

459

PROOF

No. , 1929.

A BILL

To make further provision for the regulation and control of farm produce agents and the sale of farm produce ; to amend the Farm Produce Agents Act, 1926 ; and for purposes connected therewith.

[MR. THORBY ;— , 1929.]

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 New South Wales in Parliament assembled, and by the authority of
5 the same, as follows:—
1. (1) This Act may be cited as the "Farm Produce Short title.
Agents (Amendment) Act, 1929."

5819

€6—A (7)

(2)

Farm Produce Agents (Amendment).

(2) The Farm Produce Agents Act, 1926, as amended by this Act, may be cited as the "Farm Produce Agents Act, 1926-1929."

Commence-
ment.

(3) This Act shall come into operation on a day to be appointed by the Governor and notified by pro- 5
clamation published in the Gazette.

Amendment
of Act No. 7,
1926.

2. The Farm Produce Agents Act, 1926, is amended—

Sec. 2.
(Interpre-
tation.)

(a) (i) by inserting in section two in the definition of "Farm produce" after the word "poultry" the word "honey"; 10

(ii) by omitting the definition of "Farm produce agent" from the same section and by inserting in lieu thereof the following new definition:—

"Farm produce agent" means any 15
person who as an agent for others
whether alone or in connection
with any other business sells farm
produce or advertises or notifies
that he exercises or carries on the 20
business of selling farm produce
and any person having the control
or management of the business of
a farm produce agent who is not
resident within the State of New 25
South Wales or of a broker or
factor of farm produce but does not
include a person being a licensed
auctioneer conducting a clearing-
out sale of the vendor's own farm 30
produce on the vendor's property
or a person employed merely as a
clerk or servant or any banking
company.

(iii) by inserting at the end of the same section 35
the following new subsection:—

(2) This Act shall be read and construed
subject to the Commonwealth of Australia
Constitution Act, and so as not to exceed
the

5 the legislative power of the State, to the intent that where any enactment thereof would but for this section have been construed as being in excess of that power it shall nevertheless be a valid enactment to the extent to which it is not in excess of that power.

(b) by inserting at the end of section four the following new subsections:—

10 (2) The Governor may appoint a deputy to act for the registrar at any time when the registrar is prevented by illness or absence from acting in his office. (Deputy registrar.)

15 (3) A deputy, while acting under such appointment, shall have the like powers and duties and be subject to the like provisions as if he were the registrar.

(c) by inserting at the end of section five the words "and shall be liable on summary conviction to a penalty of not less than *five* pounds nor more than *one hundred* pounds, or to imprisonment for a term not exceeding *twelve* months";

25 (d) (i) by omitting paragraph (a) of subsection three of section seven and by inserting in lieu thereof the following new paragraph:—

(a) a bond in the prescribed form and in the prescribed sum from an insurance company approved by the registrar; or

30 (ii) by inserting in the same section next after subsection three the following new subsections:—

(3A) The amount of the bond or other security shall be—

35 (a) where the applicant is a corporation—
two thousand pounds;

(b) where the applicant is a member of a firm the members of which carry on business as farm produce agents, the amount

Farm Produce Agents (Amendment).

amount shall be the sum of two thousand pounds divided by the number of members so carrying on business;

- (c) where the registrar is satisfied that the applicant sells farm produce outside the counties of Camden and Cumberland and not elsewhere and only by auction to purchasers who purchase for consumption by themselves—two hundred pounds; 5 10
- (d) in any other case—one thousand pounds.

(3B) The registrar may refuse to accept any bond receipt for renewal premium, certificate of renewal, or other security if in his opinion the bond or security tendered or in respect of which the receipt or certificate is issued is not adequate security for the amount prescribed by subsection (3A) of this section. 15 20

Sec. 8 (b).
(Disqualification.)

- (e) by omitting from paragraph (b) of section eight the words "of any felony or offence punishable by imprisonment for a term exceeding three months" and by inserting in lieu thereof the words "of any offence under Chapter I of Part IV, or under Part V of the Crimes Act, 1900, as amended by subsequent Acts, or of any similar offence against the law of any other country"; 25 30
- (f) by omitting from paragraph (f) of section eight the words "for which his license has been cancelled."

Further amendment of Act No. 7, 1926.

Sec. 9.
(Corporation.)

3. The Farm Produce Agents Act, 1926, is further amended— 35

- (a) by omitting from subsection one of section nine the words and letters "paragraphs (b), (c), (e), or (f) of section eight" and by inserting in lieu thereof the words and letters "paragraphs (b), (c), (d), (e), or (f) of section eight"; 40
(b)

- (b) (i) by inserting in paragraph (c) of subsection one of section ten after the words "against this Act" the words "or the regulations made thereunder";
- 5 (ii) by inserting at the end of subsection one of section ten the following new paragraphs:—
- (g) the holder being a member of a firm has not furnished the prescribed notice and particulars of any change in the constitution of the firm;
- 10 (h) the registrar has given notice to the holder that the bond or other security furnished or in respect of which a receipt for renewal premium or certificate of renewal has been furnished is not in his opinion adequate security for the amount thereof and the holder has not within a time specified in the notice furnished another bond or security approved by the registrar.
- 15 (c) by inserting next after section ten the following New s. 10A. new section:—
- 20 10A. Where members of a firm are carrying Change in on business as farm produce agents and any firm. change occurs in the constitution of the firm, the prescribed notice of such change and particulars of the constitution of the firm shall be furnished by each member of the firm to the registrar within the prescribed time.
- 25 4. The Farm Produce Agents Act, 1926, is further Further amendment of Act No. 7, 1926. amended—
- 30 (a) by omitting section twelve and by inserting Sec. 12. the following section in lieu thereof:—
- 35 12. Any person who allows to remain Offence. unobliterated any words which have been written or affixed over or about a house or premises occupied by him which lead to the belief that the occupier thereof is a farm produce agent shall, unless he is the holder of a license, be liable to a penalty not exceeding
- 40 *one hundred pounds.*

(b)

Sec. 13.

Inspection of
books, &c.

(b) by omitting section thirteen and by inserting the following section in lieu thereof :—

13. (1) For the purpose of ascertaining whether any offence against this Act has been committed, the registrar or any person authorised by him may at any time inspect any books, accounts, registers, documents, or writings relating to any transaction in connection with farm produce, and may take notes, copies, or extracts thereof or therefrom. 5 10

(2) When the registrar is of opinion that any offence against the provisions of this Act or the regulations has been committed he may by writing under his hand authorise any person to take possession of all or any of such books, accounts, registers, documents, or writings, and the person so authorised may take possession thereof accordingly. 15

(3) Any person who obstructs the registrar or any person so authorised or who refuses to produce such books, accounts, registers, documents, or writings, or to answer any question relating to such books or accounts or to any farm produce or who gives any untruthful answers to any such questions, shall be guilty of an offence. 20 25

(4) The registrar may communicate to any client of a farm produce agent a report of the result of such inspection so far as it directly concerns such client. 30

(5) If the registrar or any officer or any person authorised by the registrar in accordance with the provisions of this section without lawful excuse reveals any matter or thing relating to the business of a farm produce agent which has come to his knowledge in his official capacity or in his capacity as such authorised person he shall be liable to a penalty not exceeding *fifty* pounds. 35

(c)

- 5 (c) by omitting from section fourteen the words
“seven days” and by inserting in lieu thereof
the words “fourteen days” ;
- 5 (d) (i) by omitting subsection one of section Sec. 15 (1).
fifteen and by inserting in lieu thereof the
following subsection :—
- (1) The Governor may by regulations Disposal of
moneys.
prescribe—
- 10 (a) the manner in which moneys received
by a farm produce agent in respect of
the sale of any farm produce or of
any class of farm produce shall be
disposed of until paid as hereinafter
provided ; and
- 15 (b) the manner in which payment of any
moneys due in respect of any such
sale shall be made.
- (ii) by omitting subsection two of the same Subsec. (2).
section ;
- 20 (iii) by adding at the end of subsection three of Subsec. (3).
the same section the words “notwith-
standing that the farm produce agent has
not himself been paid the amount so due” ;
- 25 (iv) by omitting subsections four and five of Subsecs. 4, 5.
section fifteen and by inserting in lieu
thereof the following new subsections :—
- (4) Moneys received by a farm produce
agent in respect of the sale of any farm
produce shall not be paid into any bank
30 unless the farm produce agent shall have
notified the registrar in writing of the name
and situation of the bank and the name
of the account into which the money is paid.
- 35 (5) When moneys received by a farm
produce agent in respect of the sale of any
farm produce have been paid into an
account in any bank, the farm produce
agent shall, if required by the registrar or
by any person authorised by the registrar,
produce

Farm Produce Agents (Amendment).

produce the bank pass-book relating to the account showing the state of the account at the date when such production is required.

Sec. 16. (e) (i) by omitting from section sixteen the words "Moneys paid into such trust account" 5
and by inserting in lieu thereof the words "Where the regulations prescribe that moneys received by a farm produce agent in respect of the sale of any farm produce or of any class of farm produce shall be 10
paid into a trust account moneys paid into such trust account";

Sec. 18 (1). (ii) by inserting in subsection one of section eighteen after the words "delivered to him" the words "or to any firm of which he is a 15
member."

Further amendment of Act No. 7, 1926. **5.** The Farm Produce Agents Act, 1926, is further amended by omitting section seventeen and by inserting New sections 17, 17A, 17B in lieu thereof the following new sections:—

False accounts.

17. (1) A farm produce agent who renders a 20
false account of the receipt, sale, or disposal of any farm produce or of any moneys received by him in connection therewith shall be liable upon summary conviction to a penalty not exceeding *fifty* pounds.

(2) A farm produce agent who fraudulently 25
renders any such false account shall be liable upon conviction upon indictment to imprisonment with hard labour for a term not exceeding *three* years.

False accounts by firm.

17A. Where a false account of the receipt, sale, or 30
disposal of any farm produce or of any moneys received in connection therewith or of the application of such moneys is fraudulently rendered on behalf of a corporation carrying on business as a farm produce agent the corporation shall be deemed 35
to have committed an offence against this Act and shall be liable to a penalty not exceeding *one thousand* pounds.

And

5 And, in addition, the secretary and every director or manager or chairman thereof in the State and every officer concerned in the management of the corporation shall be liable to imprisonment with hard labour for a term not exceeding *three* years unless the person charged proves that the offence charged was committed without his knowledge or connivance and without any negligence on his part.

10 17B. Where a false account of the receipt, sale, or disposal of any farm produce, or of any moneys received in connection therewith, or of the applica-
15 tion of such moneys is rendered by or on behalf of a firm carrying on business as a farm produce agent, each member of the firm who is in the State shall be liable to be charged with an offence against subsection one of section seventeen, or if the account was fraudulently rendered, with an offence against
20 subsection two of section seventeen, and shall be liable to the punishment thereby provided unless the person charged proves that the offence charged was committed without his knowledge or connivance and without any negligence on his part.

Fraudulent accounts by corporation.

25 17C. In any prosecution for an offence against the provisions of sections seventeen, 17A, or 17B of this Act it shall be presumed that the person charged knew that the account, the subject of the prosecution, was false unless he proves lack of knowledge and that such lack of knowledge was
30 not due to connivance or negligence on his part.

Onus of proof of lack of knowledge of falsity on accused.

6. The Farm Produce Agents Act, 1926, is further amended—

Further amendment of Act No. 7, 1926.

- (a) by omitting section twenty-one;
- 35 (b) by inserting next before section twenty-two the following new section:—

New s. 21A.

40 21A. Nohay, chaff, or other proclaimed article shall be sold on the railway premises at Alexandria other than by auction, except with the written permission of the consignor, or after having been first offered at auction.

Sale of chaff at Alexandria to be by auction.

—B

(c)

Sec. 22.
(Misrepresentation of
description,
grade, &c.)

(c) by adding at the end of section twenty-two the following new subsections :—

(2) Any person who, having offered or exposed for sale any farm produce or supplied or exhibited any sample of farm produce there- 5
after upon an offer to purchase farm produce of the same quality or price, supplies farm produce of a quality inferior to that offered or exposed for sale or to the sample shall be guilty of an offence against this Act. 10

(3) Any person who offers or exposes for sale any farm produce and upon an offer to purchase the farm produce refuses to supply the purchaser from the lot of farm produce so offered or exposed, shall be guilty of an offence against 15
this Act.

Sec. 24.
(Registered
office.)

(d) (i) by omitting from section twenty-four the words “such place of business” and by inserting in lieu thereof the words “each place at which the business of a farm 20
produce agent is conducted”;

(ii) by adding at the end of the same section the following new subsection :—

(2) Any farm produce agent who—

(a) commences to carry on business at any 25
place other than that mentioned in his application for a license, or

(b) ceases to carry on business as a farm
produce agent at any place

shall forthwith give notice thereof to the 30
registrar.

Sec. 27.
(Offence by
corporation.)

(e) by omitting from section twenty-seven the words “the chairman of directors and every managing director” and by inserting in lieu thereof the words “the secretary and every 35
director or manager or chairman thereof in the State”;

Sec. 28.
(Right to
inspect and
sue on bond.)

(f) by adding at the end of section twenty-eight the following words : “and may take such other proceedings against the company which entered 40
into the bond as are necessary to recover the amount of the loss.” 7.

7. The Farm Produce Agents Act, 1926, is further amended— Further amendment of Act No. 7, 1926.

5 (a) by inserting in section twenty-five after the words "every entry in any book" the words "account, document, or writing"; Sec. 25. (Entries in books, &c.)

10 (b) (i) by omitting from section twenty-nine the words "having acted or carried on business or for having advertised or notified that he acts or carries on business as a farm produce agent without a license" and by inserting in lieu thereof the words "for a breach of any provision of section five or of section twelve"; Sec. 29. (Evidence.)

15 (ii) by inserting at the end of section twenty-nine the following new subsection:—

20 (2) In any proceedings against any person for an offence against the provisions of this Act or the regulations made thereunder, the fact that any case, box, bag, or other receptacle which contains farm produce is marked—

(a) with the name of any person or firm which is a grower or producer of that class of farm produce; or

25 (b) with any mark commonly used by such person or firm to denote his or its farm produce,

shall be evidence that such farm produce is the property of such person or firm.

30 (c) by inserting after section twenty-nine the following new sections:— New sections 29A, 29B.

35 29A. No person shall, after having purchased any farm produce, sell it or any part of it, unless before the delivery thereof to him the price for which he purchased has been definitely fixed or agreed to by his vendor in writing at a sum of money certain, and was not to be ascertained by reference to any other transaction or otherwise. Purchase of farm produce for resale.

In

440

In any prosecution for an offence against this section the onus of proof that the price has been so fixed or agreed to shall be upon the defendant.

Any person who commits an offence against this section shall be liable on summary conviction to a penalty of not less than *twenty* pounds nor more than *one hundred* pounds.

Exemption of certain persons from provisions of Act.

29B. The Governor may by regulation prescribe the conditions under which the registrar may exempt from any or all of the provisions of this Act farm produce agents who sell farm produce by auction to purchasers the majority of whom purchase for consumption by themselves.

Sec. 32. (Regulations.)

- (d) (i) by inserting in paragraph (f) of subsection one of section thirty-two after the word "charges" the word "commission";
- (ii) by inserting at the end of subsection one of section thirty-two the following new paragraph:—

(j) the manner in which farm produce received by a farm produce agent for sale shall be stored, marked, ripened, or otherwise treated by the farm produce agent and the manner in which farm produce repacked by a farm produce agent shall be marked to indicate that it has been repacked by him.
