

This PUBLIC BILL originated in the LEGISLATIVE COUNCIL and having this day passed as now printed is transmitted to the HOUSE OF REPRESENTATIVES for their concurrence.

*Legislative Council Chamber
15th September, 1868.*

A BILL INTITLED

AN ACT to declare the Law and Practice in cases of Title.
Escheat.

WHEREAS it is expedient to declare the law and mode of procedure Preamble.
to be observed in cases of escheat :

BE IT THEREFORE ENACTED by the General Assembly of New Zealand in Parliament assembled and by the authority of the same as follows—

1. The Short Title of this Act shall be “The Escheat Act 1868 ” Short Title.
and it shall come into operation on the first day of December one thousand eight hundred and sixty-eight.

2. In all cases of escheat and in all cases of forfeiture to the Crown Ten persons to be summoned of whom six shall be sufficient to constitute a jury.
10 when a special inquest of office is required by law to find such forfeiture before the Crown can grant sell or otherwise dispose of such forfeiture an inquisition shall be taken before the Sheriff of the Sheriff's district in which the land or other property is situate and for such purposes on application by or on behalf of the Attorney-General a writ tested in the name of one of the Judges of the Supreme Court shall issue from
15 the Supreme Court directed to such Sheriff in the form set forth in the first Schedule to this Act and such 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
20 shall be sufficient and shall constitute a jury to inquire of such escheat or forfeiture.

3. It shall be lawful for such Sheriff to summon all such witnesses Witnesses to be summoned and their attendance enforced by warrant if necessary.
as he may consider necessary to attend at any such inquest and to enforce the attendance of such witnesses if necessary by warrant under
25 his hand directed to any police constable and such summons and warrant respectively may be in the form set forth in the second Schedule hereto and it shall also be lawful for such Sheriff to administer to the jury and witnesses the oaths severally in that behalf set forth in the third Schedule hereto and to adjourn the inquiry from day to day
30 if necessary until the conclusion thereof.

4. All inquests under this Act shall be holden at the principal town of the Province in which the land or other property is situate or Inquests where to be holden and notice

thereof shall be published.

if situate without any Province at such town as the Sheriff shall appoint and notice of the day and hour and also of the place of holding any such inquest shall be published in the Government *Gazette* or in such other manner as the Sheriff shall think fit 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. 5

Persons claiming title to premises to appear and support claim.

5. 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 Act. 10

Inquisition and finding of jury to be in form in the Schedule and to be returned into office of Supreme Court.

6. The form of inquisition and the finding of the jury on any such inquest shall be in the form set forth in the fourth Schedule hereto and shall be returned immediately thereafter under the signatures of the Sheriff and of the jurors respectively into the office of the Supreme Court in the Province or other district of the Colony in which the same has been held. 15

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

7. If the finding on any inquest under this Act shall be against the Crown it shall nevertheless be lawful for the Attorney-General to make or cause to be made 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 proceedings shall be had as are hereinbefore mentioned. 20

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.

8. If the finding on any inquest under this Act 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 six calendar months after such finding whereupon such proceedings shall be had for the trial of the said traverse before one of the Judges of the Supreme Court and any jury summoned for trial of causes in the said Court and under such rules as shall be framed by the Judges of the said Court or any two or more of them in that behalf and the said Judges or any two or more of them shall have power from time to time to rescind add to or alter such rules and the finding of any such traverse by any such jury shall be deemed final and conclusive. 25 30 35

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.

9. After the finding on any inquest in favour of the Crown if no traverse shall be filed and copy thereof served within six 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 if directed by the Governor so to do to sell or seize if the property escheated or forfeited shall not have been already seized and sold and the proceeds thereof after payment of all fees and lawful expenses thereof shall so long as the casual revenue of the Crown in New Zealand is placed at the disposal of the Government or Legislature of New Zealand be paid to the Public Account to the credit of the Consolidated Fund or if such casual revenue shall not for the time being be placed at such disposal as aforesaid then as Her Majesty shall direct. 40 45 50

Governor empowered to grant escheated lands.

10. When Her Majesty has become or may hereafter become entitled to any lands by escheat and such title has been found by inquest as aforesaid or otherwise appears of record in the Supreme Court if the Governor thinks fit so to do the Governor may grant such lands or any part thereof in fee-simple or for any less estate to any person for the purpose of restoring the same to any of the family of the person whose estate the same had been or of carrying into effect any intended grant conveyance or devise of such last-mentioned person in relation thereto or of rewarding any person making discovery of such escheat or of Her Majesty's right and title thereto and every 55 60

such grant heretofore made shall anything in any Act to the contrary notwithstanding be valid and effectual as well against Her Majesty as against all other persons.

11. There shall be payable to the Sheriff and Attorney-General respectively for any acts or proceedings done under this Act such fees as shall be from time to time fixed by rules of Court to be made from time to time by the Judges of the Supreme Court or any two or more of them and for all proceedings under this Act there shall be payable such costs charges and fees as are for the time being payable in respect of proceedings of a similar nature in the Supreme Court.

Fees to be taken.

FIRST SCHEDULE.

Schedules.

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 _____ 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 Act 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 enquiry 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 indorsed on the _____ day of _____ next.

Witness [name of Judge] at _____ the _____ day of _____ in the year of our Lord _____

SECOND SCHEDULE.

FORM OF SUMMONS.

New Zealand.

To _____ or any other Police Constable.

THESE are to authorize 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 [or forfeiture] 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.

Sheriff.

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

THIRD SCHEDULE.

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.

FOURTH SCHEDULE.

FORM OF INQUISITION.

New Zealand }
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 [state alleged cause of escheat] as is alleged upon the oath of [here set forth the names of the six jurors impanelled] good and lawful men of the said Colony who being duly sworn and charged to make inquiry in the premises upon their oaths say that the said C.D. did [state cause of escheat] 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 estate if any] and that the same hath thereupon become the property of our Sovereign Lady the Queen by way of escheat [or forfeiture].

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.