

BENGAL WILLS AND INTESTACY REGULATION, 1799

38 WILLS AND INTESTACY [1799 : Ben. Reg.5. BENGAL REGULATION 5 OF 1799 (THE BENGAL WILLS AND INTESTACY REGULATION, 1799) 1 [3rd May 1799] A Regulation to limit the interference of the Zila * Courts of Diwani Adalat in execution of wills and administration to the Estates of persons dying intestate. 1. Doubts having been entertained to what extent, and in Preamble. what manner, the Judge of the Zila * Courts of the Diwani Adalat in the Provinces of Bengal, Bihar, Orissa and Benares are authorised to interfere in cases wherein the inhabitants of the above Provinces may have left wills at their decease, and appointed executors to carry the same into effect, or may have died intestate leaving an Estate real or personal ; with a view to remove all doubts on the authority of the Zila Courts in such cases, and i SHORT TITLE.—This short title was given by the Amending Act, 1847 (V of 1847), since repealed. LOCAL EXTENT.—This Regulation was declared, by notifications under the Scheduled Districts Act, 1874 (XIV of 1874), section 3, to be in force in the following Districts namely (excluding Nonh Cachar Hills), Darrang, The Districts of Cachar Goalpara (excluding the Eastern Duars), Kamrup, Lakhimpur Nowgong, Sibsagar and Sylhet, vide Notification No. 713-L., dated 27th September, 1937. 2The words "and City" which were repealed by Amending Act, 1891 (XII of 1891), are omitted. The words "and Cky" which were repealed by the Repealing Act (XVI of 1874), are omitted. 1799: Ben. Reg.5.] WILLS AND INTESTACY 89 1 to apply thereto, as far as possible, the principle * * 1 that in suits regarding succession and inheritance the Muhammadan laws With respect to Muhammadans, and the Hindu laws with regard to Hindus, be the general rules for the guidance of the judges, the Vice-President in Council has passed the following regulation, to be considered in force from the period of its promulgation in the above Provinces respectively. '2, In all cases of a Hindu, Mussulman or other person Estates of subject to the jurisdiction of the Zila* courts, having at his Hind us , Mu ha m - death left a will and appointed an executor or executors to carry madang and the same into effect, and in which the heir to the deceased may others not not be a disqualified landholder subject to the superintendence being dis. of the Court of Wards* * * the executors so appointed are qual i fi e d to take charge of the Estate of the deceased, and proceed in the landholders• execution of their trust according to the will of the deceased and leaving will' the laws and usages of the country, without any application to the Judge of the Diwani Adalat or any other officer of [the Government]15 for his sanction ; and the Courts of Justice are prohibited to interfere in such cases , except on a regular complaint against the executors for a breach of trust or otherwise , when they are to take cognizance of such complaint in common with all others of a civil nature * * 2.3. In case of a Hindu, Mussulman, or other person subject Estates or to the jurisdiction of the Zila Courts, dying intestate, but persons ing intestate. leaving a son or other heir, who, by the laws of the country, may The word' and figures "prescribed in section 15 of Regulation I V, 1793, viz.,i which were repealed by the Repealing Act, 1874 (XVI of 1874), are omitted. So much of S'. 2 and 3 as restricts the interference of the Civil Courts in cases of inheritance by minors was repealed by Act XL of 185B (Minors). The words "and City" which were repealed by the Repealing Act, 1874 (XVI Of 1874), are omitted. The words and figures "under Regulation X, 1193, or any other Regulation relative to the jurisdiction of the Court of Wards" which were repealed partly by the Repealing Act, 1874 (XVI of 1874), and partly by the Amending Act, 1903 (I Of 1903), are omitted. The word "Government was substituted by the A. O. 1937 by the words • 'Cthe Crown" ; "Crown" again has been substituted by A. O. 1950. P' The test Of s. 2, which was repealed by Repealing Act, 1874 (XVI of 1874), is omitted. The words ' 'or City" which were repealed by the Repealing Act, 1874 (XVI of 1874), are omitted. 40 WILLS AND INTESTACY [1799 : Ben. Reg.S. entitled to succeed to the whole estate of the deceased, such heir, if of age and competent to take the possession and management of the Estate, or, if under age or incompetent and not under the Superintendence of the Court of Wards, his guardian or nearest of kin who by special appointment or by the law and usage of the country, may be authorized to act for him, is not required to apply to the Courts of Justice for permission to take possession of the Estate of the deceased as far as the same can be done without violence ; and the Courts of Justice are restricted from interference in such cases, except Justice are a regular complaint be preferred * * If there be more heirs than one to the person more heirs will be:xtc. and they can agree amongst in the than one to appointment of trustee, they are. a! Ilbe:uv to take Estate intestate. possession, and gift: C' .Justice are not to interfere, without

a regular cotnplaint, as in the case or a single heir ; I n what But if the right of succession to the. Estate be disputed between cases . Judge may aA)0int severai clai:nants, one or rnotr whom may have taken posses- for care and Sion, the Judge, on a regular suit being by the party adm i n i s- out of possession, shali take good and sufficient security IVorn the t ration pat" or parties in possession his or their compliance with the. management that may be passed in the suit ; or, in default of such of Estate of Itldgrnnt intestate. security being given within a reasonable period, may give posses- Sion, until the suit may be determined, to the other claimant or claimnats tuay bc able to give such security , declaring at the same time that such possession is not iii any degree to affect the right of property at issue between the parties, bul to be. merely as an administration to the Estate the benefit of the heirs who may on investigation be found entitled to succeed thereto. The words ' 'when they are to proceed thereupon according to the grnc- ral Regulations,' which w•re repealed by the Amending Act. '903 (I of 1903), are omitted. 1799: Ben Reg. 5 J WILLS AND INTESTACY 41 15. In the event of none of the claimants to the estate of a person dying intestate being able to give the security required by the preceding section, and in ail cases whercin there may be no person authorized and willing to take charge 01' the landed estate of a person cleccased, the judge within whose jurisdiction such estate nmay be situated (or in which the deceased may have resided, or the principal part of the estate may lie, in the events of its being situated within two or more jurisdictions) is autho- rized to appoint an administrator lbr the due care and manage- ment of such estate, until, in the former case, the suit depending between the several claimants shall have been determined, or in the latter case, until the legal heir to the estate, or other person entitled to receive charge thereof as executor, administrator or 01'herwise, shall Oftend and claim same ; when, if the judge be satisfied ihat tite claim is well founded, or if the same be established after any inquiry that may appear necessary, the administrator appo:nted by the Court shall deliver over the .inst account of all receipts and estate to him, with a and disbursements during the period oi lns administration. 16. in all instances of. an administrator bc ing appointed Security to be taken under this Regulation, ite is, previous to entering upon the execu- from and tion of his oiifice. to give gooci security io»r the lthtitl discharge allowances of his trust in a proportionate to the extent thereof ; and the paid to judge appointing is authorized to fix för hint (subject to the administra- tors. approbation 01' the Court of Sadar Diwani Adalat, to whom a report is to be in such instances) an acicquate personal allowance to be paid out of the proceeds oi tile estate. and to be a percentage thn eupon, after deducting the expenses of nianage— ment. Ss S and have been by the Bengal Attached Estates Manage- ment Regulation, IdZi (V Oi 1827), post. 42 WILLS AND INTESTACY [1799: Ben. Reg

5. Procedure in cases of per.sons dying intestate leaving per- sonal proper- ty to which, there is no claimant. Savin\$ of j urisdltctioo oi Court of W ards

7. The Judges of the Zila * * Courts, on receiving information that any person within their respective jurisdiction has died intestate leaving personal property, and that there is no claimant to such propel ty, are to adopt such measures as may be necessary for the temporary care Of the property, and to issue an advertisement in the current languages of the country requiring the heir 01' the deceased, or any person entitled to receive charge of his effects, to attend för this purpose. Such advertisement to be published on the spot where the property was fi:und, at the Diwani Adalat cutcherry of the zila * * L, and if ascertainable at the dwelling place of the deceased * * 2; after which, should any person attend and satisfy the judge of his title to the property, or to receive charge thereof as executor, administrator or otherwise, the same is to be delivered up to him, on repayment 01' any necessary expense incurred in the care of it. Should no claim be preiörred within the twelve months next ensuing, an inventory of the property and report of the circum- stances of the case is to be transmitted to LheÆ i Board of Reve- nue, or: in Assam, to the [state:] b Government its] orders

0. Nothing in this Regulation is to be understood to iimit or alter the jurisdiction oj the Court of Wards in the appoint- ment of managers or guardians iOr * * disqualified landholders, or in any case wherein a special power may be vested in the Court of Wards. 7 a T he words • •or City' • which were repealed by the Repealing Act, 1814 XVI of I BIA), are omitted. he words "or, if the deceased were an European, in the Calcutta Gazette" which were repealed by the Amending Act, 1903 (I of 1903), are omi t ted. These words were substituted by the Decentralization Act, 1914 (IV Of 1914), for the words ' 'l..ocal Government" for ' •its," which by the Amending Act, 1903 (I of 1903), Schedule 11, had been substituted for the words "Governor General in Council" for "his". The term "Local Government" was substituted by the term "Provincial Government" by the Adaptation Order, 1937. • For the present law as

to the Court of Wards in Assam, see the Court of Wards Act, 1879 (Ben. Act IX of 1879), post. The word "the" the words and figures "described in Regulation X, 1793," and the words "by the above or any other Regulation, respectively, which were repealed by the Repealing Act, 187L (XVI of 1879) are omitted. Substituted for the word "Provincial" by A. O. , 1900

