



ANNO TRICESIMO SEPTIMO ET TRICESIMO OCTAVO

VICTORIÆ REGINÆ.

A.D. 1874.

No. 25.

An Act to abolish Forfeitures for Treason and Felony, and to otherwise amend the Law relating thereto.

[Reserved, 6th November, 1874.]

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 Governor of the Province of South Australia, with the advice and consent of the Legislative Council and House of Assembly of the said Province, in this present Parliament assembled, as follows:

Preamble.

See Imperial Act, 38
§ 34 *Vict.*, c. 23.

1. From and after the passing of this Act, no confession, verdict, inquest, conviction, or judgment of or for any treason or felony committed within the said Province, shall cause any attainder or any forfeiture or escheat.

Forfeiture abolished.

2. If any person hereafter convicted of treason or felony, for which he shall be sentenced to death, or to any term of imprisonment exceeding twelve months, with hard labor, shall, at the time of such conviction, hold any civil office under the Crown, or other public employment, or be entitled to any superannuation allowance, payable by the public or out of any public fund, such office or employment shall forthwith become vacant, and such superannuation allowance or emolument 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; and such person shall become, and (until he shall have suffered the punishment as by competent authority may be substituted

Conviction to dis-
qualify for office.

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tuted 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 civil office under the Crown, or other public employment.

Persons convicted
may be condemned in
costs.

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 payment 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.

Compensation to persons
injured.

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 by way of satisfaction for any loss of property suffered by the applicant through or by means of such 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.

“Forfeiture” defined.

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.

“Convict” defined.

6. The expression “convict,” as herein used, shall be deemed to mean any person against whom, after the passing of this Act, judgment of death, or of imprisonment with hard labor, shall have been pronounced or recorded by any Court of competent jurisdiction in the said Province, upon any charge of treason or felony.

7. When

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7. 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 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 Act.

8. 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 not to sue, &c.

9. It shall be lawful for the Governor, either generally or with reference to any particular case, to commit the custody and management of the property of any convict during the Governor's pleasure to a Curator, to be by writing 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 thereof 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; and 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 be vested in such Curator for all the estate and interest of such convict therein, and all deeds, conveyances, and assignments of such convict's property which would but for this Act be void against the Crown, shall be void against such Curator, save as hereinafter provided.

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

Convict's property to vest in Curator on his appointment.

10. All payments really and *bonâ fide* made by any convict, or by any person on his behalf, before his conviction, as the case may be, to any creditor of such convict, and all payments really and *bonâ fide* made to any convict before his conviction, and all conveyances, deeds, and assignments, by any convict *bonâ fide* made and executed before

Certain transactions protected.

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before such conviction, petitions, and all contracts, dealings, and transactions by and with any convict really and *bonâ fide* entered into before conviction shall be deemed valid.

Remuneration of
Curator.

11. The Curator shall be entitled to the like remuneration in respect of his administration of the property of a convict as that to which the Curator of Intestate Estates is now or may be hereafter entitled in respect of the administration of the intestate estates of deceased persons in the said Province; and he may receive and retain for his own benefit such remuneration accordingly, and may apply to the Supreme Court for judicial advice in like manner and with the same protection in acting thereupon as trustees may now apply and be protected.

Powers of Curator.

12. The Curator shall have absolute power to let, mortgage, sell, convey, and transfer any part of such property as to him shall seem fit, and also to carry into effect any *bonâ fide* contract or agreement lawfully made by or with any convict before his conviction.

Curator to pay costs
of prosecution.

13. 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 as the Curator may incur or be put to in or about the same.

Curator may pay
debts of convict.

14. The Curator may cause payment or satisfaction whether in full or *pro rata*, 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.

Curator may make
compensation to
persons defrauded.

15. 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 conduct 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.

16. The

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16. 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 dependant upon him for support as to such Curator shall seem fit to be made from time to time out of such property, or the income thereof.

Curator may make allowances for support of convict's family.

17. The several powers hereinbefore given to the Curator, or any of them, may be exercised by him where the same is by this Act required, 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 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 Curator, for any of the purposes hereinbefore mentioned, shall be binding; and the propriety thereof, and the sufficiency of the grounds on which the 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.

Curator's power as to priority of payments, where the same is required, not to be called in question.

18. Subject to the powers and provisions hereinbefore contained, all such property, and the income thereof, shall be preserved and held in trust by the Curator, and the surplus income thereof shall be invested and accumulated in such Government securities as he shall, from time to time, think fit, for the use and benefit of any convict, and his heirs, or legal personal representatives, or of such other persons as may be lawfully entitled thereto, according to the nature thereof; and the same, and the possession, administration, and management thereof, shall revert in, and be restored to such convict, upon his ceasing to be subject to the operation of this Act, or in and to his heirs, or legal personal representatives, or such other persons as may be lawfully entitled thereto; and all the powers and authorities by this Act given to the 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 of 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 Curator to some person being lawfully entitled thereto.

Property to revert on completion of sentence, pardon, or death.

19. The 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 nonfeasance on his part to any property vested in him by virtue hereof.

Curator when not to be liable.

20. The

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Curator to receive costs of suits.

20. The costs as between solicitor and client of every action or suit which may be brought against the Curator with reference to any such property as aforesaid, whether during the time 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.

Execution of judgments.

21. 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 under the care and management of any Curator as aforesaid, or 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 may likewise be executed, according to the practice of the Court, against any such property which may be vested in the Curator under the authority of this Act.

Proceedings may be taken to make Curator accountable before property reverts.

22. It shall be competent for the Attorney-General of the said Province, or for any person who (if any convict were dead intestate) would be entitled to the personal estate of such convict, or any share thereof, under the Statutes of Distribution or otherwise, or for any person authorized by the said 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 the Curator, or on 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 judgments, rules, 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 the Curator, or such other person as aforesaid, in respect of such property; and so long as any such proceedings shall be pending in any such Court, the Curator, or other person, as the case may be, shall act in the exercise of all powers

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powers vested in him under this Act, or otherwise in all respects as such Court shall direct.

23. Subject to the provisions of this Act, the 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 now 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.

Curator and other persons to account when property reverts.

24. The Curator, in respect of the exercise of the powers hereby given to him, shall be and shall be deemed to be an officer of the Supreme Court, and shall be liable to the summary jurisdiction thereof, and to be removed for misconduct in his office; and upon any such removal all estate and interest vested in him by virtue hereof shall rest in the Master of the said Court until a new Curator shall be appointed by the Governor in manner hereinbefore provided.

Curator subject to jurisdiction of Supreme Court.

I reserve this Bill for the signification of Her Majesty's pleasure thereon.

A. MUSGRAVE, Governor.