

VICTORIA.



ANNO QUADRAGESIMO SECUNDO

VICTORIÆ REGINÆ.

No. DCXXVII.

An Act to abolish forfeitures for Treason and
Felony and to otherwise amend the Law relating
thereto. [28th November 1878.]

WHEREAS it is expedient to abolish the forfeiture of lands and
goods for treason and felony and to otherwise amend the
Law relating thereto : Be it therefore enacted by the Queen's Most
Excellent Majesty by and with the advice and consent of the Legislative
Council and Legislative Assembly of Victoria in this present Parliament
assembled and by the authority of the same as follows (that is to say) :—

1. From and after the passing of this Act no confession verdict
inquest conviction or judgment of or for any treason or felony or *felo*
de se shall cause any attainder or corruption of blood or any forfeiture
or escheat.

Forfeiture &c.
abolished.

33 & 34 Vict. c. 23
s. 1.

2. If any person hereafter convicted of treason or felony for which
he shall be sentenced to death or to any term exceeding twelve months
of imprisonment or detention with hard labor shall at the time of such
conviction hold any office under the Crown or other public employment,
or be entitled to any pension or superannuation allowance payable by
the public or out of any public fund, such office or employment shall
forthwith become vacant, and such pension or superannuation allowance
shall forthwith determine and cease to be payable unless such person
shall receive a free pardon from Her Majesty or the Governor on behalf
of Her Majesty within two months after such conviction or before the
filling up of such office or employment if given at a later period ; and
such person shall become and (until he shall have suffered the punishment
to

Conviction for
treason or felony to
be a disqualification
for offices &c.

Ib. s. 2.

Vide "Constitution Act" sec. 11 and No. 334 s. 6.

Persons convicted of treason or felony may be condemned in costs.
33 & 34 Vict. c. 23 s. 3.

Compensation to persons defrauded or injured by felony.
Ib. s. 4.

The word "forfeiture" defined.
Ib. s. 5.
The word "convict" defined.
Ib. s. 6.

to which he had been sentenced, or such other punishment as by competent authority may be substituted for the same, or shall receive a free pardon from Her Majesty or the Governor on behalf of Her Majesty) shall continue thenceforth incapable of holding any office under the Crown or other public employment or of being elected or sitting or voting as a Member of either House of Parliament or of exercising any right of suffrage or other parliamentary or municipal franchise whatever within Victoria.

3. It shall be lawful for any court by which judgment shall be pronounced or recorded upon the conviction of any person for treason or felony in addition to such sentence as may otherwise by law be passed to condemn such person to the payment of the whole or any part of the costs or expenses incurred in and about the prosecution and conviction for the offence of which he shall be convicted if to such court it shall seem fit so to do, and the payments of such costs and expenses or any part thereof may be ordered by the court to be made out of any moneys taken from such person on his apprehension, or may be enforced at the instance of any person liable to pay or who may have paid the same in such and the same manner (subject to the provisions of this Act) as the payment of any costs ordered to be paid by the judgment or order of any court of competent jurisdiction in any civil action or proceeding may for the time being be enforced: Provided that in the meantime and until the recovery of such costs and expenses from the person so convicted as aforesaid or from his estate the same shall be paid and provided for in the same manner as if this Act had not been passed, and any money which may be recovered in respect thereof from the person so convicted or from his estate shall be applicable to the reimbursement of any person or fund by whom or out of which such costs and expenses may have been paid or defrayed.

4. It shall be lawful for any such court as aforesaid if it shall think fit upon the application of any person aggrieved and immediately after the conviction of any person for felony to award any sum of money not exceeding the value of the property lost stolen injured or destroyed by way of satisfaction or compensation for any loss of property suffered by the applicant through or by means of the said felony, and the amount awarded for such satisfaction or compensation shall be deemed a judgment debt due to the person entitled to receive the same from the person so convicted, and the order for payment of such amount may be enforced in such and the same manner as in the case of any costs ordered by the court to be paid under the last preceding section of this Act.

5. The word "forfeiture" in the construction of this Act shall not include any fine or penalty imposed on any convict by virtue of his sentence, and the expression "convict" shall be deemed to mean any person against whom after the passing of this Act judgment of death or of imprisonment or of detention with hard labor shall have been pronounced

pronounced or recorded by any court of competent jurisdiction in Victoria upon any charge of treason or felony.

6. When any convict shall die or be adjudicated insolvent, or shall have suffered any punishment to which sentence of death if pronounced or recorded against him may be lawfully commuted, or shall have undergone the full term of imprisonment or detention with hard labor for which judgment shall have been pronounced or recorded against him, or such other punishment as may by competent authority have been substituted for such full term, or shall have received from Her Majesty or the Governor on behalf of Her Majesty a pardon for the treason or felony of which he may have been convicted, he shall thenceforth so far as relates to the provisions hereinafter contained cease to be subject to the operation of this Act.

When convict shall cease to be subject to operation of the Act.

33 & 34 Vict. c. 23 s. 7.

7. No action at law or suit in equity for the recovery of any property debt or damage whatsoever shall be brought by any convict against any person during the time while he shall be subject to the operation of this Act; and every convict shall be incapable during such time as aforesaid of alienating or charging any property or of making any contract save as hereinafter provided.

Convict disabled to sue for or to alienate property &c.

Ib. s. 8.

8. It shall be lawful for the Governor in Council (either generally or with reference to any particular case) to commit the custody and management of the property of any convict to a curator to be appointed in that behalf, and every such appointment may be revoked by the same or the like authority by which it is made; and upon any determination thereof either by revocation or by the death of any such curator a new curator may be appointed by the same or the like authority from time to time, and every such new curator shall upon his appointment be and be deemed to be the successor in law of the former curator; and all property vested in and all powers given to such former curator by virtue of this Act shall thereupon devolve to and become vested in such successor who shall be bound by all acts lawfully done by such former curator during the continuance of his office, and the provisions hereinafter contained with reference to any curator shall in the case of the appointment of more than one person apply to such curators jointly.

The Governor may appoint curator of any convict's property.

Ib. s. 9.

9. Upon the appointment of any such curator in manner aforesaid all the real and personal property including choses in actions to which the convict named in such appointment was at the time of his conviction or shall afterwards while he shall continue subject to the operations of this Act become or be entitled shall vest in such curator for all the estate and interest of such convict therein.

Convict's property to vest in curators on their appointment.

Ib. s. 10.

10. If in the instrument by which any such curator is appointed provision shall be made for the remuneration of such curator out of the property of the convict the said curator may receive and retain for his own benefit such remuneration accordingly.

Remuneration of curators.

Ib. s. 11.

11. The

Powers of curators.
33 & 34 Vict. c. 23
s. 12.

Curator to pay out
of property costs
of prosecution and
costs of executing
this Act.

Ib. s. 13.

Curator may pay
out of property
debts or liabilities
of convict.

Ib. s. 14.

Curator may make
compensation out
of property to
persons defrauded
by criminal acts of
convict.

Ib. s. 15.

Curator may make
allowances out of
property for
support of family
of convict.

Ib. s. 16.

Exercise of
curator's power as
to priority of pay-
ments; payments
by curator for
purposes of Act
not to be called in
question.

Ib. s. 17.

11. The curator shall have absolute power to let mortgage sell convey and transfer any part of such property as to him shall seem fit.

12. It shall be lawful for the curator to pay or cause to be paid out of such property or the proceeds thereof all costs and expenses which the convict may have been condemned to pay, and also all costs charges and expenses incurred by such convict in and about his defence, and also all such costs charges and expenses the said curator may incur or be put to in or about the carrying this Act into execution with reference to such property or with reference to any claims which may be made thereon.

13. The curator may cause payment or satisfaction to be made out of such property of any debt or liability of such convict which may be established in due course of law or may otherwise be proved to his satisfaction, and may also cause any property which may come to his hands to be delivered to any person claiming to be justly entitled thereto upon the right of such person being established in due course of law or otherwise to his satisfaction.

14. The curator may with consent of a judge of the Supreme Court cause to be paid or satisfied out of such property such sum of money by way of satisfaction or compensation for any loss of property or other injury alleged to have been suffered by any person through or by means of any alleged criminal or fraudulent act of such convict as to him or such judge shall seem just, although no proof of such alleged criminal or fraudulent act may have been made in any court of law or equity; and all claims to any such satisfaction or compensation may be investigated in such manner as the curator with such consent shall think fit and the decision of the curator thereon shall be binding: Provided always that nothing in this Act shall take away or prejudice any right title or remedy to which any person alleging himself to have suffered any such loss or injury would have been entitled by law if this Act had not passed.

15. The curator may cause such payments and allowances for the support or maintenance of any wife or child or reputed child of such convict or of any other relative or reputed relative of such convict dependent upon him for support or for the benefit of the convict himself as to such curator shall seem fit to be made from time to time out of such property or the income thereof.

16. The several powers hereinbefore given to the said curator or any of them may be exercised by him in such order and course as to priority of payments or otherwise as he shall think fit, and all contracts of letting or sale mortgages conveyances or transfers of property *bonâ fide* made by the said curator under the powers of this Act and all payments or deliveries over of property *bonâ fide* made by or under the authority of the said curator for any of the purposes hereinbefore mentioned

mentioned shall be binding, and the propriety thereof and the sufficiency of the grounds on which the said curator may have exercised his judgment or discretion in respect thereof shall not be in any manner called in question by such convict or by any person claiming an interest in such property by virtue of this Act.

17. Subject to the powers and provisions hereinbefore contained all such property and the income thereof shall be preserved and held in trust by the said curator, and the income thereof may if and when the said curator shall think proper be invested and accumulated in such securities as he shall from time to time think fit for the use and benefit of the said convict or his personal representatives or of such other persons as may be lawfully entitled thereto according to the nature thereof; and the same and the possession and the administration and management thereof shall revert in and be restored to such convict on his ceasing to be subject to the operation of this Act or in and to his personal representatives or such other persons as may be lawfully entitled thereto; and all the powers and authorities by this Act given to the said curator shall from thenceforth cease and determine except so far as the continuance thereof may be necessary for the care and preservation of such property or any part thereof until the same shall be claimed by some person lawfully entitled thereto, or for obtaining payment out of such property or the proceeds thereof of any liabilities or any costs charges or expenses for which provision is made by this Act, for which purposes such powers and authorities shall continue to be in force until possession of such property shall be delivered up by the said curator to some person being or claiming to be lawfully entitled thereto.

18. The said curator shall not be answerable to any person for any property which shall not actually have come to his hands by virtue of this Act nor for any loss or damage which may happen through any mere omission or non-feasance on his part to any property vested in him by virtue hereof.

19. The costs as between solicitor and client of every action or suit which may be brought against the said curator with reference to any such property as aforesaid whether during the time while the same shall be and continue vested in him under this Act or after the same shall cease to be so vested and all charges and expenses properly incurred by him with reference thereto shall be a first charge upon and shall be paid out of such property unless the court before which such action is tried or such suit is heard shall think fit otherwise to order.

20. All judgments or orders for the payment of money of any court of law or equity against such convict which shall have been duly recovered or made either before or after his conviction may be executed against any property of such convict in the hands of any person who may have taken upon himself the possession or management thereof without legal authority in the same manner as if such property were in the possession or power of such convict; and all such judgments or orders

Property to be preserved for convict and to revert to him or his representatives on completion of sentence pardon or death.

33 & 34 Vict c. 23 s. 18.

Curators not liable except for what they receive.

Ib. s. 19.

Curator to receive costs of suits of property as between solicitor and client.

Ib. s. 20.

Execution of judgments against convict provided for.

Ib. s. 27.

orders may likewise be executed by writ of *scire facias* or otherwise according to the practice of the court against any such property which may be vested in any curator of the property of such convict under the authority of this Act.

Proceedings may be taken to make curator accountable before property reverts to convict.
33 & 34 Vict. c. 23
s. 28.

21. It shall be competent for the Attorney-General or for any person who (if such convict were dead intestate) would be entitled to his real or personal estate or any share thereof or for any person authorized by the Attorney-General in that behalf to apply in a summary way to any court which (if such convict were dead) would have jurisdiction to entertain a suit for the administration of his real or personal estate to issue a writ of summons calling upon any curator of the property of such convict appointed under this Act or any person who without legal authority shall have possessed himself of any part of the property of such convict to account for his receipts and payments in respect of the property of such convict in such manner as such court shall direct, and it shall be lawful for such court thereupon to issue such writ rule or other process and to enforce obedience thereto and to all orders and proceedings of such court consequent thereon in the same manner as in any other case of process lawfully issuing out of such court, and such court shall thereupon have full power jurisdiction and authority to take all such accounts and to make and give all such orders and directions as to it shall seem proper or necessary for the purpose of securing the due and proper care administration and management of the property of such convict and the due and proper application of the same and of the income thereof and the accumulation and investment of such balances if any as may from time to time remain in the hands of any such curator or other person as aforesaid in respect of such property, and so long as any such proceedings shall be pending in any such court every such curator or other person shall act in the exercise of all powers vested in him under this Act or otherwise in all respects as such court shall direct.

Curator &c. to be accountable to convict when property reverts.
Ib. s. 29.

22. Subject to the provisions of this Act every such curator and other person as aforesaid shall from and after the time when such convict shall cease to be subject to the operation of this Act be accountable to such convict for all property of such convict which shall have been by him possessed or received and not duly administered in the same manner in which any guardian or trustee is so accountable to his ward or cestuique trust, but subject nevertheless and without prejudice to the administration and application of such property under and according to the powers of this Act.

Saving of general law as to felony.
Ib. s. 32.

23. Provided always that nothing in this Act shall be deemed to alter or in anywise affect the law relating to felony in Victoria except as herein is expressly enacted.

MELBOURNE:

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