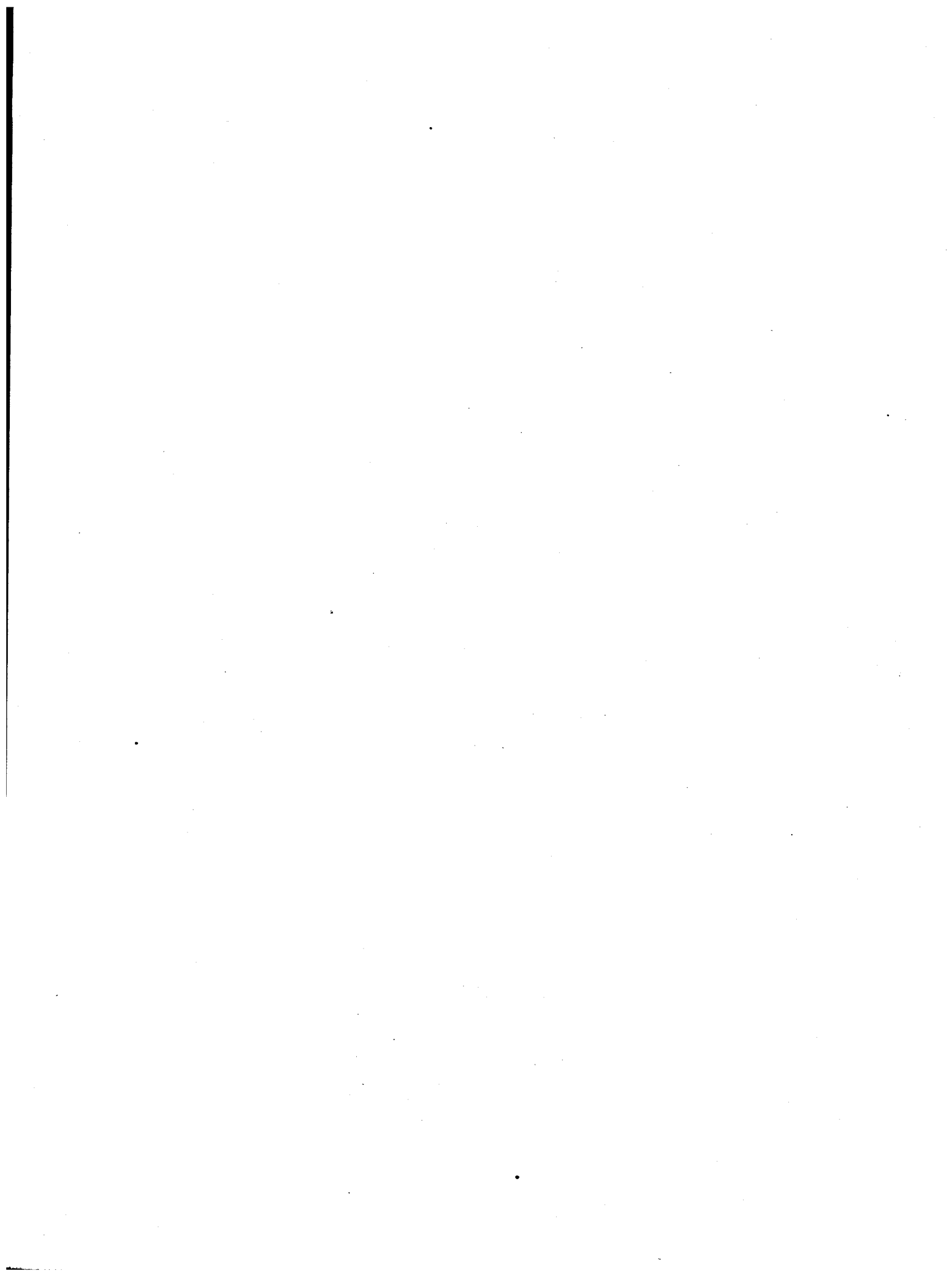


THE AUCTION ACT, 1913.

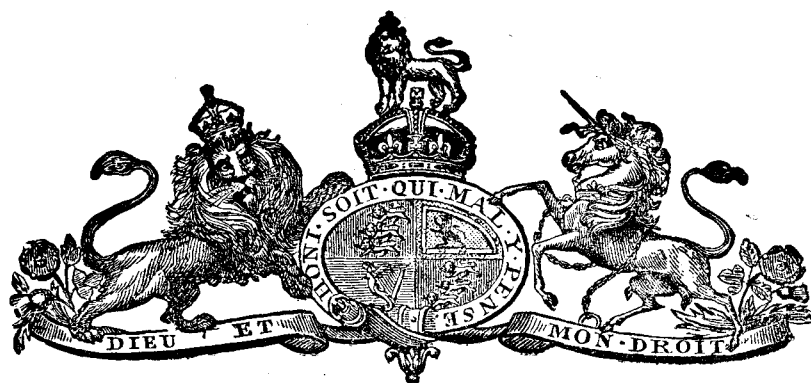
ANALYSIS.

- | | |
|---|--|
| <p>1. Short title.</p> <p>2. Repeal.
Saving.</p> <p>3. Interpretation.
"Act."
"Auctioneer."
"Outcry."
"Sales by auction," or "selling by auction," or "sell by auction."
"Sale," "sell," or "selling."
"Treasurer."</p> <p>4. No person to sell by auction unless authorised by this Act.</p> <p>5. Certain persons not to hold auctioneer's licence.</p> <p>6. Who may apply for a licence.</p> <p>7. Description of licences.
General licence.
Limited licence.
Duration of licence.
Licence fees.</p> <p>8. Mode of application for licence.
Applicant to be deemed owner of licence.
If more than One person to sell, separate licences to be applied for.
Treasurer may issue licence.</p> | <p>Name of person authorised to sell to be endorsed.
Name of such person may be changed.
Effect of licence.</p> <p>9. Sale and transfer of licence.</p> <p>10. Provisions for carrying on business of deceased auctioneer, or in case of bankruptcy.</p> <p>11. Treasurer to gazette particulars of licences, &c.</p> <p>12. Night auctions prohibited, saving as to cattle sales, &c.</p> <p>13. Unlicensed person pretending to be an auctioneer.</p> <p>14. Not exhibiting licence on demand.</p> <p>15. Selling contrary to Act.</p> <p>16. Forging licences.</p> <p>17. Penalties.</p> <p>18. Cancellation of licences.</p> <p>19. Appropriation of fees.</p> <p>20. Procedure.
Appeal.</p> <p>21. Appropriation of penalties.</p> <p>22. Sales exempted from Act.
Saving of civil remedies.
Illegal sales not validated.</p> <p>23. Regulations.</p> |
|---|--|

10d.]



T A S M A N I A



1913.

ANNO QUARTO

GEORGII V. REGIS.

No. 37.



AN ACT to consolidate and amend the Law relating to Sales by Auction and Auctioneers. [24 December, 1913.]

A.D. 1913.

BE it enacted by His Excellency the Governor of Tasmania, by and with the advice and consent of the Legislative Council and House of Assembly, in Parliament assembled, as follows:—

1 This Act may be cited as "The Auction Act, 1913." Short title.

2 The Acts mentioned in the schedule hereto are hereby repealed : Repeal. Provided that— Schedule.

1. Every auctioneer's licence in force at the commencement of Saving.

this Act shall remain in full force and effect, according to its respective class, until the expiration of the period for which it was granted, or its forfeiture, but in all other respects shall be deemed to be a licence granted under this Act.

Where the person authorised to sell by auction by virtue of any such existing licence is an employee, and conducts sales by auction on behalf of his employer, the employer shall be deemed to be the owner of such licence.

Auction.

A.D. 1913.

All the provisions and enactments contained in this Act shall apply as fully to every such owner, every person so authorised to sell by auction, and also to such licence as if such licence had been granted under this Act.

The provisions of Subsection (6) of Section Eight of this Act shall be applicable in respect of every existing licence, and the name and address of the person authorised at the commencement of this Act to sell by auction by virtue thereof shall be deemed to be endorsed thereon, and may be changed pursuant to the said subsection.

ii. All matters and proceedings commenced under any Act hereby repealed, and pending or in progress at the commencement of this Act, may be continued, completed, and enforced under this Act.

Interpretation.

“ Act.”

“ Auctioneer.”

“ Outcry.”

“ Sales by auction,” or
“ selling by auction,” or “ sell by auction.”

“ Sale,” “ sell,”
or “ selling.”

“ Treasurer.”

3 In this Act, if not inconsistent with the context—

“ Act ” includes regulations thereunder :

“ Auctioneer ” means any person who exercises or carries on the trade or business of an auctioneer or who acts in such capacity at any sale by auction and any person who sells by auction, as hereinafter defined :

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

“ Sales by auction,” or “ selling by auction,” or “ sell by auction ” means the selling anywhere (whether or not the sale has been advertised to take place) of property of any kind, or any interest or supposed interest in any property, by outcry, by the auctioneer saying “ I’ll take,” or other words, and commencing at a higher figure and going to a lower figure, by what is known as Dutch auction, knocking-down of hammer, candle, lot, parcel, instrument, machine, or any other mode whereby the highest, the lowest, or any bidder is the purchaser, or whereby the first person who claims the property submitted for sale at a certain price named by the person acting as auctioneer is the purchaser, or where there is a competition for the purchase of any property or any interest therein in any way commonly known and understood to be by way of auction :

“ Sale,” “ sell,” or “ selling,” used in any of the foregoing definitions, includes dealing, selling, or reselling, and any attempt to sell or resell, and any offer for sale or resale :

“ Treasurer ” means the Treasurer for the time being of this State, and includes any person authorised by the Governor to issue licences under this Act :

Auction.

4—(1) No person, except as hereinafter mentioned, shall sell by auction unless he is authorised to conduct sales by auction by virtue of an auctioneer's licence, granted or deemed to be granted under this Act and in force, whereon his name and address are, or are deemed to be endorsed and are uncanceled, as provided by this Act; and every person who offends against this provision is liable for each offence to a penalty of not less than Ten Pounds and not exceeding One hundred Pounds.

A.D. 1913.

No person to sell by auction unless authorised by this Act.

(2) In any prosecution under this section the onus of proof of authority to sell by auction shall be upon the party charged.

5 A person holding—

- I. Any licence issued under "The Licensing Act, 1902," or any amendment thereof: or
- II. A pawnbroker's licence issued under "The Pawnbrokers Act"—

Certain persons not to hold auctioneer's licence.

shall not be competent to hold an auctioneer's licence or sell by auction.

6 Only a company partnership firm or person exercising the trade or business of an auctioneer, by itself or himself or through some other person, or *boná fide* intending to do so, shall be entitled to apply for a licence under this Act.

Who may apply for a licence.

7—(1) There shall be Two descriptions of licence, One termed a "general licence," the other a "limited licence."

Description of licences.

A general licence shall be in force for all parts of this State, and shall be in the prescribed form.

General licence.

A limited licence shall be in force for all parts of this State, except within the cities of Hobart and Launceston and Five miles of either city, and such licence shall be in the prescribed form.

Limited licence.

(2) Every licence shall take effect from the date of the issue thereof, and shall, unless sooner cancelled or forfeited, expire on the Thirty-first day of December next following such date.

Duration of licence.

(3) For a general licence a fee of Fifty Pounds shall be paid; and for a limited licence a fee of Twenty Pounds shall be paid.

Licence fees.

Provided that where after the Thirty-first day of January, One thousand nine hundred and fourteen, any licence is granted under this Act in respect of that year in renewal of any licence in force at the commencement of this Act, the fee payable upon any such licence so granted in respect of that year shall only be in proportion to the period of the said year the same may have to run, calculating for the whole of such year at the respective rates hereinbefore mentioned.

8—(1) Every person who is desirous of obtaining an auctioneer's licence shall apply therefor in writing to the Treasurer in the prescribed form.

Mode of application for licence.

In the case of a company or partnership firm, the application shall be made in the name of the company or partnership firm.

(2) The application shall state whether a general or a limited licence is applied for, and shall also state fully the name and address of One

Auction.

A.D. 1913.

Applicant to be deemed owner of licence.

If more than One person to sell, separate licences to be applied for.

Treasurer may issue licence.

Name of person authorised to sell to be endorsed.

Name of such person may be changed.

Effect of licence.

Sale and transfer of licence.

person only (either the applicant or one of the applicants, or some other person) who it is intended will conduct sales by auction under the licence on behalf of the applicant.

(3) The licence when issued shall belong to the applicant, and he shall be deemed to be the owner thereof, notwithstanding that some other person is thereby authorised to conduct sales by auction.

(4) If in any case it is desired that more than One person shall be authorised to sell by auction, a separate licence for each such person must be applied for.

(5) If the Treasurer is satisfied with the character and qualifications of the applicant and the person proposed to be licensed to conduct sales by auction, the Treasurer, upon receipt of the appropriate fee for the licence applied for, may issue to the applicant a general licence or a limited licence, as the case may require, and shall endorse thereon the name and address of the person so proposed to be licensed as aforesaid.

(6) The person whose name and address are so endorsed may from time to time be changed on the application of the owner of the licence; and on payment of a fee of Two Pounds to the Treasurer he may, if satisfied with the character and qualifications of the person proposed to be substituted, cancel any former endorsement and endorse upon the licence the name and address of the substituted person.

(7) Every licence shall authorise the person whose name and address are for the time being endorsed thereon by the Treasurer and uncanceled to act in the capacity of an auctioneer, and sell by auction on behalf of the applicant for the licence, according to the tenor of the licence and until its expiration or its sooner determination if cancelled or forfeited.

9—(1) Upon application in writing being made to the Treasurer—

- i. By the owner of a licence in force: or
- ii. In the case of a sole owner who is dead, by his executors or administrators: or
- iii. In the case of a sole owner who is adjudged bankrupt, or files a petition for the liquidation of his affairs by arrangement or composition with his creditors, by the trustee or receiver of the property of such sole owner—

for permission to sell and transfer the licence to a company, partnership firm, or person named in the application; and upon payment to the Treasurer of the fee of Two Pounds the Treasurer, if satisfied with the character and qualifications of the proposed transferee, may issue to the transferee a new licence for the remainder of the period for which the original licence was issued, and shall endorse upon the new licence the name and address of One person only, with whose character and qualifications he is satisfied (either the transferee or One of the transferees—if more than One—or some other person) who it is intended will conduct sales by auction under the licence on behalf of the transferee, and thereupon the original licence shall be deemed cancelled.

Auction.

(2) Every application under this section shall be in the prescribed form, and shall state fully the name and address of the proposed transferee. A.D. 1913.

(3) Upon a licence being issued to him under this section, such transferee shall be deemed the owner thereof, and the provisions of Subsection (6) of Section Eight shall be applicable.

10—(1) If in either of the cases mentioned in Paragraphs II. and III. of Subsection (1) of the immediately preceding section, the executors or administrators of such deceased sole owner, or the trustee or receiver of the property of such sole owner, desire to continue to carry on the business of auctioneer until the expiration of the period specified in the licence, they shall make application in that behalf in writing to the Treasurer in the prescribed form. Provisions for carrying on business of deceased auctioneer, or in case of bankruptcy.

(2) The application shall state fully the name and address of One person only (who may be the applicant, or one of the applicants— if more than one—or some other person), who it is intended will conduct auction sales under the licence on behalf of the applicant.

(3) If the Treasurer is satisfied with the character and qualifications of the person whose name is so submitted, the Treasurer, upon receipt of a fee of Two Pounds, may endorse the name and address of such person upon the licence, and shall cancel all other endorsements thereon.

(4) Upon such endorsement being made the applicant under this section shall be deemed to be the owner of the licence, notwithstanding that some other person is thereby authorised to conduct sales by auction, and the provisions of Subsection (6) of Section Eight shall be applicable.

11 The Treasurer shall cause particulars of—

- i. Every licence issued by him and of every endorsement made by him thereon : and
- ii. Every alteration of a licence or endorsement made by him, and any cancellation of a licence or endorsement—

under this Act to be gazetted as soon as conveniently may be.

Treasurer to
gazette particulars
of licences, &c.

12 Except as hereinafter mentioned, an auctioneer shall not sell by auction any property except between the hours of Six o'clock in the morning and Six o'clock in the evening of the same day, saving that— Night auctions prohibited, saving as to cattle sales, &c.

- i. Any auction sale of live stock commenced at any time not later than Two o'clock in the afternoon of any day may be continued until Eight o'clock in the evening of the same day, but not any later : and
- ii. Land, plans of which have been exhibited in the auction-room for at least Two clear days prior to the date of sale, may be sold without limit as to time.

Auction.

A.D. 1913.

Unlicensed person
pretending to be
an auctioneer.

13 Every person, not being a licensed auctioneer or the owner of a licence under this Act, who—

- I. Has any words written, painted, or inscribed, or allows to remain unobliterated, or not thoroughly obliterated, any words over or about his house, window, or premises which import or are calculated to lead to the belief or supposition that such person is an auctioneer : or
- II. Places or causes to be placed any placard, board, writing, matter, or thing in the public view to the intent that it may be believed or supposed that such person is an auctioneer, or that any property of any kind whatever or any interest therein is to be sold by auction by such person—

is liable to a penalty not exceeding One hundred Pounds.

Not exhibiting
licence on
demand.

14 Every person selling by auction who does not at the time of the sale, or within Three days thereafter, on demand of any constable, produce and show to such constable a proper licence under this Act authorising such person so selling to sell by auction is guilty of an offence against this Act.

Selling contrary
to Act.

15 Every licensed auctioneer who exercises his business at any time or in any manner contrary to this Act is guilty of an offence against this Act.

Forging licences.

16 Every person who forges, counterfeits, or alters, or causes to be forged, counterfeited, or altered, any licence, or any endorsement thereon, or any application for a licence, or any signature to any licence or application for a licence, or uses or tenders in evidence any such forged, counterfeited, or altered licence or endorsement or signature, knowing the same to be forged, counterfeited, or altered, shall be guilty of felony, and being convicted thereof shall be liable to be imprisoned for any term not exceeding Two years.

Penalties.

17 If any person contravenes or fails to comply with or is guilty of an offence against any provision of this Act, and no other penalty is expressly provided in that behalf, he shall be liable on conviction to a penalty not exceeding Five Pounds, and in the case of a continuing offence to a further penalty not exceeding Five Pounds for every day after the first during which such offence continues.

Cancellation of
licences.

18 In any proceedings against any person for any offence against this Act the magistrate or justices when convicting him may, in addition to imposing the penalty, cancel any licence belonging to him or any endorsement upon a licence authorising him to sell by auction, whereupon all the rights and privileges of any such person under or by virtue of such licence shall absolutely cease and determine.

Appropriation
of fees.

19 All fees payable to the Treasurer under this Act shall be paid into the Treasury and form part of the Consolidated Revenue.

Auction.

- 20**—(1) All informations for offences against the provisions of this Act, and all penalties, fines, and forfeitures imposed by or under the provisions of this Act, may be heard, determined, recovered, and enforced in a summary way by and before a police magistrate or any Two or more justices in the mode prescribed by “The Magistrates’ Summary Procedure Act.” A.D. 1913
Procedure.
19 Vict. No. 8.
- (2) Any person who thinks himself aggrieved by any penalty imposed under the authority of this Act may appeal against the same in the manner prescribed by “The Appeals Regulation Act.” Appeal.
19 Vict. No. 10.
- 21** The money arising from all such fines, penalties, and forfeitures shall be paid into the Treasury and form part of the Consolidated Revenue. Appropriation of penalties.
- 22** Nothing in this Act— Sales exempted from Act.
- i. Shall extend to any sale—
 - (a) Made by order of the Governor ; or
 - (b) Under any writ or process issued by or out of any court of law or justice, or by any judge, magistrate, or justice ; or
 - (c) Of animals sold under the law relating to public pounds ; or
 - (d) Of Crown lands, or of any lease or licence in respect of Crown lands where such sale is made on behalf of the Government under statutory authority ; or
 - (e) Of any goods distrained for rent or arrears of rent ; or
 - (f) Held under any Act authorising any person who does not hold an auctioneer’s licence to conduct a sale by auction ; or
 - (g) Of any goods or articles of any kind *bonâ fide* belonging to any church committee, or school committee or committee formed for charitable purposes or charitable aid : or
 - ii. Shall be deemed to take away or limit any civil right or remedy that any person has against an auctioneer in respect of any matter constituted an offence under this Act, or any liability of such auctioneer in respect of any such matter : or Saving of civil remedies.
 - iii. Shall be construed to repeal any enactment authorising particular sales to be conducted without an auctioneer’s licence : or
 - iv. Shall render legal any sale that is contrary to law. Illegal sales not validated.
- 23** The Governor may from time to time make such regulations as he deems necessary or convenient for the purpose of carrying this Act into effect, Regulations.

Auction.

A.D. 1913.

SCHEDULE.

ACTS TO BE REPEALED.

Date and Number of Act.	Title.	Extent of Repeal.
6 Wm. IV. No. 6 (1835)	"The Auction Act"	The whole Act
23 Vict. No. 15 (1859)	"The Auction Amendment Act"	The whole Act
3 Ed. VII. No. 25 (1903)	"The Auction Amendment Act, 1903"	The whole Act