

CHAPTER XXVI.

CAPACITY OF CONVICTS TO TAKE AND CONVEY REAL PROPERTY.

- § 413. Attainder at common law— Statutory changes in England. § 414. Effect of sentence for crime in this country—Statutes.

§ 413. Attainder at common law—Statutory changes in England.—At common law among the consequences of attainder for treason or felony was the forfeiture of the lands of the attainted person to the crown as part of the punishment for the crime, the forfeiture being enforced by office found. Moreover, the blood of the attainted person was corrupted so that it was no longer inheritable, and consequently his lands escheated to the lord, as if the tenant had died without heirs, though this escheat was subject to the paramount right of the crown to forfeiture.¹ There followed also as a consequence of attainder such a destruction or suspension of the rights of the attainted person, that he was accounted in law “civilly dead.”²

One attainted of treason or felony could, however, both take and alienate lands, subject to the crown’s right to enforce a forfeiture.³

In England statutory modifications were made in the

¹ Bl. Comm. II, 251, 252, 254; IV, 381-387; Digby Hist. L. Real Prop. 91, 132, 426.

² Civil death arose in other cases as where one entered a monastery, or abjured the realm as a consequence of claiming sanctuary. Bl. Comm. I, 132; IV, 332.

³ Shep. Touchstone 232; Doe d. Griffith v. Pritchard, 5 Barn. & Ad. 765; 27 Eng. C. L. 179.

law of attainder, until in 1870⁴ the crown's claim of forfeiture and escheat (except in the rare case of forfeiture following outlawry) was abolished, as well as corruption of blood. Under the act (somewhat similar to some American statutes) an administrator may be appointed by the crown to have the custody and management of the convict's property with power to alienate it, or a curator may be appointed whose duties are merely to preserve the property. The convict is not deprived of his lands, but if adjudged guilty of treason or felony and sentenced either to death or penal servitude, he is rendered legally incapable of alienating them during the continuance of the sentence. Upon the completion of his sentence, or his pardon or death, such of his property as has not been disposed of reverts to him or his representatives.

§ 414. **Effect of sentence for crime in this country—Statutes.**—In this country forfeiture of estates in fee and corruption of blood are generally impossible under our constitutions, nor is civil death generally recognized. Therefore as a rule, the disabilities consequent upon conviction and sentence for crime are such only as are imposed by statute.⁵

Legislation, however, in several states has placed one sentenced to imprisonment under some disability in regard to taking and transferring property, though the extent of the disabilities varies among the states having statutes on the subject.

For example, in Rhode Island no person sentenced to

⁴ By the Forfeiture Act, 33 & 34 Vict., c. 23.

⁵ *Donnelly's Estate*, 1899, 125 Cal. 417; 58 Pac. 61; 73 Am. St. R. 62; *Willingham v. King*, 23 Fla. 478; 2 So. 851; *Smith v. Becker*, 1901, 62 Kan. 541; 64 Pac. 70; 53 L. R. A. 141; *Rankin's Heirs v. Rankin's Exrs.*, 6 T. B. Mon. (Ky.) 531; 17 Am. Dec. 161; *Avery v. Everett*, 1881, 110 N. Y. 317; 18 N. E. 148; 6 Am. St. R. 368; 1 L. R. A. 264; *Commonwealth v. Clemmer*, 1899, 190 Pa. St. 202, 210; 42 Atl. 675; *Davis v. Laning*, 1892, 85 Texas 39; 19 S. W. 846; 34 Am. St. R. 784; 18 L. R. A. 82; *Baltimore v. Chester*, 53 Vt. 315; 38 Am. R. 677.

imprisonment in the state prison may, during his imprisonment, make any will or conveyance of his property;⁶ and while this does not deprive him of his property nor of his capacity to enforce his rights in it,⁷ he is unable to convey it, and there may be an administrator appointed to take charge of it.

While there appear to be few American statutes directly prohibiting, as does this statute, any alienation by the convict, those of Kansas, Missouri, Oregon and South Dakota may have that effect in providing that a sentence of imprisonment for any time less than for life suspends all the civil rights of the person so sentenced,⁸ for it has been held that such a statute deprives the convict of the power of alienating or incumbering his property during the term of his imprisonment, and that a mortgage given by him during this period is void.⁹ This would seem to be the effect of similar statutory provisions in California, Idaho, Montana, North Dakota and Utah¹⁰ were it not for provisos in those states that the statutes shall not be construed to render the convict incompetent to convey his property.

In most of the states already mentioned and in some others—as Maine, Minnesota and New York¹¹—one sentenced to imprisonment for life is deemed civilly dead, and such a statute has been held to prevent the convict from inheriting.¹² Under some statutes his estate may be “administered and disposed of” as if he were naturally

⁶ R. I. Gen. L. 1896, ch. 285, § 53.

⁷ *Kenyon v. Saunders*, 18 R. I. 590; 30 Atl. 470; 26 L. R. A. 232.

⁸ Kansas Gen. Stat. 1901, § 2301; Missouri R. S. 1899, § 2382; Oregon, Hill's Stat., § 2021; S. Dak. Ann. Stat. 1901, § 8237.

⁹ *Williams v. Shackelford*, 97 Mo. 322; 11 S. W. 222; but see *La Chapelle v. Burpee*, 69 Hun 436.

¹⁰ California Penal Co., §§ 673, 674; Idaho Penal Co. 1901, §§ 5124, 5125; Montana Penal Co., §§ 1239, 1240; North Dakota R. Co. 1899, §§ 7706, 7707; Utah R. S. 1898, § 4501.

¹¹ Maine R. S. 1883, ch. 64, § 18; Minnesota Stat. 1894, § 6836; New York Penal Co., § 708.

¹² *Donnelly's Estate*, 1899, 125 Cal. 417; 58 Pac. 61; 73 Am. St. R. 62.

dead, and though it has been held that such a provision does not necessarily produce the effects of natural death in regard to the descent of his property,¹³ there appear to have been no decisions as to the effect of slightly different statutes providing that upon imprisonment for life the convict's property shall be "divided among his heirs at law and distributed as though he were dead."¹⁴

In a few states—for example, Kentucky, Missouri, New York and Virginia¹⁵—there may be appointed a committee, curator or trustee of the convict's estate, and upon such appointment being made the convict's power to alienate any of his property would seem to be suspended during the continuance of the curatorship on principles analogous to those applied when a guardian has been appointed to care for the property of one of unsound mind.¹⁶

¹³ *Smith v. Becker*, 1901, 62 Kan. 541; 64 Pac. 70; 53 L. R. A. 141. See *Avery v. Everett*, 110 N. Y. 317; 18 N. E. 148; 6 Am. St. R. 368; 1 L. R. A. 264.

¹⁴ R. I. Gen. L. 1896, ch. 285, § 56. See Maine R. S. 1883, ch. 64, § 18.

¹⁵ Kentucky Stat. 1903, §§ 1383–1385; Missouri R. S. 1899, § 8930; New York L. 1889, ch. 401, Birdseye's 3d ed. Gen. L., II, p. 1814; Virginia Code, §§ 4115–4121.

¹⁶ See ante, §§ 332, 333.