

SECRET COMMISSIONS BILL.

MEMORANDUM.

THE chief object of this Bill is to render illegal the practice of agents in secretly accepting payments and other valuable considerations from third persons in respect of the business of the principals. There is reason to believe that this practice is very widely spread, and that it exercises a pernicious influence upon the commercial morality of the community. It has already been found necessary to pass legislation for this purpose in England, Victoria, and the Commonwealth of Australia. The Acts are: in England, the Prevention of Corruption Act, 1906; in Victoria, the Secret Commissions Prohibition Act, 1905; and in the Commonwealth, the Secret Commissions Act, 1905. These Acts differ considerably from each other, and the present Bill selects what are regarded as the best features of each. It creates the following offences:—

- (1.) The giving of secret bribes or other considerations to agents by third persons. (Section 3.)
- (2.) The receiving of secret bribes or other considerations by agents from third persons. (Section 4.)
- (3.) The concealment by an agent of his pecuniary interest in a contract made by him on behalf of his principal. (Section 5.)
- (4.) The giving to an agent by a third person of a false or imperfect receipt, invoice, or other document, with intent to deceive the principal. (Section 6.)
- (5.) The giving by an agent to his principal of any such document. (Section 7.)
- (6.) The receiving of secret commissions for advising third persons to enter into contracts with the person paying such commissions. (Section 8.)

The practices to be stopped assume so many different forms and are so easily disguised that if the Act is to be effective it must be drawn in the most comprehensive terms. As so drawn it is quite possible that it includes certain practices which in themselves are not open to objection. It is not practicable, however, to foresee and exempt these cases; and it is provided accordingly, by way of safeguard (as has also been done in England and Victoria), that no prosecution can be instituted without the consent of the Attorney-General. This provision will effectually prevent the Act from being used except in cases which come within the spirit of it as well as within its letter.

Right Hon. Sir J. G. Ward.

SECRET COMMISSIONS.

ANALYSIS.

Title.	
1. Short Title and commencement.	8. Receiving secret reward for procuring contracts an offence.
2. Interpretation.	9. Aiding and abetting offences.
3. Gifts to agent without consent of principal an offence.	10. Offences by persons acting on behalf of agents.
4. Acceptance of such gifts by agent an offence.	11. Customary nature of gift to be no defence.
5. Duty of agent to disclose pecuniary interest in contract.	12. Consent of Attorney-General necessary for prosecution.
6. Giving false receipt, invoice, &c., to agent an offence.	13. Penalty on conviction.
7. Delivery of false receipt, &c., to principal an offence.	14. Proceedings to be before Magistrate only.
	15. Incriminating answers and discovery.
	16. Persons deemed to be agents within the meaning of this Act.

A BILL INTITULED

AN ACT for the Prohibition of Secret Commissions.

Title.

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

1. This Act may be cited as the Secret Commissions Act, 1910, and shall come into operation on the first day of January, nineteen hundred and *eleven*.

Short Title and commencement.

2. In this Act, unless a contrary intention appears,—

Interpretation.

10 “Agent” includes any person who is or has been, or desires or intends to be, employed by or acting for any other person, whether as agent, servant, broker, auctioneer, architect, solicitor, director, or in any other capacity whatever, either alone or jointly with any other person:

Australia, 1905, No. 10, sec. 3
Victoria, 1905, No. 1974, sec. 18
England, 1906, Ch. 34, sec.

15 “Principal” includes any person by whom an agent is or has been, or intends or desires to be, employed, or for whom an agent acts or has acted, or intends or desires to act:

20 “Consideration” means valuable consideration of any kind; and particularly includes discounts, commissions, rebates, bonuses, deductions, percentages, employment, payment of money (whether by way of loan, gift, or otherwise howsoever), and forbearance to demand any money or valuable thing.

25 3. (1.) Every person is guilty of an offence who corruptly gives, or agrees or offers to give, to any agent any gift or other consideration as an inducement or reward for doing or forbearing to do, or for

Gifts to agent without consent of principal an offence.

Australia, sec. 4
Victoria, sec. 2
England, sec. 1

having done or forborne to do, any act in relation to the principal's affairs or business (whether such act is within the scope of the agent's authority or the course of his employment as agent or not), or for showing or having shown favour or disfavour to any person in relation to the principal's affairs or business.

5

Victoria, sec. 3

(2.) Any gift or other consideration given or offered or agreed to be given to any parent, husband, wife, or child of any agent, or to his partner, clerk, or servant, or (at the agent's request or suggestion) to any other person, shall be deemed for the purposes of this section to have been given, or offered, or agreed to be given to the agent.

10

Acceptance of such
gifts by agent
an offence.

Australia, sec. 4
Victoria, sec. 2
England, sec. 1

4. (1.) Every agent is guilty of an offence who corruptly accepts or obtains, or agrees or offers to accept, or attempts to obtain, or solicits from any person, for himself or for any other person, any gift or other consideration as an inducement or reward for doing or forbearing to do, or for having done or forborne to do, any act in relation to the principal's affairs or business (whether such act is within the scope of the agent's authority or the course of his employment as agent or not), or for showing or having shown favour or disfavour to any person in relation to the principal's affairs or business.

15

20

Victoria, sec. 18 (9)

(2.) Every agent who diverts, obstructs, or interferes with the proper course of the affairs or business of his principal, or fails to use due diligence in the prosecution of such affairs or business, with intent to obtain for himself or for any other person any gift or other consideration from any person interested in such affairs or business, shall be deemed to have corruptly solicited a consideration within the meaning of this section.

25

Duty of agent to
disclose pecuniary
interest in contract.

5. (1.) Every agent is guilty of an offence who makes a contract on behalf of his principal and fails to make a full and truthful disclosure to his principal at the time of making the contract, or as soon as possible thereafter, of any pecuniary interest which the agent has in the making of the contract, unless to the knowledge of the agent such pecuniary interest is already fully known to his principal.

30

35

(2.) For the purposes of this section any pecuniary interest which a parent, husband, wife, child, or partner of the agent has in the making of the contract shall be deemed to be the pecuniary interest of the agent, unless he proves that he had no knowledge of that interest at the time when he made the contract.

40

(3.) For the purposes of this section an agent shall not be deemed to have any pecuniary interest in the making of a contract by reason merely of the fact that he or any person mentioned in the *last preceding* subsection is a shareholder in an incorporated company having more than twenty members.

45

Giving false
receipt, invoice, &c.,
to agent an offence.

Australia, sec. 5
Victoria, sec. 4
England, sec. 1

6. Every person is guilty of an offence who, with intent to deceive the principal, gives to any agent, or signs or otherwise authenticates for the use of any agent, any receipt, invoice, account, or other document of any nature whatsoever in relation to the affairs or business of the agent or his principal which contains any statement which is false, defective, or misleading in any material particular, or which omits to state explicitly and fully the fact of

50

any commission, percentage, bonus, discount, rebate, repayment, gratuity, or deduction having been made, given, or allowed, or agreed to be made, given, or allowed, in relation to the matters referred to in that document.

5 7. Every agent is guilty of an offence who delivers or presents to his principal any receipt, invoice, account, or other document of any nature whatsoever in relation to the business or affairs of his principal which to the knowledge of the agent is false or defective in any material particular, or is in any way likely to
10 mislead the principal, or which to the knowledge of the agent 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, in relation to the matters referred to in that document, or
15 which to the knowledge of the agent omits to disclose fully and explicitly any gift or other consideration that has been received by or promised to the agent in respect of those matters.

Delivery of false receipt, &c., to principal an offence.
Australia, sec. 5
Victoria, sec. 4
England, sec. 1

8. (1.) Every person is guilty of an offence who advises any person to enter into a contract with a third person and receives or
20 agrees to receive from that third person, without the knowledge and consent of the person so advised, any gift or consideration as an inducement or reward for the giving of that advice or the procuring of that contract, unless the person giving that advice himself acts as the agent of the third person in entering into the contract, or is to
25 the knowledge of the person so advised the agent of that third person.

Receiving secret reward for procuring contracts an offence.
Victoria, sec. 5

(2.) For the purposes of this section a person shall be deemed to advise another person to enter into a contract if he makes to that other person any statement or suggestion with intent to induce him
30 to enter into the contract.

9. Every person is guilty of an offence who aids, abets, counsels, or procures, or is in any way directly or indirectly knowingly concerned in or privy to the commission of any offence against this Act, or the commission outside New Zealand of any act in relation to the affairs or business of a principal residing or carrying on
35 business in New Zealand which if committed in New Zealand would be an offence against this Act.

Aiding and abetting offences.
Australia, sec. 10
Victoria, sec. 7

10. Every person is guilty of an offence who, with or without authority, does on behalf of any other person who is an agent any
40 act which if done by that agent himself would be an offence against this Act.

Offences by persons acting on behalf of agents.

11. Evidence shall not be admissible in any proceedings for an offence against this Act to show that any such gift or consideration as is mentioned in this Act is customary in any trade or calling, nor
45 shall the customary nature of any such gift or consideration be any defence in such proceedings.

Customary nature of gift to be no defence.

12. (1.) No prosecution for an offence against this Act shall be commenced without the leave of the Attorney-General, and the Attorney-General shall in granting leave to institute a prosecution
50 determine whether the offence shall be dealt with as an indictable offence or as one punishable on summary conviction, and the prosecution shall take place accordingly and not otherwise.

Consent of Attorney-General necessary for prosecution.
Victoria, sec. 16
England, sec. 2

(2.) The leave of the Attorney-General may be granted without notice to the defendant, and it shall not be necessary in any information or indictment to state that such leave has been granted or the terms thereof. Objections to an information or indictment for want of such leave or for want of conformity to the terms thereof shall be taken before the Magistrate, or by motion to quash the indictment before the defendant is given in charge to the jury upon his trial, and not otherwise; and if the Magistrate or Judge is satisfied that such leave has not been granted, or that the terms thereof have not been conformed to, the information or indictment shall be dismissed or quashed, as the case may be.

Penalty on conviction.
Victoria, sec. 9
England, sec. 1
Australia, secs. 4, 5, 6

13. (1.) Any person convicted on indictment of an offence against this Act is liable, if a corporation, to a fine not exceeding *one* thousand pounds, and if any other person to imprisonment with or without hard labour for any period not exceeding *two* years or to a fine not exceeding *five* hundred pounds.

(2.) Any person convicted summarily of an offence against this Act is liable, if a corporation, to a fine not exceeding *one* hundred pounds, and if any other person to imprisonment with or without hard labour for any period not exceeding *three* months or to a fine not exceeding *fifty* pounds.

Proceedings to be before Magistrate only.

14. An information under the Justices of the Peace Act, 1908, for an offence against this Act, whether the proceedings are by way of summary conviction or otherwise, shall be taken and heard before a Magistrate only.

Incriminating answers and discovery.
Australia, sec. 8
Victoria, sec. 11

15. No person shall in any civil or criminal proceedings be excused from answering any question put either *viva voce* or by interrogatory, or from making any discovery of documents, on the ground that the answer or discovery may criminate or tend to criminate him in respect of an offence against this Act, but his answer shall not be admissible in evidence against him in any criminal proceedings for an offence against this Act.

Persons deemed to be agents within the meaning of this Act.

16. (1.) For the purposes of this Act—

(a.) Every officer of a corporation and every member of a governing body of a corporation shall be deemed to be an agent of the corporation:

(b.) Every officer or member of any local authority, Board, Council, committee, or other body of persons, whether incorporated or unincorporated, charged by statute with any public functions, shall be deemed to be an agent of that local authority, Board, Council, committee, or other body:

(c.) Every person in the service of the Crown, or acting for or on behalf of the Crown, or holding any office in the public service, shall be deemed to be an agent of the Crown:

(d.) Every partner in a firm shall be deemed to be an agent of the firm:

(e.) An executor, administrator, or trustee shall be deemed to be an agent of the beneficiaries under the will, intestacy, or trust:

(f.) The committee of the estate of a person of unsound mind shall be deemed to be the agent of that person:

(g.) An arbitrator, umpire, or valuer shall be deemed to be an agent of every party to the arbitration or valuation :

(h.) A liquidator of a company shall be deemed to be an agent of the company.

5 (2.) If by virtue of the provisions of this Act any agent is deemed to be the agent of two or more principals in respect of the same matter, this Act shall apply to each of those principals in the same manner as if he was the sole principal.

10 (3.) Nothing in this section shall be so construed as to restrict in any manner the meaning of the terms "agent" or "principal" as used in this Act.

By Authority : JOHN MACKAY, Government Printer, Wellington.—1910.