

Bill No. 24 of 1960

PUBLISHED 17TH SEPTEMBER, 1960.

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CIVIL LAW OF BRITISH GUIANA (AMENDMENT) BILL, 1960.

ARRANGEMENT OF SECTIONS.

Section

1. Short title.
2. Amendment of section 5 of Chapter 2.

A BILL

Intituled

AN ORDINANCE TO AMEND THE CIVIL LAW OF BRITISH GUIANA ORDINANCE WITH RESPECT TO PROPERTY FALLING TO THE CROWN UNDER AN INTESTACY.

Enacted by the Legislature of British Guiana:—

1. This Ordinance may be cited as the Civil Law of British Guiana (Amendment) Ordinance, 1960, and shall be construed and read with the Civil Law of British Guiana Ordinance, hereinafter referred to as the Principal Ordinance.

Short title.
Cap. 2.

2.(1) Section 5 of the Principal Ordinance is hereby amended by the repeal of subsection (6) and the substitution therefor of the following subsection—

Amendment
of section 5
of Chapter 2.

“(6) (a) In the absence of all blood relations, including all persons entitled to succeed to the estate of a deceased person under the provisions of section 11 of the Legitimacy Ordinance and in the absence of a surviving wife or husband of a deceased person, his residuary estate shall belong to the Crown as *bona vacantia* and in lieu of any right to escheat.

Cap. 165.

(b) The Governor may, at any time, in the name of the Crown, out of the whole or any part of the property devolving on the Crown as aforesaid, provide for —

- (i) dependants, whether kindred or not, of the intestate;
- (ii) persons other than dependants for whom the intestate might reasonably have been expected to make provision; and
- (iii) other persons who would have succeeded to the estate of the deceased but for their own, or their ancestors', or the deceased's illegitimacy.

(c) The personal representative of a deceased person may, before transferring any property to the Crown as *bona vacantia*, publish a notice in the Gazette and in a daily newspaper circulating in the district or county in which the deceased ordinarily resided, calling on all persons desiring to claim any of the property to lodge their claim with the personal representative within three months from the date of the publication of the notice in the Gazette.

(d) The personal representative of a deceased person may, before transferring any property to the Crown as *bona vacantia*, apply to the Court for the opinion, advice or direction of the Court on any question respecting the ascertainment of any claim to any property of the deceased or the transfer of such property to the Crown.

(e) The personal representative of a deceased person who, before transferring any property to the Crown as *bona vacantia*, publishes notices in accordance with the provisions of paragraph (c) of this subsection and acts in accordance with any opinion, advice or direction of the Court, shall be deemed, so far as regards his own responsibility, to have discharged his obligations and his duty as personal representative in the subject matter of the application:

Provided that the provisions of this paragraph shall not extend to indemnify any personal representative in respect of any act done in accordance with the opinion, advice or

direction of the Court, if he has been guilty of any fraud or wilful concealment or misrepresentation in obtaining that opinion, advice or direction.

(f) No proceedings may be brought against the Crown in respect of any property disposed of in pursuance of the provisions of paragraph (b) of this subsection.

(g) In this subsection the expression "personal representative of a deceased person" includes the Public Trustee acting in the capacity of a personal representative with respect to any intestacy, and the provisions of section 13 of the Public Trustee Ordinance shall have no application to monies received by the Public Trustee acting as aforesaid."

Cap. 48.

(2) Nothing in this Ordinance shall affect the validity of anything done or omitted to be done prior to its commencement in pursuance of the provisions of subsection (6) of section 5 of the Principal Ordinance then in operation.

OBJECTS AND REASONS

Section 5(6) of the Civil Law of British Guiana Ordinance, Chapter 2, provides that where a person dies intestate and there is no surviving husband or wife or other legitimate heirs, his estate falls to the Crown. In such a case, however, there is power in the Crown to forego the whole or part of the escheated estate which may then be distributed to persons who would have succeeded under the rules of intestacy but for their own or the deceased's illegitimacy.

2. The Public Trustee administers vacant estates and as he is precluded from handing over any property that comes into his hands for 5 years, it means that the distribution of escheated estates cannot be made until that period has elapsed. Cases have arisen in which considerable hardship is suffered by needy persons who should receive a distribution of property in these circumstances but are not able to do so until the five-year period has elapsed. Other cases have arisen where it would be equitable to distribute an escheated estate to persons who were dependants of a deceased intestate although they do not fall within the category of those to whom such an estate can be distributed under the present law.

3. The corresponding laws of Jamaica and British Honduras which are based on the law of the United Kingdom provide that when property devolves on the Crown for want of heirs it may be distributed in whole or part to dependants, whether kindred or not, of the intestate or other persons for whom the intestate might reasonably have been expected to make provision.

4. The Bill seeks to widen the power to distribute an escheated estate to include this wider category of persons who may be considered to have a moral claim to the property. The opportunity is also taken to provide that the obligation on the Public Trustee not to distribute unclaimed property in his hands for a period of 5 years shall not apply to escheated estates so that distribution can be made to deserving and needy cases as soon as possible after the estate has been administered.

5. In order to provide every possible opportunity for a claimant to an intestate estate to lodge his claim before it is distributed, provision is made for the publication of a notice calling on all persons desiring to claim any of the property to lodge their claim within 3 months. In addition, there is power for the personal representative of the deceased (which in certain cases may mean the Public Trustee) to apply to the Court for a direction as to the administration of the property. If no claims are received to a vacant estate and the Court directs or gives an opinion that the personal representative may hand over the unclaimed estate to the Crown and the Crown subsequently distributes all or part of the estate to dependants or others who have a moral claim to it, no action can be brought against the Crown by any person who subsequently claims the property. On the other hand such late claimants are not denied the right to claim and they may do so from the persons to whom the property has been distributed by the Crown.

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(M.P. L. 94/12).
(Leg. Bill 24/1960).