

The Bengal Wills and Intestacy Regulation, 1799

UTTAR PRADESH

India

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Act 5 of 1799

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The Bengal Wills and Intestacy Regulation, 1799(Bengal Regulation No. 5 of 1799)Short title given by Act V of 1897.[Passed by the Vice-President-in-Council on the 3rd May, 1799]A Regulation to limit the interference of the Zila [* * *] [The words 'and City' repealed by Act XII of 1891.] Courts of Diwani Adalat in the execution of wills and administration to the estates of persons dying intestate.

1. Preamble.

- Doubts having been entertained to what extent, and in what manner, the Judges of the Zila [* * *] [The words 'and City' repealed by Act XVI of 1874.] Courts of Diwani Adalat in the Provinces of Bengal, Bihar and Orissa and Benares are authorized 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 [* * *] [The words 'prescribed in Section 15 of Regulation IV, 1793, viz.' repealed by ibid.] courts in such cases, and to apply thereto, as far as possible, the principle [* * *] [The words 'prescribed in Section 15 of Regulation IV, 1793, viz.' repealed by ibid.] that in suits regarding succession and inheritance the Muhammadan laws with respect to Muhammadans, and the Hindu laws with regard to Hindus, by 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. [Estates of Hindus, Muhammadans and others not being disqualified landholders, leaving wills. [As much of Section 2 as restricted the interference of the Civil Court in cases of inheritance by minors repealed by Act XL of 1858.]

- In all cases of a Hindu, Musalman or other person subject to the jurisdiction of the Zila [* * *] Courts, having at his death left a will and appointed an executor or executors to carry the same into effect, and in which the heir to the deceased may not be a disqualified land-holder, subject to the

superintendence of the Court of Wards [* * *] [The words 'under any Reg. relative to the jurisdiction of the Court of Wards' repealed by Act 1 of 1908.] the executors so appointed are to take charge of the estate of the deceased, and proceed in the execution of their trust according to the will of the deceased and the laws and usages of the country, without any application to the Judge of the Diwani Adalat or any other officer of Government, for his sanction; and the Courts of Justice are prohibited to interfere in such case, 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 [* * *] [Last part of the section directing the Court how to proceed when a regular complaint is made before them, repealed by Act XVI of 1870.].]

3. [Estate of persons dying intestate. [As much of Section 4 restricting the interference of the Civil Courts in cases of inheritance by minors repealed by Act XL of 1858.]

- In case of a Hindu, Mussalman, or other person subject to the jurisdiction of the Zila [* * *] Courts, dying intestate, but leaving a son or other heir, who by the laws of the country may be 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 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 a regular complaint be preferred [* * *] [The words 'when they are to proceed thereupon according to the General Regs' repealed by Act I of 1903.].]

4. If there be more heirs than one to estate of intestate.

- If there be more heir than one to the estate of a person dying intestate, and they can agree amongst themselves in the appointment of a common manager, they are at liberty to take possession, and the Courts of Justice are restricted from interference, without a regular complaint, as in the case of a single heir. But if the right of succession to the estate be disputed between several claimants, one or more of whom may have taken possession, the Judge, on a regular suit being preferred by the party out of possession shall take good and sufficient security from the party or parties in possession for his or their compliance with the judgment that may be passed in the suit; or, in default of such security being given within a reasonable period, may give possession, until the suit may be determined, to the other claimant or claimants who may be able to give such security, declaring at the same time that such possession is not in any degree to affect the right of property at issue between the parties, but to be considered merely as an administration to the estate for the benefit of the heirs who may, on investigation, be found entitled to succeed thereto.[5. In what cases Judge may appoint administrator for care and management of estate of intestate. - 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 all cases wherein there may be no person authorized and willing to take charge of the landed estate of a person deceased, the Judge within whose jurisdiction such estate

may be situated (or in which the deceased may have resided, or the principal part of the estate may lie, in the event of its being situated within two or more jurisdictions) is authorized to appoint an administrator for the due care and management 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 otherwise, shall attend and claim the same; when, if the Judge be satisfied that the claim is well founded, or if the same be established after any inquiry that may appear necessary, the administrator appointed by the court shall deliver over the estate to him, with a full and just account of all receipts and disbursements during the period of his administration.

6. Security to be taken from, and allowances paid to, administrators.

- In all instances of an administrator being appointed under the Regulation, he is, previous to entering upon the execution of his office, to give good security for the faithful discharge of his trust in a sum proportionate to the extent thereof; and the Judge appointing him is authorized to fix for him (subject to the approbation of the Court of Sadar Diwani Adalat, to whom a report is to be made in such instances) an adequate personal allowance to be paid out of the proceeds of the estate, and to be a percentage thereupon, after deducting the expenses of management.] [Sections 5 and 6 are modified by the Bengal Attached Estates Management Reg, 1827 (V of 1827), supra.]

7. Procedure in cases of persons dying intestate, leaving personal property to which there is no claimant.

- The Judges of the Zila [* * *] [The words 'or City' repealed by Act XVI of 1874.] Courts, on receiving information that any person within their respective jurisdictions has died intestate, leaving personal property, and that there is no claimant to such property, 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 of the deceased, or any person entitled to receive charge of his effects, to attend for this purpose. Such advertisement to be published on the spot where the property was found, at the Diwani Adalat Kachahri of the Zila [* * *] [The words 'or City' repealed by Act XVI of 1874.] and, if ascertainable at the dwelling place of the deceased [* * *] [The words 'or, if the deceased were an a European, in the Calcutta Gazette' repealed by Act I of 1903, Section 4.]; 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 of any necessary expense incurred in the care of it. Should no claim be preferred within the twelve months next ensuing, an inventory of the property and report of circumstances of the case is to be transmitted to the [Commissioner] [The word 'Commissioner' Substituted for 'Board of Revenue' and the words 'for his or its orders' or 'for its orders' by U.P. Act XII of 1922, Section 2 and Schedule in the words as substituted by Part III of Schedule to Act IV of 1914.], or in Assam, to the [State Government] [Substituted by the A.L.O. 1950 for 'Provincial Government' which had been Substituted by the A.L.O. 1937 for 'L.G.'.], [for his or its order] [The word 'Commissioner' Substituted for 'Board of Revenue' and the words 'for his or its orders' or 'for its orders' by U.P. Act XII of 1922, Section 2 and Schedule in the words as substituted by Part III of Schedule to Act IV of 1914.].

8. Saving of jurisdiction of Court of Wards.

Nothing in this Regulation is to be understood to limit or alter the jurisdiction of the Courts of Wards in the appointment of managers or guardians for [* * *] [The word 'the' before 'disqualified', the words 'described in Regulation X. 1793', after 'landholders' and the words 'by the above or any other Regulation' at the end were repealed by Act XVI of 1874.] disqualified landholders, [* * *] [The word 'the' before 'disqualified', the words 'described in Regulation X. 1793', after 'landholders' and the words 'by the above or any other Regulation' at the end were repealed by Act XVI of 1874.] or in any case wherein a special power may be vested in the Court of Wards [* * *] [The word 'the' before 'disqualified', the words 'described in Regulation X. 1793', after 'landholders' and the words 'by the above or any other Regulation' at the end were repealed by Act XVI of 1874.]