ANNO VICESIMO QUINTO & VICESIMO SEXTO

VICTORIÆ REGINÆ.

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C A P. LXXXVI.

An Act to amend the Law relating to Commissions of Lunacy and the Proceedings under the same, and to provide more effectually for the visiting of Lunatics, and for other Purposes.

[7th *August* 1862.]

WHEREAS it is expedient to amend the Law relating to Commissions of Lunacy and the Proceedings under the same, and to provide more effectually for the visiting of Persons found lunatic by Inquisition, and to make the other Provisions herein-after contained with respect to certain Officers in Lunacy, and otherwise: Be it therefore enacted by the Queen's most Excellent Majesty, by and with the Advice and Consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the Authority of the same, as follows:

1. This Act may be cited as "The Lunacy Regulation Act, 1862." Short Title.

2. In this Act, unless there be something in the Subject Matter or Context repugnant to the Construction, the following Terms shall have the Meanings herein-after assigned to them: *Interpretation.*

The Expression "the Lord Chancellor intrusted as aforesaid" and the several other Expressions and Words mentioned and referred to in Act to be construed as Part of Lunacy

Regulation Act, 1853. 16 & 17 Vict. c. 70.

the Second Section of the Act passed in the Session of Parliament holden in the Sixteenth and Seventeenth Years of the Reign of Her present Majesty, Chapter Seventy, intituled *An Act for the Regulation of Proceedings under Commissions of Lunacy, and the Consolidation and Amendment of the Acts respecting Lunatics so found by Inquisition and their Estates,* shall be read and construed according to the Interpretations thereof contained in the said Section:

And generally the Provisions of the said Act (except so far as the same are altered by or are inconsistent with this Act) shall extend and apply to the several Cases and Matters provided for by this Act, in the same Way as if this Act had been incorporated with and had formed Part of the said Act.

Nature and Limit of Inquiry under Commissions of Lunacy.

3. The Inquiry to be made under every Order for Inquiry or Commission of Lunacy or Issue shall be confined to the Question whether or not the Person who is the Subject of the Inquiry is at the Time of such Inquiry of unsound Mind, and incapable of managing himself or his Affairs, and no Evidence as to anything done or said by such Person, or as to his Demeanour or State of Mind at any Time being more than Two Years before the Time of the Inquiry, shall be receivable in Proof of Insanity on any such Inquiry, or on the Trial of any Traverse of an Inquisition, unless the Judge or Master shall otherwise direct.

Inquiries before a Jury to be made by means of an Issue to One of the Superior Courts of Common Law.

4. Wherever, under the said Act, the Lord Chancellor intrusted as aforesaid shall order an Inquiry before a Jury, he may by his Order direct an Issue to be tried in One of Her Majesty's Superior Courts of Common Law at *Westminster*, and the Question in such Issue shall be, whether the alleged insane Person is of unsound Mind and incapable of managing himself or his Affairs; and the Provisions of the said Act with respect to Commissions of Lunacy, and Orders for Inquiry to be tried by a Jury, and the Trial thereof, and the Constitution of the Jury, shall apply to any Issue to be directed as aforesaid, and the Trial thereof, and subject thereto such Issue and the Trial thereof shall be regulated by the Act of the Eighth and Ninth Years of the Reign of Her present Majesty, Chapter One hundred and nine, intituled *An Act to amend the Law concerning Games and Wagers*, and the Verdict upon any such Issue, finding the alleged insane Person to be of unsound Mind and incapable of managing himself or his Affairs, shall have the same Force to all Intents and Purposes as an Inquisition under a Commission of Lunacy, finding a Person to be of unsound Mind and incapable of managing himself or his Affairs, returned into the Court of Chancery.

5. Where

Reference in other Acts to Inquisition to apply to Verdict on Issue.

5. Where in any Act of Parliament, Order, Rule of Court, or Instrument Reference is made to a Commission of Lunacy, or the Inquisition thereon, the Issue hereby authorized to be directed, and the Verdict thereon, operating as an Inquisition, shall be deemed to be intended by or comprehended in the Reference.

Examination of alleged Lunatic on the holding of the Inquisition.

6. On the Trial of every such Issue as last aforesaid the alleged insane Person shall, if he is within the Jurisdiction, be examined before the taking of the Evidence is commenced, and at the Close of the Proceedings, before the Jury consult as to their Verdict, unless the presiding Judge shall otherwise direct; and such Examinations of the alleged insane Person shall take place either in open Court or in private as such Judge shall direct.

No Traverse of an Inquisition made by One of the Judges of the Superior Courts and by a Jury to be granted, but new Trial may be ordered by the Lord Chancellor.

7. No Person shall be entitled to a Traverse of any Inquisition made under any such Order as aforesaid upon the Oath of a Jury; but it shall be lawful for the Lord Chancellor intrusted as aforesaid, if he shall think fit, upon a Petition being presented to him within Three Months next after the Trial of any such Issue, to order that a new Trial shall be had of such Issue or a new Inquiry made as to the Insanity of such Person, subject to such Directions and upon such Conditions as to the Lord Chancellor intrusted as aforesaid may seem proper.

Sections One hundred and forty-eight, One hundred and forty-nine, and One hundred and fifty of the said Act (which Sections relate to Petitions and Orders for the Traverse of Inquisitions) shall not apply to any Case coming within the last preceding Section of this Act.

Section One hundred and fifty-one of the said Act shall apply to all Proceedings taken, Orders made, and Things done, pending a new Trial or new Inquiry or the Petition for the same, in the same Manner as is provided by the said Section with respect to such Matters pending a Traverse or the Petition for the same.

Demand of Inquiry by Jury.

8. And with reference to Inquiries before the Master without a Jury, and the Right of the alleged Lunatic to demand an Inquiry by a Jury, be it enacted, upon the Hearing of any Petition for Inquiry it shall be lawful for the alleged Lunatic, by himself, his Counsel or Solicitor, orally, or by Petition addressed to the Lord Chancellor intrusted as aforesaid, to demand an Inquiry by a Jury, and such Demand shall have the same Effect as if made by Notice filed with the Registrar in accordance with the Provisions of the said Act.

Demand of Inquiry by Jury may be withdrawn.

9. Upon such Hearing the alleged Lunatic may, by himself, his Counsel or Solicitor, orally, or by Petition as aforesaid, withdraw any Notice of demanding an Inquiry by a Jury previously filed by him.

10. And

Commission may be superseded on Conditions.

10. And with respect to the superseding of Commissions, be it enacted, That if it shall appear to the Lord Chancellor that it is not expedient or for the Benefit of the Lunatic that the Commission should be unconditionally superseded, but that same should be superseded on Terms and Conditions, he may, upon the Consent of the Lunatic and such other Persons, if any, whose Consent he may deem necessary, order the Commission to be superseded upon such Terms and Conditions as he shall think proper; and all the Provisions contained in "The Lunacy Regulation Act, 1853," in relation to the superseding of the Commission in Cases where a Traverse has been applied for, and to the Proceedings for the fulfilling of such Terms and Conditions, shall apply to all Cases in which the Commission shall be superseded upon Terms and Conditions under the Provisions herein contained.

Lord Chancellor may order Costs.

11. It shall be lawful for the Lord Chancellor intrusted as aforesaid to order the Costs, Charges, and Expenses of and incidental to the Presentation of any Petition for a Commission in the Nature of a Writ De lunatico inquirendo, or for any Order of Inquiry under "The Lunacy Regulation Act, 1853," and of and incidental to the Prosecution of any Inquiry, Inquisition, Issue, Traverse, or other Proceeding consequent upon such Commission or Order, to be paid either by the Party or Parties who shall have presented such Petition, or by the Party or Parties opposing such Petition, or out of the Estate of the alleged Lunatic, or partly in one way and partly in another, as the Lord Chancellor intrusted as aforesaid shall in each Case think proper; and such Order shall have the same Force and Effect as Orders for the Payment of Money made by the High Court of Chancery in Cases within its Jurisdiction.

As to Property of insane Persons when of small Amount.

In order that the Property of insane Persons when the same is of small Amount may be applied for their Benefit in a summary and inexpensive Manner, be it enacted as follows:

Power to Lord Chancellor, where Lunatic does not oppose Application, and his Property does not exceed 1,000*l.* in Value, or 50*l.* per Annum, to apply it for his Benefit in a sum-

12. Where, by the Report of One of the Masters in Lunacy or of the Commissioners in Lunacy, or by Affidavit or otherwise, it is established to the Satisfaction of the Lord Chancellor intrusted as aforesaid that any Person is of unsound Mind and incapable of managing his Affairs, and that his Property does not exceed One thousand Pounds in Value, or that the Income thereof does not exceed Fifty Pounds *per Annum*, the Lord Chancellor intrusted as aforesaid may, without directing any Inquiry under a Commission of Lunacy, make such Order as he may consider expedient for the Purpose of rendering the Property of such Person, or the Income thereof, available for his Maintenance or Benefit or for carrying on his Trade or Business: Provided nevertheless, that the alleged insane Person shall

shall have such personal Notice of the Application for such Order as aforesaid as the Lord Chancellor shall by General Order to be made as after mentioned direct. mary Manner, without Inquisition.

13. For the Purpose of giving effect to any such Order as is mentioned in the last preceding Section the Lord Chancellor intrusted as aforesaid may order any Land, Stock, or other Property of such Person as aforesaid to be sold, charged by way of Mortgage, or otherwise disposed of, and a Conveyance, Transfer, Charge, or other Disposition thereof to be executed or made by any Person on his Behalf, and may order the Proceeds of any such Sale, Charge, or other Disposition, or the Dividends or Income of such Land, Stock, or Property, to be paid to any Relative of such insane Person, or to such other Person as it may be considered proper to trust with the Application thereof, to be by him applied in the Maintenance or for the Benefit of the insane Person, or of him and his Family, either at the Discretion of such Relative or Person, or in such Manner, and subject to such Control, and with or without such Security for the Application thereof, as the Lord Chancellor intrusted as aforesaid may direct; and for the Purpose above mentioned the Lord Chancellor intrusted as aforesaid shall have all the same Powers with respect to the Transfer, Sale, and Disposition of, and otherwise respecting, the Real and Personal Property of such Person as aforesaid as if he had been found lunatic by Inquisition. Power to sell Land or other Property of Lunatic for his Benefit.

14. The Lord Chancellor may from Time to Time make such General Orders as he may think fit for regulating the Procedure to be adopted and the Duties to be performed by the Masters and Officers in Lunacy for obtaining such Reports as aforesaid, and for carrying the Objects of the Two last preceding Sections into effect, and for vesting in such Masters and Officers such Powers as the Lord Chancellor may consider expedient for the Purposes aforesaid. Power to make General Orders, to carry into effect the Objects of the last preceding Section.

15. Where any Person has, on the Trial of any Indictment, been acquitted on the Ground of Insanity, it shall be lawful for the Lord Chancellor intrusted as aforesaid, on being satisfied by Affidavit or otherwise of the continued Insanity of such Person, and of his being still in Confinement, to make any such Order with respect to the Property of such Person, and the Application thereof for his Maintenance or Benefit, or that of his Family, or for carrying on his Trade or Business, as is mentioned in the Three last preceding Sections of this Act. Power to apply Property of Persons acquitted on the Ground of Insanity for their Benefit.

Charging Orders.

And for the Purpose of extending the Powers over the Property of Lunatics given by Section One hundred and sixteen of the said Act, be it enacted as follows:

16. Where it appears to the Lord Chancellor intrusted as aforesaid to be for the Lunatic's Benefit, he may by Order direct any Estate Extending Powers of charging Lunatic's

Property for his Maintenance, Debts, and Costs.

or Interest of the Lunatic in Land or Stock, either in possession, reversion, remainder, contingency, or expectancy, and either existing or which may exist at any future Time, to stand and be charged with any Monies advanced or to be advanced, or due or to become due, to any Person for or in respect of any of the Purposes or Matters mentioned in the said Section, and either with or without Interest on such Monies; and he may also by Order direct any such Estate and Interest to be dealt with and disposed of in such Manner as he shall consider expedient for any of the Purposes aforesaid, or for securing any Monies advanced or to be advanced for such Purposes or any of them, and with or without Interest for the same; and every Charge and Disposition directed or made by or in pursuance of any such Order shall be valid and effectual to all Intents and Purposes, and shall take effect accordingly, subject only to any prior Charge to which the Estate or Interest affected thereby may at the Date of such Order be subject.

General.

All Deeds, Transfers, Payments, &c. made in pursuance of this Act to be valid and binding.

Indemnity to the Bank of England, &c.

17. Every Conveyance, Transfer, Charge, or other Disposition made or executed by virtue of this Act, and every Payment made in pursuance of this Act, shall be valid to all Intents, and binding upon all Persons whomsoever; and this Act shall be a full Indemnity and Discharge to the Governor and Company of the Bank of *England*, their Officers and Servants, and all other Persons respectively, for all Acts and Things done or permitted to be done in pursuance thereof, or of any Order of the Lord Chancellor intrusted as aforesaid made or purporting to be made under this Act; and such Acts and Things respectively shall not be questioned or impeached in any Court of Law or Equity to their Detriment.

Power to Masters to summon Witnesses.

18. To give further and better Effect to the Fifty-fifth, Fifty-sixth, and Sixtieth Sections of the said Act, respecting the Attendance of Witnesses before the said Masters, the Masters may in the Matter of any Lunatic or alleged Lunatic compel by Summons the Attendance of any Person to give Evidence before them, whether such Person has or has not previously given Evidence by Affidavit; and every Person so summoned shall be bound to attend as required by the Summons, and give Evidence before the said Masters, in like Manner as is provided by the Sixtieth Section of the said Act in the Case of Persons who have given Evidence by Affidavit.

Visiting.

Duties of Visitors.

And with respect to the visiting of Lunatics, be it enacted as follows:

19. It shall be the Duty of the Visitors to visit Persons of unsound Mind within the Meaning of this Act at such Times and in such Rotation and Manner, and to make such Inquiries and Investigations as to their Care and Treatment and mental and bodily Health, and the Arrangements for their Maintenance and Comfort, and otherwise respecting

respecting them, as the Lord Chancellor shall by General Orders, or as the Lord Chancellor intrusted as aforesaid shall by Special Order in any particular Case from Time to Time direct.

All Lunatics to be visited Four Times a Year.

20. Provided always, That from and after the First Day of *October* next every Lunatic shall be personally visited and seen by One of the said Visitors Four Times at least in every Year, and such Visits shall be so regulated as that the Interval between successive Visits to any such Lunatic shall in no Case exceed Four Months: Provided always, that Lunatics who are resident in licensed Houses, Asylums, or registered Hospitals shall not necessarily be visited by any of the said Visitors more than once in the Year, unless the Lord Chancellor intrusted as aforesaid shall otherwise direct.

Visitors also to visit alleged Lunatics, and make a Report, &c. to the Lord Chancellor.

21. The Visitors shall also visit such Persons alleged to be insane, and shall make such Inquiries and Reports in reference to them as the Lord Chancellor intrusted as aforesaid may direct, and at the Expiration of every Six Calendar Months they shall report to the Lord Chancellor the Number of Visits which they shall have made, the Number of Patients they shall have seen, and the Number of Miles they shall have travelled during such Months, and shall on the First Day of *January* in each Year make a Return to the Lord Chancellor of all Sums received by them for travelling Expenses, or upon any other Account; and a Copy of such Reports, showing the Number of Visits made, the Number of Patients seen, and the Number of Miles travelled, and also a Copy of such Return of Sums received for travelling Expenses, or upon any other Account, shall be laid before Parliament on or before the First Day of *February* in each Year, if Parliament be then sitting, and if not, within Twenty-one Days next after the Commencement of the next Session of Parliament.

Sections 104 and 105 of 16 & 17 Vict. c. 70. repealed.

22. Sections One hundred and four and One hundred and five of the said Act (which Sections relate to the visiting of Lunatics) are hereby repealed.

Officers in Lunacy.

Power to the Lord Chancellor to allow Pensions to present Visitors, if desirous of retiring.

23. The Lord Chancellor may, if he shall so think fit, on a Petition presented to him for that Purpose, order Annuities, not exceeding One Half of their respective Salaries, to be paid to the present Medical Visitors or either of them, in case they or either of them shall be desirous of retiring from the Offices held by them, they having already attained the respective Ages of Seventy-eight and Eighty-one Years, and having served as such Medical Visitors for Twenty-eight and Twenty Years respectively.

Visitors to hold Office during good Behaviour.

24. The Medical Visitors to be hereafter appointed and the Legal Visitor shall hold their Offices during their good Behaviour, but may be

be removed therefrom by the Lord Chancellor in case of Misconduct or Neglect in the Discharge of their Duties, or of their being disabled from performing the same, and they shall receive Salaries of Fifteen hundred Pounds each, and shall not be in any way engaged in the Practice of their respective Professions.

Visitors to receive Salaries, but not to practise in their Professions.

Clerks to the Visitors.

25. Such Clerks to the Visitors may from Time to Time be appointed by the Lord Chancellor and at such Salaries as the Lord Chancellor, with the Approbation of the Commissioners of Her Majesty's Treasury, shall from Time to Time direct: So much of Section Twenty-three of the said Act as refers to the Clerk of the Secretary to the said Visitors is hereby repealed.

Superannuation Allowances to Officers in Lunacy.

26. The Lord Chancellor may, if he shall so think fit, order to be paid to any Officer who has served for Twenty Years in any Office or Offices in Lunacy, and who shall be above Sixty Years of Age, and shall be desirous of retiring, or who is disabled by permanent Infirmity from the Performance of his Duties, such Superannuation Allowance, not exceeding Two Thirds of the Salary payable to such Officer or Person at the Time of his Resignation, as the Lord Chancellor, with the Approbation of the Commissioners of Her Majesty's Treasury, may approve.

Payment of Pensions and Salaries.

27. All Annuities and Salaries ordered to be paid in pursuance of this Act shall be payable out of "The Suitors Fee Fund Account" mentioned in the said Act, and at the Times and in the Manner directed by the Twenty-fifth Section of the said Act.

Registrar to hold Office during good Behaviour.

28. The Registrar in Lunacy shall hold his Office during good Behaviour, and may be removed therefrom by the Lord Chancellor in case of Misconduct or Neglect in the Discharge of his Duties or his being disabled from performing the same.

Orders.

And with respect to Orders in Lunacy, be it enacted as follows:

Office Copies of Orders to be acted upon by Accountant General and others.

29. The Accountant General and all other Persons, and the Governor and Company of the Bank of *England*, shall act upon all Office Copies of Orders in Lunacy purporting to be signed by the Registrar in Lunacy, and sealed with the Seal of his Office, in the same Manner as such Persons are by Section One hundred and one of the said Act required to act upon Office Copies of Reports confirmed by Fiat.

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