

CHAPTER VII

AFFIDAVITS

1. (1) The heading of every affidavit to be used in a Court of Justice shall be “In the Court of at “, naming such Court.

(2) If there be a cause pending in Court, the affidavit in support of, or opposition to, an application respecting it, must also begin with the heading “In the matter of the case of “in the case.

(3) If there be no case pending in Court, the heading shall be “In the matter of the application of.

2. Every affidavit shall be drawn up clearly and legibly and, as far as possible, in a language which the person making it understands. It shall be drawn up in the first person and divided into paragraphs numbered consecutively, and each paragraph, as far as may be, shall be confined to a distinct subject or portion thereof.

3. (1) Every person making any affidavit shall state his full name, father's name surname, age, profession or trade and place of residence and shall give such other particulars as will make it possible to identify him clearly.

(2) The affidavit shall be signed by him in his own hand or he shall make his finger impression thereon.

4. Unless it is otherwise provided, an affidavit may be made by any person having knowledge of the facts deposed to.

5. (1) Every affidavit should clearly specify what portion of the statement is made on the declarant's knowledge and what portion of the statement is made on his information or belief.

(2) When a particular portion is not within the declarant's own knowledge but it is stated from information obtained from others, the declarant must use the expression “I am informed” and, if it is made on belief should add “I verify believe it to be true.” He must also state the source or ground of the information or belief,

and give the name and address of, and sufficiently describe for the purpose of identification, the person or persons from whom he had received such information.

(3) When the statement rests on facts disclosed in documents or copies of documents procured from any court or other person, the declarant shall state the source from which they were procured and his information, or belief, as to the truth of the facts disclosed in such documents.

6. Documents or copies thereof (other than those on the record of the case) referred to in the affidavit shall so far as possible be annexed to it.

7. All erasures, errors, interlineations, etc, in the affidavit shall be legibly initialled and dated by the declarant.

8. (1) The Officer authorised in this behalf, shall, before administering the oath ask the declarant if he has read the affidavit and understood the contents thereof, and if the latter states that he has not read it, or appears not to understand fully, the contents thereof, or appears to be blind, illiterate or ignorant of the language in which it is written, the Officer administering the oath shall read and explain or cause some other competent person to read and explain in his presence the affidavit to the declarant in the language which both the declarant and the Officer administering the oath understand.

(2) When an affidavit is read, translated or explained as herein provided, the Officer administering the oath shall certify in writing at the foot of the affidavit that it has been so read, translated or explained in his presence and that the declarant understood the same at the time of making the affidavit and made his signature or finger impression in the presence of the Officer.

9. The Court may order any scandalous or irrelevant matter in an affidavit to be struck out or amended.

10. The Court of Sessions may appoint a Commissioner of Oath under Section 297(1)(b) of the Code of Criminal Procedure, 1973, for the purpose of administration of oath or for solemn affirmation before him for affidavits required for the purpose of the Code.

Attestation of Affidavits, Power of Attorney, etc.

11. When any person desires to make any application to the High Court in its civil or criminal jurisdiction, and to support the same by an affidavit or statement on solemn affirmation, any Court or the Clerk of the Court or Nazir of a Civil Court, or Senior Clerk or Sheristedar of a Judicial Magistrate's Court shall, on application, take such affidavit or statement on solemn affirmation and on payment, by an affixed stamp, or the prescribed fee, authenticate the same by signature.

12. Every affidavit signed in the presence of any Officer (authorised to administer an oath) by a person not known to such Officer, should be attested in his presence by a person known to him and identifying the declarant before him, e.g., a Lawyer or a Lawyer's clerk etc. The Officer administering the oath should add the following words after the words "solemnly affirmed before me", namely "by..... who is personally known to me" or "by..... who is identified before me by..... whom I personally know."

13. The powers of Officers mentioned in paragraph 10 to administer oaths or to take affidavits extend to all affidavits which are to be filed in any civil or criminal Court or in the High Court. The practice of taking affidavits, which are not to be filed in any Court, by such Officers is irregular and should be discontinued.

14. Judicial Officers should, as far as possible, avoid attesting documents because if they do so, they are liable to be summoned as witnesses to prove them in a Court of Justice.

15. (1) In all instances in which affidavits are sworn or statements on solemn affirmation are made before a Judge or a Magistrate or where attestations are made before such Officer, a fee of Re. 1 should be taken in the shape of stamp, which should be affixed to the affidavit or the document, as the case may be, and obliterated.

(2) The Officers empowered under paragraph 10 to take affidavits or statements on solemn affirmation or any Officer of a Court duly appointed in this behalf by the District Judge may charge a fee of 50 paise, except in the case of affidavits, which are made for immediate use of the Court, in which the Officer is employed. Half of the fee so charged shall be paid to the Officer before whom the affidavit is affirmed. The other half shall be taken in the form of a stamp, which should be affixed to the document and obliterated.

16. The attestation by Judicial Officers and Officers referred to above should only be made when the documents mentioned are brought to the Court. Parties who require documents to be attested at their own houses, should have recourse to other Officers.