



**BERMUDA
1871 : 14**

ESCHEATS ACT 1871

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SCHEDULES

FIRST SCHEDULE

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SECOND SCHEDULE

[repealed]

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[14 September 1871]

[*preamble and words of enactment omitted*]

Writ of escheat

1 On receiving information in writing of any supposed escheat, the Secretary to the Cabinet shall lay such information before the Attorney-General; and if the Attorney-General reports to the Secretary to the Cabinet that it is proper to issue a writ of escheat then the Secretary to the Cabinet, with the sanction of the Governor, shall issue a writ of escheat under the Public Seal of Bermuda, and under the hand of the Governor, and in the usual form, with such variations as the circumstances of the case may render necessary.

Deposit by applicant

2 If any person, either before or after any such information is laid before the Secretary to the Cabinet, prays for a grant of the property alleged or supposed to have escheated, such person shall make a deposit of one hundred and twenty dollars with the Secretary to the Cabinet to meet the expenses attending the inquest, and unless such deposit is made no application on the part of such person shall be entertained unless the Governor under any special circumstances sees fit to dispense with such deposit; and the Secretary to the Cabinet shall out of the money so deposited pay to the Provost Marshal General the expenses attending the inquest:

Provided that after any one applicant has made any such deposit no other applicant shall be required or allowed to make such deposit.

Inquisition by Provost Marshal General

3 (1) Whenever a writ of escheat issues to the Provost Marshal General it shall require him to inquire as to any alleged or supposed escheat by the oaths of six good and lawful persons resident in any part of Bermuda and qualified to serve as jurors in the Supreme Court.

(2) Three months' notice at least shall be given by notice in the Gazette, specifying the time and place for holding the inquest and specifying, in the case of real estate, as far as is practicable the land to which such inquest relates.

(3) The jurors shall be summoned by precept in Form A in the First Schedule, signed by the Provost Marshal General and addressed to any police officer, and the precept shall direct the person summoned to attend at the time and place mentioned in the precept, such time being not less than three days nor more than ten days after issue of the precept.

(4) The Attorney-General may attend any inquest of escheat on behalf of the Government.

(5) At any time after the issue of the writ of escheat and before the return of the inquisition the Provost Marshal General may state and sign a case stating any question of law arising in respect of the escheat proceedings for the opinion of the Supreme Court, and may for that purpose adjourn any proceedings for such time as he may consider desirable.

(6) Upon the argument of such case the Supreme Court and all parties to the escheat shall be at liberty to refer to the whole contents of the writ of escheat or to any document admitted into evidence upon any inquisition, and the Court shall be at liberty to draw from the facts and documents stated in any such case any inference, whether of fact or law, which might have been drawn therefrom if proved at a trial.

(7) The Court shall deliver judgment on any point of law which arises, and any such judgment shall be forwarded by the Registrar for the information of the Provost Marshal General.

Jury of inquisition

4 (1) The jurors so summoned and attending at such time and place shall constitute the jury of inquisition:

Provided that the Attorney-General or any other person attending the inquest on behalf of the Crown, or any person claiming to be interested in or entitled to the property which is the subject matter of the inquisition, may challenge any juror for any cause which in the Supreme Court would disqualify him from sitting in a civil suit.

(2) The Provost Marshal General shall determine all challengers to jurors on the principles recognized in the Supreme Court.

(3) The places of all jurors so challenged and with respect to whom the challenge is allowed and of any absent juror or jurors shall be supplied by talesmen qualified as aforesaid to be summoned by the Provost Marshal General.

Failure to attend

5 Every person duly summoned to serve upon any jury for the trial of any cause of escheat who does not appear in obedience to any such summons after being openly called in court three times and who does not offer some sufficient excuse for his absence to be allowed by the Provost Marshal General, or who departs from the court during any sitting of the court without leave of the court, shall be liable to a fine not exceeding \$172.80 which may be imposed in a summary way by the Provost Marshal General and which shall be paid into the Consolidated Fund; and any such fine may be recovered by the Provost Marshal General as a debt due to the Crown:

Provided that the Provost Marshal General at any time during the sitting of any court to which such juror has been summoned or

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within thirty days thereafter may remit such fine or any part thereof if he sees fit so to do.

Witnesses

6 (1) The Provost Marshal General may summon all such witnesses as he may consider necessary or as may be required on behalf of the Crown or of any persons claiming to be entitled to any property to which the inquisition relates to attend at the inquest and to enforce the attendance of such witnesses if necessary by warrant under his hand directed to any police officer.

(2) Such summons and warrant may be, respectively, in Form B and Form C in the First Schedule.

(3) The Provost Marshal General may administer to the jury and witnesses the oaths, or to any juror or witness having conscientious scruples against oaths a solemn declaration, in the forms respectively set forth in Form D and in Form E in the First Schedule.

(4) The Provost Marshal General may adjourn the inquest from time to time if necessary until the conclusion thereof.

Holding of inquest

7 (1) All inquests under this Act shall be held at the Court House in the City of Hamilton on any day or days not appointed for the sitting of any court therein.

(2) Notice of the day and hour and also of the place of holding such inquests shall be published three times 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 three months before the holding of the inquest.

Appearance of claimants

8 Any person claiming title to the premises respecting which inquiry is to be made may appear and give evidence in support of such claim before the Court of Escheat at any inquest held under this Act.

Form of inquisition and return

9 The form of inquisition and the finding of the jury on any inquest of escheat shall be in the form set forth in Form F in the First Schedule, or as near thereto as the circumstances admit, and such inquisition and finding shall be returned immediately thereafter under the signature of the Provost Marshal General and the jurors into the office of the Secretary to the Cabinet and be there recorded.

Preliminary disposal of escheated property

10 (1) Whenever any property is found by inquisition to have escheated to the Crown then the Provost Marshal General shall take and keep possession of the property until the Governor otherwise orders, or

until on any traverse of the finding the finding is reversed in the Supreme Court.

(2) In the meantime and while such property, if real property, remains in the custody of the Provost Marshal General he shall let the property to the best advantage, and out of the rents and profits thereof shall provide for the necessary repairs and maintenance and for the taxes and assessments of such property.

(3) The Provost Marshal General shall also receive and may recover from any person in whose hands any money due to the Crown arising from the rents and profits may be, all such moneys after allowing and deducting all such charges, expenses and disbursements as the Supreme Court on summary application, or motion by or on behalf of the Attorney-General, or by the person in whose hands such money may be, may sanction; and on any such application the Attorney-General shall appear for the Crown, and it shall be sufficient that the person in whose hands such money may be shall be brought before the Court either as applicant or respondent without any other party being represented except the Crown unless the Court otherwise orders,

(4) The Provost Marshal General, on all monies received by him under this Act, shall be allowed a commission of two and one half cents in the dollar, and on all monies paid away by him (except money paid into the Consolidated Fund) a like commission, and the balance of all monies remaining in the hands of the Provost Marshal General arising under this Act shall be paid by him into the Consolidated Fund and the Accountant General shall keep an account thereof; but the Governor may sanction the payment out of such rents and profits of all expenses attending the writ and inquest.

Second inquiry

11 If the finding on any inquest under this Act is against the Crown it shall nevertheless be lawful for the Provost Marshal General to issue another precept for a second inquiry under the order and sanction of the Supreme Court on application made for that purpose which order the Supreme Court may give or withhold at its discretion; and if such order is obtained the like proceedings shall be had as are hereinbefore mentioned.

Recourse to Supreme Court

12 (1) If the finding on any inquest 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 and if the finding is against the Crown the Attorney-General on behalf of the Crown may traverse such finding at any time within twelve months after the finding has been given, which traverse shall be prosecuted and tried in the Supreme Court.

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(2) Such proceedings shall thereupon be had before the Supreme Court and a jury shall be summoned and returned in the usual manner as may be required by any rules to be made by the Supreme Court:

Provided that a copy of any traverse filed by any person claiming title to any such property shall be served on the Attorney-general.

(3) The verdict of any jury on any such traverse shall be final and conclusive unless the Court sees fit to grant a new trial.

(4) The Supreme Court may make rules for regulating proceedings on such traverses and from time to time may vary or rescind the rules as it sees fit.

Security for costs

13 The Supreme Court may require any traverser other than the Crown to give security for costs to the amount of two hundred and forty dollars by the recognizance of the traverser and two sufficient sureties taken and acknowledged before the Court or a judge, and may stay proceedings on such traverse until such security is given; and if such security is not given in sufficient time to allow of the traverse being brought to trial within eighteen months from the time of the finding being delivered then the traverse shall be finally dismissed and judgment given for the Crown.

Disposal of escheats

14 (1) After the finding of any inquest in favour of the Crown if no traverse is filed and a copy thereof served within twelve months thereafter as aforesaid, or in any case where the finding on any traverse by the jury in the Supreme Court is in favour of the Crown or judgment is given thereon for the Crown under section 13, then the property escheated shall form part of the general revenue and be subject to the Appropriation of Escheats Act 1870 [*title 8 item 102*].

(2) If any property found to have escheated to the Crown is of a perishable nature the Governor may order the property to be immediately sold and the net proceeds thereof to be paid into the Consolidated Fund as part of the general revenue and to be subject to the like provisions as other property under the said Act, or may make such other order respecting such proceeds pending the inquisition and subsequent proceedings thereon as to the Governor seems expedient.

Consolidated Fund

15 All money paid into the Consolidated Fund under this Act shall be appropriated to the general purposes of Government, and no money shall be paid out of the Consolidated Fund under this Act without the warrant of the Minister of Finance to be appropriated as hereinbefore mentioned.

Fees for witnesses; forfeiture of deposit

16 (1) A witness for the Crown at any inquest under this Act shall be entitled to receive out of the Consolidated Fund, upon the certificate of the Provost Marshal General, a sum equal to the allowance such a witness would receive if attending a civil suit in the Supreme Court.

(2) A person summoned to attend as a witness for any claimant at any inquest under this Act may, at the time of his attendance, apply to the Provost Marshal General for a direction that a sum equal to the allowance such a witness would receive if attending a civil suit in the Supreme Court be paid by the party at whose instance the summons is issued; and upon any such direction being given that sum shall constitute a debt owed by that party to that witness,

(3) The Governor may order a deposit made by any claimant under section 2, or such part thereof as the Governor sees fit, to be forfeit to the Crown.

Costs

17 Whenever any person prefers a petition to the Supreme Court under the Appropriation of Escheats Act 1870 [*title 8 item 102*], or traverses any finding under this Act, then the costs attending such proceedings shall be in the discretion of the Court and the Court shall have authority to tax and allow costs in such amount as seems to the Court reasonable and just, and if the Court certifies that any costs incurred by any person in prosecuting any such petition or traverse ought to be paid by the public then the costs shall be paid in such amount as the Court may allow in the same manner as is provided in the case of Crown actions by the Crown Causes Act 1951 [*title 8 item 101*].

SCHEDULES

FIRST SCHEDULE

FORMS

FORM A.

PRECEPT FOR SUMMONS OF JURY.

BERMUDA, or)
SOMERS ISLANDS.)

By the Provost Marshal
General of the said Islands.

To

This is to authorize and require you to summon six good and lawful persons of Bermuda to attend on [blank] the [blank] day of [blank]

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at [blank] o'clock [blank] noon, at the Court House in the City of Hamilton, then and there to inquire touching certain property to which our Sovereign [Lady] the [Queen] hath become entitled by way of Escheat as is alleged, and have you then and there the names of the said jurors and this Writ.

Dated this [blank] day of [blank] A.D. 19 [blank]

(Signed) J.H.T.,

Provost Marshal General.

FORM B.

SUMMONS FOR WITNESS.

BERMUDA, or)
SOMERS ISLANDS.)

To _____, a police
officer.

These are to authorize and require you to summon [blank] to be and appear as [blank] witness at the Court House in the City of Hamilton on [blank] the [blank] day of [blank] at [blank] o'clock [blank] noon, to testify to [blank] knowledge in an inquiry touching a certain Escheat to our Sovereign [Lady] the [Queen] in accordance with. the Escheats Act 1871, and hereof you are to make return at the time and place aforesaid.

Dated this [blank] day of [blank] 19 [blank]

(Signed) J.H.T.,

Provost Marshal General.

FORM C.

WARRANT FOR WITNESS.

When a warrant is issued it is to be in Form B in this Schedule, but substituting the words "apprehend the body of" for the word "summon".

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died intestate and without leaving heirs or next of kin and if so whether he left any and if any, what real and personal estate in Bermuda, and if he left any such estate whether the same has become the property of our said Lady the Queen [or Lord the King] by way of escheat, upon their oaths do say that the said [blank] died intestate on or about [blank] without leaving any heirs or next of kin, and that at the time of decease he was seized or possessed in his own right of [*here set forth the particulars and nature of the deceased person's title and the description and value of the property real and personal found to have escheated, but where the description of the property would run into an inconvenient length it may be set forth in a schedule referred to in the inquisition and annexed thereto under seal and signed by the Provost Marshal General and jurors at the same time as the inquisition is signed*] and we find that the said property has by reason of the premises become the property of our Sovereign Lady the Queen [or Lord the King] by way of escheat [or as the case may be].

IN WITNESS WHEREOF the said Provost Marshal General and jurors respectively have hereunto set their hands and seals this [blank] day of [blank] 19 [blank].

(Signed) J.H.T.,
Provost Marshal General (L.S.)
A.B. (L.S.)
C.D. (L.S.)
E.F. (L.S.)
G.H. (L.S.)
I.J. (L.S.)
K.L. (L.S.)

[Amended by

1951 : 78
1935 : 9
1949 : 26
1951 : 42
1951 : 58
1951 : 87
1951 : 93
1952 : 11
1961 : 1
1966 : 55
1966 : 185
1967 : 187
1969 : 182
1969 : 666
1971 : 83
1971 : 118