

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
* *² Courts of *Diwani Adalat* in execution
of wills and administration to the Estates of
persons dying intestate.

Preamble. 1. Doubts having been entertained to what extent, and in what manner, the Judge of the Zila * *³ 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 * *³ Courts in such cases, and

¹ SHORT TITLE.—This short title was given by the Amending Act, 1897 (V of 1897), since repealed.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 :—

The Districts of Cachar (excluding North Cachar Hills), Darrang, 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²The words "and City" which were repealed by Amending Act, 1891 (XII of 1891), are omitted.

³ The words "and City" which were repealed by the Repealing Act 1874 (XVI of 1874), are omitted.

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.

²2. In all cases of a Hindu, Mussulman or other person subject to the jurisdiction of the Zila * * ³ 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 landholder subject to the superintendence of the Court of Wards * * * ⁴ 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 [the Government]⁵ 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 * * ⁶.

Estates of
Hindus,
Muham-
madans and
others not
being dis-
qualified
landholders.
leaving will.

³3. In case of a Hindu, Mussulman, or other person subject to the jurisdiction of the Zila * ⁷ Courts, dying intestate, but leaving a son or other heir, who, by the laws of the country, may

Estates of
persons dy-
ing intestate.

¹ The words and figures "prescribed in section 15 of Regulation IV, 1793, viz.," which were repealed by the Repealing Act, 1874 (XVI of 1874), are omitted.

² So much of ss. 2 and 3 as restricts the interference of the Civil Courts in cases of inheritance by minors was repealed by Act XL of 1858 (Minors).

³ The words "and City" which were repealed by the Repealing Act, 1874 (XVI of 1874), are omitted.

⁴ The words and figures "under Regulation X, 1793, 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.

⁵ The word "Government" was substituted by the A. O. 1937 by the words "the Crown"; "Crown" again has been substituted by A. O. 1950.

⁶ The rest of s. 2, which was repealed by the Repealing Act, 1874 (XVI of 1874), is omitted.

⁷ The words "or City" which were repealed by the Repealing Act, 1874 (XVI of 1874), are omitted.

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 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 a regular complaint be preferred * * * *1.

If there be more heirs than one to the Estate of an intestate.

4. If there be more heirs 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;

In what cases Judge may appoint for care and administration management of Estate of intestate.

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.

¹ The words "when they are to proceed thereupon according to the general Regulations," which were repealed by the Amending Act, 1903 (I of 1903), are omitted.

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 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 events 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.

16. In all instances of an administrator being appointed under this 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.

Security to be taken from and allowances paid to administrators.

¹ Ss 5 and 6 have been modified by the Bengal Attached Estates Management Regulation, 1827 (V of 1827), *post*.

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

7. The Judges of the Zila * * ¹ 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 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 cutcherry of the zila * * ¹, 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 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 the circumstances of the case is to be transmitted to the³ [Board of Revenue, or, in Assam, to the [state]⁴ Government for its] orders.

Saving of jurisdiction of Court of Wards.

8. Nothing in this Regulation is to be understood to limit or alter the jurisdiction of the Court of Wards ⁴ in the appointment of managers or guardians for * * ⁵ disqualified landholders, * * ⁶ or in any case wherein a special power may be vested in the Court of Wards. * * ⁷

¹The words "or City" which were repealed by the Repealing Act, 1874 (XVI of 1874), are omitted.

²The words "or, if the deceased were an European, in the Calcutta Gazette" which were repealed by the Amending Act, 1903 (I of 1903), are omitted.

³These words were substituted by the Decentralization Act, 1914 (IV of 1914), for the words "Local Government" for "its," which by the Amending Act, 1903 (I of 1903), Schedule II, 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.

⁴For the present law as to the Court of Wards in Assam, see the Court of Wards Act, 1879 (Ben. Act IX of 1879), *post*.

⁵ ⁶ ⁷The 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, 1874 (XVI of 1874) are omitted.

⁸Substituted for the word "Provincial" by A. O., 1950.