

CHAPTER XXVII

OATHS AND AFFIDAVITS

506. The persons who may administer oaths to deponents must be duly authorised under section 139 of the Civil Procedure Code to do so.

507. District Courts have been empowered by the Government of Bombay (see resolution of the 12th October 1877), to appoint officers to administer oaths to deponents for the purpose of affidavits in the District Courts, and the Courts subordinate to the District Courts. This order was originally made under section 197 of the old Code and is valid under section 157 of the present Code.

508. The Clerks of the courts and any Notary appointed under the Notaries Act, 1952, are empowered to administer oaths only for the purpose of affidavits under section 139 of the Civil Procedure Code, and, therefore, they should not administer oaths for the purpose of affidavits, which do not come within the scope of the Code.

509. (i) 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 Magistrate or other officer or person duly, appointed shall, on application, take such affidavit or statement on solemn affirmation, and on payment by an affixed stamp of such fee as may be legally prescribed, authenticate the same by signature with endorsement stating clearly that the affidavit was made on oath or solemn affirmation in the presence of the Court or the officer attesting it.

(ii) An affidavit intended by a person to be filed in any proceeding before the High Court may be sworn before any Court or Magistrate or before a person duly empowered in that behalf who shall, if the appropriate court fees thereon and other legal fees have been paid, authenticate it, stating clearly that the affidavit was made on oath or affirmation in the presence of the person authenticating it.

510. “The Officer, authorised to administer oaths shall before certifying the affidavit, satisfy himself as to the identity of the declarant who may be either known to him personally or identified before him by a person whom he personally knows, or whose identity is duly established to the satisfaction of the Officer by any of the following documents, namely Passport, Driving License, Voters identity Card, PAN Card, or Photo Identity Card issued by State/Central Government. The manner in which

the identification is so made shall be certified by the Officer administering the oath.”

Every Officer administering an oath in such a case shall add the following words after the words, “Solemnly affirmed before me,” namely, “by” ...” who is identified before me by” or “whom I personally know.”

511. (1) Every affidavit to be used in a Court shall be entitled “In the Court of””.

(2) Every affidavit shall bear the number of the proceeding in which it is proposed to be filed and shall set out the names of the parties to the proceedings.

(3) Every affidavit containing any statement of facts shall be divided into paragraphs, and every paragraph shall be numbered consecutively, and as nearly as may be, shall be confined to a distinct portion of the subject.

(4) The declarant shall state what paragraphs or portions of his affidavit he swears of solemnly affirms to from his own knowledge and what paragraphs or portions he swears or solemnly affirms to on his own belief, stating the grounds of such belief.

(5)(a) The Officer administering the oath or affirmation for the purpose of affidavits shall satisfy himself that the language in which the affidavit is sought to be made is known to the declarant.

If the language is not known or understood by the declarant, the Officer administering the oath or affirmation shall, where the party is represented by a lawyer, require the said lawyer to certify in writing below the affidavit that the contents of the affidavit have been interpreted to the declarant in a language known to him and that the declarant has fully understood them.

(c) Where the declarant is not represented by a lawyer, the Officer administering the oath or affirmation shall, when necessary, cause the affidavit to be interpreted to the declarant by any person appointed by him as an Interpreter. The person interpreting the document shall certify below the document that its contents have been interpreted to the declarant in a language known to him.

(d) When the Officer administering the oath or affirmation is satisfied that the language of the document as known or understood by the declarant, or when the lawyer

or the interpreter certifies that the contents have been interpreted to the declarant in a language known to him, the oath shall be administered and the affidavit completed by the signature of the declarant below the declaration on oath in the presence of the Officer and the certification by the officer of the administration of the oath.

512. (1) Judicial Officer 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 Court of Justice.

(2) Where an affidavit is sworn or a statement on solemn affirmation is made before a judge or a Magistrate or where a document is attested before such Officer, a fee of Re. 1 should be taken in Court fee stamps, which should be affixed to the affidavit or the document, as the case may be, and obliterated.

(3) The Officer empowered under paragraph 506 to take affidavits or statements on sworn affirmation or any Officer of a Court duly appointed in this behalf by the District Judge, may charge a fee of 50 ps. except in the case of affidavits, which are made for immediate use in the Court, in which the Officer is employed. Half of the fee so charges shall be paid to the Officer before whom the affidavit is affirmed. The other half shall be taken in the form of Court-fee stamps, which should be affixed to the document and obliterated.

(4) The attestation of documents should ordinarily be done in the Court. In special cases, the Court Officers may with the previous written permission of their superior Officers, attend private houses for the purpose of attesting documents but they should do so entirely out of office hours. The Court Officers attending at private houses would be entitled to receive an extra fee of Rs. 5, when the private house is situated within a distance of 5 miles from the Court, and Rs. 10 when it is beyond that distance, for each such attendance.

513. Government have authorized all Magistrates where there are no Civil Courts and the following officers to administer the oath to Bailiffs making affidavits of service of Processes of Civil Courts without levying from them the fees leviable under Government Resolutions in the Judicial Department, No. 2308, dated the 12th June 1871, and No. 429, dated the 21st January 1887, for attestation of affidavits :

The Sub-Registrar of Savda and the sub-Assistant Surgeons of Savda and Bodwad, in the District of East Khandesh (vide G.R., H.D., No. 2327/2, dated the 22nd December 1927). (Now in District Jalgaon.)

Oaths and Affirmations to be made by witnesses and interpreters.

514. Oaths and affirmations to be made by a witness or interpreter under section 3 of the Oaths Act, 1969 (Act XLIV of 1969), shall, as required by section 5(2) of that Act, be administered by the Court, itself.

515. The following forms of oaths and affirmations are prescribed under section 6 of the Oaths Act, 1969.

Form No. I (Witnesses), -

I do swear in the name of God that what I shall state, shall be the
solemnly affirm
Truth, the whole truth and nothing but the truth.

Form No.2 (Jurors) : * * * *

Form No.3 (Interpreters) :-

I do swear in the name of God that i will well and truly interpret
solemnly affirm
and explain all questions put to and evidence given by witnesses and translate
correctly and accurately all documents given to me for translation.

Form No. 4 (Affidavits) :-

I do swear in the name of God that this is my name and signature
solemnly affirm
(or mark) and that the contents of this my affidavit are true.