

T A S M A N I A.

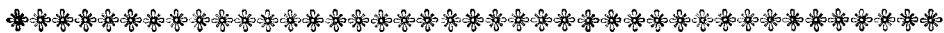


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ANNO TRICESIMO-TERTIO

VICTORIÆ REGINÆ,

No. 13.



AN ACT to declare the Law and Practice in
Cases of Escheat. [22 October, 1869.]

WHEREAS it is expedient to make provision for the disposal of Escheated Property, and to declare the Law and mode of Procedure to be observed in cases of Escheat: Be it therefore enacted by His Excellency the Governor of *Tasmania*, by and with the advice and consent of the Legislative Council and House of Assembly, in Parliament assembled, as follows:—

PREAMBLE.

1 All property of what nature or kind soever in *Tasmania* which has escheated to, or shall escheat to, or which has devolved, or may hereafter devolve, upon Her Majesty, Her Heirs or Successors, by reason of default of heirs or next of kin, shall be applied and disposed of in manner hereinafter directed: Provided that nothing herein contained shall apply to any property as to which any Warrant for the disposal thereof under Her Majesty's Sign Manual has been received before the passing of this Act.

Disposal of Escheated Property.

2 The Governor in Council may make such grants or gifts as he sees fit of any such Escheated Property as aforesaid, or of any rents or profits due and in arrear in respect thereof, to any person or persons, for the purpose of restoring such Property or any part thereof to the family of the person to whom such property had belonged, or for the purpose of carrying into effect any intended grant, conveyance, devise, or bequest of any such person in relation thereto, or of rewarding any person making discovery of any such Escheat, or of the Crown's right or title

Persons to whom Governor may make gifts of Escheated Property.

Escheat Act, 1869.

thereto: And subject to, and so far as any such gift or grant by the Governor in Council shall not extend, such Escheated Property shall, subject to the provisions hereinafter contained, be applied and disposed of as the Legislature may direct.

Governor may authorise the issue of a Commission.

3 Upon information of any supposed Escheat being laid before the Governor in Council, and upon his being satisfied that the case is one in which it will be proper to issue a Commission of Escheat, it shall be lawful for the Governor to give authority for the issue of such Commission under the Seal of the Colony, directed to such Commissioner as he thinks fit.

Vacancy in office of Commissioner how filled.

4 Such Commissioner shall hold office during pleasure; and in case of the death, resignation, or removal of the Commissioner, the Governor may, by indorsement under his hand on the Commission, appoint another Commissioner in the place of the Commissioner who so dies, resigns, or is removed; and every Commissioner appointed as last aforesaid shall have the same powers as if the Commission had been directed to him, and all things done by his predecessor shall be deemed to have been done by him.

Commissioner to issue jury Precept.

Seven persons to constitute a jury.

5 Upon the issue of a Commission of Escheat it shall be lawful for the Commissioner to issue his Precept in the form in the Schedule A. to the Sheriff to summon Ten persons, any Seven of whom shall be sufficient to constitute a Jury to enquire of such Escheat; and the Sheriff shall thereupon summon any Ten persons competent and qualified in like manner as Jurors qualified to serve on a Special Jury in the Supreme Court, and he shall immediately thereafter return such Precept to the said Commissioner, with the names of the persons summoned endorsed thereon, certified under his hand.

Witnesses to be summoned, and their attendance enforced by warrant if necessary. Oaths to be administered to jury and witnesses.

6 It shall be lawful for the Commissioner in every case to summon such witnesses as he considers necessary to attend any Inquest of Escheat, and to enforce the attendance of such witnesses, if necessary, by warrant under his hand directed to any Police Constable; and such summons and warrant respectively may be in the form in the Schedule B.; and it shall also be lawful for the Commissioner to administer to the Jury and witnesses the Oaths severally in that behalf set forth in the Schedule C., and to adjourn the enquiry from time to time, if necessary, until the conclusion thereof.

Time and place for Inquest how fixed.

7 Every Inquest under this Act shall be holden at a time and place to be named by the Commissioner; and notice of the day and hour and also of the place of holding such Inquest shall be published in the *Gazette*; and in the case of real estate shall be affixed to, or left with some person at, the premises respecting which inquiry is to be made Thirty days before the holding of the Inquest.

Persons claiming title to premises to appear and support claim.

8 It shall be lawful for any person claiming title to the property respecting which enquiry is made to appear and give evidence in support of such claim before the Commissioner at any Inquest held under this Act.

Form of Inquisition and finding of jury. To be returned into Supreme Court.

9 The form of Inquisition and the finding of the Jury on an Inquest of Escheat, shall be in the form in the Schedule D., and shall be returned immediately thereafter under the hands of the Commissioner and of the Jurors, or of any Five of them, into the Office of the Registrar of the Supreme Court.

Escheat Act, 1869.

10 If the finding on any Inquest under this Act is against the Crown it shall, nevertheless, be lawful for the Commissioner to issue another Precept for a Second Enquiry under the order and sanction of a Judge of the Supreme Court on application made for that purpose, which order the said Judge may give or withhold at his discretion, and on such order being obtained the like proceedings shall be had as are hereinbefore mentioned.

If the finding be against the Crown, another Precept may issue by order of a Judge.

11 If the finding on any Inquest under this Act is in favour of the Crown it shall, nevertheless, be lawful for any person claiming title to the premises respecting which the finding has been made, to traverse such finding, and the claimant shall in such case file such traverse in the Office of the Registrar of the Supreme Court, and shall serve a copy thereof on the Attorney-General of this Colony for the time being.

Persons claiming title to premises may traverse finding.

12 Every such traverse shall be tried before the Supreme Court sitting in Banco, and for such purpose the Court may receive evidence on affidavit or *viva voce*, or in both such ways, and the trial of such traverse shall in every case be in accordance with such rules, if any, as the Judges of the said Court may from time to time make in that behalf; and in default of such rules, then in such manner as they may from time to time direct; and the decision of the Court as to any such traverse shall be deemed final and conclusive.

Traverse how tried.

13 After the finding of any Inquest in favour of the Crown, if no traverse is filed and copy thereof served within Twelve calendar months thereafter, or in case the decision by the Supreme Court on any traverse is in favour of the Crown, it shall in either of such cases be lawful for the Commissioner to seize, get in, and take possession of, and, with the approval of the Governor, to proceed to a sale of the property Escheated; and the proceeds thereof, after payment of all fees and lawful expenses thereon, shall be paid and applied in manner herein directed.

After finding, and decision of traverse, if any, property to be seized and sold.

14 Provided, that in case any property found to have Escheated is personal, or of such a nature that the Governor considers that it would be injurious to the property or disadvantageous to postpone the sale thereof, or is unoccupied or unprotected, then the Governor may authorise the Commissioner to seize, get in, and take possession of the same, and to proceed with the sale thereof as the Governor may direct, although a period of Twelve months has not expired from the finding by the Jury.

Governor may in certain cases authorise Commissioner to seize property.

15 In case the decision of the Supreme Court upon any traverse is against the Crown, then and in such case the person in whose favour any such traverse is found shall be entitled to a return of the property which was found by the Jury to have escheated; or in case such property has been sold, then such person shall be entitled to a return of the amount received on account of such sale, less the costs and expenses incurred by reason of the holding of the Commission of Escheat and the sale.

In case traverse is successful property to be returned.

16 Every such traverse shall be filed within Six years after the finding of the Jury which is so traversed.

Traverse to be filed within Six years.

17 There shall be payable to the several persons named in Schedule E. to this Act annexed the fees therein set forth.

Fees.

Escheat Act, 1869.

Repeal.

18 The Act 32 *Victoria*, No. 32, is hereby repealed except as to acts done thereunder.

Short Title.

19 This Act may be cited as "The Escheat Act, 1869."

SCHEDULE.

A.**FORM OF PRECEPT.**

TASMANIA.

To the Sheriff or his lawful Deputy.

THESE are to authorise and require you to summon Ten good and lawful men to appear as a Jury at _____, at _____ o'clock, on the _____ day of _____, 18____, to inquire touching certain property to which our Sovereign Lady the Queen has become entitled by way of Escheat, as is alleged, and have there then the names of the Jurors and this Writ according to the Act in that case provided.

Dated the _____ day of _____, 18____.

A. B.,

Commissioner of Escheat.

B.**FORM OF SUMMONS.**

TASMANIA.

To all Police Constables of this Colony.

THESE are to authorise and require you to summon C.D. to be and appear as a Witness at _____, at _____ o'clock, on the _____ day of _____, 18____, to testify to his knowledge on an enquiry touching a certain Escheat to our Sovereign Lady the Queen, according to the Act in such case provided, and hereof you are to make return on the day aforesaid.

Dated the _____ day of _____, 18____.

A. B.,

Commissioner of Escheat.

NOTE.—Where a Warrant is issued, instead of the word "summon," insert the words "apprehend the body of."

C.**FORM OF OATH TO JURORS.**

You, C.D., do swear that you will truly enquire of the title to the lands and tenements (or other property) of which enquiry shall be made in this case, and a true verdict give according to the evidence. So help you God.

FORM OF OATH TO WITNESS.

You, C.D., do swear that you will true evidence give, and a true answer make, to the best of your knowledge, to all questions which shall be asked of you on this enquiry. So help you God.

Escheat Act, 1869.

D.

FORM OF INQUISITION.

TASMANIA }
 (TO WIT.) } AN Inquisition indented taken for Our Sovereign Lady the Queen at
Tasmania, on the day of , 18 , before *A.B.*, gentleman,
 Commissioner of Our said Lady the Queen for *Tasmania*, touching certain property,
 to wit, [*here set forth the description of the property, if real estate, by name,*
boundaries, or other description], late the property of *C.D.*, of , who
 died without heirs (*or next of kin*) as is alleged, to which Our said Lady the Queen
 has become entitled by Escheat, as is alleged upon the Oath of [*here set forth the*
names of the Seven Jurors empannelled, or of the Five if Five only concur] good
 and lawful men who, being duly sworn and charged to make enquiry in the premises
 upon their Oaths, say that the said *C.D.* did die without heirs [*or next of kin, or both,*
as the case may be] on or about [*state time*] at [*state place*], and that the said *C.D.*
 was at his death seised in fee simple [*if the property is personal estate say possessed in*
his own right] of the said [*here set forth the particulars of the real or personal estate*
as the case may be], and that the same has thereupon become the property of Our
 Sovereign Lady the Queen by way of Escheat.

In witness whereof, as well the said Commissioner as the Jurors aforesaid (*or*
Five of them as the case may be) have hereto set their hands, this day of
 , 18 .

A. B.,
 Commissioner of Escheat.
 (*Signatures of Jurors.*)

E.

TABLE OF FEES.

Commissioner of Escheat.

	£	s.	d.
For each Summons or Warrant.....	0	3	0
For issuing Precept in every case.....	0	10	0
For every Inquest when the Escheat does not amount in value to over £100	5	0	0
Over £100 and under £500	7	10	0
Over £500 and under £1000	10	0	0

Sheriff.

Summoning Jury and returning Precept	1	6	8
Jurors, each, per diem	0	6	0

