Under this Act the Crown is to be treated as an individual and the rights of the Crown as the rights of individuals. The alleged possible right of the Crown is that John Irwin may have died intestate and without heirs. That right, if it exists, can as well be established now as later, because, to establish it, John Irwin must, in any possible view of the case, have died before the 2nd February, 1896.

The mortgage from James Raycraft to John Irwin is dated the 2nd February, 1877; the first instalment became due on the 2nd February, 1878. Assuming . . . that the payment to one William Kerr was a valid payment on the mortgage, then the next instalment fell due on the 2nd February, 1879. This was not paid, and nothing has been paid since, and John Irwin, so far as appears, has not been heard from or heard of as being alive since a date prior to the 2nd February, 1878.

If John Irwin was not in fact dead on the 2nd February, 1896 —putting that as the longest possible period required to bar him or his heirs, if any—there could be no claim on the part of the Crown to this land or the mortgage money. But the Crown's possible case is based upon the death of John Irwin on or prior to the 2nd February, 1885. . . . The Crown, in asserting a claim by escheat, cannot rely solely upon the presumption of Irwin's death. There is no presumption that he died on any particular day within the seven years, or that he died without heirs. The presumption would be that he left heirs. The presumption would be sufficient to establish death, but intestacy and death without leaving heirs would require to be proved.

Why is the Crown not as well able to establish that now, if a fact, as it may be at any time later, and, if not able, why should the Crown be in any other or better position under the Act than an individual?

It would not, as I view it, be any ground for an individual mortgagee to prove his claim in quieting title proceedings, that his mortgage, although past due, was not barred by the Statute of Limitations. An opportunity should be given to a person claiming to be a mortgagee to establish his right. . . . As the Crown was not in a position to assert its right, and did not, but merely suggested a possibility of being able to do so within sixty years from the time the cause of action arose to the Crown—that, in my opinion, will not do. . . .

There is another objection . . . . The Crown's right . . . arose upon Irwin's death. At that time the title to the mortgaged land was in the Crown, and on the 25th October, 1890, was granted under the great seal to James Raycraft, the