or otherwise comply with its provisions in respect of any business lawfully carried on by such trustee company.

(3) Nothing in this Act shall be construed as relieving any person from the obligation to take out a license from any Department of the Government or under any Act (other than this Act) for the performance of any function the exercise of any power or the carrying out of any duty for which a license would have been required if this Act had not been passed or to pay the fees payable in respect of any such license.

Act not to apply to sale at appeal for support of a charity.

(4) This Act shall not apply to a sale by auction made for the purposes of or in the course of an appeal for support of a charity where such appeal for support is made under and in accordance with the provisions of the Charitable Collections Act, 1934, and where the gross proceeds of the sale are devoted to the charity or charitable purpose for which the appeal for support is made.

Operation of Auctioneers' Licensing Act, 1898-1934.

5. (1) After the commencement of this Act no license or renewal of license under the Auctioneers' Licensing Act, 1898-1934, shall be granted.

(2) The provisions of the Auctioneers' Licensing Act, 1898-1934, shall, after the commencement of this Act, apply only with respect to licenses issued under that Act and in force immediately before the commencement of this Act, and for that purpose shall continue in force, in relation to any such license, only until such time as such license has expired.

(3) As from the first anniversary of the date of the commencement of this Act, the Acts mentioned in the Schedule to this Act are hereby repealed.

(4) Notwithstanding anything in subsections two and three of this section, every auctioneer shall keep the written record referred to in section eleven of the Auctioneers' Licensing Act, 1898-1934, for a period of not less than three years after the date upon which it was made.

PART

PART II.

The Council of the Auctioneers, Stock and Station Agents and Real Estate Agents.

The council.

6. There shall be constituted a council which shall have and may exercise and perform the powers, authorities, duties and functions conferred and imposed upon the council by or under this Act.

First council.

7. (1) The council first constituted under this Act shall consist of seven members who shall be appointed by the Governor.

(2) Of the members so appointed—

(a) two shall be auctioneers who are holders of auctioneers' licenses under the Auctioneers' Licensing Act, 1898-1934;

(b) two shall be stock and station agents;

(c) two shall be real estate agents;

(d) one shall be a practising solicitor of the Supreme Court of New South Wales.

(3) The members appointed pursuant to paragraphs (a), (b) and (c) of subsection two of this section are in this Act referred to as "appointed members."

The member appointed pursuant to paragraph (d) of subsection two of this section is in this Act referred to as the "official member."

(4) The council shall appoint one of its members to be chairman of the council.

(5) The members of the council first constituted under this Act shall, subject to this Act, hold office until the thirtieth day of June, one thousand nine hundred and forty-two, and shall be eligible for reappointment or for election as members of the council.

(6) (a) If any member of the council appointed pursuant to paragraph (a) of subsection two of this section neglects or fails to take out a license under this Act (whether on his own behalf or on behalf of a corporation) as an auctioneer, upon the expiration of the license held by him under the Auctioneers' Licensing Act, 1898-1934, he shall be deemed to have vacated his office on the day upon which such license expired.

(b)

(b) If any member of the council appointed pursuant to paragraph (b) or paragraph (c) of subsection two of this section neglects or fails to take out a license under this Act (whether on his own behalf or on behalf of a corporation) as a stock and station agent or as a real estate agent, as the case may be, within a period of three months from the commencement of this Act, he shall, upon the expiration of that period, be deemed to have vacated his office.

(7) Where any vacancy occurs in the office of a member of the council first constituted under this Act the Governor may appoint a person to the vacant office.

Constitution of subsequent councils.

8. (1) On and from the first day of July, one thousand nine hundred and forty-two, the council shall consist of seven members, of whom six shall be elected members and one shall be an official member.

(2) (a) The elected members shall be elected as provided in this section.

(b) Of the elected members—

(i) two shall be auctioneers;

(ii) two shall be stock and station agents;

(iii) two shall be real estate agents.

(3) The official member shall be appointed by the Governor and shall be a practising solicitor of the Supreme Court of New South Wales.

(4) (a) The council shall cause separate rolls to be prepared and revised in the prescribed manner of—

(i) auctioneers;

(ii) stock and station agents;

(iii) real estate agents.

(b) Any person shall be eligible for enrolment—

(i) on the roll of auctioneers, if he holds an auctioneer's license;

(ii) on the roll of stock and station agents, if he holds a stock and station agent's license;

(iii) on the roll of real estate agents, if he holds a real estate agent's license:

Provided that if any person possesses the qualification for enrolment on more than one such roll he shall be

be eligible for enrolment on only one such roll; and any such person may, by instrument in writing addressed to the council, elect on which such roll he shall be enrolled.

(c) No person shall be qualified to vote at an election of, or to become a candidate for election as, a member of the council—

(i) as an auctioneer—unless his name is on the roll of auctioneers;

(ii) as a stock and station agent—unless his name is on the roll of stock and station agents;

(iii) as a real estate agent—unless his name is on the roll of real estate agents.

(5) Elections of elected members shall be held during the month of May in the year one thousand nine hundred and forty-two, and in each third year thereafter.

The persons elected at any such election shall assume office as elected members on the first day of July next after their election, and, subject to this Act, shall hold office for a period of three years and shall be eligible for re-election.

(6) All elections of elected members shall be held and conducted in the manner prescribed.

(7) The council shall appoint one of its members to be chairman of the council.

Vacation of office.

9. A member of the council shall be deemed to have vacated his office if—

(a) he becomes bankrupt within the meaning of the law in force for the time being relating to bankruptcy or compounds with his creditors; or

(b) he becomes an insane person or patient or an incapable person within the meaning of the Lunacy Act of 1898; or

(c) he is absent from three consecutive ordinary meetings of the council without leave granted by the council; or

(d) he dies; or

(e) he resigns his office by writing under his hand delivered to the registrar; or

(f)

(f) he is removed from office by the Governor; or

(g) being an elected member, his license is suspended or cancelled or he neglects or fails to renew the same upon its expiry.

Removal of member.

10. The Governor may, for any cause which appears to him to be sufficient, remove any member of the council from office.

Filling of vacancy.

11. Where a vacancy occurs in the office of an elected member the vacancy shall be filled by appointment by the council of a person whose name is on the same roll as the person in whose office the vacancy occurred.

Any person appointed to fill a vacancy shall hold office for the residue of the term for which his predecessor was elected and shall, for the purposes of this Act, be deemed to be an elected member.

Deputies.

12. (1) If a member of the council (other than the official member) is, through illness or any other just cause, likely to be absent from meetings of the council for more than three months, such member may appoint a deputy (who shall have the same qualification as the member making the appointment) to act for such member during such absence.

(2) If the official member is, through illness or any other just cause, likely to be absent from meetings of the council for more than three months, such official member may, with the consent of the Governor, appoint a deputy (who shall be a practising solicitor of the Supreme Court of New South Wales) to act during his absence.

(3) Any deputy appointed under this section, whilst acting as such deputy, shall have the like powers, authorities, duties and functions as the member for whom he is appointed to act.

Vacancies.

13. In any of the following cases, that is to say—

(a) where no proper election of elected members or of any elected member takes place upon the date appointed for the holding of an election of members; or

(b) where a vacancy occurs in the office of an elected member and such vacancy is not filled within two months after the occurrence thereof,

the

the Governor may appoint to the vacant office or offices such person or persons as are qualified to be elected members of the council and are necessary to constitute the council. Any person so appointed shall, for the purposes of this Act, be deemed to be an elected member.

Fees and expenses.

14. (1) The chairman and members of the council may be paid such fees for services rendered and such travelling and sustenance expenses as are approved by the Governor.

(2) The office of chairman or of member of the council shall not, for the purposes of the Constitution Act, 1902, or the Sydney Corporation Act, 1932-1940, or of any Act amending or replacing those Acts, be deemed to be an office or place of profit under the Crown.

Quorum.

15. (1) Four members shall form a quorum at any meeting of the council.

(2) Any duly convened meeting of the council at which a quorum is present shall be competent to transact the business of the council.

(3) The procedure for the calling of meetings of the council and for the conduct of business at meetings shall, subject to any regulations made in relation thereto, be as determined by the council.

Powers of chairman and casting vote.

16. (1) The chairman shall preside at any meeting of the council at which he is present.

(2) If the chairman is absent from any meeting of the council the members present shall elect one of their number to preside at the meeting.

(3) The chairman or member presiding, as the case may be, shall have a deliberative vote and, if the voting is equal, a second or casting vote.

Registrar.

17. (1) The Governor may, under and subject to the Public Service Act, 1902, as amended by subsequent Acts, appoint a registrar.

(2) The registrar shall have and may exercise and perform the powers, authorities, duties and functions conferred and imposed upon the registrar by or under this Act.

18.

18. (1) No act or proceeding of the council shall be invalidated or prejudiced by reason only of the fact that at the time when such act or proceeding was done, taken or commenced there was a vacancy in the office of any member of the council. Validity of acts and proceedings. cf. Act No. 37, 1938, s. 12.

(2) All acts and proceedings of the council shall, notwithstanding the subsequent discovery of any defect in the appointment or election of any member thereof, or that any member was disqualified to act, be as valid as if such member had been duly appointed or elected, as the case may be, and was qualified to act and had acted as a member of the council, and as if the council had been properly and fully constituted.

19. The council shall each year furnish to the Minister for presentation to Parliament a report giving information as to its work and as to its general decisions in the course thereof. Annual report.

PART III.

Auctioneers, Stock and Station Agents and Real Estate Agents.

Division 1.—*Licenses.*

20. (1) No person shall act as an auctioneer unless he is the holder of an auctioneer's license issued under the Auctioneers' Licensing Act, 1898-1934, or under this Act. No person or partner in a firm to act without a license.

(2) Subject to this Act, from and after the expiration of three months after the commencement of this Act no person (either by himself or as a member of a partnership)—

(a) shall act as or carry on or advertise, notify or state that he acts as or carries on or is willing to act as or carry on the business of a stock and station agent unless he is the holder of a stock and station agent's license;

(b)

(b) shall act as or carry on or advertise, notify or state that he acts as or carries on or is willing to act as or carry on the business of a real estate agent unless he is the holder of a real estate agent's license.

(3) Where a corporation carries on the business of an auctioneer or of a stock and station agent or of a real estate agent, as the case may be, a license shall be taken out by each of the directors or other the members of the governing body of the corporation and each such license shall be so taken out on behalf of the corporation.

Penalty.

(4) Any person who commits any contravention of or fails to comply with any of the provisions of this section shall be guilty of an offence against this Act.

Amendment of Act No. 24, 1898, ss. 3 and 19.

(5) The Auctioneers' Licensing Act, 1898-1934, is amended by omitting sections three and nineteen.

Each separate place of business to be in charge of licensee.

21. (1) (a) No person shall, by virtue of one stock and station agent's license, keep more than one place for the conduct of his business as a stock and station agent.

(b) Where a person (other than a corporation) conducts his business as a stock and station agent at more than one place of business he shall employ at each such place, other than the place at which he is himself in charge, a person holding a stock and station agent's license who shall be in charge at that place.

(c) Where a corporation conducts its business as a stock and station agent at more than one place of business it shall employ at each such place a person who has taken out a license on its behalf, and such person shall be in charge at that place.

(2) (a) No person shall, by virtue of one real estate agent's license, keep more than one place for the conduct of his business as a real estate agent.

(b) Where a person (other than a corporation) conducts his business as a real estate agent at more than one place of business he shall employ at each such place, other than the place at which he is himself in charge, a person holding a real estate agent's license who shall be in charge at that place.

(c)

(c) Where a corporation conducts its business as a real estate agent at more than one place of business it shall employ at each such place a person who has taken out a license on its behalf and such person shall be in charge at that place.

Licenses.

22. (1) A license under this Act shall be one of the following, namely:—

(a) an auctioneer's license; or

(b) a stock and station agent's license; or

(c) a real estate agent's license.

(2) (a) An auctioneer's license shall be either—

(i) a general license which shall be in force for all parts of New South Wales; or

(ii) a district license which shall be in force for the police district only for which the same is taken out; or

(iii) a primary products license which shall be in force only at the market within the metropolitan police district which is specified in the license.

(b) No person shall act as an auctioneer in the metropolitan police district unless he has taken out a general license or unless he has taken out a primary products license and acts as an auctioneer only for the sale of firewood, coal, coke, fish, or any products within the meaning of the Marketing of Primary Products Act, 1927-1938, as amended by subsequent Acts, at the market specified in his license.

(3) A license shall be in the form prescribed and shall set forth the name and place of abode of the person taking out the same, and, where the license is held on behalf of a corporation, the name and the address of the registered office of the corporation.

A stock and station agent's license or a real estate agent's license shall, in addition, set forth the address of the place of business in respect of which it is taken out.

(4) (a) Subject to this Act a license shall be in force for a period of twelve months from the date of its issue:

Provided that a license of any class which is issued to a person who is already the holder of a license of any other

other class shall be in force for a period expiring on the day upon which the license of such other class expires:

Provided further that a license of any class which is issued to a person who is already the holder of a business agent's license under the Business Agents Act, 1935-1941, shall be in force for a period expiring on the day upon which the business agent's license expires.

(b) A license may be renewed and on each renewal shall, subject to this Act, be in force for a further period of twelve months.

(5) An auctioneer shall not be required to hold a license under the Farm Produce Agents Act, 1926-1932, by reason only of the fact that he sells farm produce (as defined in that Act), outside a radius of ten miles from the General Post Office, Sydney, and not within such radius, and so sells only by auction.

Nothing contained in the Farm Produce Agents Act, 1926-1932, shall be construed as exempting any such auctioneer from the obligation to comply with the requirements of this Act.

(6) The Farm Produce Agents Act, 1926-1932, is amended by omitting paragraph (c) of subsection (3A) of section seven. Amendment of Act No. 7, 1926, s. 7. (Consequential.)

23. (1) An application for a license or for the renewal of a license shall be made in triplicate in the form prescribed. Procedure. cf. Act No. 24, 1898, s. 5.

(2) Such application shall—

(a) contain such particulars as are prescribed;

(b) specify the class of license desired by the applicant.

(3) (a) Where the application is for an auctioneer's license and the applicant resides in New South Wales, the application shall be lodged with the clerk of the court of the petty sessions district within which the applicant resides, or, if there is more than one such court, then with the clerk of the court within such district nearest to the place where the applicant resides.

(b) Where the application is for a stock and station agent's license or for a real estate agent's license

and

and the applicant resides in New South Wales the application shall be lodged with the clerk of the court of the petty sessions district within which the applicant proposes to carry on business, or if there is more than one such court then with the clerk of the court within such district nearest to the place where the applicant proposes to carry on business.

(4) (a) Where the application is for an auctioneer's license and the applicant resides in any other State of the Commonwealth of Australia the application shall be lodged with the clerk of any court of petty sessions.

(b) Where the application is for an auctioneer's license and the applicant resides in the Australian Capital Territory then—

(i) if the application is for a general license it shall be lodged with the clerk of any court of petty sessions;

(ii) if the application is for a district license it shall be lodged with the clerk of any court of petty sessions within the police district in respect of which the application is made.

(c) Where the application is for a stock and station agent's license or for a real estate agent's license and the applicant resides outside New South Wales the application shall be lodged with the clerk of any court of petty sessions.

(5) Upon the receipt of an application for the grant or the renewal of a license by any person, the clerk shall forthwith forward one copy of the application to the officer in charge of police at the nearest police station and one copy of the application to the registrar.

Thereupon the officer in charge of police and the council shall severally inquire into and report upon the character of the applicant.

(6) (a) Where an application is made for the renewal of a license or where an application for a license of any class is made by a person who is already the holder of a license of the same or any other class, the clerk may,

on payment to him of the prescribed fee and when the bond referred to in section twenty-five of this Act has been lodged and is still subsisting, issue to such person a provisional license.

Any such provisional license shall take effect as from the date of its issue or from a later date to be specified therein.

(b) When a provisional license is issued under this subsection the holder thereof shall, for all purposes of this Act, be deemed to be the holder of a license of the class specified in his application until such time as a license or renewal of license is issued to him pursuant to this section or until his application for a license or renewal of license is refused.

(c) If a license or renewal of license is so issued to a person to whom a provisional license has been issued under this subsection such license or renewal of license shall take effect as from the date upon which the provisional license took effect, and the prescribed fee paid under this subsection shall be applied in or towards payment of the prescribed fee for the license or renewal of license.

(7) If the officer in charge of police or the council objects to the grant of the application, such officer or the council, as the case may be, shall include in the report furnished pursuant to subsection five of this section, a statement setting out the nature of the objection proposed to be made.

(8) Where neither the officer in charge of police nor the council objects to the grant of the application, the clerk with whom the application was lodged shall, on payment to him of the prescribed fee and when the bond referred to in section twenty-five of this Act has been lodged and is still subsisting, issue the license.

(9) Where the officer in charge of police or the council objects to the grant of the application—

(a) the clerk of the court shall notify the applicant that the grant of his application will be objected to, and shall set out shortly in the notice the nature of the objection proposed to be made;

(b)

(b) the application shall be heard and determined by the court, which for that purpose shall be constituted by a stipendiary or police magistrate or two or more justices;

(c) such hearing shall not take place until after the expiration of seven days after the lodging of the application;

(d) the hearing of the application shall be in open court and the consideration of the application shall be deemed to be a judicial proceeding;

(e) where the council has objected to the grant of the application it may appear at the hearing by any member of the police force or by counsel or attorney.

If the court grants the application, the clerk of the court shall, on payment to him of the prescribed fee and when the bond referred to in section twenty-five of this Act has been lodged and is still subsisting, issue the license.

(10) A license or a renewal of a license shall not be granted—

(a) to a corporation; or

(b) to an applicant who is disqualified from holding a license under this Act or who is of bad or doubtful character; or

(c) to a person appointed by a corporation to take out the same on behalf of the corporation, where the court is satisfied that the corporation is substantially owned or controlled by a person who is disqualified from holding a license under this Act.

(11) An auctioneer's license or a renewal of an auctioneer's license shall not be granted to an applicant who is the holder of a license under the Pawnbrokers Act, 1902.

(12) Notwithstanding anything in the foregoing provisions of this section a bond of the nature referred to in section twenty-five of this Act shall not be required in

in the case of an auctioneer who is the holder of a license under the Farm Produce Agents Act, 1926-1932, and who sells farm produce (as defined in that Act) by auction, within a radius of ten miles from the General Post Office, Sydney, but who does not in any other way whatsoever exercise the trade or business of an auctioneer.

Nothing contained in this Act shall be construed as exempting any such auctioneer from the obligation to comply with the requirements of the Farm Produce Agents Act, 1926-1932.

Transfer of license. Act No. 7, 1935, s. 8.

24. (1) The court of petty sessions may (by endorsement upon the license when the bond referred to in section twenty-five of this Act has been lodged and is still subsisting) upon application made to the clerk of such court in the prescribed form for the transfer of a license—

(a) by the holder of a license—grant a transfer of the license to any person approved by the court for the purpose; or

(b) by a person holding the license on behalf of a corporation—grant a transfer of the license from the person holding the same on behalf of the corporation to any other person approved by the court for the purpose to hold the same on its behalf:

Provided that a license granted to an individual on his own behalf shall not be transferable to a person to hold on behalf of a corporation, and a license granted to a person to hold on behalf of a corporation shall not be transferable to an individual on his own behalf.

(2) The provisions of section twenty-three of this Act shall, mutatis mutandis, apply to and in respect of an application for the transfer of a license in all respects as if the same were an application for a license or a renewal of a license.

Bond.

25. (1) The bond shall be a bond in the prescribed form in the penal sum of five hundred pounds in the case of an individual or a partnership or in the penal sum of one thousand pounds in the case of a corporation from the

the Colonial Treasurer acting under the powers and authorities conferred by the Government Insurance Act, 1927-1941, or from some insurance company or surety approved for the purpose by the Minister, conditioned for duly accounting to the persons entitled thereto for any trust funds received by the licensee or by the partnership in which he is a partner or by the corporation on whose behalf he holds the license, as the case may be, in the course of his or its business as an auctioneer, a stock and station agent or a real estate agent or in the course of any two or more of such businesses carried on under the authority of the license.

Any such bond may, in addition to the condition referred to in the foregoing provisions of this subsection, also be conditioned as provided in subsection eleven of section seven of the Business Agents Act, 1935-1941:

Provided that, where security approved by the Minister, for the payment of an amount equal to the appropriate penal sum (which security shall be in addition to the bond hereinafter referred to) has been given to the Minister, the Minister may, in lieu of the bond referred to in the foregoing provisions of this subsection accept a bond similarly conditioned from the licensee or from the members of the partnership in which the licensee is a partner or from the corporation on whose behalf the license is held.

(2) (a) Any such bond may be terminated by the Colonial Treasurer or the insurance company or surety, as the case may be, by notice in writing served personally or by post upon the licensee concerned, the registrar, and the clerk of the court by which the license was issued.

(b) Such notice shall specify the date (not being earlier than thirty days after the date of service of the notices) upon which the bond is to be terminated.

(c) The obligation of the Colonial Treasurer or the insurance company or surety, as the case may be, under the bond shall, as from the date so specified, be determined so far as it relates to transactions by the licensee or by the partnership in which he is

a partner or by the corporation on whose behalf he holds the license, as the case may be, after such specified date, other than the duly accounting to the persons entitled thereto for any trust funds received by the licensee or by the partnership in which he is a partner or by the corporation on whose behalf he holds the license, as the case may be, before such specified date.

(3) If the bond given in respect of any licensee is terminated or if the obligation thereof is discharged during the period for which the license or licenses held by such licensee is or are in force, then, as from the date of such termination or discharge and until a further bond has been lodged and is still subsisting, the license or licenses held by such licensee shall be suspended.

Amendment of Act No. 18, 1927.

(4) (a) The Government Insurance Act, 1927-1930, is amended by inserting next after paragraph (f) of section two the following new paragraph:—

(f1) to undertake and carry on all classes of insurance business under the Business Agents Act, 1935-1941, and the Auctioneers, Stock and Station and Real Estate Agents Act, 1941, or under either of such Acts.

(b) The Government Insurance Act, 1927-1930, as amended by subsequent Acts, including this Act, may be cited as the Government Insurance Act, 1927-1941.

Fees payable for license.

26. (1) The following fees shall be payable in respect of the several matters hereinafter referred to:—

(a) for an auctioneer's license—

(i) being a general license—fifteen pounds;

(ii) being a district license—two pounds;

(iii) being a primary products license—two pounds;

(b) for a stock and station agent's license—two pounds;

(c) for a real estate agent's license—two pounds;

(d) for an auctioneer's license (being a general license) and either a stock and station agent's license or a real estate agent's license or both—fifteen pounds;

(e)

(e) for an auctioneer's license (being a district license or a primary products license) and either a stock and station agent's license or a real estate agent's license or both—three pounds;

(f) for a stock and station agent's license and a real estate agent's license—three pounds;

(g) for the transfer of any license—one pound;

(h) for a duplicate license—five shillings;

(i) for renewal of any license or licenses—the same fee as that payable upon the issue of the license or licenses.

(2) The fees referred to in paragraphs (d) (e) and (f) of subsection one of this section shall be the fees payable for the several licenses referred to in the respective paragraphs whether the applications upon which the licenses are issued were made at different times or at the same time.

Power to grant auctioneers' licenses to persons resident in reciprocating States.

cf. Act No. 7, 1935, s. 10.

27. (1) Where the Governor is satisfied that in any State of the Commonwealth of Australia (other than New South Wales) an Act is in force under which any person resident in New South Wales and holding an auctioneer's license (being a general license) may obtain a license to follow the occupation of an auctioneer in all parts of such other State, the Governor may by notification published in the Gazette declare that on and after a date to be specified in the notification, and while the notification remains in force, this Act shall extend and apply to the granting in New South Wales of auctioneers' licenses (being general licenses) to residents in such other State.

(2) The Governor may, if he thinks fit, revoke any such notification.

(3) Any notification declaring that the Auctioneers' Licensing Act, 1898, as amended by subsequent Acts, shall extend and apply to the granting in New South Wales of general licenses to residents in any other State, which was published pursuant to section six of that Act and which was still in force immediately before the

the commencement of this Act, shall, as from such commencement and until revoked by a notification published pursuant to this Act, have and take effect as if it were a notification published pursuant to subsection one of this section declaring that, as from such commencement and while the notification remains in force, this Act shall extend and apply to the granting in New South Wales of auctioneers' licenses (being general licenses) to residents in such other States as is mentioned in such notification.

(4) (a) In the case of a resident in any State of the Commonwealth of Australia with respect to which a notification under this section is in force an auctioneer's license (being a general license) shall be granted to such resident only if he holds a license to follow the occupation of an auctioneer in all parts of that State.

(b) An auctioneer's license (being a district license or a primary products license) shall not in any case be granted to any person resident in any State of the Commonwealth of Australia, other than New South Wales.

Grant of auctioneers' licenses to persons resident in the Australian Capital Territory.

28. The provisions of this Act (other than section twenty-seven) shall extend and apply to the granting in New South Wales of auctioneers' licenses (being general licenses or district licenses) to persons resident in the Australian Capital Territory:

Provided that an auctioneer's license (being a general license or a district license) shall not be granted to a person resident in the Australian Capital Territory unless—

(a) such person is the holder of an auctioneer's license for the Australian Capital Territory granted in accordance with the law for the time being in force in that Territory; and

(b) under the law for the time being in force in that Territory, any resident of New South Wales who is the holder of an auctioneer's license (being a general license or a district license) may obtain an auctioneer's license for that Territory.

29.

Applicant for auctioneer's license to be resident in New South Wales or reciprocating State.

Act No. 28, 1924, s. 2 (a).

29. Save as provided in sections twenty-seven and twenty-eight of this Act, a person who is not a resident of New South Wales shall not be entitled to obtain an auctioneer's license or a renewal thereof under this Act.

Cancellation of license.

cf. Act No. 7, 1935, s. 14.

30. (1) Upon complaint being made to him by a member of the police force of or above the rank of sergeant or by the council any justice of the peace may summon a licensee to appear before a court of petty sessions holden before a stipendiary or police magistrate to show cause why the license held by him (whether on his own behalf or on behalf of a corporation) should not be cancelled and why he should not be disqualified either permanently or temporarily from holding a license on the ground—

(a) that the license was improperly obtained contrary to the provisions of this Act; or

(b) that he is not a fit and proper person to continue any longer to hold a license or that the corporation is not a fit and proper person any longer to have a license held on its behalf; or

(c) that he has been guilty of such conduct as renders him unfit to continue any longer to hold a license or that the affairs of the corporation have been so conducted as to render it unfit to continue any longer to have a license held on its behalf.

(2) If upon the day and at the time and place appointed by the summons issued in accordance with the provisions of subsection one of this section the licensee named therein does not appear then upon proof of the due service of the summons upon him a reasonable time before the time appointed for his appearance, such court of petty sessions may proceed to hear and determine the matter of such complaint in the absence of such licensee.

Service of the summons may be proved by the oath of the person who served it or by affidavit or otherwise.

(3) Upon being satisfied of the truth of any of the grounds aforesaid the court may order that the license

license of such licensee be delivered up to the court forthwith and cancelled and that such licensee be disqualified either permanently or for such period as the court specifies from holding a license under this Act, and upon the making of such order such license shall thereafter be deemed and taken to be cancelled.

Register to be kept by registrar.

31. (1) The clerk of petty sessions shall, within seven days after the issue of a license or renewal thereof or after the transfer or cancellation thereof under this Act, notify the registrar of such issue, renewal, transfer or cancellation.

(2) The registrar shall keep a register of all such licenses and of all renewals, transfers and cancellations of licenses, which register shall be available for perusal by any member of the public upon payment of the prescribed fee.

Appeal.

32. (1) Where the court refuses any application under section twenty-three or under section twenty-four or makes an order under section thirty of this Act the person making the application or the licensee, as the case may be, may appeal in accordance with the rules of court of the District Court to the District Court exercising jurisdiction in the district within which the court refusing such application or making such order is situated.

(2) Every such appeal shall be in the nature of a rehearing.

(3) Notice of appeal shall be given to such persons as may be prescribed by rules of court of the District Court, or as the District Court may direct.

(4) (a) An appeal shall lie to the Supreme Court either by special case or upon notice of motion against any ruling, order, direction or decision of the District Court in point of law or upon the admission or rejection of any evidence.

(b) The provisions of Part VI of the District Courts Act, 1912-1936, shall, mutatis mutandis, extend to and in respect of any such appeal.

For the purposes of such extension the word "party" where used in that Part shall be deemed to include any of the following persons:—

(i) the person making the application or the licensee, as the case may be;

(ii)

(ii) the officer in charge of police who objected to the grant of the application—in any case where the appeal is in proceedings arising out of an application to the granting of which such officer in charge of police had objected;

(iii) the member of the police force who made the complaint—in any case where the appeal is in proceedings arising out of a complaint made by him under section thirty of this Act;

(iv) the council—in any case where the appeal is in proceedings arising out of an application to the granting of which the council had objected, or out of a complaint made by the council under section thirty of this Act.

DIVISION 2.—*Licensees generally.*

Effect of disqualification on membership, etc., of corporation.

cf. Act No. 7, 1935, s. 24.

33. A person disqualified under this Act shall not, while his disqualification continues, be capable of becoming or continuing a director or manager of any corporation or a partner in any partnership carrying on business in New South Wales as an auctioneer, a stock and station agent or a real estate agent, or of becoming or continuing the holder of a license on behalf of a corporation.

Failure to deliver up license.

34. Where the court has made an order that a license be delivered up to the court the holder of such license shall, if he refuses, neglects or fails to comply with such order, be guilty of an offence against this Act.

Registered office and address.

cf. *Ibid.* s. 15.

35. (1) Every licensee shall have a registered office within New South Wales.

(2) All writs, summonses, notices or other documents required or authorised to be served on or given to a licensee shall be deemed to be duly served or given if left for him at his registered office.

(3) The address specified in the application as the address at which the applicant proposes to carry on business shall, upon the grant, renewal or transfer of the license, be deemed to be the registered office of the licensee.

(4)

(4) Notice of any change in the situation of the registered office shall be lodged by the licensee with the court from which the license issued within the prescribed time, and the clerk of such court shall record such notice and advise the registrar who shall enter such change in the register.

(5) If any licensee carries on business without complying with the requirements of this section he shall be liable to a penalty not exceeding five pounds for every day during which he so carries on business.

Publication of name of licensee. cf. Act No. 33, 1936, s. 76.

36. (1) Every licensee shall paint or affix and keep painted or affixed his name and description as a licensee on the outside of his registered office, and, where the business is carried on at any place other than such registered office, on the outside of each place in which his business as a licensee is carried on, in a conspicuous position, in letters easily legible.

cf. Act No. 7, 1935, s. 16.

(2) Any person shall be guilty of an offence against this Act who—

(a) commits any contravention of or fails to comply with any of the provisions of subsection one of this section; or

(b) after the expiration of three months after the commencement of this Act, keeps up or exhibits or allows to remain unobliterated on or near to his office, house or place of business or exhibits anywhere any sign, writing, painting or other mark implying that such office, house or place of business is that of a person licensed—

(i) as an auctioneer—unless he is the holder of an auctioneer's license granted under the Auctioneers' Licensing Act, 1898-1934, or under this Act;

(ii) as a stock and station agent—unless he is the holder of a stock and station agent's license;

(iii) as a real estate agent—unless he is the holder of a real estate agent's license.

37.

Payment into bank. cf. Act No. 22, 1898, s. 41.

37. (1) All moneys received for or on behalf of any person by any licensee shall be held by him exclusively for such person, to be paid to such person, or to be disbursed as he directs, and until so paid or disbursed the moneys shall be paid into a bank in New South Wales to a trust account, whether general or separate.

(2) The moneys shall not be available for the payment of the debts of the licensee to any other creditor of the licensee, or be liable to be attached or taken in execution under the order or process of any court at the instance of any such other creditor.

(3) Nothing in this section shall be construed to take away or affect any just claim or lien which any licensee may have against or upon any of the moneys.

(4) Any licensee who neglects or fails to comply with any of the provisions of this section shall be guilty of an offence against this Act.

Relief to bankers. cf. *Ibid.* s. 44.

38. (1) Subject to the provisions of this section no bank shall, in connection with any transaction on any account of any licensee kept with it or with any other bank, incur any liability or be under any obligation to make any enquiry or be deemed to have any knowledge of any right of any person to any money paid or credited to any such account which it would not incur or be under or be deemed to have in the case of an account kept by a person entitled absolutely to all the money paid or credited to it:

Provided that nothing in this subsection shall relieve a bank from any liability or obligation under which it would be apart from this Act.

(2) Notwithstanding anything in subsection one of this section a bank at which a licensee keeps an account for clients' money shall not, in respect of any liability of the licensee to the bank, not being a liability in connection with that account, have or obtain any recourse or right whether by way of set-off, counter-claim, charge or otherwise, against moneys standing to the credit of that account:

Provided

Provided that nothing in this subsection shall deprive a bank of any right existing at the time of the commencement of this Act.

Power to inspect documents relating to trust account, etc., of licensee. cf. Act No. 7, 1935, s. 19.

39. (1) The Minister may, at the request of the council, by writing under his hand, authorise any person—

(a) to inspect any books, accounts, documents or writings in the custody or control of any licensee—

(i) relating to any trust account in any bank in the name of the licensee; or

(ii) for the purpose of ascertaining whether or not the licensee has any partners; and

(b) to take notes, copies or extracts thereof or therefrom.

Penalty for obstruction, refusal to produce, etc.

(2) Any person who—

(a) wilfully delays or obstructs the person so authorised in the exercise of his powers under this section; or

(b) being a licensee or employee of a licensee refuses—

(i) to produce such books, accounts, documents or writings; or

(ii) to answer any question relating to such books or accounts; or

(c) knowingly gives any untruthful answer to any such question,

shall be liable to a penalty not exceeding one hundred pounds.

Power to communicate result of inspection to client of licensee.

(3) The Minister may communicate a report of the result of such inspection to the council and the council may communicate such report to any client of the licensee if and so far as it directly concerns such client.

Record to be kept. cf. *Ibid.* s. 22.

40. (1) Every licensee shall keep in a legible manner a written record containing full particulars of all transactions by or with him as licensee.

(2) The written record shall be preserved by the licensee for a period of not less than three years after the date upon which it was made.

(3)

(3) The written record shall be open to inspection at all reasonable times by a member of the police force of or above the rank of sergeant, and every licensee, upon being required so to do, shall produce the written record kept by him for inspection by such officer.

(4) Every entry in the written record kept at the registered office of a licensee shall be deemed, unless the contrary is proved, to have been made by or with the authority of the licensee.

(5) Any person who contravenes any of the provisions of this section shall be guilty of an offence against this Act.

Certain persons not to be employed by licensees. cf. Act No. 7, 1935, s. 25.

41. (1) A licensee shall not, except with the approval of a court of petty sessions holden before a stipendiary or police magistrate, and subject to such conditions as the court may impose, knowingly employ in any way whatever in connection with his business any person—

(a) who is for the time being disqualified under this Act from holding a license or disqualified under the Business Agents Act, 1935, from holding a license under that Act; or

(b) whose application for a license under this Act, or the Auctioneers' Licensing Act, 1898-1934, or the Business Agents Act, 1935, as the case may be, has been refused, unless such an application has been subsequently granted.

(2) Subject to this section no such person shall participate or be in any way concerned in the business of a licensee.

(3) A licensee who holds a license as a real estate agent or on whose behalf (if a corporation) a license as a real estate agent is held shall not, from and after the expiration of three months after the commencement of this Act, employ, in connection with his or its business as a real estate agent, any real estate salesman who is not registered as such under this Act.

(4) Any licensee or any person aforesaid who commits any contravention of or fails to comply with any of the provisions of this section shall be guilty of an offence against this Act.

42.

Production of license. cf. Act No. 7, 1935, s. 36.

42. Every licensee shall on demand, at the premises upon which he carries on his business, produce his license to any member of the police force of or above the rank of sergeant, or to any person with whom such licensee is transacting or attempting to transact any business as an auctioneer, a stock and station agent or a real estate agent, as the case may be.

Licensee not to lend license. *Ibid.* s. 37.

43. Any licensee who lets out, hires or lends any license held by him to any other person or permits any other person to use his license shall be guilty of an offence against this Act, and on conviction for such offence, and in addition to any penalty therefor, any license held by him shall thereupon become absolutely void and shall be delivered up to the court and cancelled.

Provisions as to commission, etc. *Ibid.* s. 38.

44. (1) Subject to this Act, no person shall be entitled to bring any proceeding in any court to recover any commission, fee, gain or reward for any service done or performed by him—

(a) as an auctioneer unless he was the holder of an auctioneer's license issued under the Auctioneers' Licensing Act, 1898-1934, or under this Act at the time of doing or performing such service;

(b) as a stock and station agent unless he was the holder of a stock and station agent's license at the time of doing or performing such service or such service was done or performed before the expiration of three months after the commencement of this Act;

(c) as a real estate agent unless he was the holder of a real estate agent's license at the time of doing or performing such service or such service was done or performed before the expiration of three months after the commencement of this Act.

(2) This section shall extend to and in respect of any licensee which is a corporation on whose behalf a license is held, and for such purpose the corporation shall be deemed to be the holder of any license held on its behalf.

45.

45. Any licensee who publishes (whether in a newspaper or otherwise) any advertisement relating to or in connection with his business (or in the case of a corporation or partnership or a person who holds a license on behalf of a corporation relating to or in connection with the business of the corporation or partnership) without specifying therein his or its name as a licensee and (if the business is not carried on in his or its own name) the name under which he or it or the partnership in which he or it is a partner is registered or deemed to be registered under any Act for the time being in force relating to the registration of business names, and his or its place of business, shall be guilty of an offence against this Act.

Publication of name and place of business in advertisements.

cf. Act No. 7, 1935, s. 41.

DIVISION 3.—*Auctioneers.*

46. (1) In this Division—

Definitions.

"Cattle" means horses, mares, fillies, foals, geldings, colts, bulls, bullocks, cows, heifers, steers, calves, ewes, wethers, rams, lambs and swine.

cf. Vict. Act No. 4323, 1935, s. 2.

"Farm produce" means cereals, grain, vegetables, potatoes, onions, other edible roots and tubers, tobacco leaf, fruit, hay, chaff, dairy produce, live or dead poultry and game, and eggs.

cf. Vict. Act No. 4420, 1936, s. 2.

(2) Upon a day to be appointed by the Governor and notified by proclamation published in the Gazette, the meaning of the expression "farm produce," as defined in subsection one of this section, shall extend to include wool.

cf. Vict. Act No. 4323, 1935, s. 3.

47. (1) Any person who induces or attempts to induce any other person to abstain from bidding at a sale by auction of cattle or farm produce either generally or for any particular lot, by means of a promise, express or implied, that he will if he is the successful bidder for the cattle or farm produce—

Splitting of lots purchased at auction.

cf. Vict. Acts Nos. 4323, 1935, s. 3, and 4420, 1936, s. 2.

(a) give such other person the right to elect to take over as purchaser through the auctioneer all or any of the said cattle or farm produce at the auction price; or

(b) agree to decide by tossing or the drawing of lots or other method who is to become the owner of all or any of the said cattle or farm produce,

shall be liable for a first offence to a penalty of not more than ten pounds and for a second or any subsequent offence to a penalty of not more than twenty-five pounds or to imprisonment for a term of not more than one month.

(2) Any person who abstains or agrees to abstain from bidding at a sale by auction of cattle or farm produce as the result of a promise, express or implied, given to him—

(a) that he shall have the right to elect to take over as purchaser through the auctioneer all or any of the said cattle or farm produce at the auction price; or

(b) that the ownership of all or any of the said cattle or farm produce shall be determined by tossing or the drawing of lots or any other method,

shall be liable for a first offence to a penalty of not more than ten pounds and for a second or any subsequent offence to a penalty of not more than twenty-five pounds or to imprisonment for a term of not more than one month.

Entry by auctioneer or employee in record or book kept by auctioneer as purchaser of cattle or farm produce sold by auction of any name other than the name of the actual successful bidder.

cf. Vict. Acts Nos. 4323, 1935, s. 4, and 4420, 1936, s. 2.

48. (1) Any auctioneer or any employee of an auctioneer who knowingly enters in any record or book kept or required to be kept by such auctioneer as the purchaser of any cattle or farm produce sold by auction any name other than the name of the actual successful bidder for such cattle or farm produce shall be liable for a first offence to a penalty of not more than ten pounds and for a second or any subsequent offence to a penalty of not more than twenty-five pounds or to imprisonment for a term of not more than one month.

(2) If the employee of any auctioneer enters in any record or book kept or required to be kept by such auctioneer as the purchaser of any cattle or farm produce sold by auction any name other than the name of the actual successful bidder for such cattle or farm produce the

the auctioneer shall, unless he proves to the satisfaction of the court that he did not know that a name other than the name of the actual successful bidder was entered as aforesaid, be guilty of an offence and shall be liable for a first offence to a penalty of not more than ten pounds and for a second or any subsequent offence to a penalty of not more than twenty-five pounds or to imprisonment for a term of not more than one month.

Provision for entry in record or book of name other than name of actual successful bidder in certain cases.

(3) Notwithstanding anything in subsection one or subsection two of this section, where the actual successful bidder at a sale by auction of any cattle or farm produce as soon as practicable after the auctioneer conducting such sale has indicated such actual successful bidder but not in any case later than the day of the sale informs such auctioneer—

(a) that he bid for such cattle or farm produce on behalf of another person; and

(b) of the name of such other person,

the said auctioneer or employee shall not be guilty of an offence against the provisions of subsection one or subsection two of this section by reason of the fact that he enters in the record or book aforesaid as purchaser of such cattle or farm produce the name of such other person.

Material parts of sections to be read or recited aloud at sales by auction of cattle.

cf. Vict. Acts Nos. 4323, 1935, s. 5, and 4420, 1936, s. 2.

49. (1) Every auctioneer shall before beginning any sale by auction of any cattle or farm produce read or recite aloud a statement of the material parts of sections forty-seven and forty-eight of this Act:

Provided that where on any day successive sales by auction of cattle or farm produce are held at the same selling place and the foregoing provisions of this subsection are complied with by the auctioneer conducting the first of such sales no auctioneer thereafter conducting any of such successive sales shall be required before commencing any of such sales to comply with such provisions.

(2) Any auctioneer who fails to comply with the provisions of subsection one of this section shall be liable to a penalty of not more than ten pounds.

50.

50. Any auctioneer who knowingly misrepresents, or causes or permits to be misrepresented, the value, composition, structure, character or quality, or the origin of manufacture of any goods or chattels put up for sale at an auction sale conducted by him, shall be guilty of an offence against this Act.

Misrepresentation as to quality, etc., of goods and chattels.
Act No. 24, 1898, s. 10.

51. (1) Where a sale by auction is not notified in the conditions of sale to be subject to a right to bid on behalf of the seller, it shall not be lawful for the seller to bid himself or for the seller or the auctioneer to employ any person to bid at the sale, or for the auctioneer knowingly to take any bid from the seller or any such person.

(2) Whosoever contravenes the provisions of this section shall be guilty of an offence against this Act.

Bidding by seller.
Ibid. s. 12.

52. No auctioneer shall attempt to sell, offer for sale or sell by way of public auction any land, goods or effects except wool not being on the skin, after sunset or before sunrise of any day throughout the year and every such auctioneer who offends against this section shall be guilty of an offence against this Act.

No auction sales after sunset (sales of wool excepted).
Ibid. s. 18.

Division 4.—*Real Estate Agents.*

53. (1) Any real estate agent or any partner or employee of a real estate agent shall be guilty of an offence against this Act if—

(a) with the intention of inducing a prospective purchaser to buy an allotment of land or any interest in an allotment of land—

(i) he makes any false representation; or

(ii) he states that he or some other person named by him will buy, at a profit to be received in the future by such prospective purchaser, the said allotment of land or any part thereof or any interest therein or any other land or chattel owned by the prospective purchaser; or

Offences in connection with the sale of allotments of land.
cf. Act No. 1807 (S.A.), s. 25A.

(iii)

(iii) he states that he or some other person named by him will at some future time obtain for the prospective purchaser a profit on the sale of such allotment of land or any part thereof or any interest therein; or

(b) while the real estate agent is retained by any person as agent for the sale of any allotment of land at a stipulated price he, either on his own behalf or on behalf of some person other than the person by whom such agent is so retained, negotiates for or arranges the sale of such allotment of land at a price higher than such stipulated price.

(2) If any person is charged with an offence against this Act by reason of a contravention of subparagraph (i) of paragraph (a) of subsection one of this section, it shall be a sufficient defence if the person charged proves—

(a) that he had reasonable grounds for believing and did in fact believe that the representation was true; and

(b) that otherwise he acted innocently.

(3) (a) Where a real estate agent or a partner or employee of a real estate agent is convicted of an offence against this Act by reason of a contravention of paragraph (a) of subsection one of this section, any contract into which a purchaser was induced to enter by reason of the false representation or of the statement giving rise to the conviction, shall be voidable at the option of the purchaser at any time within three months after the date of such conviction.

(b) Where a real estate agent or a partner or employee of a real estate agent is convicted of an offence against this Act by reason of a contravention of paragraph (b) of subsection one of this section, any contract entered into by the person by whom the real estate agent is retained shall be voidable at the option of such person at any time within three months after the date of such conviction.

PART

PART IV.

Real Estate Dealers and Real Estate Salesmen.

Division 1.—*Real Estate Dealers.*

Provisions as to employment of certain persons by real estate dealers.

54. (1) A real estate dealer shall not, except with the approval of a court of petty sessions holden before a stipendiary or police magistrate, and, subject to such conditions as the court may impose, knowingly employ, in any way whatever in connection with his business as a real estate dealer, any person—

(a) who is for the time being disqualified under this Act from holding a license or disqualified under the Business Agents Act, 1935, from holding a license under that Act; or

(b) whose application for a license under this Act, or the Auctioneers' Licensing Act, 1898-1934, or the Business Agents Act, 1935, as the case may be, has been refused, unless such an application has been subsequently granted.

(2) Subject to this section no such person shall participate or be in any way concerned in the business of a real estate dealer as such.

(3) A real estate dealer shall not, from and after the expiration of three months after the commencement of this Act, employ, in connection with his business as a real estate dealer, any real estate salesman who is not registered as such under this Act.

(4) Any real estate dealer or any person aforesaid who commits any contravention of or fails to comply with any of the provisions of this section shall be guilty of an offence against this Act.

Publication of name and place of business in advertisements.

cf. Act No. 7, 1935, s. 41.

55. Any real estate dealer who publishes (whether in a newspaper or otherwise) any advertisement relating to or in connection with his business as a real estate dealer (or in the case of a corporation or partnership relating to or in connection with the business as a real estate dealer, of the corporation or partnership) without specifying therein his or its name and (if the business as a real estate dealer is not carried on in his or its own name) the name under which he or it or the partnership in which he or it is a partner is registered

or

or deemed to be registered under any Act for the time being in force relating to the registration of business names, and his or its place of business, shall be guilty of an offence against this Act.

Real estate dealer to have registered place of business.

56. (1) Every real estate dealer shall have a registered place of business in New South Wales.

(2) (a) Every person who, immediately before the commencement of this Act, was carrying on business as a real estate dealer shall, within one month after such commencement, register his place of business by lodging with the registrar a notice specifying the address of such place of business.

(b) Every real estate dealer who commences to carry on business as such after the commencement of this Act shall, before so commencing, register his place of business by lodging with the registrar a notice specifying the address of such place of business.

(c) The registrar shall keep a register of all such registered places of business, which shall be available for perusal by any member of the public upon payment of the prescribed fee.

(d) Notice of any change in situation of his registered place of business shall be lodged with the registrar, who shall enter such change in the register kept by him pursuant to this subsection.

(3) All writs, summonses, notices or other documents required or authorised to be served on or given to a real estate dealer shall be deemed to be duly served or given if left for him at his registered place of business.

(4) If any real estate dealer carries on business as such without complying with the requirements of this section he shall be liable to a penalty not exceeding five pounds for every day during which he so carries on business.

Record to be kept.

cf. Act No. 7, 1935, s. 22.

57. (1) Every real estate dealer shall keep in a legible manner a written record containing full particulars of all transactions by or with him as a real estate dealer.

(2) The written record shall be preserved by the real estate dealer for a period of not less than three years after the date upon which it was made.

(3)

(3) The written record shall be open to inspection at all reasonable times by a member of the police force of or above the rank of sergeant, and every real estate dealer upon being required so to do, shall produce the written record kept by him for inspection by such officer.

(4) Every entry in the written record kept at the place of business of a real estate dealer shall be deemed, unless the contrary is proved, to have been made by or with the authority of the real estate dealer.

(5) Any person who contravenes any of the provisions of this section shall be guilty of an offence against this Act.

Offences in connection with the sale of allotments of land.

58. (1) Any real estate dealer or any partner or employee of a real estate dealer shall be guilty of an offence against this Act if with the intention of inducing a prospective purchaser to buy an allotment of land or any interest in an allotment of land—

(a) he makes any false representation; or

(b) he states that he or some other person named by him will buy, at a profit to be received in the future by such prospective purchaser, the said allotment of land or any part thereof or any interest therein or any other land or chattel owned by the prospective purchaser; or

(c) he states that he or some other person named by him will at some future time obtain for the prospective purchaser a profit on the sale of such allotment of land or any part thereof or any interest therein.

(2) If any person is charged with an offence against this Act by reason of a contravention of paragraph (a) of subsection one of this section, it shall be a sufficient defence if the person charged proves—

(a) that he had reasonable grounds for believing and did in fact believe that the representation was true; and

(b) that otherwise he acted innocently.

(3)

(3) Where any real estate dealer or any partner or employee of a real estate dealer is convicted of an offence against this Act by reason of a contravention of subsection one of this section any contract into which the purchaser was induced to enter by reason of the false representation or of the statement giving rise to the conviction, shall be voidable at the option of the purchaser at any time within three months after the date of such conviction.

DIVISION 2.—*Real Estate Salesmen.*

Real estate salesmen to be registered.

59. (1) Subject to this Act, from and after the expiration of three months after the commencement of this Act, no person shall, unless he is registered as a real estate salesman in accordance with this Act,—

(a) be or remain in the employment or service of any real estate agent or real estate dealer as a real estate salesman; or

(b) represent, whether expressly or impliedly, that he is a real estate salesman or that he is in the employment of a real estate agent or a real estate dealer as a real estate salesman; or

(c) act as or carry out any of the functions of a real estate salesman.

(2) Any person who commits any contravention of or fails to comply with any of the provisions of this section shall be guilty of an offence against this Act.

Procedure.

60. (1) An application for registration as a real estate salesman shall be made in triplicate in the form prescribed.

(2) The application shall be lodged with the clerk of the court of the petty sessions district within which the applicant resides, or, if there is more than one such court, with the clerk of the court within such district nearest to the place where the applicant resides.

(3) Upon receipt of the application the clerk shall forthwith forward one copy of the application to the officer in charge of police at the nearest police station and one copy to the registrar.

Thereupon

Thereupon the officer in charge of police and the council shall severally inquire into and report upon the character of the applicant.

(4) If the officer in charge of police or the council objects to the grant of the application such officer or the council, as the case may be, shall include in the report furnished pursuant to subsection three of this section, a statement setting out the nature of the objection proposed to be made.

(5) (a) Where an application is made by a real estate salesman who is the holder of a certificate of registration as such for the renewal of his registration the clerk may, on payment to him of a fee of five shillings, issue to such person a provisional certificate of registration.

Any such provisional certificate of registration shall take effect as from the date of its issue or from a later date to be specified therein.

(b) When a provisional certificate of registration is issued under this subsection the holder thereof shall, for all purposes of this Act, be deemed to be the holder of a certificate of registration until such time as a certificate of registration is issued to him pursuant to this section or until his application for a certificate of registration is refused.

(c) If a certificate of registration is so issued to a person to whom a provisional certificate of registration has been issued under this subsection such certificate of registration shall take effect as from the date upon which the provisional certificate of registration took effect, and the prescribed fee paid under this subsection shall be applied in or towards payment of the prescribed fee for the certificate of registration.

(6) Where neither the officer in charge of police nor the council objects to the grant of the application, the clerk shall, on payment to him of a fee of five shillings, issue to the applicant a certificate of registration as a real estate salesman.

(7) Where the officer in charge of police or the council objects to the grant of the application—

(a) the clerk of the court shall notify the applicant that the grant of his application will be objected to, and shall set out shortly in the notice the nature of the objection proposed to be made;

(b) the application shall be heard and determined by the court, which for that purpose shall be constituted by a stipendiary or police magistrate or two or more justices;

(c) such hearing shall not take place until after the expiration of seven days after the lodging of the application;

(d) the hearing of the application shall be in open court and the consideration of the application shall be deemed to be a judicial proceeding;

(e) where the council has objected to the grant of the application it may appear at the hearing by any member of the police force or by counsel or attorney.

If the court grants the application, the clerk of the court shall, on payment to him of a fee of five shillings, issue to the applicant a certificate of registration as a real estate salesman.

(8) A certificate of registration as a real estate salesman shall not be issued to an applicant who is of bad or doubtful character.

(9) (a) Subject to this Act a certificate of registration as a real estate salesman shall be in force for a period of twelve months from the date of its issue.

(b) A certificate of registration may be renewed and on each renewal shall, subject to this Act, be in force for a further period of twelve months.

Register to be kept by registrar.

61. (1) The clerk of petty sessions shall, within seven days after the issue or cancellation of a certificate of registration as a real estate salesman, notify the registrar of such issue.

(2)

(2) The registrar shall keep a register of all such certificates of registration, which shall be available for perusal by any member of the public upon payment of the prescribed fee.

Registered address.

cf. Act No. 7, 1935, s. 15.

62. (1) Every real estate salesman shall have a registered address within New South Wales.

(2) All writs, summonses, notices or other documents required or authorised to be served on or given to a real estate salesman shall be deemed to be duly served or given if left for him at his registered address.

(3) The address specified in the application as the address at which the applicant then resides, shall, upon the grant of the application, be deemed to be the registered address of the real estate salesman.

(4) Notice of any change in the situation of the registered address shall be lodged by the real estate salesman with the court from which the certificate of registration as a real estate salesman issued, within the prescribed time, and the clerk of such court shall record such notice and advise the registrar who shall enter such change in the register kept pursuant to section sixty-one of this Act.

(5) If any real estate salesman acts as or carries out any of the functions of a real estate salesman without complying with the requirements of this section he shall be liable to a penalty not exceeding five pounds for every day during which he so acts or carries out such functions.

Cancellation of certificate of registration.

cf. *Ibid.* s. 14.

63. (1) Upon complaint being made to him by a member of the police force of or above the rank of sergeant or by the council any justice of the peace may summon a real estate salesman to appear before a court of petty sessions holden before a stipendiary or police magistrate to show cause why his certificate of registration should not be cancelled and why he should not be disqualified either permanently or temporarily from holding a certificate of registration on the ground—

(a) that he improperly obtained his certificate of registration contrary to the provisions of this Act; or

(b)

(b) that he is not a fit and proper person to continue any longer to hold a certificate of registration; or

(c) that he has been guilty of such conduct as renders him unfit to continue any longer to hold a certificate of registration.

(2) If upon the day and at the time and place appointed by the summons issued in accordance with the provisions of subsection one of this section the real estate salesman named therein does not appear, then, upon proof of the due service of the summons upon him a reasonable time before the time appointed for his appearance, such court of petty sessions may proceed to hear and determine the matter of such complaint in the absence of such real estate salesman.

Service of the summons may be proved by the oath of the person who served it or by affidavit or otherwise.

(3) Upon being satisfied of the truth of any of the grounds aforesaid the court may order that the certificate of registration of such real estate salesman be delivered up to the court forthwith and cancelled and that such real estate salesman be disqualified either permanently or for such period as the court specifies from holding a certificate of registration under this Act, and upon the making of such order such certificate of registration shall thereafter be deemed and taken to be cancelled.

Appeal.

64. (1) Where the court refuses any application under section sixty, or makes an order under section sixty-three of this Act, the person making the application or the real estate salesman, as the case may be, may appeal in accordance with the rules of court of the District Court to the District Court exercising jurisdiction in the district within which the court refusing such application or making such order is situated.

(2) Every such appeal shall be in the nature of a rehearing.

(3) Notice of appeal shall be given to such persons as may be prescribed by rules of court of the District Court, or as the District Court may direct.

(4)

(4) (a) An appeal shall lie to the Supreme Court either by special case or upon notice of motion against any ruling, order, direction or decision of the District Court in point of law or upon the admission or rejection of any evidence.

(b) The provisions of Part VI of the District Courts Act, 1912-1936, shall, mutatis mutandis, extend to and in respect of any such appeal.

For the purposes of such extension the word "party" where used in that Part shall be deemed to include any of the following persons—

(i) the person making the application or the real estate salesman, as the case may be;

(ii) the officer in charge of police who objected to the grant of the application—in any case where the appeal is in proceedings arising out of an application to the granting of which such officer in charge of police had objected;

(iii) the member of the police force who made the complaint—in any case where the appeal is in proceedings arising out of a complaint made by him under section sixty-three of this Act;

(iv) the council—in any case where the appeal is in proceedings arising out of an application to the granting of which the council had objected, or out of a complaint made by the council under section sixty-three of this Act.

Production of certificate of registration.

65. Every real estate salesman shall, on demand, produce his certificate of registration to any member of the police force of or above the rank of sergeant, or to any person with whom such real estate salesman is transacting or attempting to transact any business as a real estate salesman.

cf. Act No. 7, 1935, s. 36.

Real estate salesman not to lend certificate of registration.

66. Any real estate salesman who lets out, hires or lends any certificate of registration held by him to any other person or permits any other person to use his certificate of registration shall be guilty of an offence against this Act, and on conviction for such offence, and in addition to any penalty therefor, any certificate of registration held by him shall thereupon become absolutely void and shall be delivered up to the court and cancelled.

cf. *Ibid.* s. 37.

PART

PART V.

Amendment of the Business Agents Act, 1935.

67. (1) The Business Agents Act, 1935, is amended— Amendment of Act No. 7, 1935.

(a) by inserting in section two at the end of the definition of "auctioneer" the words "or an auctioneer's license under the Auctioneers, Stock and Station and Real Estate Agents Act, 1941"; Sec. 2. (Definitions.)

(b) by inserting in subparagraph (iii) of paragraph (a) of subsection two of section three after the words "subsequent Acts" the words "or under the Auctioneers, Stock and Station and Real Estate Agents Act, 1941"; Sec. 3. (Act not to apply to certain persons.)

(c) by omitting from subsection eleven of section seven all words after the words "issue the license" and by inserting in lieu thereof the following words:— Sec. 7. (Application for license—bond.)

The fidelity bond shall be a bond in the prescribed form in the penal sum of five hundred pounds in the case of an individual or partnership or in the penal sum of one thousand pounds in the case of a corporation from the Colonial Treasurer, acting under the powers and authorities conferred by the Government Insurance Act, 1927-1941, or from some insurance company or person approved for the purpose by the Minister, conditioned for duly accounting to the persons entitled thereto for any trust funds received by the holder of the business agent's license or by the partnership in which he is a partner or by the corporation on whose behalf he holds the license, as the case may be, in the course of his or its business as a business agent.

Any such fidelity bond may, in addition to the condition referred to in the foregoing provisions of this subsection, also be conditioned as provided in subsection one of section twenty-five of the Auctioneers, Stock and Station and Real Estate Agents Act, 1941:

Provided

Provided that where security approved by the Minister for the payment of an amount equal to the appropriate penal sum (which security shall be in addition to the bond hereinafter referred to) has been given to the Minister, the Minister may, in lieu of the bond referred to in the foregoing provisions of this subsection, accept a bond similarly conditioned from the licensee or from the members of the partnership in which the licensee is a partner or from the corporation on whose behalf the license is held.

Sec. 9. (License fee.)

(d) (i) by inserting in section nine after the words "subsequent Acts" the words "or under the Auctioneers, Stock and Station and Real Estate Agents Act, 1941";

(ii) by inserting in paragraph (ii) of the proviso to the same section after the words "auctioneer's district license" the words "or a stock and station agent's license or a real estate agent's license";

Sec. 25. (Certain persons not to be employed.)

(e) (i) by inserting at the end of paragraph (a) of subsection one of section twenty-five the words "disqualified under the Auctioneers, Stock and Station and Real Estate Agents Act, 1941, from holding any license under that Act; or";

(ii) by inserting in paragraph (b) of the same subsection after the words "for the time being in force" the words "or for any license under the Auctioneers, Stock and Station and Real Estate Agents Act, 1941";

New sec. 26A.

(f) by inserting next after section twenty-six the following new section:—

Power to terminate bond.

26A. (1) (a) Any fidelity bond given pursuant to this Act may be terminated by the Colonial Treasurer or the insurance company or surety, as the case may be, by notice in writing served personally or by post upon the licensee concerned, the Registrar-General and the clerk of the court by which the license was issued.

(b)

(b) Such notice shall specify the date (not being earlier than thirty days after the date of the service of the notices) upon which the bond is to be terminated.

(c) The obligation of the Colonial Treasurer or the insurance company or surety, as the case may be, shall, as from the date so specified, be determined so far as it relates to transactions by the business agent, or by the partnership in which he is a partner, or by the corporation on whose behalf he holds the license, as the case may be, after such specified date, other than the duly accounting to the persons entitled thereto for any trust funds received by the licensee or by the partnership in which he is a partner or by the corporation on whose behalf he holds the license, as the case may be, before such specified date.

(2) If the bond given in respect of any business agent is terminated or if the obligation thereof is discharged during the period for which the license held by the business agent is in force, then, as from the date of such termination or discharge, and until a further bond has been lodged and is still subsisting, the license held by such business agent shall be suspended.

(g) by omitting subsection three of section twenty-seven and by inserting in lieu thereof the following subsection:— Sec. 27. (Inspection of bond and power to sue thereon.)

(3) Any such action shall be taken within two years after the date upon which the cause of such action arises.

(2) The amendments made by subsection one of this section shall not operate to release any party or surety to any bond given under the Business Agents Act, 1935.

(3) The Business Agents Act, 1935, as amended by this Act, may be cited as the Business Agents Act, 1935-1941.

PART VI.

General.

Contracts relating to allotments of land voidable in certain cases.

68. (1) Any contract for the sale of an allotment of land or any interest in an allotment of land made after the commencement of this Act shall be voidable at the option of the purchaser at any time within six months from the making thereof unless—

cf. Act No. 1807 (S.A.), s. 25B.

(a) it contains the following particulars, namely:—

(i) the name, address and description of the vendor;

(ii) where the allotment of land is subject to the provisions of the Real Property Act, 1900, the name, address and description of the person who is, at the time when the contract is made, the registered proprietor of the allotment of land;

(iii) a statement whether or not a plan of subdivision relating to the land sold has been lodged in the office of the Registrar-General and the name (if any) of the subdivision and the number of the plan (if registered); and

(iv) the name, address and description of some person to whom all moneys falling due under the contract may be paid; and

(b) the signature by the purchaser upon the contract or the memorandum or note thereof, is attested by a witness who is not the real estate agent who acted in the sale of the allotment of land or any partner or employee of such real estate agent.

Payments under voidable contracts hereunder not deemed election to affirm same.

(2) A purchaser shall not be deemed to have elected to affirm a contract which is voidable under this section by reason of any payments of money made by him pursuant to the contract within the period of six months aforesaid.

(3)

(3) Any agreement whereby a purchaser purports to waive the right to avoid a contract conferred upon him by this section shall be void and have no effect.

Prohibition of contracting out. cf. Act No. 1807 (S.A.), s. 25c.

69. No term or provision of any agreement (whether entered into before or after the commencement of this Act) for the sale and purchase of an allotment of land or any interest therein shall be so construed as to prevent the purchaser from claiming or being awarded damages or any other relief in respect of any fraudulent misrepresentation in connection with the sale and purchase of such allotment of land or interest therein.

Construction of certain agreements.

70. (1) Any person for whom any licensee or any employee as such of a licensee is acting or has acted may on payment of a fee of two shillings and sixpence to the clerk of the court of petty sessions with whom the same was lodged or by whom it is being kept, inspect the bond lodged by or on behalf of such licensee pursuant to this Act and may take a copy thereof.

Inspection of bond and power to sue thereon. cf. Act No. 7, 1935, s. 27.

(2) Any person may with the approval in writing of the Minister sue upon any bond under this Act for indemnity in respect of any loss covered by the said bond.

(3) Any such action shall be taken within two years after the date upon which the cause of such action arises.

71. (1) Any person who in any application made pursuant to this Act makes any statement which is not correct or furnishes any particulars which are not correct or omits to furnish any particulars required to be furnished by or under this Act shall be guilty of an offence against this Act and shall be liable to a penalty not exceeding fifty pounds.

Furnishing incorrect particulars in applications. cf. *Ibid.* s. 39.

(2) If any person is charged with an offence against this Act by reason of any contravention of subsection one of this section, it shall be a sufficient defence if the person charged proves—

(a) where the charge relates to the making of a statement that is not correct or to the furnishing of particulars which are not correct—that he had

had reasonable grounds for believing and did in fact believe that the statement made or the particulars furnished were correct;

(b) where the charge relates to the omission to furnish particulars—that the omission was not made with intent to evade the requirements of this Act or, that he had reasonable grounds for believing and did in fact believe that he had furnished all particulars required to be furnished by or under this Act.

72. (1) Every person who commits any contravention of or fails to comply with any of the provisions of this Act shall be guilty of an offence against this Act. Offences against Act. Act No. 7, 1935, s. 40.

(2) Where no penalty is specially provided for any offence against this Act any person guilty of such offence shall be liable, if a corporation, to a penalty not exceeding four hundred pounds, and, if an individual, to a penalty not exceeding two hundred pounds or to imprisonment for a period not exceeding two years or to both such penalty and imprisonment.

(3) Where any person is convicted of an offence against this Act the court may, in addition to any penalty or imprisonment imposed, order that the license or licenses (if any) or the certificate of registration (if any) held by such person be delivered up and cancelled, whereupon such license or licenses or certificate of registration shall thereafter be deemed and taken to be cancelled and/or that such person be disqualified, for such period as the court may think fit, from holding any license or certificate of registration under this Act.

(4) Any penalty imposed by this Act or by the regulations may be recovered in a summary manner in a court of petty sessions holden before a stipendiary or police magistrate.

(5) Where two or more persons commit or knowingly authorise or permit the commission of any offence against this Act each of such persons shall be liable therefor and the liability of each of them shall be independent of the liability of the other or others.

73.

73. Without affecting the generality of the provisions of the Crimes Act, 1900, as amended by subsequent Acts, any licensee who— Wrongful conversion and false accounts. cf. Act No. 7, 1935, s. 20.

(a) fraudulently converts to his own use—

(i) any moneys received by him on behalf of any person in respect of any transaction in his capacity as an auctioneer or a stock and station agent or a real estate agent; or

(ii) any moneys so received which are held by him as a stakeholder or in trust pending the completion of any transaction,

or any part of any such moneys; or

(b) fraudulently omits to account for, deliver or pay—

(i) any such moneys received by him as aforesaid on behalf of any person or any part thereof to such person; or

(ii) any such moneys received by him as aforesaid which are or were held by him as a stakeholder or in trust as aforesaid pending the completion of the transaction or any part of such moneys to the person or persons entitled to such moneys; or

(c) fraudulently renders an account—

(i) of any moneys received by him as aforesaid on behalf of any person or any part of such moneys; or

(ii) of any moneys received by him as aforesaid which are or were held by him as a stakeholder or in trust pending the completion of any transaction or any part of such moneys; or

(iii) of expenses, commission or other charges incidental to any transaction or proposed or contemplated transaction as an auctioneer, or a stock and station agent or a real estate agent,

knowing such account to be false in any material particular,

shall

shall be guilty of a misdemeanour and shall be liable to imprisonment for a term of not more than ten years.

Facilitation of proof. cf. Act No. 7, 1935, s. 26.

74. When in any proceedings under this Act or the regulations against any person it is alleged in the information that such person is not the holder of a license of the class specified in the allegation, or, as the case may be, is not the holder of a certificate of registration, it shall, in the absence of proof to the contrary, be presumed that such person is not the holder of a license or of a certificate of registration, as the case may be.

Civil remedy not affected by proceedings for an offence. *Ibid.* s. 29.

75. Notwithstanding any proceedings against any person for an offence against this Act (whether resulting in a conviction or otherwise) such person shall remain liable to all civil proceedings in like manner as if the proceedings for an offence had not been taken.

Corporations.

76. (1) Except where special provision is made to the contrary, a corporation shall be liable for any offence against this Act as if such corporation were an individual and shall be subject to the same pecuniary penalties as if it were an individual.

(2) Where any act which by this Act is declared to be an offence and which is committed by a body corporate is proved to have been committed with the consent or approval of or to have been facilitated by any wilful neglect on the part of any director, manager, secretary or other officer of the body corporate, he, as well as the body corporate, shall be deemed to be guilty of the offence, and he may be proceeded against and shall be liable to the pecuniary penalty or imprisonment or both provided by this Act in the case of an offence by a person who is not a corporation.

Regulations.

77. (1) The Governor may make regulations not inconsistent with this Act prescribing all matters which by this Act are required or permitted to be prescribed or which are necessary or convenient to be prescribed for carrying out or giving effect to this Act.

(2) Without prejudice to the generality of the power conferred by subsection one of this section the Governor may, in and by the regulations—

(a) prescribe any forms to be used under this Act;

(b)

(b) prescribe the procedure to be followed on applications and other proceedings under this Act;

(c) prescribe the method of election of members of the council;

(d) prescribe the procedure to be followed at meetings of the council;

(e) prescribe the duties and functions of the registrar.

(3) The regulations may prescribe penalties not exceeding ten pounds for any breach thereof.

(4) All regulations shall—

(a) be published in the Gazette;

(b) take effect from the date of publication or from a later date to be specified in the regulations; and

(c) be laid before both Houses of Parliament within fourteen sitting days after the publication thereof if Parliament is then in session, and, if not, then within fourteen sitting days after the commencement of the next session.

If either House of Parliament passes a resolution of which notice has been given at any time within fifteen sitting days after such regulations have been laid before such House disallowing any regulation or part thereof, such regulation or part shall thereupon cease to have effect.

SCHEDULE. Sec. 5.

Auctioneers' Licensing Act, 1898, No. 24.

Auctioneers Licensing (Amendment) Act, 1924, No. 28.

Auctioneers Licensing (Amendment) Act, 1925, No. 9.

Auctioneers Licensing (Amendment) Act, 1934, No. 44.

Sydney: Thomas Henry Tennant, Government Printer—1941.

[3*s.* 6*d.*]

I certify that this PUBLIC BILL, *which originated in the* LEGISLATIVE ASSEMBLY, *has finally passed the* LEGISLATIVE COUNCIL *and the* LEGISLATIVE ASSEMBLY *of* NEW SOUTH WALES.

W. R. McCOURT,
Clerk of the Legislative Assembly.

Legislative Assembly Chamber,
Sydney, 8 April, 1941.

New South Wales.

ANNO QUINTO

GEORGII VI REGIS.

* *

Act No. 28, 1941.

An Act to provide for the licensing of auctioneers, stock and station agents and real estate agents, and for the regulation of their operations; to make provision for the constitution of a council of the auctioneers, stock and station agents and real estate agents; to make provision for the control and regulation of real estate dealers and real estate salesmen; to repeal the Auctioneers' Licensing Act, 1898, and certain other Acts; to amend the Business Agents Act, 1935, and certain other Acts in certain respects; and for purposes connected therewith. [Assented to, 10th April, 1941.]

BE

I have examined this Bill, and find it to correspond in all respects with the Bill as finally passed by both Houses.

W. W. HEDGES,
Chairman of Committees of the Legislative Assembly.

Auctioneers, Stock and Station and Real Estate Agents.

BE it enacted by the King's Most Excellent Majesty, by and with the advice and consent of the Legislative Council and Legislative Assembly of New South Wales in Parliament assembled, and by the authority of the same, as follows :—

PART I.

Preliminary.

Short title.

1. (1) This Act may be cited as the "Auctioneers, Stock and Station and Real Estate Agents Act, 1941."

(2) This Act shall commence on a day to be appointed by the Governor and notified by proclamation published in the Gazette.

Division into Parts.

2. This Act is divided into Parts as follows:—

PART I.—Preliminary—*ss.* 1–5.

PART II.—The Council of the Auctioneers, Stock and Station Agents and Real Estate Agents—*ss.* 6–19.

PART III.—Auctioneers, Stock and Station Agents and Real Estate Agents—*ss.* 20–50.

Division 1.—*Licenses*—*ss.* 20–31.

Division 2.—*Licensees generally*—*ss.* 32–43.

Division 3.—*Auctioneers*—*ss.* 44–50.

PART IV.—Real Estate Dealers and Real Estate Salesmen—*ss.* 51–63.

Division 1—*Interpretation*—*s.* 51.

Division 2.—*Real Estate Dealers*—*ss.* 52–55.

Division 3.—*Real Estate Salesmen*—*ss.* 56–63.

PART V.—Amendment of the Business Agents Act, 1935—*s.* 64.

PART VI.—The Auctioneers, Stock and Station and Real Estate Agents Fidelity Guarantee Fund—*ss.* 65–83.

PART VII.—General—*ss.* 84–92.

SCHEDULE.

3.

3. (1) In this Act, unless the context otherwise indicates or requires— Definitions.

"Auctioneer" means any person who exercises the trade or business of an auctioneer or seller by commission at any auction sale or who sells or attempts to sell or offer for sale or resale any estate, goods or effects by way of auction.

"Auction sale," "sale by auction," "sell by way of auction," and expressions of a similar character mean the selling of any estate, goods, or effects whatsoever by outcry, by what is known as Dutch auction, by knocking-down of hammer, candle, lot, parcel, instrument, machine, or by 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 whereby there is a competition for the purchase of any estate, goods, or effects whatsoever in any way commonly known and understood to be by way of auction, and shall be deemed to include the selling by outcry or in any other manner before mentioned in any public place or in any room, or mart, or place to which the public are admitted or have access, whether or not the sale has been advertised to take place. cf. Act No. 44, 1936, s. 4.

"Council" means the council of the auctioneers, stock and station agents and real estate agents constituted under this Act.

"Employee" includes any person employed whether on salary, wages, bonus, commission, fees, allowance or other remuneration and includes a director or member of the governing body of a corporation.

"Individual" means a natural person and does not include a corporation.

"License" means a license issued under this Act.

"Licensee" means the holder of any license issued under this Act and includes any employee of a corporation in respect of whom the corporation has taken out any such license.

"Live

"Live stock" means horses, cattle, asses, mules, sheep, swine, camels or goats.

"Prescribed" means prescribed by this Act or the regulations.

"Real estate agent" means a person (whether or not such person carries on any other business) who for reward (whether monetary or otherwise) carries on business as an agent for—

(a) the sale, purchase, exchange, letting or taking on lease of land, other than land used for agricultural or pastoral purposes; or

(b) the collection of rents payable in respect of any lease or letting of land other than land used for agricultural or pastoral purposes.

"Registrar" means the registrar appointed under this Act.

"Regulations" means regulations made under this Act.

"Stock and station agent" means a person (whether or not such person carries on any other business) who, for reward (whether monetary or otherwise), carries on business as an agent for—

(a) the sale, purchase, exchange, letting or taking on lease of land used for agricultural or pastoral purposes;

(b) the collection of rents payable in respect of any lease or letting of land used for agricultural or pastoral purposes;

(c) the sale, purchase or exchange of live stock;

(d) the provision of agistment for live stock or the collection of fees for such agistment.

(2) Without prejudice to the generality of the definition of "licensee" in subsection one of this section, a reference to a licensee in any of the provisions contained in

in Divisions 2 and 3 of Part III of this Act may in any case where a corporation has taken out a license on behalf of an employee be read, deemed and taken to refer to the corporation which has taken out such license, or to the employee in respect of whom such license has been so taken out or to both such corporation and such employee at the same or at different times as the case may require.

Act not to apply to any Government department, etc.

cf. Act No. 7, 1935, s. 3.

4. (1) This Act shall not be construed as requiring—

(a) any Minister of the Crown whether a Minister of the State of New South Wales or of the Commonwealth of Australia; or

(b) any Government department of the said State or Commonwealth (including the Rural Bank of New South Wales and any statutory corporation representing the Crown); or

(c) the Municipal Council of Sydney or any council within the meaning of the Local Government Act, 1919; or

(d) any public statutory authority prescribed by the regulations; or

(e) any officer or employee of the Crown or of any such Minister, department, corporation, council or authority in the exercise of his functions as such officer or employee,

to hold a license under this Act.

(2) Nothing in this Act shall be construed—

(a) as requiring—

(i) the Public Trustee or any executor, administrator, trustee, liquidator, official receiver, master in equity or in lunacy, trustee in bankruptcy of a bankrupt's estate, trustee under a composition or scheme of arrangement or under a deed of arrangement or under a deed of assignment, committee of the estate of an insane person, or manager of the property of an incapable person, for the purpose of performing his functions, exercising his powers or carrying out his duties as such; or

(ii) any person for the purposes of any sale made of Crown lands or other Crown property or for the purposes of any sale of any property made by virtue of any writ or process issued out of any Court or made in obedience to any process issued by any Court or judge or justice for the recovery of any fine, penalty or award, or under any rule, order or decree of any competent Court or made pursuant to the Impounding Act, 1898,

to hold a license under this Act:

Vict. Act No. 4,117, s. 6.

Provided that notwithstanding anything in this paragraph it shall not be lawful for any of the persons referred to in subparagraph (i) of this paragraph in whom is vested the management of the business of any auctioneer, stock and station agent or real estate agent to carry on such business at any time after the expiration of one month from the date upon which the management thereof was so vested, unless such person holds a license under this Act; or

(b) as prohibiting any person for the time being entitled to practise as a solicitor from performing any function, exercising any power or carrying out any duty which if this Act had not been passed he might lawfully have performed, exercised or carried out as such solicitor; or

(c) as rendering any such person liable to any proceedings or to any penalty for performing any such function or exercising any such power or carrying out any such duty.

(3) Nothing in this Act shall be construed as relieving any person from the obligation to take out a license from any Department of the Government or under any Act (other than this Act) for the performance of any function the exercise of any power or the carrying out of any duty for which a license would have been required if this Act had not been passed or to pay the fees payable in respect of any such license.

(4) This Act shall not apply to a sale by auction made for the purposes of or in the course of an appeal for support of a charity where such appeal for support is made under and in accordance with the provisions of the Charitable Collections Act, 1934, and where the gross proceeds of the sale are devoted to the charity or charitable purpose for which the appeal for support is made. Act not to apply to sale at appeal for support of a charity.

5. (1) After the commencement of this Act no license or renewal of license under the Auctioneers' Licensing Act, 1898-1934, shall be granted. Operation of Auctioneers' Licensing Act, 1898-1934.

(2) The provisions of the Auctioneers' Licensing Act, 1898-1934, shall, after the commencement of this Act, apply only with respect to licenses issued under that Act and in force immediately before the commencement of this Act, and for that purpose shall continue in force, in relation to any such license, only until such time as such license has expired.

(3) As from the first anniversary of the date of the commencement of this Act, the Acts mentioned in the Schedule to this Act are hereby repealed.

(4) Notwithstanding anything in subsections two and three of this section, every auctioneer shall keep the written record referred to in section eleven of the Auctioneers' Licensing Act, 1898-1934, for a period of not less than three years after the date upon which it was made.

PART II.

The Council of the Auctioneers, Stock and Station Agents and Real Estate Agents.

6. (1) There shall be constituted a council which shall have and may exercise and perform the powers, authorities, duties and functions conferred and imposed upon the council by or under this Act. The council.

(2) The council shall be a body corporate with perpetual succession and a common seal, and shall, for the

the purposes and subject to the provisions of this Act, be capable of purchasing, holding, granting, demising, disposing of or otherwise dealing with real and personal property, and of doing and suffering all such other acts and things as bodies corporate may by law do and suffer.

(3) The corporate name of the council shall be "The Council of the Auctioneers, Stock and Station Agents and Real Estate Agents."

First council.

7. (1) The council first constituted under this Act shall consist of ten members who shall be appointed by the Governor.

(2) Of the members so appointed—

(a) three shall be auctioneers who are holders of auctioneers' licenses under the Auctioneers' Licensing Act, 1898-1934;
(b) three shall be stock and station agents;
(c) three shall be real estate agents;
(d) one shall be a practising solicitor of the Supreme Court of New South Wales.

(3) The members appointed pursuant to paragraphs (a), (b) and (c) of subsection two of this section are in this Act referred to as "appointed members."

The member appointed pursuant to paragraph (d) of subsection two of this section is in this Act referred to as the "official member."

(4) The council shall appoint one of its members to be chairman of the council.

(5) The members of the council first constituted under this Act shall, subject to this Act, hold office until the thirtieth day of June, one thousand nine hundred and forty-two, and shall be eligible for reappointment or for election as members of the council.

(6) (a) If any member of the council appointed pursuant to paragraph (a) of subsection two of this section neglects or fails to obtain a license under this Act (whether on his own behalf or as the employee of a corporation) as an auctioneer, upon the expiration of the license held by him under the Auctioneers' Licensing Act, 1898-1934, he shall be deemed to have vacated his office on the day upon which such license expired.

(b)

(b) If any member of the council appointed pursuant to paragraph (b) or paragraph (c) of subsection two of this section neglects or fails to obtain a license under this Act (whether on his own behalf or as the employee of a corporation) as a stock and station agent or as a real estate agent, as the case may be, within a period of three months from the commencement of this Act, he shall, upon the expiration of that period, be deemed to have vacated his office.

(7) Where any vacancy occurs in the office of a member of the council first constituted under this Act the Governor may appoint a person to the vacant office.

Constitution of subsequent councils.

8. (1) On and from the first day of July, one thousand nine hundred and forty-two, the council shall consist of ten members of whom nine shall be elected members and one shall be an official member.

(2) (a) The elected members shall be elected as provided in this section.

(b) Of the elected members—

(i) three shall be auctioneers;

(ii) three shall be stock and station agents;

(iii) three shall be real estate agents.

(3) The official member shall be appointed by the Governor and shall be a practising solicitor of the Supreme Court of New South Wales.

(4) (a) The council shall cause separate rolls to be prepared and revised in the prescribed manner of—

(i) auctioneers;

(ii) stock and station agents;

(iii) real estate agents.

(b) Any person shall be eligible for enrolment—

(i) on the roll of auctioneers, if he holds an auctioneer's license;

(ii) on the roll of stock and station agents, if he holds a stock and station agent's license;

(iii) on the roll of real estate agents, if he holds a real estate agent's license:

Provided that if any person possesses the qualification for enrolment on more than one such roll he shall be

be eligible for enrolment on only one such roll; and any such person may, by instrument in writing addressed to the council, elect on which such roll he shall be enrolled.

(c) No person shall be qualified to vote at an election of, or to become a candidate for election as, a member of the council—

(i) as an auctioneer—unless his name is on the roll of auctioneers;

(ii) as a stock and station agent—unless his name is on the roll of stock and station agents;

(iii) as a real estate agent—unless his name is on the roll of real estate agents.

(d) Each such roll shall be divided into two parts to be known respectively as Part I and Part II.

In Part I of each such roll shall be entered the names of all persons eligible for enrolment on such roll whose places of business are situated within the county of Cumberland or the county of Northumberland.

In Part II of each such roll shall be entered the names of all persons eligible for enrolment on such roll whose places of business are situated in any other part of New South Wales.

(e) The persons whose names are on Part I of the roll of auctioneers shall elect two members of the council, and the persons whose names are on Part II of that roll shall elect one member of the council.

The persons whose names are on Part I of the roll of stock and station agents shall elect one member of the council and the persons whose names are on Part II of that roll shall elect two members of the council.

The persons whose names are on Part I of the roll of real estate agents shall elect two members of the council and the persons whose names are on Part II of that roll shall elect one member of the council.

(5) Elections of elected members shall be held during the month of May in the year one thousand nine hundred and forty-two, and in each third year thereafter.

The persons elected at any such election shall assume office as elected members on the first day of July next after

after their election, and, subject to this Act, shall hold office for a period of three years and shall be eligible for re-election.

(6) All elections of elected members shall be held and conducted in the manner prescribed.

(7) The council shall appoint one of its members to be chairman of the council.

Vacation of office.

9. A member of the council shall be deemed to have vacated his office if—

(a) he becomes bankrupt within the meaning of the law in force for the time being relating to bankruptcy or compounds with his creditors; or

(b) he becomes an insane person or patient or an incapable person within the meaning of the Lunacy Act of 1898; or

(c) he is absent from three consecutive ordinary meetings of the council without leave granted by the council; or

(d) he dies; or

(e) he resigns his office by writing under his hand delivered to the registrar; or

(f) he is removed from office by the Governor; or

(g) being an elected member, his license is suspended or cancelled or he neglects or fails to renew the same upon its expiry.

Removal of member.

10. The Governor may, for any cause which appears to him to be sufficient, remove any member of the council from office.

Filling of vacancy.

11. Where a vacancy occurs in the office of an elected member the vacancy shall be filled by appointment by the council of a person whose name is on the same roll as the person in whose office the vacancy occurred.

Any person appointed to fill a vacancy shall hold office for the residue of the term for which his predecessor was elected and shall, for the purposes of this Act, be deemed to be an elected member.

Deputies.

12. (1) If a member of the council (other than the official member) is, through illness or any other just cause, likely to be absent from meetings of the council for more than three months, such member may appoint

a deputy (who shall have the same qualification as the member making the appointment) to act for such member during such absence.

(2) If the official member is, through illness or any other just cause, likely to be absent from meetings of the council for more than three months, such official member may, with the consent of the Governor, appoint a deputy (who shall be a practising solicitor of the Supreme Court of New South Wales) to act during his absence.

(3) Any deputy appointed under this section, whilst acting as such deputy, shall have the like powers, authorities, duties and functions as the member for whom he is appointed to act.

Vacancies.

13. In any of the following cases, that is to say—

(a) where no proper election of elected members or of any elected member takes place upon the date appointed for the holding of an election of members; or

(b) where a vacancy occurs in the office of an elected member and such vacancy is not filled within two months after the occurrence thereof,

the Governor may appoint to the vacant office or offices such person or persons as are qualified to be elected members of the council and are necessary to constitute the council. Any person so appointed shall, for the purposes of this Act, be deemed to be an elected member.

Fees and expenses.

14. (1) The chairman and members of the council may be paid such travelling and sustenance expenses as are approved by the Governor.

(2) The office of chairman or of member of the council shall not, for the purposes of the Constitution Act, 1902, or the Sydney Corporation Act, 1932-1940, or of any Act amending or replacing those Acts, be deemed to be an office or place of profit under the Crown.

Quorum.

15. (1) Six members shall form a quorum at any meeting of the council.

(2) Any duly convened meeting of the council at which a quorum is present shall be competent to transact the business of the council.

(3)

(3) The procedure for the calling of meetings of the council and for the conduct of business at meetings shall, subject to any regulations made in relation thereto, be as determined by the council.

Powers of chairman and casting vote.

16. (1) The chairman shall preside at any meeting of the council at which he is present.

(2) If the chairman is absent from any meeting of the council the members present shall elect one of their number to preside at the meeting.

(3) The chairman or member presiding, as the case may be, shall have a deliberative vote and, if the voting is equal, a second or casting vote.

Registrar.

17. (1) The Governor may, under and subject to the Public Service Act, 1902, as amended by subsequent Acts, appoint a registrar.

(2) The registrar shall have and may exercise and perform the powers, authorities, duties and functions conferred and imposed upon the registrar by or under this Act.

Validity of acts and proceedings.

cf. Act No. 37, 1938, s. 12.

18. (1) No act or proceeding of the council shall be invalidated or prejudiced by reason only of the fact that at the time when such act or proceeding was done, taken or commenced there was a vacancy in the office of any member of the council.

(2) All acts and proceedings of the council shall, notwithstanding the subsequent discovery of any defect in the appointment or election of any member thereof, or that any member was disqualified to act, be as valid as if such member had been duly appointed or elected, as the case may be, and was qualified to act and had acted as a member of the council, and as if the council had been properly and fully constituted.

Annual report.

19. The council shall each year furnish to the Minister for presentation to Parliament a report giving information as to its work and as to its general decisions in the course thereof.

PART

PART III.

Auctioneers, Stock and Station Agents and Real Estate Agents.

Division 1.—*Licenses.*

No person or partner in a firm to act without a license.

20. (1) No person shall act as an auctioneer unless he is the holder of an auctioneer's license issued under the Auctioneers' Licensing Act, 1898-1934, or under this Act.

(2) Subject to this Act, from and after the expiration of three months after the commencement of this Act no person (either by himself or as a member of a partnership)—

(a) shall act as or carry on or advertise, notify or state that he acts as or carries on or is willing to act as or carry on the business of a stock and station agent unless he is the holder of a stock and station agent's license;

(b) shall act as or carry on or advertise, notify or state that he acts as or carries on or is willing to act as or carry on the business of a real estate agent unless he is the holder of a real estate agent's license.

(3) A corporation shall not carry on the business of an auctioneer or of a stock and station agent or of a real estate agent, as the case may be, unless the corporation has taken out a license on its own behalf and has also taken out, in respect of the employee in charge at its sole or principal place of business, a license or licenses of such one or more of the classes referred to in section twenty-two of this Act as may be appropriate.

A corporation shall not be entitled to take out or to hold a license in respect of an employee unless it is the holder of a license on its own behalf.

A corporation which is the holder of a license on its own behalf may take out one or more licenses of any of the classes referred to in section twenty-two of this Act in respect of employees nominated by it for the purpose.

(4)

(4) The Auctioneers' Licensing Act, 1898-1934, is amended by omitting sections three and nineteen. Amendment of Act No. 24, 1898, ss. 3 and 19.

21. (1) (a) No person shall, by virtue of one stock and station agent's license, keep more than one place for the conduct of his business as a stock and station agent. Each separate place of business to be in charge of licensee.

(b) Where a person (other than a corporation) conducts his business as a stock and station agent at more than one place of business he shall employ at each such place, other than the place at which he is himself in charge, a person holding a stock and station agent's license who shall be in charge at that place.

(c) Where a corporation conducts its business as a stock and station agent at more than one place of business it shall employ at each such place a person in respect of whom it has taken out a license, and such person shall be in charge at that place.

(2) (a) No person shall, by virtue of one real estate agent's license, keep more than one place for the conduct of his business as a real estate agent.

(b) Where a person (other than a corporation) conducts his business as a real estate agent at more than one place of business he shall employ at each such place, other than the place at which he is himself in charge, a person holding a real estate agent's license who shall be in charge at that place.

(c) Where a corporation conducts its business as a real estate agent at more than one place of business it shall employ at each such place a person in respect of whom it has taken out a license, and such person shall be in charge at that place.

22. (1) A license under this Act (other than a license taken out by a corporation on its own behalf) shall be one of the following, namely:— Licenses.

(a) an auctioneer's license; or
(b) a stock and station agent's license; or
(c) a real estate agent's license.

(2) (a) An auctioneer's license shall be either—

(i) a general license which shall be in force for all parts of New South Wales; or

(ii)

(ii) a country license which shall be in force for all parts of New South Wales outside the counties of Cumberland and Northumberland; or

(iii) a district license which shall be in force for the police district only for which the same is taken out; or

(iv) a primary products license which shall be in force only at the market within the metropolitan police district which is specified in the license.

(b) No person shall act as an auctioneer in the metropolitan police district unless he has taken out a general license or unless he has taken out a primary products license and acts as an auctioneer only for the sale of firewood, coal, coke, fish, or any products within the meaning of the Marketing of Primary Products Act, 1927-1938, as amended by subsequent Acts, at the market specified in his license.

(3) A license shall be in the form prescribed and shall set forth the name and place of abode of the person taking out the same, and, where the license is taken out by a corporation in respect of an employee, the name and place of abode of such employee and the name and the address of the registered office of the corporation.

A stock and station agent's license or a real estate agent's license shall, in addition, set forth the address of the place of business in respect of which it is taken out.

(4) (a) Subject to this Act a license shall be in force for a period of twelve months from the date of its issue:

Provided that a license of any class which is issued to a person who is already the holder of a license of any other class shall be in force for a period expiring on the day upon which the license of such other class expires.

(b) A license may be renewed and on each renewal shall, subject to this Act, be in force for a further period of twelve months.

(5) An auctioneer shall not be required to hold a license under the Farm Produce Agents Act, 1926-1932, by reason only of the fact that he sells farm produce

(as

(as defined in that Act), outside a radius of ten miles from the General Post Office, Sydney, and not within such radius, and so sells only by auction.

Nothing contained in the Farm Produce Agents Act, 1926-1932, shall be construed as exempting any such auctioneer from the obligation to comply with the requirements of this Act.

(6) The Farm Produce Agents Act, 1926-1932, is amended by omitting paragraph (c) of subsection (3A) of section seven. Amendment of Act No. 7, 1926, s. 7. (Consequential.)

23. (1) An application for a license or for the renewal of a license shall be made in triplicate in the form prescribed. Procedure. cf. Act No. 24, 1898, s. 5.

(2) Such application shall—

(a) contain such particulars as are prescribed;

(b) specify the class of license desired by the applicant.

(3) (a) Where the application is for an auctioneer's license and the applicant resides in New South Wales, the application shall be lodged with the clerk of the court of the petty sessions district within which the applicant resides, or, if there is more than one such court, then with the clerk of the court within such district nearest to the place where the applicant resides.

(b) Where the application is for a stock and station agent's license or for a real estate agent's license and the applicant resides in New South Wales the application shall be lodged with the clerk of the court of the petty sessions district within which the applicant proposes to carry on business, or if there is more than one such court then with the clerk of the court within such district nearest to the place where the applicant proposes to carry on business.

(c) Where any such application is made by a corporation in respect of an employee the application shall be lodged with the clerk of the court of the petty sessions district within which such employee resides, or, as the case may be, of the petty sessions district within which is situated the place of business at which such employee is to be in charge.

(4)

(4) (a) Where the application is for an auctioneer's license and the applicant resides in any other State of the Commonwealth of Australia the application shall be lodged with the clerk of any court of petty sessions.

(b) Where the application is for an auctioneer's license and the applicant resides in the Australian Capital Territory then—

(i) if the application is for a general license it shall be lodged with the clerk of any court of petty sessions;

(ii) if the application is for a district license it shall be lodged with the clerk of any court of petty sessions within the police district in respect of which the application is made.

(c) Where the application is for a stock and station agent's license or for a real estate agent's license and the applicant resides outside New South Wales the application shall be lodged with the clerk of any court of petty sessions.

(5) Upon the receipt of an application for the grant or the renewal of a license by any person, the clerk shall forthwith forward one copy of the application to the officer in charge of police at the nearest police station and one copy of the application to the registrar.

Thereupon the officer in charge of police and the council shall severally inquire into and report upon the character of the applicant, or, where the application is made by a corporation in respect of an employee, the character of such employee.

(6) (a) Where an application is made for the renewal of a license or where an application for a license of any class is made by a person who is already the holder of a license of the same or any other class, the clerk shall, on payment to him of the prescribed fees and the prescribed contribution, issue to such person a provisional license.

Any such provisional license shall take effect as from the date of its issue or from a later date to be specified therein.

(b)

(b) When a provisional license is issued under this subsection the holder thereof shall, for all purposes of this Act, be deemed to be the holder of a license of the class specified in his application until such time as a license or renewal of license is issued to him pursuant to this section or until his application for a license or renewal of license is refused.

(c) If a license or renewal of license is so issued to a person to whom a provisional license has been issued under this subsection such license or renewal of license shall take effect as from the date upon which the provisional license took effect, and the prescribed fees and the prescribed contribution paid under this subsection shall be applied in or towards payment of the prescribed fees and the prescribed contribution for the license or renewal of license.

(7) If the officer in charge of police or the council objects to the grant of the application, such officer or the council, as the case may be, shall include in the report furnished pursuant to subsection five of this section, a statement setting out the nature of the objection proposed to be made.

(8) Where neither the officer in charge of police nor the council objects to the grant of the application, the clerk with whom the application was lodged shall, on payment to him of the prescribed fees and the prescribed contribution, issue the license.

(9) Where the officer in charge of police or the council objects to the grant of the application—

(a) the clerk of the court shall notify the applicant and, where the application is made by a corporation in respect of an employee, shall also notify such employee that the grant of the application will be objected to, and shall set out shortly in the notice the nature of the objection proposed to be made;

(b) the application shall be heard and determined by the court, which for that purpose shall be constituted by a stipendiary or police magistrate or two or more justices;

(c)

(c) such hearing shall not take place until after the expiration of seven days after the lodging of the application;

(d) the hearing of the application shall be in open court and the consideration of the application shall be deemed to be a judicial proceeding;

(e) where the council has objected to the grant of the application it may appear at the hearing by any member of the police force or by counsel or attorney;

(f) where the application is made by a corporation in respect of an employee, the employee as well as the corporation may appear at the hearing.

If the court grants the application, the clerk of the court shall, on payment to him of the prescribed fees and the prescribed contribution, issue the license.

(10) A license or a renewal of a license shall not be granted—

(a) to a corporation in respect of an employee where the employee is disqualified from holding a license under this Act, or is of bad or doubtful character; or

(b) to an applicant who is disqualified from holding a license under this Act or who is of bad or doubtful character; or

(c) to a corporation whether on its own behalf or in respect of an employee, where the court is satisfied that the corporation is substantially owned or controlled by a person who is disqualified from holding a license under this Act.

(11) An auctioneer's license or a renewal of an auctioneer's license shall not be granted to an applicant who is the holder of a license under the Pawnbrokers Act, 1902.

(12) Notwithstanding anything in the foregoing provisions of this section payment of the prescribed contribution shall not be required in the case of an auctioneer who is the holder of a license under the Farm Produce Agents Act, 1926-1932, and who sells farm produce (as defined in that Act) by auction, within a radius of

of ten miles from the General Post Office, Sydney, but who does not in any other way whatsoever exercise the trade or business of an auctioneer.

Nothing contained in this Act shall be construed as exempting any such auctioneer from the obligation to comply with the requirements of the Farm Produce Agents Act, 1926-1932.

Variation of license.

24. (1) The court of petty sessions may upon the application of a corporation which has taken out a license in respect of an employee, vary such license by substituting the name of some other employee nominated by the corporation for the purpose.

(2) The provisions of section twenty-three (other than the provisions relating to payment of the prescribed contribution) of this Act shall, mutatis mutandis, apply to and in respect of an application for the variation of a license in all respects as if the same were an application for a license or a renewal of a license.

Fees payable for license.

25. (1) The following fees shall be payable in respect of the several matters hereinafter referred to:—

(a) for an auctioneer's license—
  (i) being a general license—fifteen pounds;
  (ii) being a country license—five pounds;
  (iii) being a district license—two pounds;
  (iv) being a primary products license—two pounds;
(b) for a stock and station agent's license—one pound;
(c) for a real estate agent's license—one pound;
(d) for an auctioneer's license (being a general license) and either a stock and station agent's license or a real estate agent's license or both—fifteen pounds;
(e) for an auctioneer's license (being a country license) and either a stock and station agent's license or a real estate agent's license or both—five pounds;
(f) for an auctioneer's license (being a district license or a primary products license) and either a stock and station agent's license or a real estate agent's license or both—three pounds;

(g)

(g) for a stock and station agent's license and a real estate agent's license—two pounds;

(h) for a license taken out by a corporation on its own behalf—five pounds;

(i) for the variation of a license—ten shillings;

(j) for a duplicate license—five shillings;

(k) for renewal of any license or licenses—the same fee as that payable upon the issue of the license or licenses;

(l) for a provisional license or licenses—the same fee as that payable upon the issue of the license or licenses.

(2) The fees referred to in paragraphs (d) (e) (f) and (g) of subsection one of this section shall be the fees payable for the several licenses referred to in the respective paragraphs whether the applications upon which the licenses are issued were made at different times or at the same time.

(3) There shall also be payable upon the grant of each application for a license or for renewal of a license and upon the issue of each provisional license a fee of one pound which fee shall be transmitted by the clerk of petty sessions who receives the same to the registrar.

(4) The fees payable pursuant to subsection three of this section shall be paid into a bank in New South Wales to the credit of a separate account to be called the "Auctioneers, Stock and Station and Real Estate Agents Administration Account," and such account shall be operated upon in such manner as the council may from time to time determine.

There shall be paid out of such account—

(a) all costs and expenses incurred by the council in the exercise and discharge of its powers, authorities, duties and functions under this Act, other than such costs and expenses as are, pursuant to Part VI of this Act charged upon the fund referred to in that Part;

(b) any expenses payable to members of the council;

(c) such amount as the Governor may determine in respect of the remuneration or allowances payable to the registrar.

(5)

(5) The amount payable under paragraph (c) of subsection four of this section shall be paid to the Colonial Treasurer to be carried by him to the Consolidated Revenue Fund.

(6) Any surplus moneys in the account may be invested in any manner in which trustees are for the time being authorised to invest trust funds, or on deposit for such period not exceeding two years as the council deems proper with any bank or corporation prescribed by the rules of court as a bank or corporation to which trust moneys may be paid under section fifteen of the Trustee Act, 1925-1940.

Power to grant auctioneers' licenses to persons resident in reciprocating States.

cf. Act No. 7, 1935, s. 10.

26. (1) Where the Governor is satisfied that in any State of the Commonwealth of Australia (other than New South Wales) an Act is in force under which any person resident in New South Wales and holding an auctioneer's license (being a general license) may obtain a license to follow the occupation of an auctioneer in all parts of such other State, the Governor may by notification published in the Gazette declare that on and after a date to be specified in the notification, and while the notification remains in force, this Act shall extend and apply to the granting in New South Wales of auctioneers' licenses (being general licenses) to residents in such other State.

(2) The Governor may, if he thinks fit, revoke any such notification.

(3) Any notification declaring that the Auctioneers' Licensing Act, 1898, as amended by subsequent Acts, shall extend and apply to the granting in New South Wales of general licenses to residents in any other State, which was published pursuant to section six of that Act and which was still in force immediately before the commencement of this Act, shall, as from such commencement and until revoked by a notification published pursuant to this Act, have and take effect as if it were a notification published pursuant to subsection one of this section declaring that, as from such commencement and while the notification remains in force, this Act shall extend and apply to the granting in New South Wales of auctioneers' licenses (being general licenses) to residents in such other States as is mentioned in such notification.

(4)

(4) (a) In the case of a resident in any State of the Commonwealth of Australia with respect to which a notification under this section is in force an auctioneer's license (being a general license) shall be granted to such resident only if he holds a license to follow the occupation of an auctioneer in all parts of that State.

(b) An auctioneer's license (being a district license or a primary products license) shall not in any case be granted to any person resident in any State of the Commonwealth of Australia, other than New South Wales.

Grant of auctioneers' licenses to persons resident in the Australian Capital Territory.

27. The provisions of this Act (other than section twenty-six) shall extend and apply to the granting in New South Wales of auctioneers' licenses (being general licenses or district licenses) to persons resident in the Australian Capital Territory:

Provided that an auctioneer's license (being a general license or a district license) shall not be granted to a person resident in the Australian Capital Territory unless—

(a) such person is the holder of an auctioneer's license for the Australian Capital Territory granted in accordance with the law for the time being in force in that Territory; and

(b) under the law for the time being in force in that Territory, any resident of New South Wales who is the holder of an auctioneer's license (being a general license or a district license) may obtain an auctioneer's license for that Territory.

Applicant for auctioneer's license to be resident in New South Wales or reciprocating State.

Act No. 28, 1924, s. 2 (a).

28. Save as provided in sections twenty-six and twenty-seven of this Act, a person who is not a resident of New South Wales shall not be entitled to obtain an auctioneer's license or a renewal thereof under this Act.

Cancellation of licenses.

cf. Act No. 7, 1935, s. 14.

29. (1) Upon complaint being made to him by a member of the police force of or above the rank of inspector or by the council any justice of the peace may summon a licensee to appear before a court of petty sessions

sessions holden before a stipendiary or police magistrate to show cause why the license held by him or, in the case of a corporation, held by it either on its own behalf or in respect of an employee, should not be cancelled and why such licensee or, as the case may be, such employee, should not be disqualified either permanently or temporarily from holding a license on the ground—

(a) that the license was improperly obtained contrary to the provisions of this Act; or

(b) that he is not a fit and proper person to continue any longer to hold a license, or to have a license held in respect of him as an employee, by a corporation, or that the corporation is not a fit and proper person any longer to continue to hold a license on its own behalf or in respect of an employee; or

(c) that he has been guilty of such conduct as renders him unfit to continue any longer to hold a license, or to have a license held in respect of him as an employee, by a corporation, or that the affairs of the corporation have been so conducted as to render it unfit to continue any longer to hold a license on its own behalf or in respect of an employee.

Where the licensee named in the summons is a corporation which holds the license in respect of an employee, a copy of the summons shall be served personally or by post on such employee.

(2) If upon the day and at the time and place appointed by the summons issued in accordance with the provisions of subsection one of this section the licensee or, as the case may be, the employee named therein does not appear then upon proof of the due service of the summons upon him a reasonable time before the time appointed for his appearance, such court of petty sessions may proceed to hear and determine the matter of such complaint in the absence of such licensee, or, as the case may be, such employee.

Service of the summons may be proved by the oath of the person who served it or by affidavit or otherwise.

(3)

(3) Upon being satisfied of the truth of any of the grounds aforesaid the court may order that the license of such licensee be delivered up to the court forthwith and cancelled and that such licensee or such employee, or both, be disqualified either permanently or for such period as the court specifies from holding a license under this Act, and upon the making of such order such license shall thereafter be deemed and taken to be cancelled.

Register to be kept by registrar.

30. (1) The clerk of petty sessions shall, within seven days after the issue of a license or renewal thereof or after the variation or cancellation thereof under this Act, notify the registrar of such issue, renewal, variation or cancellation.

(2) The registrar shall keep a register of all such licenses and of all renewals, variations and cancellations of licenses, which register shall be available for perusal by any member of the public upon payment of the prescribed fee.

Appeal.

31. (1) Where the court refuses any application under section twenty-three or under section twenty-four or makes an order under section twenty-nine of this Act the person making the application or the licensee, as the case may be, may appeal in accordance with the rules of court of the District Court to the District Court exercising jurisdiction in the district within which the court refusing such application or making such order is situated.

(2) Every such appeal shall be in the nature of a rehearing.

(3) Notice of appeal shall be given to such persons as may be prescribed by rules of court of the District Court, or as the District Court may direct.

(4) (a) An appeal shall lie to the Supreme Court either by special case or upon notice of motion against any ruling, order, direction or decision of the District Court in point of law or upon the admission or rejection of any evidence.

(b) The provisions of Part VI of the District Courts Act, 1912-1936, shall, mutatis mutandis, extend to and in respect of any such appeal.

For

For the purposes of such extension the word "party" where used in that Part shall be deemed to include any of the following persons:—

(i) the person making the application or the licensee, or employee, as the case may be;

(ii) the officer in charge of police who objected to the grant of the application—in any case where the appeal is in proceedings arising out of an application to the granting of which such officer in charge of police had objected;

(iii) the member of the police force who made the complaint—in any case where the appeal is in proceedings arising out of a complaint made by him under section twenty-nine of this Act;

(iv) the council—in any case where the appeal is in proceedings arising out of an application to the granting of which the council had objected, or out of a complaint made by the council under section twenty-nine of this Act.

DIVISION 2.—*Licensees generally.*

Effect of disqualification on membership, etc., of corporation.

cf. Act No. 7, 1935, s. 24.

32. A person disqualified under this Act shall not, while his disqualification continues, be capable of becoming or continuing a director or manager of any corporation or a partner in any partnership carrying on business in New South Wales as an auctioneer, a stock and station agent or a real estate agent, and no corporation shall obtain or continue to hold a license in respect of any such person as an employee.

Failure to deliver up license.

33. Where the court has made an order that a license be delivered up to the court the holder of such license shall, if he refuses, neglects or fails to comply with such order, be guilty of an offence against this Act.

Registered office and address.

cf. *Ibid.* s. 15.

34. (1) Every licensee shall have a registered office within New South Wales.

(2) All writs, summonses, notices or other documents required or authorised to be served on or given to a licensee shall be deemed to be duly served or given if left for him at his registered office.

(3)

(3) The address specified in the application as the address at which the applicant proposes to carry on business shall, upon the grant, renewal or transfer of the license, be deemed to be the registered office of the licensee:

Provided that where a corporation takes out a license in respect of an employee the address of the corporation and not that of the employee shall be so deemed to be the registered office of the licensee.

(4) Notice of any change in the situation of the registered office shall be lodged by the licensee with the court from which the license issued within the prescribed time, and the clerk of such court shall record such notice and advise the registrar who shall enter such change in the register.

(5) If any licensee carries on business without complying with the requirements of this section he shall be liable to a penalty not exceeding five pounds for every day during which he so carries on business.

Publication of name of licensee.
cf. Act No. 33, 1936, s. 76.

35. (1) Every licensee shall paint or affix and keep painted or affixed his name and description as a licensee on the outside of his registered office, and, where the business is carried on at any place other than such registered office, on the outside of each place in which his business as a licensee is carried on, in a conspicuous position, in letters easily legible.

(2) It shall be a sufficient compliance with the requirements of subsection one of this section if, in any case where a license is taken out by a corporation in respect of an employee the name of the corporation and the name of the employee in respect of whom the license is taken out and who is in charge at the registered office or place of business is painted or affixed as provided in that subsection.

cf. Act No. 7, 1935, s. 16.

(3) Any person shall be guilty of an offence against this Act who—

(a) commits any contravention of or fails to comply with any of the provisions of subsection one of this section; or

(b)

(b) after the expiration of three months after the commencement of this Act, keeps up or exhibits or allows to remain unobliterated on or near to his office, house or place of business or exhibits anywhere any sign, writing, painting or other mark implying that such office, house or place of business is that of a person licensed—

(i) as an auctioneer—unless he is the holder of an auctioneer's license granted under the Auctioneers' Licensing Act, 1898-1934, or under this Act;

(ii) as a stock and station agent—unless he is the holder of a stock and station agent's license;

(iii) as a real estate agent—unless he is the holder of a real estate agent's license.

Payment into bank. cf. Act No. 22, 1898, s. 41.

36. (1) All moneys received for or on behalf of any person by any licensee shall be held by the licensee exclusively for such person, to be paid to such person, or to be disbursed as he directs, and until so paid or disbursed the moneys shall be paid into a bank in New South Wales to a trust account, whether general or separate.

In any case where a license is held by a corporation in respect of an employee the trust account shall be in the name of the corporation.

(2) The moneys shall not be available for the payment of the debts of the licensee to any other creditor of the licensee, or be liable to be attached or taken in execution under the order or process of any court at the instance of any such other creditor.

(3) Nothing in this section shall be construed to take away or affect any just claim or lien which any licensee may have against or upon any of the moneys.

(4) Any licensee who neglects or fails to comply with any of the provisions of this section shall be guilty of an offence against this Act.

37.

Relief to bankers. cf. Act No. 22, 1898, s. 44.

37. (1) Subject to the provisions of this section no bank shall, in connection with any transaction on any account of any licensee kept with it or with any other bank, incur any liability or be under any obligation to make any enquiry or be deemed to have any knowledge of any right of any person to any money paid or credited to any such account which it would not incur or be under or be deemed to have in the case of an account kept by a person entitled absolutely to all the money paid or credited to it:

Provided that nothing in this subsection shall relieve a bank from any liability or obligation under which it would be apart from this Act.

(2) Notwithstanding anything in subsection one of this section a bank at which a licensee keeps an account for clients' money shall not, in respect of any liability of the licensee to the bank, not being a liability in connection with that account, have or obtain any recourse or right whether by way of set-off, counter-claim, charge or otherwise, against moneys standing to the credit of that account:

Provided that nothing in this subsection shall deprive a bank of any right existing at the time of the commencement of this Act.

Record to be kept. cf. Act No. 7, 1935, s. 22.

38. (1) Every licensee (being an auctioneer or a stock and station agent) shall keep in a legible manner a written record containing full particulars of all transactions by or with him as licensee.

(2) The written record shall be preserved by the licensee for a period of not less than three years after the date upon which it was made.

(3) Every entry in the written record kept at the registered office of a licensee shall be deemed, unless the contrary is proved, to have been made by or with the authority of the licensee.

(4) Any person who contravenes any of the provisions of this section shall be guilty of an offence against this Act.

39.

Certain persons not to be employed by licensees.
cf. Act No. 7, 1935, s. 25.

39. (1) A licensee shall not, except with the approval of a court of petty sessions holden before a stipendiary or police magistrate, and subject to such conditions as the court may impose, knowingly employ in any way whatever in connection with his business any person—

(a) who is for the time being disqualified under this Act from holding a license or disqualified under the Business Agents Act, 1935, from holding a license under that Act; or

(b) whose application for a license under this Act, or the Auctioneers' Licensing Act, 1898-1934, or the Business Agents Act, 1935, as the case may be, has been refused, unless such an application has been subsequently granted.

(2) Subject to this section no such person shall participate or be in any way concerned in the business of a licensee.

(3) A licensee who holds a license as a real estate agent or on whose behalf (if a corporation) a license as a real estate agent is held shall not, from and after the expiration of three months after the commencement of this Act, employ, in connection with his or its business as a real estate agent, any real estate salesman who is not registered as such under this Act.

(4) Any licensee or any person aforesaid who commits any contravention of or fails to comply with any of the provisions of this section shall be guilty of an offence against this Act.

Production of license.
cf. *Ibid.* s. 36.

40. Every licensee shall on demand, at the premises upon which he carries on his business, produce his license to any member of the police force of or above the rank of sergeant, or to any person with whom such licensee is transacting or attempting to transact any business as an auctioneer, a stock and station agent or a real estate agent, as the case may be.

Licensee not to lend license.
Ibid. s. 37.

41. Any licensee who lets out, hires or lends any license held by him to any other person or permits any other person to use his license shall be guilty of an offence against this Act, and on conviction for such offence, and in

in addition to any penalty therefor, any license held by him shall thereupon become absolutely void and shall be delivered up to the court and cancelled.

Provisions as to commission, etc. Act No. 7, 1935, s. 38.

42. (1) Subject to this Act, no person shall be entitled to bring any proceeding in any court to recover any commission, fee, gain or reward for any service done or performed by him—

(a) as an auctioneer unless he was the holder of an auctioneer's license issued under the Auctioneers' Licensing Act, 1898-1934, or under this Act at the time of doing or performing such service;

(b) as a stock and station agent unless he was the holder of a stock and station agent's license at the time of doing or performing such service or such service was done or performed before the expiration of three months after the commencement of this Act;

(c) as a real estate agent unless he was the holder of a real estate agent's license at the time of doing or performing such service or such service was done or performed before the expiration of three months after the commencement of this Act.

(2) This section shall extend to and in respect of any licensee which is a corporation on whose behalf a license is held, and for such purpose the corporation shall be deemed to be the holder of any license held on its behalf.

Publication of name and place of business in advertisements. cf. *Ibid.* s. 41.

43. Any licensee who publishes (whether in a newspaper or otherwise) any advertisement relating to or in connection with his business (or in the case of a corporation or partnership or a person who holds a license on behalf of a corporation relating to or in connection with the business of the corporation or partnership) without specifying therein his or its name as a licensee and (if the business is not carried on in his or its own name) the name under which he or it or the partnership in which he

he or it is a partner is registered or deemed to be registered under any Act for the time being in force relating to the registration of business names, and his or its place of business, shall be guilty of an offence against this Act.

DIVISION 3.—*Auctioneers.*

44. (1) In this Division— Definitions.

"Cattle" means horses, mares, fillies, foals, geldings, colts, bulls, bullocks, cows, heifers, steers, calves, ewes, wethers, rams, lambs and swine. cf. Vict. Act No. 4323, 1935, s. 2.

"Farm produce" means cereals, grain, vegetables, potatoes, onions, other edible roots and tubers, tobacco leaf, fruit, hay, chaff, dairy produce, live or dead poultry and game, and eggs. cf. Vict. Act No. 4420, 1936, s. 2.

(2) Upon a day to be appointed by the Governor and notified by proclamation published in the Gazette, the meaning of the expression "farm produce," as defined in subsection one of this section, shall extend to include wool. cf. Vict. Act No. 4323, 1935, s. 3.

45. (1) Any person who induces or attempts to induce any other person to abstain from bidding at a sale by auction of cattle or farm produce either generally or for any particular lot, by means of a promise, express or implied, that he will if he is the successful bidder for the cattle or farm produce— Splitting of lots purchased at auction. cf. Vict. Acts Nos. 4323, 1935, s. 3, and 4420, 1936, s. 2.

(a) give such other person the right to elect to take over as purchaser through the auctioneer all or any of the said cattle or farm produce at the auction price; or

(b) agree to decide by tossing or the drawing of lots or other method who is to become the owner of all or any of the said cattle or farm produce,

shall be liable for a first offence to a penalty of not more than ten pounds and for a second or any subsequent offence to a penalty of not more than twenty-five pounds or to imprisonment for a term of not more than one month.

(2)

(2) Any person who abstains or agrees to abstain from bidding at a sale by auction of cattle or farm produce as the result of a promise, express or implied, given to him—

(a) that he shall have the right to elect to take over as purchaser through the auctioneer all or any of the said cattle or farm produce at the auction price; or

(b) that the ownership of all or any of the said cattle or farm produce shall be determined by tossing or the drawing of lots or any other method,

shall be liable for a first offence to a penalty of not more than ten pounds and for a second or any subsequent offence to a penalty of not more than twenty-five pounds or to imprisonment for a term of not more than one month.

Entry by auctioneer or employee in record or book kept by auctioneer as purchaser of cattle or farm produce sold by auction of any name other than the name of the actual successful bidder.
cf. Vict. Acts Nos. 4323, 1935, s. 4, and 4420, 1936, s. 2.

46. (1) Any auctioneer or any employee of an auctioneer who knowingly enters in any record or book kept or required to be kept by such auctioneer as the purchaser of any cattle or farm produce sold by auction any name other than the name of the actual successful bidder for such cattle or farm produce shall be liable for a first offence to a penalty of not more than ten pounds and for a second or any subsequent offence to a penalty of not more than twenty-five pounds or to imprisonment for a term of not more than one month.

(2) If the employee of any auctioneer enters in any record or book kept or required to be kept by such auctioneer as the purchaser of any cattle or farm produce sold by auction any name other than the name of the actual successful bidder for such cattle or farm produce the auctioneer shall, unless he proves to the satisfaction of the court that he did not know that a name other than the name of the actual successful bidder was entered as aforesaid, be guilty of an offence and shall be liable for a first offence to a penalty of not more than ten pounds and for a second or any subsequent offence to a penalty of not more than twenty-five pounds or to imprisonment for a term of not more than one month.

(3)

(3) Notwithstanding anything in subsection one or subsection two of this section, where the actual successful bidder at a sale by auction of any cattle or farm produce as soon as practicable after the auctioneer conducting such sale has indicated such actual successful bidder but not in any case later than the day of the sale informs such auctioneer— Provision for entry in record or book of name other than name of actual successful bidder in certain cases.

(a) that he bid for such cattle or farm produce on behalf of another person; and

(b) of the name of such other person,

the said auctioneer or employee shall not be guilty of an offence against the provisions of subsection one or subsection two of this section by reason of the fact that he enters in the record or book aforesaid as purchaser of such cattle or farm produce the name of such other person.

47. (1) Every auctioneer shall before beginning any sale by auction of any cattle or farm produce read or recite aloud a statement of the material parts of sections forty-five and forty-six of this Act: Material parts of sections to be read or recited aloud at sales by auction of cattle. cf. Vict. Acts Nos. 4323, 1935, s. 5, and 4420, 1936, s. 2.

Provided that where on any day successive sales by auction of cattle or farm produce are held at the same selling place and the foregoing provisions of this subsection are complied with by the auctioneer conducting the first of such sales no auctioneer thereafter conducting any of such successive sales shall be required before commencing any of such sales to comply with such provisions.

Provided further that if the auctioneer exhibits before and keeps exhibited during the sale in a conspicuous position, a statement of the material parts of such sections printed in letters easily legible he shall not be required to so recite such statement aloud.

(2) Any auctioneer who fails to comply with the provisions of subsection one of this section shall be liable to a penalty of not more than ten pounds.

48.

Misrepresentation as to quality, etc., of goods and chattels.
Act No. 24, 1898, s. 10.

48. Any auctioneer who knowingly misrepresents, or causes or permits to be misrepresented, the value, composition, structure, character or quality, or the origin of manufacture of any goods or chattels put up for sale at an auction sale conducted by him, shall be guilty of an offence against this Act.

Bidding by seller.
Ibid. s. 12.

49. (1) Where a sale by auction is not notified in the conditions of sale to be subject to a right to bid on behalf of the seller, it shall not be lawful for the seller to bid himself or for the seller or the auctioneer to employ any person to bid at the sale, or for the auctioneer knowingly to take any bid from the seller or any such person.

(2) Whosoever contravenes the provisions of this section shall be guilty of an offence against this Act.

No auction sales after sunset (sales of wool excepted).
Ibid. s. 18.

50. No auctioneer shall attempt to sell, offer for sale or sell by way of public auction any land, goods or effects except wool not being on the skin, after sunset or before sunrise of any day throughout the year and every such auctioneer who offends against this section shall be guilty of an offence against this Act.

PART IV.

Real Estate Dealers and Real Estate Salesmen.

Division 1.—*Interpretation.*

Interpretation.

51. In this Part—

"Allotment of land" means a parcel of land offered for sale as suitable or intended wholly or mainly for residential or retail commercial trade purposes but on which no building suitable for human occupation is erected.

"Real estate dealer" means a person not being the holder of a license as a real estate agent whose sole or principal business is the selling, as owner, of land in allotments.

"Real

"Real estate salesman" means a person who, for or on behalf of any real estate agent or real estate dealer, goes, whether by appointment or otherwise, from house to house or from place to place, for the purpose of inducing or attempting to induce or negotiating with a view to inducing any person—

(a) to buy, sell or otherwise dispose of any allotment of land; or

(b) to make any offer to buy, sell or otherwise dispose of any allotment of land; or

(c) to accept any offer to buy, sell or otherwise dispose of any allotment of land; or

(d) to enter into any contract for the purchase, sale or other disposal of any allotment of land.

DIVISION 2.—*Real Estate Dealers.*

Provisions as to employment of certain persons by real estate dealers.

52. (1) A real estate dealer shall not, except with the approval of a court of petty sessions holden before a stipendiary or police magistrate, and, subject to such conditions as the court may impose, knowingly employ, in any way whatever in connection with his business as a real estate dealer, any person—

(a) who is for the time being disqualified under this Act from holding a license or disqualified under the Business Agents Act, 1935, from holding a license under that Act; or

(b) whose application for a license under this Act, or the Auctioneers' Licensing Act, 1898-1934, or the Business Agents Act, 1935, as the case may be, has been refused, unless such an application has been subsequently granted.

(2) Subject to this section no such person shall participate or be in any way concerned in the business of a real estate dealer as such.

(3) A real estate dealer shall not, from and after the expiration of three months after the commencement of this Act, employ, in connection with his

his business as a real estate dealer, any real estate salesman who is not registered as such under this Act.

(4) Any real estate dealer or any person aforesaid who commits any contravention of or fails to comply with any of the provisions of this section shall be guilty of an offence against this Act.

Publication of name and place of business in advertisements.

cf. Act No. 7, 1935, s. 41.

53. Any real estate dealer who publishes (whether in a newspaper or otherwise) any advertisement relating to or in connection with his business as a real estate dealer (or in the case of a corporation or partnership relating to or in connection with the business as a real estate dealer, of the corporation or partnership) without specifying therein his or its name and (if the business as a real estate dealer is not carried on in his or its own name) the name under which he or it or the partnership in which he or it is a partner is registered or deemed to be registered under any Act for the time being in force relating to the registration of business names, and his or its place of business, shall be guilty of an offence against this Act.

Real estate dealer to have registered place of business.

54. (1) Every real estate dealer shall have a registered place of business in New South Wales.

(2) (a) Every person who, immediately before the commencement of this Act, was carrying on business as a real estate dealer shall, within one month after such commencement, register his place of business by lodging with the registrar a notice specifying the address of such place of business.

(b) Every real estate dealer who commences to carry on business as such after the commencement of this Act shall, before so commencing, register his place of business by lodging with the registrar a notice specifying the address of such place of business.

(c) The registrar shall keep a register of all such registered places of business, which shall be available for perusal by any member of the public upon payment of the prescribed fee.

(d) Notice of any change in situation of his registered place of business shall be lodged with the registrar, who shall enter such change in the register kept by him pursuant to this subsection.

(3)

(3) All writs, summonses, notices or other documents required or authorised to be served on or given to a real estate dealer shall be deemed to be duly served or given if left for him at his registered place of business.

(4) If any real estate dealer carries on business as such without complying with the requirements of this section he shall be liable to a penalty not exceeding five pounds for every day during which he so carries on business.

Record to be kept. cf. Act No. 7, 1935, s. 22.

55. (1) Every real estate dealer shall keep in a legible manner a written record containing full particulars of all transactions by or with him as a real estate dealer.

(2) The written record shall be preserved by the real estate dealer for a period of not less than three years after the date upon which it was made.

(3) The written record shall be open to inspection at all reasonable times by a member of the police force of or above the rank of sergeant, and every real estate dealer upon being required so to do, shall produce the written record kept by him for inspection by such officer.

(4) Every entry in the written record kept at the place of business of a real estate dealer shall be deemed, unless the contrary is proved, to have been made by or with the authority of the real estate dealer.

(5) Any person who contravenes any of the provisions of this section shall be guilty of an offence against this Act.

DIVISION 3.—*Real Estate Salesmen.*

Real estate salesmen to be registered.

56. (1) Subject to this Act, from and after the expiration of three months after the commencement of this Act, no person shall, unless he is registered as a real estate salesman in accordance with this Act,—

(a) be or remain in the employment or service of any real estate agent or real estate dealer as a real estate salesman; or

(b) represent, whether expressly or impliedly, that he is a real estate salesman or that he is in the

the employment of a real estate agent or a real estate dealer as a real estate salesman; or

(c) act as or carry out any of the functions of a real estate salesman.

(2) Any person who commits any contravention of or fails to comply with any of the provisions of this section shall be guilty of an offence against this Act.

Procedure.

57. (1) An application for registration as a real estate salesman shall be made in triplicate in the form prescribed.

(2) The application shall be lodged with the clerk of the court of the petty sessions district within which the applicant resides, or, if there is more than one such court, with the clerk of the court within such district nearest to the place where the applicant resides.

(3) Upon receipt of the application the clerk shall forthwith forward one copy of the application to the officer in charge of police at the nearest police station and one copy to the registrar.

Thereupon the officer in charge of police and the council shall severally inquire into and report upon the character of the applicant.

(4) If the officer in charge of police or the council objects to the grant of the application such officer or the council, as the case may be, shall include in the report furnished pursuant to subsection three of this section, a statement setting out the nature of the objection proposed to be made.

(5) (a) Where an application is made by a real estate salesman who is the holder of a certificate of registration as such for the renewal of his registration the clerk may, on payment to him of a fee of five shillings, issue to such person a provisional certificate of registration.

Any such provisional certificate of registration shall take effect as from the date of its issue or from a later date to be specified therein.

(b)

(b) When a provisional certificate of registration is issued under this subsection the holder thereof shall, for all purposes of this Act, be deemed to be the holder of a certificate of registration until such time as a certificate of registration is issued to him pursuant to this section or until his application for a certificate of registration is refused.

(c) If a certificate of registration is so issued to a person to whom a provisional certificate of registration has been issued under this subsection such certificate of registration shall take effect as from the date upon which the provisional certificate of registration took effect, and the prescribed fee paid under this subsection shall be applied in or towards payment of the prescribed fee for the certificate of registration.

(6) Where neither the officer in charge of police nor the council objects to the grant of the application, the clerk shall, on payment to him of a fee of five shillings, issue to the applicant a certificate of registration as a real estate salesman.

(7) Where the officer in charge of police or the council objects to the grant of the application--

(a) the clerk of the court shall notify the applicant that the grant of his application will be objected to, and shall set out shortly in the notice the nature of the objection proposed to be made;

(b) the application shall be heard and determined by the court, which for that purpose shall be constituted by a stipendiary or police magistrate or two or more justices;

(c) such hearing shall not take place until after the expiration of seven days after the lodging of the application;

(d) the hearing of the application shall be in open court and the consideration of the application shall be deemed to be a judicial proceeding;

(e) where the council has objected to the grant of the application it may appear at the hearing by any member of the police force or by counsel or attorney.

If

If the court grants the application, the clerk of the court shall, on payment to him of a fee of five shillings, issue to the applicant a certificate of registration as a real estate salesman.

(8) A certificate of registration as a real estate salesman shall not be issued to an applicant who is of bad or doubtful character.

(9) (a) Subject to this Act a certificate of registration as a real estate salesman shall be in force for a period of twelve months from the date of its issue.

(b) A certificate of registration may be renewed and on each renewal shall, subject to this Act, be in force for a further period of twelve months.

Register to be kept by registrar.

58. (1) The clerk of petty sessions shall, within seven days after the issue or cancellation of a certificate of registration as a real estate salesman, notify the registrar of such issue.

(2) The registrar shall keep a register of all such certificates of registration, which shall be available for perusal by any member of the public upon payment of the prescribed fee.

Registered address.

cf. Act No. 7, 1935, s. 15.

59. (1) Every real estate salesman shall have a registered address within New South Wales.

(2) All writs, summonses, notices or other documents required or authorised to be served on or given to a real estate salesman shall be deemed to be duly served or given if left for him at his registered address.

(3) The address specified in the application as the address at which the applicant then resides, shall, upon the grant of the application, be deemed to be the registered address of the real estate salesman.

(4) Notice of any change in the situation of the registered address shall be lodged by the real estate salesman with the court from which the certificate of registration as a real estate salesman issued, within the prescribed time, and the clerk of such court shall record such notice and advise the registrar who shall enter such change in the register kept pursuant to section fifty-eight of this Act.

(5)

(5) If any real estate salesman acts as or carries out any of the functions of a real estate salesman without complying with the requirements of this section he shall be liable to a penalty not exceeding five pounds for every day during which he so acts or carries out such functions.

Cancellation of certificate of registration.

cf. Act No. 7, 1935, s. 14.

60. (1) Upon complaint being made to him by a member of the police force of or above the rank of inspector or by the council any justice of the peace may summon a real estate salesman to appear before a court of petty sessions holden before a stipendiary or police magistrate to show cause why his certificate of registration should not be cancelled and why he should not be disqualified either permanently or temporarily from holding a certificate of registration on the ground—

(a) that he improperly obtained his certificate of registration contrary to the provisions of this Act; or

(b) that he is not a fit and proper person to continue any longer to hold a certificate of registration; or

(c) that he has been guilty of such conduct as renders him unfit to continue any longer to hold a certificate of registration.

(2) If upon the day and at the time and place appointed by the summons issued in accordance with the provisions of subsection one of this section the real estate salesman named therein does not appear, then, upon proof of the due service of the summons upon him a reasonable time before the time appointed for his appearance, such court of petty sessions may proceed to hear and determine the matter of such complaint in the absence of such real estate salesman.

Service of the summons may be proved by the oath of the person who served it or by affidavit or otherwise.

(3) Upon being satisfied of the truth of any of the grounds aforesaid the court may order that the certificate of registration of such real estate salesman be delivered up to the court forthwith and cancelled and that such real estate salesman be disqualified either

permanently

permanently or for such period as the court specifies from holding a certificate of registration under this Act, and upon the making of such order such certificate of registration shall thereafter be deemed and taken to be cancelled.

Appeal.

61. (1) Where the court refuses any application under section fifty-seven, or makes an order under section sixty of this Act, the person making the application or the real estate salesman, as the case may be, may appeal in accordance with the rules of court of the District Court to the District Court exercising jurisdiction in the district within which the court refusing such application or making such order is situated.

(2) Every such appeal shall be in the nature of a rehearing.

(3) Notice of appeal shall be given to such persons as may be prescribed by rules of court of the District Court, or as the District Court may direct.

(4) (a) An appeal shall lie to the Supreme Court either by special case or upon notice of motion against any ruling, order, direction or decision of the District Court in point of law or upon the admission or rejection of any evidence.

(b) The provisions of Part VI of the District Courts Act, 1912-1936, shall, mutatis mutandis, extend to and in respect of any such appeal.

For the purposes of such extension the word "party" where used in that Part shall be deemed to include any of the following persons—

(i) the person making the application or the real estate salesman, as the case may be;

(ii) the officer in charge of police who objected to the grant of the application—in any case where the appeal is in proceedings arising out of an application to the granting of which such officer in charge of police had objected;

(iii) the member of the police force who made the complaint—in any case where the appeal is in proceedings arising out of a complaint made by him under section sixty of this Act;

(iv) the council—in any case where the appeal is in proceedings arising out of an application to the granting of which the council had objected, or out of a complaint made by the council under section sixty of this Act.

Production of certificate of registration.

62. Every real estate salesman shall, on demand, produce his certificate of registration to any member of the police force of or above the rank of sergeant, or to any person with whom such real estate salesman is transacting or attempting to transact any business as a real estate salesman.

cf. Act No. 7, 1935, s. 36.

Real estate salesman not to lend certificate of registration.

63. Any real estate salesman who lets out, hires or lends any certificate of registration held by him to any other person or permits any other person to use his certificate of registration shall be guilty of an offence against this Act, and on conviction for such offence, and in addition to any penalty therefor, any certificate of registration held by him shall thereupon become absolutely void and shall be delivered up to the court and cancelled.

cf. *Ibid.* s. 37.

PART V.

Amendment of the Business Agents Act, 1935.

Amendment of Act No. 7, 1935.

64. (1) The Business Agents Act, 1935, is amended—

Sec. 2. (Definitions.)

(a) by inserting in section two at the end of the definition of "auctioneer" the words "or an auctioneer's license under the Auctioneers, Stock and Station and Real Estate Agents Act, 1941";

Sec. 3. (Act not to apply to certain persons.)

(b) by inserting in subparagraph (iii) of paragraph (a) of subsection two of section three after the words "subsequent Acts" the words "or under the Auctioneers, Stock and Station and Real Estate Agents Act, 1941";

Sec. 7. (Application for license—bond.)

(c) by omitting from subsection eleven of section seven all words after the words "issue the license" and by inserting in lieu thereof the following words:—

The fidelity bond shall be a bond in the prescribed form in the penal sum of five hundred pounds

pounds in the case of an individual or partnership or in the penal sum of one thousand pounds in the case of a corporation from the Colonial Treasurer, acting under the powers and authorities conferred by the Government Insurance Act, 1927-1941, or from some insurance company or person approved for the purpose by the Minister, conditioned for duly accounting to the persons entitled thereto for any trust funds received by the holder of the business agent's license or by the partnership in which he is a partner or by the corporation on whose behalf he holds the license, as the case may be, in the course of his or its business as a business agent:

Provided that where security approved by the Minister for the payment of an amount equal to the appropriate penal sum (which security shall be in addition to the bond hereinafter referred to) has been given to the Minister, the Minister may, in lieu of the bond referred to in the foregoing provisions of this subsection, accept a bond similarly conditioned from the licensee or from the members of the partnership in which the licensee is a partner or from the corporation on whose behalf the license is held.

Sec. 9. (License fee.)

(d) (i) by inserting in section nine after the words "subsequent Acts" the words "or under the Auctioneers, Stock and Station and Real Estate Agents Act, 1941";

(ii) by omitting from paragraph (ii) of the proviso to the same section the words "an auctioneer's district license" and by inserting in lieu thereof the words "any other license under any of those Acts";

Sec. 25. (Certain persons not to be employed.)

(e) (i) by inserting at the end of paragraph (a) of subsection one of section twenty-five the words "disqualified under the Auctioneers, Stock and Station and Real Estate Agents Act, 1941, from holding any license under that Act; or";

(ii)

(ii) by inserting in paragraph (b) of the same subsection after the words "for the time being in force" the words "or for any license under the Auctioneers, Stock and Station and Real Estate Agents Act, 1941";

(f) by inserting next after section twenty-six the following new section:— New sec. 26A.

26A. (1) (a) Any fidelity bond given pursuant to this Act may be terminated by the Colonial Treasurer or the insurance company or surety, as the case may be, by notice in writing served personally or by post upon the licensee concerned, the Registrar-General and the clerk of the court by which the license was issued. Power to terminate bond.

(b) Such notice shall specify the date (not being earlier than thirty days after the date of the service of the notices) upon which the bond is to be terminated.

(c) The obligation of the Colonial Treasurer or the insurance company or surety, as the case may be, shall, as from the date so specified, be determined so far as it relates to transactions by the business agent, or by the partnership in which he is a partner, or by the corporation on whose behalf he holds the license, as the case may be, after such specified date, other than the duly accounting to the persons entitled thereto for any trust funds received by the licensee or by the partnership in which he is a partner or by the corporation on whose behalf he holds the license, as the case may be, before such specified date.

(2) If the bond given in respect of any business agent is terminated or if the obligation thereof is discharged during the period for which the license held by the business agent is in force, then, as from the date of such termination or discharge, and until a further bond has been lodged and is still subsisting, the license held by such business agent shall be suspended.

(g)

Sec. 27. (Inspection of bond and power to sue thereon.)

(g) by omitting subsection three of section twenty-seven and by inserting in lieu thereof the following subsection:—

(3) Any such action shall be taken within two years after the date upon which the cause of such action arises.

(2) The amendments made by subsection one of this section shall not operate to release any party or surety to any bond given under the Business Agents Act, 1935.

(3) The Business Agents Act, 1935, as amended by this Act, may be cited as the Business Agents Act, 1935-1941.

Amendment of Act No. 18, 1927.

(4) (a) The Government Insurance Act, 1927-1930, is amended by inserting next after paragraph (f) of section two the following new paragraph:—

(f1) to undertake and carry on all classes of insurance business under the Business Agents Act, 1935-1941.

(b) The Government Insurance Act, 1927-1930, as amended by subsequent Acts, including this Act, may be cited as the Government Insurance Act, 1927-1941.

PART VI.

The Auctioneers, Stock and Station and Real Estate Agents Fidelity Guarantee Fund.

The fund. Act No. 22, 1898, s. 46.

65. (1) There shall be a fund called the Auctioneers, Stock and Station and Real Estate Agents Fidelity Guarantee Fund.

(2) The fund shall be the property of the council and shall be applied for the purposes set out in this Part.

Separate bank account, *Ibid.* s. 47.

66. All moneys belonging to the fund shall, pending the investment or application thereof, be paid into a bank in New South Wales to the credit of a separate account to be called the "Auctioneers, Stock and Station and

and Real Estate Agents Fidelity Guarantee Account" and such account shall be operated upon in such manner as the council shall from time to time determine.

Moneys of the fund. Act No. 22, 1898, s. 48.

67. The fund shall consist of—

(a) all sums paid by way of contribution or levy by licensees in accordance with this Act;

(b) the interest from time to time accruing from the investment of the fund;

(c) any other moneys that may be lawfully paid into the fund.

Expenditure. *Ibid.* s. 49.

68. There shall from time to time be paid out of the fund as required and in such order as the council deems proper—

(a) all legal expenses in connection with claims made against the fund or the council in respect of the fund or otherwise incurred in relation to the fund;

(b) the amount of all claims, including costs, allowed or established against the council in respect of the fund as provided in this Act;

(c) all refunds made to licensees or their personal representatives pursuant to this Act;

(d) the expenses involved in the administration of the fund;

(e) the expenses incurred by the council in or in relation to appearances before courts of petty sessions with respect to applications for licenses or renewals or variations or cancellations of licenses under this Act;

(f) any other moneys payable out of the fund in accordance with any of the provisions of this Act.

Audit. *Ibid.* s. 50.

69. The accounts of the fund shall be audited annually by an accountant approved by the Minister and appointed for the purpose by the council.

70.

Administration of fund.

70. The fund shall be administered by the council.

Contributions to fund.
Act No. 22, 1898, s. 52.

71. (1) A contribution to the fund of three pounds shall, subject to this section, be paid annually by every licensee.

Where a person holds more than one class of license only one contribution shall be payable by him under this section in respect of all such licenses.

Where a corporation holds licenses taken out by it in respect of employees a separate contribution shall be payable in respect of each such license, and such contribution shall be in addition to the contribution in respect of the license held by the corporation on its own behalf.

(2) Such contributions shall be in addition to any fees prescribed.

(3) Where a person has paid by way of contributions or where a corporation has paid by way of contributions in respect of the license held on its own behalf and in respect of any license held by it in respect of an employee an amount of not less than nine pounds, and no claim has been made, or, no claim which has been made has been sustained against the fund in respect of such person or of such corporation or employee, as the case may be, and no refund of such contributions has been made under section eighty-two of this Act, such person shall not be required to pay any further amount by way of contributions under this section, and such corporation shall not be required to pay any further amount by way of contributions under this section in respect of the license held on its own behalf or of the license held in respect of such employee.

Levies.
cf. *Ibid.* ss. 53 & 54.

72. (1) If at any time or times the fund is, in the opinion of the council, not sufficient to satisfy the liabilities of the council in relation thereto, the council may, subject as hereinafter provided, by resolution, impose on every licensee, for payment into the fund, a levy of such amount as the council thinks fit not exceeding two pounds in any one year.

(2)

(2) The amount of the levy shall become payable on a date and in a manner to be fixed by the council. The council may, in any special case, allow time for the payment of any levy or part thereof.

(3) If a licensee does not, after the prescribed notice, pay any levy, the council shall report to the registrar that such licensee has not paid the levy.

The registrar shall make due record of the fact in the register and so long as the levy remains unpaid the licensee shall be deemed not to be the holder of a license under this Act.

(4) For the purposes of this section a corporation which has taken out a license or licenses in respect of an employee or employees shall be deemed to be a separate licensee under each such license.

Council may invest funds. cf. Act No. 22, 1898, s. 55.

73. Any moneys in the fund which are not immediately required for the purposes of the fund may be invested in any manner in which trustees are for the time being authorised to invest trust funds, or on deposit for such period not exceeding two years as the council deems proper with any bank or corporation prescribed by the rules of court as a bank or corporation to which trust moneys may be paid under section fifteen of the Trustee Act, 1925-1940.

Application of fund. cf. *Ibid.* s. 56.

74. (1) Subject to the provisions of this Act, the fund shall be held and applied for the purpose of reimbursing persons who may suffer pecuniary loss by reason of the theft or fraudulent misapplication by a licensee of any money or other valuable property intrusted to him or to his employee in the course of his business as an auctioneer or a stock and station agent or a real estate agent.

(2) No person shall have any claim against the fund in respect of any theft or fraudulent misapplication committed before the commencement of this Act.

(3)

(3) In respect of any theft or fraudulent misapplication that may be committed after such commencement no person shall have a claim against the fund unless notice of such theft or fraudulent misapplication is given in writing to the council as soon as reasonably practicable after the claimant has become aware of the theft or fraudulent misapplication but in any event within a period of six months after having become so aware, or within a period of two years from the date of the commission of such theft or misapplication, whichever is the shorter period.

(4) No person shall be entitled to claim against the fund in respect of any loss through such theft or fraudulent misapplication unless and until there shall have been a conviction of such licensee for such theft or fraudulent misapplication unless the Supreme Court or a judge thereof, for reasons which to such court or judge, shall be good and sufficient, shall have by an order certified that the person claiming to have suffered loss should be permitted to claim against the fund notwithstanding that such licensee has not been convicted in respect of such theft or fraudulent misapplication.

Claims against the fund.

cf. Act No. 22, 1898, s. 57.

75. (1) The council may receive and settle any claim against the fund at any time after the commission of the theft or fraudulent misapplication in respect of which the claim arose but no person shall be entitled, without the leave of the council, to commence any action in relation to the fund unless the council shall have disallowed his claim, and unless and until the claimant has exhausted all relevant rights of action and other legal remedies available against the defaulting licensee or any other person in respect of the loss suffered by him.

(2) No person shall be entitled to recover from the council out of the fund by action as aforesaid an amount greater than the balance of the loss suffered by him after deducting from the total amount of such loss the amount or value of all moneys or other benefits received or recovered or which in the opinion of the council might, but for his neglect or default, have been received or recovered by him from any source other than the fund in reduction of such loss.

(3)

(3) The total amount which any person shall be entitled to recover from the fund shall not in any case or in any event exceed five hundred pounds.

(4) The aggregate sum which may be applied in the reimbursement of all persons who suffer loss through theft or fraudulent misapplication by the same licensee shall not in any case or in any event exceed the sum of five hundred pounds.

(5) No amount shall be paid or be payable out of the fund as interest on the amount of any judgment obtained or of any claim allowed against the fund.

Advertisement relating to defaulting licensee and claims. cf. Act No. 22, 1898, s. 58.

76. The council may cause to be published a notice, in or to the effect of the prescribed form, in a newspaper published and circulating in the district in which the defaulting licensee, being an auctioneer, is or was residing, or being a stock and station agent or a real estate agent, is or was carrying on business, and also in a daily newspaper published and circulating in Sydney, and such notice shall fix a date not being earlier than three months after the publication, or the first publication, as the case may be, within which claims must be made.

Any claim not made in writing on or before the date so fixed shall be barred unless the council otherwise determines.

Council may distribute. cf. *Ibid.* s. 59.

77. After the date so fixed the council shall be at liberty to distribute the sum from time to time available to be applied in reimbursement under section seventy-five of this Act having regard only to judgments obtained and claims allowed against the fund.

Defences. *Ibid.* s. 60.

78. Any proceedings brought against the council in relation to any claim upon the fund shall be by action at law in the Supreme Court as for a debt due by the council, and in any such action all defences which would have been available to the licensee in relation to whom the claim arose shall be available to the council, and in any such action all questions of costs shall be in the discretion of the Court or the presiding judge.

Subrogation. *Ibid.* s. 61.

79. On payment out of the fund of moneys in settlement in whole or in part of any claim under this Act, the council

council shall be subrogated, to the extent of such payment, to all the rights and remedies of the claimant against the licensee in relation to whom the claim arose, or any other person.

Council may require production, etc., of documents. Act No. 22, 1898, s. 62.

80. The council may at any time and from time to time require production and delivery up of securities and documents necessary to support any claim made, or available for that purpose, or for the purpose of exercising its rights against any defaulting licensee and may in default of delivery up of any such securities or documents reject any claim.

Insufficiency of fund. *Ibid.* s. 63.

81. (1) No moneys or other property belonging to the council, other than the fund, shall be available for the satisfaction of any judgment obtained against the council in relation to the fund, or for the payment of any claim allowed by the council; and if at any time the fund is not sufficient to provide for the satisfaction of all such judgments and claims, they shall (subject to the limitations fixed by this Act) to the extent to which they are not so satisfied, be satisfied out of future accumulations of the fund.

(2) No proceedings based upon the enforcement of any such judgment shall be taken without leave of the Supreme Court.

(3) Where the total amount of the judgments obtained and claims allowed exceeds the aggregate sum which may be applied in reimbursement under section seventy-five of this Act, the council may, in its uncontrolled discretion, determine the division and allocation amongst the claimants respectively or any one or more of them, exclusively of the other or others of them, of the moneys for the time being payable out of the fund.

Refund to representative of deceased agent or retiring agent. cf. *Ibid.* s. 64.

82. In the event of the death or on the retirement from business of any licensee (being an individual) in respect of whom no claim has been made under this Act, or if any such claim has been made, in respect of whom such claim has not been sustained, the council may, in its discretion, pay to him or to his personal representatives, as the case may be, a sum not exceeding the aggregate amount of his contributions to the fund.

83.

Examination of account. Act No. 22, 1938, s. 65.

83. (1) For the purpose of safeguarding the fund the council may at any time and from time to time appoint an accountant to examine the trust accounts of any licensee specified in the appointment and to furnish to the council a confidential report as to any irregularity or alleged or suspected irregularity in the accounts of such licensee that may be disclosed by such examination, or as to any other matter that in the opinion of such accountant should, in the interest of the fund, be further investigated.

A copy of the report shall forthwith be sent by post by the council to the licensee concerned.

(2) Every appointment made under this section shall be subject to the approval of the Prothonotary and shall be in writing signed by the chairman or two members of the council.

(3) Upon production by such accountant of the instrument of his appointment as aforesaid, he may require the licensee in respect of whom the appointment has been made, or in the absence of such licensee, any servant or agent of such licensee having the apparent control or charge for the time being of the office or business of such licensee to produce to the accountant and any assistant of the accountant all books, papers, accounts, securities or other documents relating to the business or accounts of such licensee, so far as the same relate to the trust accounts of such licensee, and to give all information in relation thereto and to furnish all authorities and orders to bankers and others that may be reasonably required of him or them, and if any such person without lawful justification or excuse, the proof whereof shall lie on him, refuses or fails so to do, or otherwise hinders, obstructs or delays the accountant in the performance of his duties or the exercise of his powers under this section, he shall be guilty of an offence against this Act.

(4) No accountant appointed to make any examination of accounts for the purposes of this section shall communicate that fact or any matter which may come to his knowledge in the course of the examination to any person except in the course of his report to the council.

No

No assistant of any such accountant shall communicate the fact of the appointment of such accountant or any matter which may come to his knowledge in the course of the examination to any person except to the accountant appointed to make the examination, or if so required, to the council.

(5) It shall not be lawful for any member of the council or any of its officers to publish, except to the court before which proceedings relating to the renewal, variation or cancellation of the license of the licensee are pending, any information disclosed in such report.

(6) Any person who commits a breach of any of the provisions of this section shall, in addition to any other proceedings, penalty or punishment to which he may be liable be guilty of an offence against this Act.

PART VII.

General.

Offences in connection with the sale of allotments of land.

84. (1) Any real estate agent or real estate dealer or any partner or employee of a real estate agent or real estate dealer shall be guilty of an offence against this Act if with the intention of inducing a prospective purchaser to buy an allotment of land or any interest in an allotment of land—

(a) he makes any false representation; or

(b) he states that he or some other person named by him will buy, at a profit to be received in the future by such prospective purchaser, the said allotment of land or any part thereof or any interest therein or any other land or chattel owned by the prospective purchaser; or

(c) he states that he or some other person named by him will at some future time obtain for the prospective purchaser a profit on the sale of such allotment of land or any part thereof or any interest therein.

(2)

(2) Any real estate agent or any partner or employee of a real estate agent shall be guilty of an offence against this Act if while the real estate agent is retained by any person as agent for the sale of any allotment of land at a stipulated price he, either on his own behalf or on behalf of some person other than the person by whom such agent is so retained, negotiates for or arranges the sale of such allotment of land at a price higher than such stipulated price.

(3) If any person is charged with an offence against this Act by reason of a contravention of paragraph (a) of subsection one of this section, it shall be a sufficient defence if the person charged proves—

(a) that he had reasonable grounds for believing and did in fact believe that the representation was true; and

(b) that otherwise he acted innocently.

Construction of certain agreements.

85. No term or provision of any agreement (whether entered into before or after the commencement of this Act) for the sale and purchase of an allotment of land or any interest therein shall be so construed as to prevent the purchaser from claiming or being awarded damages or any other relief in respect of any fraudulent misrepresentation in connection with the sale and purchase of such allotment of land or interest therein.

Furnishing incorrect particulars in applications. cf. Act No. 7, 1935, s. 39.

86. (1) Any person who in any application made pursuant to this Act makes any statement which is not correct or furnishes any particulars which are not correct or omits to furnish any particulars required to be furnished by or under this Act shall be guilty of an offence against this Act and shall be liable to a penalty not exceeding fifty pounds.

(2) If any person is charged with an offence against this Act by reason of any contravention of subsection one of this section, it shall be a sufficient defence if the person charged proves—

(a) where the charge relates to the making of a statement that is not correct or to the furnishing of particulars which are not correct—that he had

had reasonable grounds for believing and did in fact believe that the statement made or the particulars furnished were correct;

(b) where the charge relates to the omission to furnish particulars—that the omission was not made with intent to evade the requirements of this Act or, that he had reasonable grounds for believing and did in fact believe that he had furnished all particulars required to be furnished by or under this Act.

Offences against Act. Act No. 7, 1935, s. 40.

87. (1) Every person who commits any contravention of or fails to comply with any of the provisions of this Act shall be guilty of an offence against this Act.

(2) Where no penalty is specially provided for any offence against this Act any person guilty of such offence shall be liable, if a corporation, to a penalty not exceeding four hundred pounds, and, if an individual, to a penalty not exceeding two hundred pounds or to imprisonment for a period not exceeding two years or to both such penalty and imprisonment.

(3) Where any person is convicted of an offence against this Act the court may, in addition to any penalty or imprisonment imposed, order that the license or licenses (if any) or the certificate of registration (if any) held by such person be delivered up and cancelled, whereupon such license or licenses or certificate of registration shall thereafter be deemed and taken to be cancelled and/or that such person be disqualified, for such period as the court may think fit, from holding any license or certificate of registration under this Act.

(4) Any penalty imposed by this Act or by the regulations may be recovered in a summary manner in a court of petty sessions holden before a stipendiary or police magistrate.

(5) Where two or more persons commit or knowingly authorise or permit the commission of any offence against this Act each of such persons shall be liable therefor and the liability of each of them shall be independent of the liability of the other or others.

88.

Wrongful conversion and false accounts.

cf. Act No. 7, 1935, s. 20.

88. Without affecting the generality of the provisions of the Crimes Act, 1900, as amended by subsequent Acts, any licensee who—

(a) fraudulently converts to his own use—

(i) any moneys received by him on behalf of any person in respect of any transaction in his capacity as an auctioneer or a stock and station agent or a real estate agent; or

(ii) any moneys so received which are held by him as a stakeholder or in trust pending the completion of any transaction,

or any part of any such moneys; or

(b) fraudulently omits to account for, deliver or pay—

(i) any such moneys received by him as aforesaid on behalf of any person or any part thereof to such person; or

(ii) any such moneys received by him as aforesaid which are or were held by him as a stakeholder or in trust as aforesaid pending the completion of the transaction or any part of such moneys to the person or persons entitled to such moneys; or

(c) fraudulently renders an account—

(i) of any moneys received by him as aforesaid on behalf of any person or any part of such moneys; or

(ii) of any moneys received by him as aforesaid which are or were held by him as a stakeholder or in trust pending the completion of any transaction or any part of such moneys; or

(iii) of expenses, commission or other charges incidental to any transaction or proposed or contemplated transaction as an auctioneer, or a stock and station agent or a real estate agent,

knowing such account to be false in any material particular,

shall

shall be guilty of a misdemeanour and shall be liable to imprisonment for a term of not more than ten years.

Facilitation of proof. cf. Act No. 7, 1935, s. 26.

89. When in any proceedings under this Act or the regulations against any person it is alleged in the information that such person is not the holder of a license of the class specified in the allegation, or, as the case may be, is not the holder of a certificate of registration, it shall, in the absence of proof to the contrary, be presumed that such person is not the holder of a license or of a certificate of registration, as the case may be.

Civil remedy not affected by proceedings for an offence. *Ibid.* s. 29.

90. Notwithstanding any proceedings against any person for an offence against this Act (whether resulting in a conviction or otherwise) such person shall remain liable to all civil proceedings in like manner as if the proceedings for an offence had not been taken.

Corporations.

91. (1) Except where special provision is made to the contrary, a corporation shall be liable for any offence against this Act as if such corporation were an individual and shall be subject to the same pecuniary penalties as if it were an individual.

(2) Where any act which by this Act is declared to be an offence and which is committed by a body corporate is proved to have been committed with the consent or approval of any director, manager, secretary or other officer of the body corporate, he, as well as the body corporate, shall be deemed to be guilty of the offence, and he may be proceeded against and shall be liable to the pecuniary penalty or imprisonment or both provided by this Act in the case of an offence by a person who is not a corporation.

Regulations.

92. (1) The Governor may make regulations not inconsistent with this Act prescribing all matters which by this Act are required or permitted to be prescribed or which are necessary or convenient to be prescribed for carrying out or giving effect to this Act.

(2) Without prejudice to the generality of the power conferred by subsection one of this section the Governor may, in and by the regulations—

(a) prescribe any forms to be used under this Act;

(b)

(b) prescribe the procedure to be followed on applications and other proceedings under this Act;
(c) prescribe the method of election of members of the council;
(d) prescribe the procedure to be followed at meetings of the council;
(e) prescribe the duties and functions of the registrar.

(3) The regulations may prescribe penalties not exceeding ten pounds for any breach thereof.

(4) All regulations shall—
(a) be published in the Gazette;
(b) take effect from the date of publication or from a later date to be specified in the regulations; and
(c) be laid before both Houses of Parliament within fourteen sitting days after the publication thereof if Parliament is then in session, and, if not, then within fourteen sitting days after the commencement of the next session.

If either House of Parliament passes a resolution of which notice has been given at any time within fifteen sitting days after such regulations have been laid before such House disallowing any regulation or part thereof, such regulation or part shall thereupon cease to have effect.

SCHEDULE. **Sec. 5.**

Auctioneers' Licensing Act, 1898, No. 24.
Auctioneers Licensing (Amendment) Act, 1924, No. 28.
Auctioneers Licensing (Amendment) Act, 1925, No. 9.
Auctioneers Licensing (Amendment) Act, 1934, No. 44.

In the name and on behalf of His Majesty I assent to this Act.

WAKEHURST,
Governor.

Government House,
Sydney, 10th April, 1941.