

writ shall be made returnable, at the option of the attorney-general, either at the next term thereafter of the court of errors and appeals, or within ten days after the teste of the writ; and in all such cases the attorney-general may assign and file errors and serve a copy thereof on the defendant in error or his attorney within ten days after the return of the writ, and the defendant shall join in error within ten days after service as aforesaid of a copy of the assignments of error, and in default thereof the cause shall be set down to be heard *ex parte*.

Argument at special term of court of errors and appeals.

**22. SEC. 2.** That when the attorney-general shall elect to make such writ of error returnable within ten days from the date of its teste, the cause shall come on for argument without further notice at a special term of the court of errors and appeals, to be appointed by the presiding judge of said court upon the application of the attorney-general without notice to the defendant; said special term to be held not more than twenty days from and after the time herein fixed for the filing of the joinder in error.

Attorney-general may employ assistant counsel.

**23. SEC. 3.** That the attorney-general shall, with the approval of the governor and the comptroller, have power to employ such assistant counsel and to incur such other expense for printing and otherwise, as may be necessary to protect and properly defend the interests of the state; and such assistants shall be paid such compensation for their services as may be approved by the governor, the attorney-general and the comptroller.

Compensation of assistants.

#### Supplement.

Passed May 24, 1894.

P. L. 1894, p. 491.

Writ shall not lie in contested election cases.

**24. SEC. 1.** That no writ of error shall be brought or lie to reverse any judgment of the supreme court rendered on any appeal heretofore taken or hereafter to be taken to said supreme court from the judgment of any circuit court in any case of contested election.

Act repealed.

**25. SEC. 2.** That the act entitled "A supplement to an act entitled 'An act respecting writs of error' [Revision], approved March twenty-seventh, anno domini one thousand eight hundred and seventy-four," which supplement was approved March fourth, one thousand eight hundred and ninety-one [P. L. 1891, p. 77], be and the same is hereby repealed.

### Escheats.

Attorney-general to issue writ, and form of it.  
 2. To cause notice thereof to be advertised.  
 3. To serve notice on tenants, &c. To make conveyances.

4. Amended by section 6.  
 5. Injunction to restrain waste.  
 6. Expenses of proceedings and debts, how paid.

Har. 176.

R. S. 342.

Attorney-general to cause a writ to issue.

#### An act concerning escheats.

Passed February 27, 1828.

**1.** That whenever the attorney general shall be informed, or shall have reason to suppose, that any person hath died seized of any real estate within this state, without making any devise thereof, and leaving no heirs capable of inheriting the same, (a) he shall cause a writ to be issued out of the court of chancery, and directed to the sheriff of any county in this state, in the form following: "The state of New Jersey to the sheriff of the county of \_\_\_\_\_ greeting: Because we are informed that \_\_\_\_\_ died seized of divers lands, tenements and hereditaments in our county of \_\_\_\_\_, without making any devise thereof, and leaving no heir capable of inheriting the same; we command you, that, by the oath of twelve good and lawful men in your county, you diligently inquire what lands, tenements and hereditaments the said \_\_\_\_\_ was seized of at the time of his death, if any; and what estate of inheritance, and when he died, and whether he

Inquisition to be made.

(a) The real estate of a person dying intestate, and leaving no heirs capable of inheriting the same, escheats to and vests in the state at the instant of his death. *O'Hanlin v. Den, Spen. 31, 1 Zab. 582.* Land which has escheated may be granted by the state by a private act passed before any proceedings in

escheat. *Coigan v. McKeon, 4 Zab. 566.* After the state in proceedings in escheat has acknowledged a certain person as heir-at-law, he cannot proceed with the escheat in the name of the state for his own benefit. *State v. Engle, 1 Zab. 348.*

made any, and what, devise thereof, and whether he left any heir, and, if he did, who is his heir, and what is the clear yearly value of such lands, tenements and hereditaments; and the inquisition which you shall take thereof, do you send, under your seal and the seals of those by whose oaths you take the same inquisition, before us, in our court of chancery, without delay, together with this writ."

2. That it shall be the duty of the attorney-general, in every case where an inquisition shall be taken pursuant to this act, to cause notice to be given thereof, in one of the newspapers printed at Trenton, in this state, [in one of the newspapers printed at the city of Washington and in one of the newspapers printed in the city of New York], for the space of six months successively, requiring the persons claiming any interest in the lands described in such inquisition, to appear and traverse the said inquisition, within twenty days after the expiration of the time limited in the said notice; and further, that no judgment shall be given upon the said inquisition, until after the expiration of said twenty days.

3. That in all cases in which any such inquisition shall be taken, if the real estate to be affected thereby, shall be possessed by any person residing on, or improving the same, it shall be the duty of the attorney-general to cause notice of such inquisition to be served on each of the tenants occupying such real estate, at least forty days before any judgment shall be entered on such inquisition, which notice shall set forth the taking of such inquisition, and that judgment will be rendered thereon at the time limited in such notice, unless such tenants shall appear and traverse the same; and if any of the occupants above mentioned, or any other person aggrieved thereby, shall traverse the inquisition taken on the writ by this act directed to be issued, and if any issue shall be joined thereupon, the record thereof shall be sent into the supreme court, who shall direct the same to be tried at the next or any subsequent circuit court to be held in and for the county in which the lands affected thereby, are situate; and on such trial, it shall be incumbent on the prosecution in behalf of this state, to prove all such matters as are requisite in judgment of law, to establish any such escheat, without prejudice to the defendant, from the finding of the inquest in any such case; and if the judgment shall be given thereupon for this state, then a writ shall be issued out of the same supreme court, to the sheriff of the same county, commanding him to seize and take the lands, tenements and hereditaments, whereof the person named in such inquisition shall be found to have died seized, as aforesaid, into his hands; but if no such traverse shall be taken to such inquisition, before the end of the term next after the time limited in the second section of this act, then such writ shall immediately thereafter be issued out of the court of chancery, commanding the sheriff to seize and take the same lands, tenements and hereditaments; and upon the return of such writ of seizure, the attorney-general shall cause the record and proceedings to be exemplified under the seal of the court out of which the same writs of seizure issued, and deposit such exemplification in the office of the secretary of this state; and the treasurer of this state shall thereupon cause the said lands, tenements and hereditaments to be sold at public vendue; and he shall give at least six weeks' previous notice of the time and place of such sale, by publishing the same in one of the newspapers printed at Trenton, in this state, and also in three of the most public places of the county where the said lands, tenements and hereditaments shall lie, for the term of four weeks next preceding the time of such sale; which sale, however, shall be subject to adjournment by the treasurer for any time, in the whole, not exceeding two months; and the treasurer shall, upon such sale, give the purchaser a certificate containing the name of the purchaser, and a description of the bounds of the lands, tenements and hereditaments purchased, and the price to be paid for the same; and the purchaser shall thereupon, and within thirty days thereafter, pay to the treasurer of this state the sum mentioned in such certificate; and the treasurer shall thereupon indorse a receipt for the same upon such certificate, and, upon producing the same certificate and receipt to the attorney-general, he shall

To cause notice thereof to be advertised.

[Repealed March 15, 1859, P. L. 1859, p. 380.]

Further proceedings.

Writ to issue.

Record and proceedings to be exemplified, and filed in the office of secretary of state.

Treasurer authorized and directed to advertise and make sale of the lands.

Attorney-general to make conveyances.

make, execute and deliver, in the name of this state, a deed to such purchaser for the lands, tenements and hereditaments in the same certificate mentioned, granting and conveying an estate of inheritance in the said lands, tenements and hereditaments to such purchaser, and to his heirs and assigns forever; and, upon the production of such deed to the sheriff, he shall deliver the possession of the said lands, tenements and hereditaments to the purchaser thereof.

4. [Amended by Sec. 6, *post.*]

Injunction to  
restrain waste, &c.

5. That it shall be the duty of the attorney-general, in case of any waste done or committed on any lands, tenements and hereditaments which have escheated or may escheat to this state, to apply to the court of chancery for an injunction to restrain all such waste; and further, that the person or persons committing any such waste or other trespass upon such property, shall be liable in damages for the same, to be sued for and recovered, in the name of the state, by action of trespass, in any court having cognizance thereof.

#### Supplement.

Passed June 1, 1886.

P. L. 1886, p. 394.

6. SEC. 1. That section four of the act to which this is a supplement be amended so as to read as follows:

Expenses of pro  
ceedings and  
debts, how paid.

[That jurors and witnesses in every case of escheat shall be entitled to the like compensation as is authorized by law for attending in causes commenced in the supreme court; and that the expenses of conducting the said proceedings shall be made out by the treasurer, and, when approved of by the comptroller, shall be paid by him; and any person or persons who have any claim or claims against the estate of any such intestate whose lands have so escheated to the state, may give notice thereof, under oath, to the treasurer of the state, who thereupon shall hold any moneys which may or shall come into his hands, derived from the sale of any lands of such intestate against whose estate claims have been filed with the treasurer, and whose lands have so escheated, for the space of one year, and no claim shall be received by the treasurer which shall not be filed with him within the year aforesaid; and when such claims shall be proven to the satisfaction of the treasurer and audited by the comptroller, they shall be paid by the treasurer; *provided*, said estate shall not prove to be insolvent, in which case the treasurer shall be empowered to pay the claims against said estate ratably.]

Proviso.

## Evidence.

### I. WITNESSES.

#### 1. COMPETENCY AND EXAMINATION OF.

1. Not disqualified by conviction of crime.
2. Party may be called by adverse party, when.
3. Interest no disqualification.
4. Party in a representative capacity.
5. Husband and wife competent.
6. Complainant competent to disprove answer.
7. Person whose name is forged competent.
8. Person indicted may testify.
9. Interest or conviction of crime may be proved by witness.
10. Witness, when excused from answering.
11. Testimony of parties may be taken by deposition.
12. Testimony of a deceased party at a former trial.

#### 2. PROCESS FOR. PRIVILEGE.

13. Process. Penalty for disobeying.
14. Subpoena to run into every county.
15. Privilege from arrest.

### II. EVIDENCE IN PARTICULAR CASES.

16. Fraud in consideration pleadable.
17. Non-summmons may be shown in action on foreign judgment.
18. Omission to plead *plene administravit*.

19. Comparison of handwriting.
20. Certificate of notary when conclusive; how disputed.
21. In prosecution for libel, truth may be given in evidence.
22. Statutes of other states.
23. Reports of other states.

### III. INSPECTION OF PROPERTY.

24. Inspection of premises or chattels.

### IV. DEPOSITIONS.

#### 1. OF WITNESSES WITHIN THIS STATE.

25. May be taken before certain officers.
26. Witness compelled to appear.
27. How taken and filed.
28. Oath of person transmitting.

#### 2. OF WITNESSES OUT OF THE STATE.

29. Commission, when and by whom issued.
30. Names of witnesses to be inserted; interrogatories.
31. Notice of application for, how served.
32. Commission on short notice.
33. Oath of commissioner.
34. How examination taken.
35. How commission returned.