

Escheated Estates and Practice in Escheat

WESTERN AUSTRALIA

ANNO TRIGESIMO PRIMO

VICTORIÆ REGINÆ

No. 3

An Ordinance to declare the Law and Practice in cases of Escheat. [Assented to 15th July, 1867.]

WHEREAS it is expedient 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 Western Australia and its Dependencies, by and with the advice and consent of the Legislative Council thereof, as follows:—

1. In all cases of escheat to the Crown an inquisition shall be taken before the Sheriff, and for such purposes, on the application of the Attorney-General, a writ tested in the name of the Chief Justice shall issue from the Supreme Court, directed to the Sheriff in the form set forth in Schedule A hereto annexed; and the said Sheriff shall thereupon summon a jury of ten persons competent and qualified in like manner as jurors qualified to serve on a jury in the Supreme Court, any six of whom shall be sufficient, and shall constitute a jury to inquire of such escheat.

Ten persons to be summoned, of whom six shall be sufficient to constitute a jury

2. It shall be lawful for the Sheriff to summon all such witnesses as he may consider necessary to attend at 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 set forth in the said schedule; and it shall also be lawful for the said Sheriff to administer to the jury and witnesses the oaths severally in that behalf set forth in the said schedule, and to adjourn the inquiry from day to day, if necessary, until the conclusion thereof.

Witnesses to be summoned and their attendance enforced by warrant, if necessary

Forms of oaths to be administered to jury and witnesses

3. All inquests under this Ordinance shall be holden at the Court House in Perth, or such other place as the Sheriff shall appoint; and notice of the day and hour, and also of the place of holding such inquests, shall be published in the 'Government 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 seven days before the holding of the inquest.

Inquests shall be holden at the Court House, and notice thereof shall be published

4. It shall be lawful for any person claiming title to the premises respecting which inquiry is made, to appear and give evidence in support of such claim before the Sheriff at any inquest held under this Ordinance.

Persons claiming title to premises to appear and support claim

5. The form of inquisition and the finding of the jury on an inquest of escheat, shall be in the form set forth in the schedule, and shall be returned immediately thereafter, under the signatures of the Sheriff and of the jurors respectively, into the office of the Supreme Court.

Inquisition and finding of jury to be in form in the schedule, and to be returned into office of Supreme Court

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If the finding be against the Crown another precept may issue at discretion of the Supreme Court

6. If the finding on any inquest under this Ordinance shall be against the Crown, it shall nevertheless be lawful for the Sheriff to make special application to the Supreme Court for an order for the issue of another writ of inquisition, which order the said Court may give or withhold at its discretion, and on such order being obtained, the like proceeding shall be had as are hereinbefore mentioned.

If the finding be in favour of the Crown persons claiming title to premises may traverse such finding and serve copy of traverse on the Attorney-General within three calendar months whereupon trial will be had in the Supreme Court

7. If the finding on any inquest under this Ordinance shall be in favour of the Crown, it shall nevertheless be lawful for any person claiming title to the premises respecting which the finding shall have been made, to traverse such finding; and the claimant shall in such case file such traverse in the office of the Supreme Court, and shall serve a copy thereof on Her Majesty's Attorney-General, within three calendar months after such finding, whereupon such proceedings shall be had for the trial of the said traverse before the Chief Justice, and any jury summoned for trial of causes in the said Court, and under such rules as shall be framed by the said Chief Justice in that behalf, and the said Chief Justice shall have power from time to time to rescind, add to, or alter such rules, and the finding of any such traverse by any jury of the said Supreme Court shall be deemed final and conclusive.

If after the finding for the Crown, no traverse be filed and served, or if there be a finding for the Crown on a traverse, property to be sold and proceeds applied as Her Majesty may direct

8. After the finding on any inquest in favour of the Crown, if no traverse shall be filed and copy thereof served within three calendar months thereafter as aforesaid, or in case the finding on any traverse by the jury of the Supreme Court shall be in favour of the Crown, it shall in either of such cases be thereupon lawful for the Sheriff to seize and to proceed to a sale of the property escheated, and the proceeds thereof, after payment of all fees and lawful expenses thereout, shall be paid and applied as Her Majesty may direct.

Fees to be taken

9. There shall be payable to the several persons named in Schedule B to this Ordinance annexed, the fees therein set forth.

Short title of Act

10. This Ordinance may be cited as 'The Escheat Ordinance, 1867.'

J. S. HAMPTON,
GOVERNOR AND COMMANDER-IN-CHIEF.

SCHEDULE A

FORM OF WRIT

Victoria, by the Grace of God of the United Kingdom of Great Britain and Ireland, Queen, Defender of the Faith, to the Sheriff of Western Australia Greeting: Whereas it is alleged that C.D. (*set forth the allegation of the facts in support of the escheat*). And whereas application has been made by the Attorney-General that inquiry be made in the premises, we therefore pursuant to the Ordinance in such case made and provided, command you that you do summon ten good and lawful men duly qualified according to law, six of whom shall be sworn truly to make inquiry in the premises, and that you proceed to make such inquiry; and when the same shall have been made in manner aforesaid, we command you that you make known to us in the Supreme Court what shall have been done by virtue of this writ, with the finding of the jury hereon endorsed, on the day of next,

Witness (*name of Chief Justice*) at Perth, Western Australia, the day of in the year of our Lord

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FORM OF SUMMONS

Western Australia.

To _____ or any other Police Constable.

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 inquiry touching a certain escheat to our Sovereign Lady the Queen, according to the Ordinance in such case provided, and hereof you are to make return on the day aforesaid.

Dated the _____ day of _____ 18 _____

A.B.
Sheriff.

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

FORM OF OATH TO JURORS

You C.D. do swear that you will truly inquire of the title to the Lands and tenements (*or other property*), of which inquiry 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 inquiry. So help you God.

FORM OF INQUISITION

Western Australia }
to wit.

An inquisition indented taken for our Sovereign Lady the Queen, at _____ in the said Colony, on the _____ day of _____ 18 _____ before A.B. Sheriff, 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 (*if other alleged cause of escheat state same*), as is alleged upon the oath of (*here set forth the names of the six Jurors empanelled*) good and lawful men of the said Colony, who being duly sworn and charged to make inquiries in the premises, upon their oaths, say that the said C.D. did die without heirs (*or next of kin or otherwise as the case may be*) on or about (*state time*) at (*state place*) and that the said C.D. was (*at his death*) seized 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 estate if any*) and that the same hath thereupon become the property of our Sovereign Lady the Queen, by way of escheat.

In witness whereof, as well the said Sheriff as the Jurors aforesaid have hereto set their hands this _____ day of _____ 18 _____

A.B.,
Sheriff.
Signatures of Jurors.

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SCHEDULE B

TABLE OF FEES

SHERIFF

	£	s.	d.
For each Summons or Warrant	0	3	0
Summoning Jury and returning Precept	1	6	8
Jurors and Witnesses, usual allowance according to scale in Supreme Court for the time being—			
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 £1,000	10	0	0

ATTORNEY-GENERAL

Searching Title at Registrar's Office, each day	2	2	0
Every attendance on Sheriff	0	13	4
Attendance at Inquest, each day	2	2	0
Drawing or setting every paper, per folio	0	1	6