

WESTERN AUSTRALIA.



ANNO QUINTO

EDWARDI SEPTIMI REGIS,

XIII.

No. 13 of 1905.

AN ACT for the Prohibition of Secret Commissions and Rebates.

[Assented to 23rd December, 1905.]

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 *Secret Commissions Act*, 1905, and shall come into operation on the first day of April, one thousand nine hundred and six.

2. If any agent corruptly receives or solicits from any person, for himself or for any other person, any valuable consideration—

(a.) as an inducement or reward for, or otherwise on account of, doing or forbearing to do or having done or forborne to do any act in relation to his principal's affairs or business; or

Receipt or solicitation of secret commission by an agent a misdemeanour.

V. 1905, No. 1974, s. 2.

- (b.) the receipt or any expectation of which would in any way tend to influence him to show or to forbear to show favour or disfavour to any person in relation to his principal's affairs or business,

he shall be guilty of a misdemeanour.

Gift or offer of
secret commission
to an agent a
misdemeanour.
Ibid.

3. If any person corruptly gives or offers to any agent any valuable consideration—

- (a.) as an inducement or reward for, or otherwise on account of, doing or forbearing to do or having done or forborne to do any act in relation to his principal's affairs or business; or

- (b.) the receipt or any expectation of which would in any way tend to influence him to show or to forbear to show favour or disfavour to any person in relation to his principal's affairs or business,

he shall be guilty of a misdemeanour.

Secret gifts to
parent, wife, child,
partner, etc., of
agent deemed gifts
to agent.
Ibid., s. 3.

4. (1.) Any valuable consideration given or offered to any parent, husband, wife, or child of any agent, or to his partner, clerk, or employee, or at the agent's request to any person by any person having business relations with the principal of such agent, shall be deemed to have been given or offered to the agent.

Secret gifts received
by parent, wife,
child, partner, etc.,
of agent deemed
received by agent.
Ibid.

(2.) Any valuable consideration received or solicited by any parent, husband, wife, or child of any agent, or by his partner, clerk, or employee, from any person having business relations with the principal of such agent shall be deemed to have been received or solicited by the agent, unless it be proved that the valuable consideration was so received or solicited without the consent, knowledge, or privity of the agent.

Giving to agent
false or misleading
receipt or account
a misdemeanour.
Ibid., s. 4.

5. If, with intent to deceive or defraud the principal, any person gives to any agent, or if any agent receives or uses or gives to the principal, any receipt, invoice, account, or document in respect of which or in relation to a dealing, transaction, or matter in which the principal is interested and which—

- (a.) contains any statement which is false or erroneous or defective in any important particular, or is in any way likely to mislead the principal; or

- (b.) omits to state explicitly and fully the fact of any commission, percentage, bonus, discount, rebate, repayment, gratuity, or deduction having been made, given, or allowed or agreed to be made, given, or allowed,

he shall be guilty of a misdemeanour.

6. Whenever any advice is given by one person to another, and such advice is in any way likely or intended to induce or influence the person advised—

Gift or receipt of secret commission in return for advice given.

Ibid., s. 5 (1).

(a.) to enter into a contract with any third person; or

(b.) to appoint or join with another in appointing, or to vote for or to aid in obtaining the election or appointment, or to authorise or join with another in authorising the appointment, of any third person as trustee,

and any valuable consideration is given by such third person to the person giving the advice without the assent of the person advised, the gift or receipt of the valuable consideration shall be a misdemeanour, but this section shall not apply when the person giving the advice was, to the knowledge of the person advised, the agent of such third person, or when the valuable consideration was not given in respect of such advice.

7. Any offer or solicitation of a valuable consideration in respect of any advice given or to be given by one person to another with a view to induce or influence the person advised—

Offer or solicitation of secret commission in return for advice given.

Ibid., s. 5 (2).

(a.) to enter into a contract with the person offering or solicited; or

(b.) to appoint or join with another in appointing, or to vote for or to aid in obtaining the election or appointment, or to authorise or join with another in authorising the appointment, of the person offering or solicited as trustee,

and with the intent that the gift or receipt of such valuable consideration is not to be made known to the person advised, shall be a misdemeanour, but this section shall not apply when such first-mentioned person is the agent of the person offering or solicited.

8. If any person offers or gives any valuable consideration to a trustee, or if any trustee receives or solicits any valuable consideration for himself or for any other person, without the assent of the persons beneficially entitled to the estate, or of a Judge of the Supreme Court, as an inducement or reward for appointing or having appointed or for joining or having joined with another in appointing, or for authorising or having authorised or for joining or having joined with another in authorising any person to be appointed in his stead or instead of him and any other person as trustee he shall be guilty of a misdemeanour.

Secret commission to trustee in return for substituted appointment.

Ibid., s. 6.

9. Any person who, being within Western Australia, knowingly aids, abets, counsels, or procures, or who attempts or takes part in or is in any way privy to—

Aiding and abetting offences within or outside Western Australia.

Ibid., s. 7.

(a.) doing any act or thing in contravention of this Act;

- (b.) doing any act or thing outside Western Australia, or partly within and partly outside Western Australia, which if done within Western Australia would be in contravention of this Act;

shall be guilty of a misdemeanour.

Liability of directors, etc., acting without authority.

Ibid., s. 8.

10. Any director, manager, or officer of a company, or any person acting for another, who knowingly takes part in or is in any way privy to doing or who attempts to do any act or thing without authority which, if authorised, would be in contravention of any of the provisions of this Act shall be guilty of a misdemeanour.

Penalty on conviction.

Ibid., s. 9.

11. Any person, on conviction of a misdemeanour under any of the provisions of this Act, shall—

- (a.) be liable, if a corporation, to a penalty not exceeding five hundred pounds, and if any other person, to be imprisoned for any period not exceeding two years, with or without hard labour, or to pay a penalty not exceeding five hundred pounds or imprisonment and penalty as aforesaid; and,

- (b.) in addition, be liable to be ordered to pay to such person, and in such manner as the court directs, the amount or value, according to the estimation of the court, of any valuable consideration received or given by him or any part thereof; and such order shall be enforceable in the same manner as judgment of the court.

Court may order withdrawal of trifling or technical cases.

Ibid., s. 10.

12. Upon the trial of a person for any offence under this Act, if it appears to the court that the offence charged is in the particular case of a trifling or merely technical nature, or that in the particular circumstances it is inexpedient to proceed to a conviction, the court may in its discretion, and for reasons stated on the application of the accused, withdraw the case from the jury, and this shall have the same force and effect as if the jury had returned a verdict of not guilty, except that the court may, if it think fit, make the order mentioned in the last preceding section.

Protection of witness giving answers criminating himself.

Ibid., s. 11.

13. A person who is called as a witness in any proceedings shall not be excused from answering any question relating to any offence under this Act on the ground that the answer thereto may criminate or tend to criminate him—

Provided that—

- (a.) a witness who, in the judgment of the court or justices, answers truly all questions which he is required by the court or justices to answer shall be entitled to receive a certificate from the court or justices stating that such witness has so answered; and

- (b.) an answer by a person to a question put by or before the court or justices in any proceeding under this Act shall not, except in the case of any criminal proceedings for perjury in respect of such evidence, be in any proceeding civil or criminal admissible in evidence against him.

14. When a person has received a certificate as aforesaid, and any criminal proceeding is at any time instituted against him in respect of the offence which was in question in the proceeding in which the said person was called as a witness, the court or justices having cognizance of the case shall, on proof of the certificate and of the identity of the offence in question in the two cases, stay the proceedings.

Stay of proceedings against such witness.

Ibid., s. 12.

15. In any prosecution under this Act it shall not amount to a defence to show that any such valuable consideration as is mentioned in this Act is customary in any trade or calling.

Custom of itself no defence.

Ibid., s. 13.

16. For the purposes of this Act, where it is shown that any valuable consideration has been received or solicited by an agent from or given or offered to an agent by any person having business relations with the principal, without the assent of the principal, the burden of proving that such valuable consideration was not received, solicited, given, or offered in contravention of any of the provisions of this Act shall be on the accused.

Burden of proof that gift not secret commission.

Ibid., s. 14.

17. No prosecution for an offence under this Act shall be commenced after the expiration of two years next after the commission of the offence, or six months next after the first discovery thereof by the principal or the person advised, as the case may be, whichever expiration first happens.

Limit of time for prosecution.

Ibid., s. 15.

18. No prosecution for an offence under this Act shall be commenced without the consent of the Attorney General.

Consent of Attorney General to prosecution.

Ibid., s. 16.

19. Every information for an offence under this Act shall be upon oath.

Prosecution of offences.

Ibid., s. 17.

20. In the construction of this Act, the following provisions shall apply:—

Interpretations.

Ibid., s. 18.

- (1.) The word "agent" shall include any corporation or other person acting or having been acting or desirous or intending to act for or on behalf of any corporation or other person, whether as agent, partner, co-owner, clerk, servant, employee, banker, broker, auctioneer, architect, clerk of works, engineer, solicitor, surveyor, buyer, salesman, foreman, trustee, executor, administrator, liquidator, trustee in bankruptcy or of a deed of arrangement, receiver, director, manager, or other

officer or member of committee or governing body of any corporation, club, partnership, or association, or in any other capacity, either alone or jointly with any other person, and whether in his own name or in the name of his principal, or otherwise; and a person serving under the Crown is an agent within the meaning of this Act:

- (2.) The word "principal" shall include a corporation or other person for or on behalf of whom the agent acts, has acted, or is desirous or intending to act:
- (3.) The word "trustee" shall include trustee, executor, administrator, liquidator, trustee in bankruptcy or of a deed of arrangement, receiver, director, committee of the estate of an insane person, having power to appoint a trustee, or person entitled to obtain probate of the will or letters of administration to the estate of a deceased person:
- (4.) The words "valuable consideration" shall include any money, loan, office, place, employment, agreement to give employment, benefit, or advantage whatsoever, and any commission or rebate, deduction, or percentage, bonus, or discount, or any forbearance to demand any money or money's worth or valuable thing; and the acceptance of any of the said things shall be deemed the receipt of a valuable consideration:
- (5.) The words "valuable consideration," when used in connection with the offer thereof, shall include any offer of any agreement or promise to give, and every holding out of any expectation of valuable consideration:
- (6.) The words "valuable consideration," when used in connection with the receipt thereof, shall include any acceptance of any agreement, promise, or offer to give, and of any holding out of any expectation of valuable consideration:
- (7.) The word "contract" shall include contract of sale or of employment or any other contract whatever:
- (8.) Any act or thing prohibited by this Act is prohibited whether done directly or indirectly by the person mentioned or by or through any other person:
- (9.) The words "solicit any valuable consideration," and "valuable consideration solicited," and words to the like extent shall be construed with the following direction, namely:—That every agent who shall divert, obstruct, or interfere with the proper course of business or manufacture, or shall impede or obstruct, or shall fail to use due diligence in the prosecution of any negotiation or business with the intent to obtain the gift of any valuable consideration from any person interested in the said

negotiation or business or with intent to injure any such person shall be deemed to have solicited a valuable consideration from a person having business relations with the principal of such agent:

- (10.) The words "person having business relations with the principal" shall include every corporation or other person, whether as principal or agent, carrying on or having carried on or desirous or intending to carry on any negotiation or business with or engaged or having been engaged or desirous or intending to be engaged in the performance of any contract with or in the execution of any work or business for or in the supply of any goods or chattels to any principal, and shall also include any agent of such corporation or other person:
- (11.) The words "in relation to his principal's affairs or business" shall imply the additional words "whether within the scope of his authority or course of his employment as agent or not:" and
- (12.) The words "advice given" and words to the like effect shall include every report, certificate, statement, and suggestion intended to influence the person to whom the same may be made or given, and every influence exercised by one person over another.