

### 3 RELATIVE CATEGORIES FOR ADVANCED EQUITY TUTORIAL EPISODE 1

1. Perfection of Interests
2. Conveyance
3. Subrogation/Exoneration

Section 1, and in respect to Perfection of interest, it is important to Note:

#### TO WHAT EXTENT THE COURT ACTS ON PRESUMPTION

1. The Court will not *of itself* presume a party to have a better title, or better claims for *equity*, than the pleadings of the party himself disclose. Therefore, if relief be sought as *Heir*, it is necessary to show sufficient facts by statement to demonstrate the plaintiff to be *Heir*, and not merely a descendant or a son; and also to show by statement in the Bill sufficient facts to manifest *equity* sufficient to warrant such relief being granted to him as he claims as heir by the Bill.

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2. The Court of itself will not presume that a fact which has been proved to have occurred or to exist, has ceased to be in existence, or has become more injurious, unless proved to be so by proper evidence.

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3. Therefore it is necessary to state in the Bill each important fact depending on provable circumstances; for, being of importance to the plaintiff's case, and not undeniably certain in its existence, it will not be presumed.

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The Court *of itself* will presume such consequences to have happened or to exist as are not provable facts, but are dependent wholly for their existence on the logical reasoning of the Law, or Equity, from the facts actually established in the case.

For instance, the Court, on sufficient facts being established in the case, will presume, as a consequence from such facts, That **A** ought to -----, is entitled to -----, may -----, is in fault as to -----, should -----, must not -----, because such a

writing as -----, is a -----, and imports -----, and therefore is an absurdity in law, and is also uncertain, illegal; therefore, **B** is to have -----, and is entitled to possession of -----.

4. The Court *of itself* will never presume that A has possession, however many collateral facts may be established, which together almost manifest to a certainty that A, as a consequence, *has possession*; because, whether A *has possession* or not, is a provable fact, directly provable; and to assume, therefore, that he has possession, were arbitrarily to supply facts by giving evidence as if a witness, and perhaps as a false witness.

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5. The Court *of itself* will presume that each party knows the *law*, and what is *equity*, if not shown to be an infant, lunatic, or incapacitated person; but that each party is ignorant of a fact till such fact is shown to be his own act, or part of his proper duty, or that he had afforded him proper opportunity for taking *notice of such fact*.

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COMMON FORMS AND RULES  
ORIGINAL BILL IN CHANCERY  
BY GEORGE FARREN, ESQ.,j  
E.B MYERS AND CHANDLER  
CHICAGO 1866

Section 2, and in respect to Conveyance of interest, it is important to Note:

THE VACANT PROPERTY ACT  
C.C.S.M. c V10

### **Personal property deposited or held in trust**

1 All personal property, including money or securities for money, deposited with or held in trust by any person in the province, which remains unclaimed by the person entitled thereto for 12 years from the time when that property, money, or securities were first payable, notwithstanding that the deposittee or trustee has delivered or paid or transferred that personal property, money or securities to any other person or official within or without the province as deposittee or trustee, vests in, and is payable to, Her Majesty in right of the Province of Manitoba subject only to Her Majesty's

pleasure with respect to any claim thereafter made by any person claiming to be entitled to that property, money or securities.

### **Escheats Act to apply**

2 The property set out in section 1 is subject to the application of *The Escheats Act*

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## THE ESCHEATS ACT

C.C.S.M. c E140

### **Minister of Justice may take possession of forfeited property**

1 Where any lands, tenements, or hereditaments, have escheated to the Crown by reason of the person last seized thereof, or entitled thereto having died intestate and without lawful heirs, or by reason of the failure of heirs, or a failure in the devises or bequests in any will, or when property of any kind has become forfeited for any cause to the Crown, the Minister of Justice may cause possession thereof to be taken in the name of the Crown; and, if possession is withheld, he may cause an action to be brought for the recovery thereof without an inquisition being first made.

### **Proceedings**

2 The proceedings in the action may be in all respects similar to those in other actions for the recovery of land.

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### **L.G. in C. may make grants**

3 The government, if authorized by an order of the Lieutenant Governor in Council, may make any grant of lands, tenements, or hereditaments, that have so escheated or become forfeited, or at any time so escheat or become forfeited, for any cause except crime, or of any portion thereof, or of any interest therein, to any person, for the purpose of transferring or restoring them to any person having a legal or moral claim upon the person to whom they had belonged, or of carrying into effect any disposition thereof that that person may have contemplated, or of rewarding any person making discovery of the escheat or forfeiture, as to the Lieutenant Governor in Council may seem meet.

### **Without entry or prior inquisition**

4 Any such Grant may be made without actual entry or inquisition being first necessary, and although the lands, tenements, or hereditaments, are not in actual

possession of the Crown, and notwithstanding that some person claims title thereto adversely to the person whose estate they had been; and if possession of the lands, tenements, or hereditaments, is withheld, the person to whom the grant is made is thereupon entitled to institute in any court of competent jurisdiction proceedings for the recovery of the lands, tenements, or hereditaments.

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#### **L.G. in C. may release or waive**

5 Where a forfeiture takes place of any lands, tenements, or hereditaments, or any interest therein, as aforesaid, the Lieutenant Governor in Council may waive or release any right to which the Crown may thereby have become entitled, so as, by the waiver or release, to vest the property, either absolutely or otherwise, in the persons who would have been entitled thereto but for the forfeiture; and the waiver or release may be either for valuable consideration or otherwise, and may be upon such terms and conditions as to the Lieutenant Governor in Council may seem fit.

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#### **Assign personal property**

6 The government, if authorized by an order of the Lieutenant Governor in Council, may make an assignment of personal property to which the Crown is entitled by reason of the person last entitled thereto having died intestate and without leaving any kin or other persons entitled to succeed thereto, or by reason of having become forfeited to the Crown for any cause except for crime; or, if so authorized, the government may make an assignment of any portion of such personal property, for the purpose of transferring or restoring it to any person having a legal or moral claim upon the person to whom it had belonged, or for carrying into effect any disposition thereof that that person may have contemplated, or of rewarding the person making the discovery of the right of the Crown to the property, as to the Lieutenant Governor in Council may seem meet.

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#### **Minister of Finance may administer estate**

7 The Minister of Finance may administer the estate of any deceased person whose property has been escheated or been forfeited to the Crown.

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Meaning of: Escheated- (Law) (in England before 1926) the reversion of property to the Crown in the absence of legal heirs.

Escheat, The power of a state to acquire title to property for which there is no owner.

Meaning of: Issuer (a) with respect to a registration of a transfer of a security, means a person on whose behalf transfer books are maintained; and (b) the person's duty to perform an obligation represented by the security certificate.

## **Merger**

**14**

There is no merger by operation of law only of any estate the beneficial interest in which would not be deemed to be merged or extinguished in equity.

## **Land to be dealt with in the same way as chattels real**

17.3(4)

Subject to section 36 of *The Wills Act*, all enactments and rules of law relating to the effect of probate or letters of administration respecting chattels real, respecting the dealing with chattels real before probate or administration, and respecting the payment of costs of administration and other matters in relation to the administration of personal estate, and the powers, rights, duties, and liabilities of the personal representative in respect of personal estate, apply to land, so far as they are applicable, as if the land were a chattel real vesting in the personal representative, except that some or one only of several joint personal representatives shall not sell or transfer land without the approval of a judge of the Court of Queen's Bench.

## **Order for execution of conveyance or transfer**

22(1)

Where partition or sale is ordered, the court may order the execution of a conveyance, transfer or other document by all the proper parties thereto to give effect to the sale or partition of the land.

## **Delivery of uncertificated security**

68(2)

Delivery of an uncertificated security to a purchaser occurs when

(a) the issuer registers the purchaser as the registered owner, on the original issue or the registration of transfer; or

(b) another person, other than a securities intermediary, either

(i) becomes the registered owner of the uncertificated security on behalf of the purchaser, or

(ii) having previously become the registered owner, acknowledges that the person holds the uncertificated security for the purchaser.

## **Rights of purchaser**

### 69(1)

Except as otherwise provided in subsections (2) and (3), a purchaser of a certificated or uncertificated security acquires all rights in the security that the transferor had or had power to transfer.

## **PART 5**

### **REGISTRATION**

#### **Duty of issuer to register transfer**

### 86(1)

If a certificated security in registered form is presented to an issuer with a request to register a transfer of the certificated security or an instruction is presented to an issuer with a request to register a transfer of an uncertificated security, the issuer must register the transfer as requested if

(a) under the terms of the security, the proposed transferee is eligible to have the security registered in that person's name;

(b) the endorsement or instruction is made by the appropriate person or by an agent who has actual authority to act on behalf of the appropriate person;

(c) reasonable assurance is given that the endorsement or instruction is genuine and authorized;

#### **Liability of issuer**

86(2)

If, under subsection (1), an issuer is under a duty to register a transfer of a security, the issuer is liable to a person presenting a certificated security or an instruction for registration, or to that person's principal, for any loss resulting from unreasonable delay in registration or the failure or refusal to register the transfer.

Section 3, and in respect to Subrogation/Exoneration, it is important to Note:

“That in all suits concerning real estate which is vested in trustees by devise, and such trustee(s) are competent to sell and give discharges for the proceeds of the sale, and for the rents and profits of the estate, such trustees shall represent the persons beneficially interested in the estate, or the proceeds, or the rents and profits, in the same manner and to the same extent as the executors or administrators in suits concerning personal estate represent the persons beneficially interested in such personal estate.”

“It is sufficient to bring before the Court the first person having a vested estate of inheritance.”

“Another instance of equity’s beneficial effect is the estate of the *cestui que use* (the person for whom a trustee holds), which is also repugnant to the principles of *law*.”

After a set of statements is finished which manifest an equity to plaintiff, it is advisable, at the end of each of such sets, to submit to the Court, as a statement, that such an equity does exist, and that the plaintiff is entitled to it, and that he now *claims* such equity.