

AUCTIONEERS.

12° GEO. V., No. XXIX.

No. 29 of 1921.

AN ACT to amend and consolidate the Law relating to Auctioneers.

[Assented to 30th December, 1921.]

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 Western Australia, in this present Parliament assembled, and by the authority of the same, as follows:—

1. This Act may be cited as the *Auctioneers Act*, 1921. Short title.
 2. The Acts mentioned in the Schedule A to this Act are hereby repealed. Repeal.
Schedule A.
 3. Every person who shall sell or offer for sale any goods or chattels, land, tenements, or hereditaments, or any interest therein, at any sale where any person becomes the purchaser of the same by competition and being the highest bidder, either by being the single bidder or increasing on the bid-dings made by others or decreasing on sums named by the auctioneer or other person at such sale or by any other mode of sale by competition, shall (subject to this Act) be deemed to act as an auctioneer within the meaning of this Act. Interpretation of
term "act as
auctioneer."
 4. (1.) Licenses to act as auctioneer shall be of three kinds, namely, General, Country, and District. Licenses
- (2.) The authority conferred by a general license shall extend to the whole State, that conferred by a country license to the whole State, except the Metropolitan Area, and that conferred by a district license to the Magisterial District named therein, but so that every part of the Metropolitan Area shall be excluded therefrom.

(3.) Metropolitan Area means that portion of the State which is within the Metropolitan Province, the Metropolitan-Suburban Province, and the West Province.

No license to be granted unless magistrate's certificate obtained.

Applications for certificates. Schedule B.

5. (1.) No general or country license shall be granted except on the certificate (according to the form in Schedule B to this Act) of the resident magistrate of the magisterial district within which the applicant resides, and no district license shall be granted except on the like certificate of the resident magistrate of the district in which the license is to be operative.

Schedule C.

(2.) Every person who desires to obtain a certificate under this section shall, ten days at least before the day appointed for the hearing of the application, deliver in duplicate to the clerk of the magistrate an application in writing therefor according to the form in Schedule C to this Act, and the clerk shall forthwith send one copy of the application to the chief officer of police stationed within the district wherein the application is to be heard.

(3.) The applicant shall also, seven days at least before the day appointed for the hearing, publish a copy of such application (with a notice subscribed as shown in Schedule C) in a newspaper circulating in the said district. The day appointed for the hearing shall be such day as shall be inserted in the application with the approval of the clerk. The hour and place of hearing to be inserted in the application shall also be subject to the approval of the clerk.

Schedule D.

(4.) Any person desirous of objecting to the granting of the certificate may serve on the applicant, at least three days before the day appointed for the hearing, a notice according to the form in Schedule D to this Act, of his intended objection and setting out the grounds thereof in such manner that the applicant shall know what he has to answer.

Hearing of applications.

6. (1.) Every hearing of an application shall be a judicial proceeding, and may be at any time adjourned by the magistrate. It shall be open to the public, and the magistrate shall hear the applicant and any objector who has given the prescribed notice and shall appear before him. Any party may appear and be represented by a solicitor or agent, but the magistrate may insist on the personal appearance of the applicant.

(2.) If the magistrate shall be satisfied that the applicant is a fit and proper person to hold a license under this Act, he shall grant the application, but otherwise he shall refuse it.

(3.) If any objection to such application appears to be frivolous or vexatious, the magistrate may order the objector to pay to the applicant the costs of and occasioned by the objection, and if an application is refused, the magistrate may order the applicant to pay any successful objector the costs of and incidental to his objection.

7. (1.) When an application is granted the magistrate shall issue the certificate to the applicant, who shall forthwith cause the same to be presented to the Colonial Treasurer or a collector of revenue, and the said Colonial Treasurer or collector shall issue the license on payment of the fees prescribed by this Act. A certificate shall become void unless the sum required to be paid for the license authorised thereby is paid within fourteen days after the granting of the certificate. Granting of licenses.

(2.) The licenses shall be respectively according to the forms 1, 2, and 3 in Schedule E to this Act, and the forms shall be printed by the Government Printer. Schedule E.

8. Every application for a license shall be heard during the currency of the calendar year in which the license is to have effect or in the month of December preceding that year, and every such license which shall be granted shall, subject to this Act, expire on the thirty-first day of December of that year; but licenses granted before the commencement of this Act shall continue to have effect till the expiry of the respective periods for which they were granted. Duration of licenses.

9. The fee for a general license shall be twenty-five pounds, for a country license fifteen pounds, and for a district license five pounds: Provided that if the term of any license shall commence on or after the first day of April, the licensee shall pay only three-fourths of the annual fee for such license; if on or after the first day of July, one-half of such fee; and if on or after the first day of October, one-fourth of such fee. Fees for licenses.

Transfer of
licenses.

10. (1.) Any person to whom the holder of a license or the legal personal representative of the licensee has agreed to transfer the license may apply to the resident magistrate of the district in which the certificate for the license was granted for an order transferring the license to the applicant.

(2.) The provisions of sections *five* and *six* of this Act shall apply (*mutatis mutandis*) to and in respect of the application and the hearing thereof, and the decision thereon and the incidental costs, as if the application were for a certificate for a license: Provided that before the application is heard the applicant shall pay a fee of one pound, and that the applicant must, in addition to satisfying the magistrate that he is a fit and proper person to hold a license, prove also that the holder of the license or his legal personal representative consents to the application.

(3.) For the purposes of this section the forms in Schedules C and D may be used, with such alterations as may be necessary to adapt them to such purposes.

Schedule F.

(4.) If an application for a transfer is granted, the magistrate shall indorse the license with an order of transfer according to the form in Schedule F to this Act, and such order shall have effect according to its tenor.

(5.) In the case of a general or country license granted before the commencement of this Act, the application must be made to the resident magistrate of the district within which the applicant resides, and in the case of a district license so granted, the application must be made to the resident magistrate of the district for which the license was granted.

No person to act as
an auctioneer after
sunset or before
sunrise.

11. No person shall act as an auctioneer after sunset or before sunrise on any day except for the purpose of selling freehold or leasehold lands or tenements or shares in any incorporated company, or wool included and described in a catalogue issued prior to and for the purpose of the sale of such wool.

Penalty: Fifty pounds.

Provided that this section shall not apply to sales by auction held, with the approval of the Colonial Treasurer, at a bazaar or sale of gifts for charitable or church purposes.

Unlicensed person
not to act or hold
himself out as an
auctioneer or ad-
vertise sales by
auction.

12. No person not being the holder of a license under this Act shall—

(a) act as an auctioneer; or

- (b) advertise or hold himself out as being an auctioneer or entitled to conduct auction sales; or
- (c) have any words painted or inscribed over, on, or about any premises occupied by him which are calculated to lead to the belief that such person is an auctioneer, or keep, maintain, or suffer to remain any such words over, on, or about any such premises; or
- (d) publish or make or cause to be published or made any public advertisement or announcement to the effect that any sale by auction of any property whatsoever (not being a sale which may be made by an unlicensed person) will be made, conducted or carried out by him or under his direction or supervision, or that he has received instructions to make, conduct, or carry out any such sale.

Penalty: One hundred pounds.

13. No person being the holder of a license other than a general license shall act as an auctioneer beyond the limits within which his license is operative, or publish or make or cause to be published or made any public advertisement or announcement to the effect that any sale by auction of any property whatsoever (not being a sale which may be made by an unlicensed person) will be made, conducted, or carried out by him or under his direction or supervision at any place outside such limits, or that he has received instructions to make, conduct, or carry out any such sale.

Holder of limited license not to act or advertise sale beyond limits of license.

Penalty: Fifty pounds.

14. (1.) Any police or resident magistrate on the written application of any licensed auctioneer and on payment of the fee hereinafter mentioned, if he is satisfied that such auctioneer is unable from illness or any other sufficient cause to act as auctioneer, may grant to such auctioneer a temporary license to sell by auction by his clerk or deputy in any place; and such clerk or deputy shall thereupon, at the place and during the period specified in such temporary license, be authorised to act as an auctioneer on behalf of such licensed auctioneer, and for that purpose shall be deemed to be the holder of an appropriate license under this Act.

Temporary license to clerk or deputy of licensed auctioneer.

(2.) Such temporary license shall be according to the form in Schedule G to this Act, and the forms shall be printed by the Government Printer.

Schedule G.

(3.) A fee of one guinea shall be paid for each period of seven days for which such temporary license is granted.

(4.) A licensed auctioneer shall not be granted more than twelve temporary licenses in any calendar year. Such auctioneer shall be personally liable and responsible for acts or defaults of any clerk or deputy acting on his behalf by virtue of any such temporary license, in the same manner and to the same extent as such auctioneer would be liable if such act were done or such default were made by such auctioneer.

(5.) During the period such temporary license is in force the auctioneer's license granted to such auctioneer shall be suspended.

Auction sales for which no license required.

15. Nothing in this Act shall prevent any unlicensed person acting as auctioneer in connection with the sale of any property—

- (a) under a distress for rent; or
- (b) under any process of execution issued out of any court or by any magistrate; or
- (c) under any judgment or order of the Supreme Court or of the High Court of Australia or of any local court or of any prize court; or
- (d) by a person authorised by the Minister for Lands to conduct sales by auction under the provisions of the Land Act, 1898;
- (e) at a bazaar or sale of gifts where the whole of the proceeds are devoted for charitable, educational, or church purposes;

or in connection with the sale of any ship, boat, vessel, or goods wrecked or stranded on any of the coasts of the State or found derelict at sea and sold by auction for the benefit of the insurers or proprietors thereof or to defray charges of salvage.

Auctioneers to have the privileges of a gallon license holder.

16. A licensed auctioneer shall, without further payment or without being licensed under the Licensing Act, 1911, have, in addition to the rights and privileges conferred by this Act, the privilege of selling in any quantity not less than one gallon, on the premises on which a *bonâ fide* sale of the goods and effects of the occupier or late occupier of the said premises shall be held, all liquors which are the private stock of such occupier of the said premises, and which have been kept *bonâ fide* for the home consumption of such occupier: Provided, nevertheless, that before an auctioneer, not being the holder of a gallon license, can or may exercise the rights and privileges hereby conferred, or any of them, he shall first obtain the written license of a police or resident magistrate for that purpose, which said license the said magistrate may grant or refuse as he may deem advisable; and every such

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license shall be for one day's sale only, and shall state the premises upon which the auction is to be held; and the rights and privileges hereby conferred shall extend only to the day and premises mentioned in the said license.

17. Nothing in this Act contained shall interfere with or deprive an auctioneer, holding a license under the Licensing Act, 1911, from selling liquors in accordance with the privileges conferred upon him by such license as he may hold.

Reservation of rights of auctioneer being a license holder.

18. A licensed auctioneer who is also the holder of a gallon, two-gallon, or spirit merchant's license shall have the right of selling by auction liquor on any premises other than those in respect of which he is so licensed, but in all other respects in accordance with such license, notwithstanding anything contained in the Licensing Act, 1911.

An auctioneer who holds a gallon, two gallon, or spirit merchant's license may hold sale on any premises.

19. (1.) Any person applying for a license under this Act may, in his application, state that he is applying for the benefit of a particular firm of or in which he is an employee or partner or of a particular company of which he is an employee; but the clerk of the magistrate shall not receive such application unless he is satisfied that the firm or company has, by writing signed on its behalf, consented thereto.

Licenses may be issued for the benefit of firms or companies.

(2.) The firm or company may be represented at the hearing, and shall be liable to pay and may be awarded costs, as if such firm or company were the applicant.

(3.) The magistrate may refuse the application on the ground of want of fitness in the firm or company.

(4.) The certificate of the license, if granted, shall state that the license is to be used for the benefit of the firm or company, and the license when issued shall contain the like statement and shall be exercised for the benefit of the firm or company and not otherwise.

(5.) Two or more such licenses may be granted in favour of the same firm or company.

(6.) Neither the licensee nor his legal personal representative shall be competent, except with the consent of the firm or company, to agree to transfer such license, but a transfer of any such license as aforesaid may be made to any person to whom the firm or company has agreed to transfer the same, and the consent of any such licensee, being the employee of the firm or company, or of his representative, shall not be necessary.

(7.) A temporary license shall not be granted in respect of such license as aforesaid except with the consent of the

firm or company. The liability imposed by subsection *four* of section *fourteen* shall in the case of a temporary license granted by virtue hereof, attach to the firm or company and not to the licensed auctioneer.

(8.) A firm or company for whose benefit any such license has been issued shall not be entitled, by virtue thereof, to act as auctioneer; but, with this exception, the provisions of section *twelve* of this Act shall not, within the limits to which the license extends, apply to such firm or company so long as the license remains in force, and any business done under the license may be transacted in the name of the firm or company.

(9.) If during the currency of any such license as aforesaid the firm or company desires to transfer the benefit of the license to any firm or company, the transfer may on the application of the proposed transferor and transferee be made by the resident magistrate of the district in which the license was granted, but the provisions of section *ten* shall (subject to such modifications as may be prescribed) apply to and in respect of such application and the proceedings thereon as if the application were for a transfer of a license. After the transfer, the license shall be held and exercised for the benefit of the transferee as if it had been granted for that purpose.

(10.) For the purpose of this section "firm" means a firm consisting of two or more persons registered under the Registration of Firms Act, 1897, and "company" means any incorporated body of persons which but for this Act would be competent in law to transact or engage in auctioneering business.

No appeal against grant of license, etc.
Application of Justices Act, 1902-1920.

20. There shall be no appeal against the decision of any magistrate granting or refusing a certificate for a license or a transfer of a license, but in other respects the Justices Act, 1902-1920, shall apply to proceedings under this Act before a magistrate so far as it is applicable.

Any police magistrate may act as resident magistrate.

21. Any police magistrate may exercise the powers under this Act of a resident magistrate.

Forfeiture of license.

22. If any licensed auctioneer shall be convicted before any police or resident magistrate of any offence against this Act, the magistrate may order his license to be forfeited, and thereupon such license shall become void and of no effect.

Regulations.

23. The Governor may make such regulations as may be necessary to give effect to the provisions of this Act.

SCHEDULE A.

Section 2.

Acts repealed.

- 37 Victoria, No. 3.—The Auctioneers Act, 1873.
- 44 Victoria, No. 19.—The Auctioneers Act Amendment Act, 1881.
- 61 Victoria, No. 11.—The Auctioneers Act, 1873, Further Amendment Act, 1897.

SCHEDULE B.

Section 5.

Form of Certificate for License.

I,....., Resident Magistrate of the District of....., do hereby certify that of having duly made application to me for a General (or Country or District) License under the Auctioneers Act, 1921, I am satisfied that the said..... is a fit and proper person to be the holder of a license under the said Act, and I do hereby authorise the issue of a General License (or Country License, or License for the District of.....) under the said Act to him accordingly, such license to commence on the issue thereof and to expire on the 31st day of December, 19 .

Dated the.....day of....., 19 .

Resident Magistrate.

SCHEDULE C.

Section 5.

Application for License.

To the Resident Magistrate of the Magisterial District of.....

I,....., now residing at do hereby apply for a General (or Country) License (or a License for the Magisterial District of.....) under the Auctioneers Act, 1921, and I give notice that I will bring such application before you for hearing at....., on the day of....., 19 , ato'clock in thenoon.

Dated the.....day of....., 19 .

Notice to be subscribed when application advertised.

N.B.—Any person wishing to object to this application may do so provided he serves the prescribed notice on the applicant at least three days before the hearing. Forms of notice may be obtained from the Clerk of Petty Sessions at.....

Section 5

SCHEDULE D.

Notice of objection to application for License.

To Mr.....

Take notice that I object to a General (or Country) License (or a License for the Magisterial District of.....) being granted to you under the Auctioneers Act, 1921, and I intend to oppose the application which you have made for such license, on the grounds following:—

(Here set out grounds.)

Dated the.....day of....., 19 .

X.Y.

(Here insert address.)

SCHEDULE E.

FORMS OF LICENSE.

Section 7.

1.—General License.

Pursuant to the Auctioneers Act, 1921,....., of is hereby licensed until the 31st day of December, 19...., to act as an auctioneer in and throughout Western Australia.

Dated the.....day of....., 19 .

..... Colonial Treasurer (or Collector of Revenue).

2.—Country License.

Pursuant to the Auctioneers Act, 1921,....., of is hereby licensed until the 31st day of December, 19...., to act as an auctioneer in and throughout Western Australia save and except within the limits of the Metropolitan Area.

Dated the.....day of....., 19

..... Colonial Treasurer (or Collector of Revenue).

3.—District License.

Pursuant to the Auctioneers Act, 1921, of is hereby licensed until the 31st day of December, 19...., to act as an auctioneer in and throughout the Magisterial District of..... [provided that this license shall not extend to any part of the Metropolitan Area].

Dated the.....day of....., 19 .

..... Colonial Treasurer (or Collector of Revenue)

SCHEDULE F.

Section 10.

Form of Order of Transfer to be indorsed on License.

I,....., Resident Magistrate of the District of....., having heard an application by..... of for an order transferring the within license to him, and being satisfied that he the within licensee (or the legal personal representative of the within licensee) has consented to the application, and that the said..... is a fit and proper person to be the holder of a license under the said Auctioneers Act, 1921, do hereby order that the within license be transferred, and the same is hereby transferred to the said....., who shall henceforth have the sole right to use and exercise the same, subject to the said Act.

Dated the.....day of....., 19 .

..... Resident Magistrate.

SCHEDULE G.

Section 14.

Temporary License.

Whereas..... of is the holder of a General (or Country or District) License under the Auctioneers Act, 1921, and is desirous of selling by auction, by his clerk or deputy, on the.....day of.....next, at..... These are to certify that the said having paid the sum of one guinea, is authorised to act as an auctioneer under the said license, by his clerk or deputy, on the said.....day of.....next, at.....aforesaid.

Dated the.....day of....., 19 .

..... Resident Magistrate (or Police Magistrate).