



MONTSERRAT

CHAPTER 4.11

FORFEITURE ACT*

Revised Edition

showing the law as at 1 January 2013

This is a revised edition of the law, prepared by the Law Revision Commissioner under the authority of the Revised Edition of the Laws Act.

This edition contains a consolidation of the following laws—

FORFEITURE ACT

Act 6 of 1877 .. in force 7 December 1877

Amended by S.R.O. 15/1956

Amended by Acts: 12 of 1983

4 of 2003

9 of 2011 .. in force 27 September 2011 (S.R.O. 40/2011)

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* Section of the Act consolidated

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CHAPTER 4.11
FORFEITURE ACT
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CHAPTER 4.11

FORFEITURE ACT

(Act 6 of 1877, S.R.O. 15/1956, Acts 12 of 1983, 4 of 2003 and 9 of 2011)

Commencement

[7 December 1877]

Short title

1. This Act may be cited as the Forfeiture Act.

Interpretation

2. In this Act—

“**administrator**” means an administrator appointed under the provisions of section 8;

“**convict**” means any person against whom, after the passing of this Act, judgment of death, or of imprisonment exceeding one year shall have been pronounced or recorded by any Court of competent jurisdiction in Montserrat;

“**forfeiture**” does not include any fine or penalty imposed on any convict by virtue of his sentence;

“**interim curator**” means an interim curator appointed under the provisions of section 20.

(Amended by Act 12 of 1983)

Forfeiture, etc., abolished

3. From and after the passing of this Act, no confession, verdict, inquest, conviction, or judgment of or for any offence shall cause any attainder or corruption of blood, or any forfeiture or escheat. *(Amended by Act 12 of 1983)*

Convict to be disqualified for office, etc.

4. Notwithstanding the provisions of section 3 if any person hereafter convicted of imprisonment or any offence for which he has been sentenced to imprisonment for one year shall, at the time of such conviction, hold any military or naval office, or any civil office under the Crown, or other public employment, or any ecclesiastical benefice, or any place, office, or emolument in any university, college, or other corporation, or be entitled to any pension or superannuation allowance payable by the public or out of any public fund, such office, benefice, 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 the Governor within two months after such conviction, or before the filling up of such office, benefice, 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 the Governor), shall continue thenceforth incapable of holding any military or naval office, or any civil office under the Crown, or other public employment, or any ecclesiastical benefice, or of being elected, or sitting, or voting as a member of the Legislative Assembly. (*Amended by Acts 12 of 1983 and 9 of 2011*)

Persons convicted of felony may be condemned in costs

5. It shall be lawful for the Court by which judgment shall be pronounced or recorded upon the conviction of any convict 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 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 and defrayed.

(Amended by Act 12 of 1983)

When convict shall cease to be subject to operation of this Act

6. When any convict shall die, or be made 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 imprisonment 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 pardon for the offence 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. (*Amended by Act 12 of 1983*)

Convict disabled from suing for or alienating property, etc.

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.

Governor may appoint administrator of convict's property

8. It shall be lawful for the Governor, by writing under his hand, to commit the custody and management of the property of any convict, during his pleasure, to an administrator, to be by such writing appointed in that behalf; and every such appointment may be revoked by the same 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 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.

Convict's property to vest in administrator

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

Remuneration of administrator

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

Administrator to have administration of property

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

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

12. 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 such costs, charges, and expenses incurred by such convict in and about his defence; and also all such costs, charges and expenses as the administrator 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.

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

13. 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 into his hands, to be delivered up 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.

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

14. The administrator may 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 fraudulent or criminal 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 Law or Equity; 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 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 been passed.

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

15. The administrator may cause such payments and allowances for the support and 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 if and while he shall be lawfully at large under any licence, as to the administrator shall seem fit, to be made, from time to time, out of such property or the income thereof.

Exercise of administrator's power as to priority of payments

16. The several powers hereinbefore given to the 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 *bona fide* made by the administrator under the powers of this Act, and all payments, or deliveries over of property, *bona fide* made by, or under the authority of, the administrator, for any of the purposes hereinbefore mentioned shall be binding; and the propriety thereof, and the sufficiency of the grounds on which the 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.

Property to be preserved for convict

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 administrator, and the income thereof may, if and when the 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 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 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 such 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 administrator to some person being, or claiming to be, lawfully entitled thereto.

Administrator not to be liable except for what he receives

18. The 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 non-feasance on his part, to any property vested in him by virtue hereof.

Administrator to have costs as between solicitor and client

19. The costs, as between solicitor and client, of every action or suit which may be brought against the 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 whom such action is tried or such suit is heard shall think fit otherwise to order.

If no administrator, interim curator may be appointed by Magistrate

20. If no administrator shall have been appointed, an interim curator of the property of any convict may be appointed by any Magistrate 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 Magistrate that the application is made *bona fide* with a view to the benefit of the convict or 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 Magistrate shall seem fit.

Proceedings before Magistrate

21. Before making any appointment, the Magistrate 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 to such Magistrate to require notice of such application to be given to all such persons, and in such manner, as to such Magistrate shall seem fit.

Removal of interim curator for cause shown

22. Any interim curator so appointed may be removed for any cause shown to the satisfaction of the Magistrate or the Court, 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 Magistrate by whom he was appointed (or, in the event of such Magistrate dying or being unable to act, by any other Magistrate having the like jurisdiction) or by the Supreme Court; 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 then be depending) by the Court in which any such proceedings shall be so depending as aforesaid.

Powers of interim curator

23. Every interim curator shall have power (unless and until an administrator shall be appointed under this Act, in which case the authority

of the interim curator shall thenceforth cease and determine) to sue in his own name as interim curator, at law or in equity, 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 interim curator, any action or suit 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 authorised by any such Magistrate or Court aforesaid (who shall have power from time to time to authorise the same), or by any other Court having competent jurisdiction to authorise 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 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 order of Magistrate or Court

24. Any personal property of the convict may be sold and transferred by the interim curator, by and with the authority of such Magistrate or the Supreme Court as aforesaid, but not otherwise; and the 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

25. All proceedings at law or in equity duly instituted by or against any interim curator may (in case of an administrator or a new interim curator being afterwards appointed) be continued by or against the administrator, or the new interim curator, without any abatement thereof, the appointment of the 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 the Court; and all acts lawfully done, and contracts lawfully made, by the interim curator with respect to any property of the convict, before the appointment of the administrator, or new interim curator, shall be binding upon the administrator, or new interim curator, after his appointment.

Execution of judgment against convict provided for

26. All judgments or orders for the payment of money of any Court against the 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 interim curator, 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 the 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 any administrator of the property of the convict under the authority of this Act.

Proceedings may be taken to make administrator or interim curator, etc., accountable before property reverts to convict

27. It shall be competent for the Attorney General 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, or for any person authorised by the Attorney General in that behalf, to apply in a summary way to the Supreme Court to issue a writ of summons calling 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 the Court shall direct; and it shall be lawful for the Court, thereupon, to issue such writ of summons, and to enforce obedience thereto, and to all orders and proceedings of the Court consequent thereon, in the same manner as in any other case of process lawfully issuing out of the Court; and the 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 administrator or interim curator, or other person 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 in him under this Act, or otherwise, in all respects as the Court shall direct; and it shall be lawful for the Court (if it shall think fit) to authorise 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.

Administrator etc., to be accountable to convict when property reverts

28. Subject to the provisions of this Act, every administrator, interim curator and other person 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 cestui que trust; but subject nevertheless and without prejudice to the administration and application of such property under and according to the powers of this Act.

Property of convict acquired while lawfully at large not to be subject to the operation of this Act

29. Notwithstanding any of the provisions of this Act to the contrary no property acquired by a convict, during the time while he shall be lawfully at large under any licence, shall vest in any administrator appointed under this Act, but such convict shall be entitled thereto without any interference on the part of any administrator or interim curator appointed under this Act, and, during the time last aforesaid, the disabilities mentioned in section 7 shall, as to such convict be suspended.
