

(Hon. Mr. Gisborne.)

# Convicts Forfeitures Act.

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## A BILL INTITULED

AN ACT to abolish Forfeitures for Treason and Felony and to otherwise amend the Law relating thereto. Title.

WHEREAS it is expedient to abolish the forfeiture of lands and goods for treason and felony and to otherwise amend the law relating thereto: Preamble.

BE IT ENACTED by the General Assembly of New Zealand in Parliament assembled and by the authority of the same as follows that is to say:

1. The Short Title of this Act shall be "The Convicts Forfeitures Act 1871." Short Title.

2. 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.

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

Provided nevertheless that if any person hereafter convicted of treason or felony for which he shall be sentenced to death or penal servitude or any term of imprisonment with hard labour or exceeding twelve months shall at the time of such conviction hold any office under the Crown in New Zealand or other public employment or any place office or emolument in any Corporation or be entitled to any pension or superannuation allowance payable by the Colony or out of any public fund such office employment or place shall forthwith become vacant and such pension or 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 within two months after such conviction or before the filling up of such office employment or place if given at a later period and such person shall become and (until he shall have suffered the punishment 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 in New Zealand or other public employment or of being elected or sitting or voting as a member of either House of the General Assembly or of exercising any right of suffrage or other parliamentary or municipal franchise whatever within New Zealand.

Persons convicted of treason or felony 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 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 defrauded or injured by felony.

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 one hundred pounds 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.

The word "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.

The word "convict" defined.

6. The expression "convict" as hereinafter used shall be deemed to mean any person against whom after the passing of this Act judg-

ment of death or of penal servitude shall have been pronounced or recorded by any Court of competent jurisdiction in New Zealand upon any charge of treason or felony.

7. When any convict shall die or be made insolvent or bankrupt 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 penal servitude 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.

8. No action 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.

9. It shall be lawful for the Governor or for any person in that behalf authorized by him by warrant under his hand (and which authority may be given either generally or with reference to any particular case) if to the Governor or to the person so authorized it shall seem fit by writing under the hand of the Governor or such person so authorized as aforesaid to commit the custody and management of the property of any convict during the Governor's pleasure to an administrator to be by such 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 or by the death of any such administrator a new administrator may be appointed by the same or the like authority from time to time and every such new administrator shall upon his appointment be and be deemed to be the successor-in-law of the former administrator and all property vested in and all powers given to such former administrator 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 administrator during the continuance of his office and the provisions hereinafter contained with reference to any administrator shall in the case of the appointment of more than one person apply to such administrators jointly.

The Crown may appoint administrators of any convict's property.

10. Upon the appointment of any such administrator 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 administrator for all the estate and interest of such convict therein.

Convicts' property to vest in administrators on their appointment.

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

Remuneration of administrators.

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

Administrators to have administration of property during sentences of convicts.

13. It shall be lawful for the administrator 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 said administrator may incur or be put to in or about the carrying this Act

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

into execution with reference to such property or with reference to any claims which may be made thereon.

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

14. The administrator 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. 5

Administrators may make compensations out of property to persons defrauded by criminal acts of convict.

15. The administrator may cause to be paid or satisfied out of 10 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 shall seem just although no proof of such alleged criminal or fraudulent act may have been made in any Court of Justice and all claims to any such satisfaction or compensation may be investigated in such manner as the administrator shall think fit and the decision of the administrator 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 20

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

16. The administrator 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 as to such administrator shall seem fit to be made from time to time out of such property or the income thereof. 25

Exercise of administrator's power as to priority of payments. Payments by administrator for purposes of Act not to be called in question.

17. The several powers hereinbefore given to the said administrator 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 *boná fide* made by the said administrator under the powers of this Act and all payments or deliveries over of property *boná fide* made by or under the authority of the said administrator for any of the purposes hereinbefore mentioned shall be binding and the propriety thereof and the sufficiency of the grounds on which the said administrator 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. 30 35 40

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

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 said administrator and the income thereof may if and when the said administrator 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 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 re-vest 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 said administrator 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 45 50 55 60

possession of such property shall be delivered up by the said administrator to some person being or claiming to be lawfully entitled thereto.

19. The said administrator 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.

Administrators not to be liable except for what they receive.

20. The costs as between solicitor and client of every action which may be brought against the said administrator 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 shall think fit otherwise to order.

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

21. If no such administrator as aforesaid shall have been appointed an interim curator of the property of any convict may be appointed by any Resident Magistrate or Justices of the Peace in petty sessions assembled or where there is no Resident Magistrate or there are no petty sessions by any Justice of the Peace having jurisdiction in the place where such convict before his conviction shall have last usually resided upon the application of any person who shall be able to satisfy such Resident Magistrate Justices or Justice as the case may be that the application is made *bona fide* with a view to the benefit of the convict or of his family or to the due and proper administration and management of his property and affairs and the interim curator to be appointed may be either the person making the application or any other person willing to accept the office and competent to discharge its duties as to such Resident Magistrate Justices or Justice shall seem fit.

If no administrator interim curator may be appointed by Justices.

22. Before making any such appointment the Resident Magistrate Justices or Justice as the case may be shall require the applicant to make oath that no administrator or interim curator of the property of such convict has been to his knowledge or belief already appointed and the applicant shall also state upon oath to the best of his knowledge and belief who are the nearest relatives (including any husband or wife) of such convict and (if any such there be) where they are residing and whether any and which of them have consented to or have had notice of such application and it shall be competent for such Resident Magistrate Justices or Justice as the case may be to require notice of such application to be given to all such persons and in such manner as to such Resident Magistrate Justices or Justice shall seem fit.

Proceedings before Justices.

23. Any interim curator so appointed may be removed for any cause shown to the satisfaction of the Resident Magistrate Justices or Justice or the Court in which proceedings for an account are instituted as hereinafter provided upon the application of any relative of the convict or of any person interested in the due and proper administration and management of his property and affairs either by the Resident Magistrate Petty Sessions or Justice by whom he was appointed (or in the event of such Resident Magistrate or Justice dying or being unable to act by any other Resident Magistrate or Justice having the like jurisdiction) or by any Court in which proceedings for an account may be instituted as hereinafter provided and upon the death or removal of any such interim curator a new interim curator may be appointed in the same manner and by the like authority as aforesaid or (in case any such proceedings shall be then depending) by the Court in which any such proceedings shall be so depending as aforesaid.

Removal of interim curator for cause shown.

24. Every interim curator so appointed as aforesaid shall have power (unless and until an administrator shall be appointed under

Powers of interim curator.

this Act in which case the authority of such interim curator shall thenceforth cease and determine) to sue in his own name as such interim curator for the possession and recovery of any part of the property in respect of which he shall have been so appointed or for damages in respect of any injury thereto and to defend in his own name as such interim curator any action brought against such convict or against himself in respect of such property and to receive and give legal discharges for all rents dividends interest and income of or arising from such property and also to receive and give discharges for any debts due to such convict or forming part of his property and to pay and discharge all or any debts due from such convict out of such property and to settle and adjust accounts with any debtor or creditor of such convict and generally to manage and administer the property of such convict and also to make or cause to be made such payments and allowances for the support or maintenance of any wife or child of such convict or of any other relative dependent on him for support as shall be specially authorized by any such Resident Magistrate Petty Sessions or Justice or Court aforesaid (who shall have power from time to time to authorize the same) or by any other Court having competent jurisdiction to authorize the same out of the income of such property or (in case such income shall be insufficient for that purpose) out of the capital thereof and every such interim curator shall be entitled to retain out of such property or out of the income thereof all his costs charges and expenses properly incurred in and about the discharge of his duties as such curator.

Personal property may be sold by interim curator under special order of Justices or Court.

**25.** Any personal property of such convict may be sold and transferred by such interim curator by and with the authority of such Resident Magistrate Petty Session Justice or Court as aforesaid or of any other Court having competent jurisdiction to order the same but not otherwise and such interim curator shall be accountable for the proceeds of any property so sold in the same manner as for such property while remaining unsold.

Proceedings by or against interim curator not to abate if administrator is appointed.

**26.** All proceedings in any Court of Justice duly instituted by or against any such interim curator may (in case of an administrator or a new interim curator being afterwards appointed) be continued by or against such administrator or such new interim curator without any abatement thereof the appointment of such administrator or new interim curator being entered by way of suggestion on the record or otherwise stated upon the proceedings according to the practice of such Court and all acts lawfully done and contracts lawfully made by such interim curator with respect to any property of such convict before the appointment of such administrator or such new interim curator shall be binding upon such administrator or such new interim curator after his appointment.

Execution of judgments against convict provided for.

**27.** All judgments or orders for the payment of money of any Court of Justice 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 such interim 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 by writ or otherwise according to the practice of the Court against any such property which may be vested in any administrator of the property of such convict under the authority of this Act.

Proceedings may be taken to make administrator or interim curator &c. accountable before

**28.** It shall be competent for Her Majesty's Attorney-General in New Zealand or for any person who if such convict were dead intestate would be his heir-at-law or entitled to his personal estate or any share thereof under the Statutes of Distribution or otherwise or for

any person authorized by Her Majesty's 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  
5 upon any administrator or interim 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  
10 it shall be lawful for such Court thereupon to issue such writ of summons 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  
15 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  
20 of such balances if any as may from time to time remain in the hands of any such administrator or interim 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 administrator or interim curator or other person shall act in the exercise of all powers vested  
25 in him under this Act or otherwise in all respects as such Court shall direct and it shall be lawful for such Court (if it shall think fit) to authorize and direct any act to be done by any such interim curator which might competently be done by an administrator duly appointed under this Act.

property reverts to convict.

30 **29.** Subject to the provisions of this Act every such administrator interim 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  
35 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.

Administrator &c. to be accountable to convict when property reverts.