

## SECRET COMMISSIONS BILL.

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### MEMORANDUM.

The 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 every 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.)

The practice to be stopped assumes so many different forms and is 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.

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Right Hon. Sir J. G. Ward.

## SECRET COMMISSIONS.

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### A BILL INTITULED

AN ACT for the Prohibition of Secret Commissions.

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, 1908, and shall come into operation on the first day of January, nineteen hundred and *nine*.

2. In this Act, if not inconsistent with the context,—

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

“Principal” means the 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:

“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.

3. (1.) Every person is guilty of an offence who gives, or agrees or offers to give, to any agent, without the knowledge and consent of his principal, any gift or other consideration as an

Title.

Short Title.

Interpretation.

Australia, 1905,  
No. 10, sec. 3  
Victoria, 1905,  
No. 1974, sec. 18  
England, 1906,  
Ch. 34, sec. 1

Gifts to agent  
without consent of  
principal illegal.

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

inducement or reward for doing or forbearing to do, or for having done or forborne to do, any act in relation to his principal's affairs or business.

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. 5

Acceptance of such gifts by agent illegal.

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

4. (1.) Every agent is guilty of an offence who, without the knowledge and consent of his principal, 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 his principal's affairs or business. 10 15

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 any gift or other consideration from any person interested therein, shall be deemed to have solicited a consideration within the meaning of this section. 20

Victoria, sec. 3

(3.) Any gift or other consideration accepted, obtained, or solicited by any parent, husband, wife, child, partner, or servant of an agent shall, for the purposes of this section, be deemed to have been accepted, obtained, or solicited by the agent, unless it is proved that it was accepted, obtained, or solicited without the knowledge or against the will of the agent. 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. 30

(2.) For the purposes of this section any pecuniary interest which a parent, husband, wife, child, partner, or servant 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. 35

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 or defraud 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 that person knows to be false or defective in any material particular, or which 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. 40 45

Delivery of false receipt, &c., to principal an offence.

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 50

- or defective in any material particular, or which is in any way likely to mislead the principal, or which 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 which omits to disclose fully and explicitly any gift or other consideration that has been received by or promised to the agent in respect of the said matters.
- 5 8. 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 business in New Zealand which if committed in New Zealand would be an offence against this Act.
- 10 9. Every person is guilty of an offence who, with or without authority, does on behalf of any other person who is an agent any act which if done by that agent himself would be an offence against this Act.
- 15 20 10. This Act shall not apply to customary gratuities paid or offered to or received or solicited by a servant in respect of personal services rendered by him to persons other than his employer, save when such a gratuity has been paid, received, offered, or solicited as a reward or inducement for some breach of the servant's duty to his employer.
- 25 11. No prosecution for an offence under this Act shall be commenced without the leave of the Attorney-General, and the Attorney-General shall in granting leave to institute a prosecution determine whether it shall be by way of indictment or by way of summary proceedings, and it may take place accordingly and not otherwise.
- 30 12. (1.) Any person convicted on indictment of an offence under this Act is liable, if a corporation, to a fine not exceeding *one* thousand pounds, and if any other person to imprisonment for any period not exceeding two years with or without hard labour, or to a fine not exceeding *five* hundred pounds.
- 35 (2.) Any person convicted summarily of an offence under this Act is liable, if a corporation, to a fine not exceeding *fifty* pounds, and if any other person to imprisonment for any period not exceeding *three* months with or without hard labour, or to a fine not exceeding *fifty* pounds.
- 40 13. Summary proceedings in respect of an offence under this Act shall be taken before a Magistrate in accordance with the provisions of the Justices of the Peace Act, 1908.
- 45 14. 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 other than a prosecution for perjury.
- 50 15. (1.) For the purposes of this Act 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.

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

Aiding and abetting offences.

Australia, sec. 10  
Victoria, sec. 7

Offences by persons acting on behalf of agents.

Act not to apply to certain gratuities.

Consent of Attorney-General necessary for prosecution.

Victoria, sec. 16  
England, sec. 2

Penalty on conviction.

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

Summary proceedings before Magistrate.

Incriminating answers and discovery.

Australia, sec. 8  
Victoria, sec. 11

Agents of corporation.

Public servants.

(2.) For the purposes of this Act 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.

Partners.

(3.) For the purposes of this Act every partner in a firm shall be deemed to be an agent of the firm.

Trustees.

(4.) For the purposes of this Act every executor, administrator, or trustee shall be deemed to be an agent of the beneficiaries under the will, intestacy, or trust.

By Authority : JOHN MACRAY, Government Printer, Wellington.—1908.