

Question 22. Property and Escheat

"By the law of England, before the Declaration of Independence, the lands of a man dying intestate and without lawful heirs reverted by escheat to the king as the sovereign lord; but the king's title was not complete without an actual entry upon the land, or judicial proceedings to ascertain the want of heirs and devisees. *Attorney General v. Mercer*, 8 App. Cas. 767, 772; 2 Bl. Comm. 245. The usual form of proceeding for this purpose was by an inquisition or inquest of office before a jury, which was had upon a commission out of the court of chancery, but was really a proceeding at common law; and, if it resulted in favor of the king, then, by virtue of ancient statutes, any one claiming title in the lands might by leave of that court, file a traverse, in the nature of a plea or defense to the king's claim, and not in the nature of an original suit. Lord Somers, in *The Bankers' Case*, 14 How. State Tr. 1, 83; *Ex parte Webster*, 6 Ves. 809; *Ex parte Gwydir*, 4 Madd. 281; *In re Parry*, L. R. 2 Eq. 95; *People v. Cutting*, 3 Johns. 1; *Briggs v. Light-Boats*, 11 Allen, 157, 172. The inquest of office was a proceeding in rem. When there was a proper office found for the king, that was notice to all persons who had claims to come in and assert them, and, until so traversed, it was conclusive in the king's favor. Bayley, J., in *Doe v. Redfern*, 12 East, 96, 103; 16 Vin. Abr. 86, pl. 1.....By the constitution of 1836 of the republic of Texas (article 4, 13), it was provided that the legislature should, 'as early as practicable, introduce, by statute, the common law of England, with such modifications as our circumstances, in [161 U.S. 256, 264] their judgment, may require.' 2 Chart. & Const. 1757. And by the statutes of Texas, from the time of its existence as an independent republic, the common law of England, so far as not inconsistent with the constitution and laws of Texas, has been declared to be, together with such constitution and laws, the rule of decision, and to continue in force until altered or repealed by the legislature. *Tex. St. Jan. 20, 1840*; *Pasch. Dig. (4th Ed.) art 978*; *Rev. St. 1879, 3128*; *Courand v. Vollmer*, 31 Tex. 397; *Barrett v. Kelly*, Id. 476.

By the constitution of the state of Texas of 1845, it was provided, in article 4, 10, that the district court should have original jurisdiction 'of all suits in behalf of the state to recover penalties, forfeitures and escheats'; and in article 13, 4, as follows: 'All fines, penalties, forfeitures and escheats which have accrued to the republic of Texas under the constitution and laws shall accrue to the state of Texas; and the legislature shall by law provide a method for determining what lands may have been forfeited or escheated.' 2 Chart. Const. 1773, 1781.'The object of such a proceeding is not simply to have a decree declaring the escheat, and vesting the title in the state, but, by and through process to be issued under the judgment, to divest, not only the title of persons entitled to take the property of the deceased as his heirs, if perchance any such there be, but also, by a sale, to divest the title of the state, and to start, and confer upon the purchaser, a new title, deraigned directly from the sovereign of the soil. *Rev. St. 1777-1780....*" *HAMILTON v. BROWN*, 161 U.S. 256 (1896)