

G.



R.

## The Judicature Amendment Act, 1921.

---

# RULES OF COURT, 1921.

---

His Excellency the Lieutenant-Governor has, with the advice and assistance of the Judges of the High Court, made, by virtue of Section 24 of the Judicature Amendment Act, 1921, Rules of Court (a copy of which is appended), dated the 12th July, 1921, which Rules were laid before Tynwald on the 12th July, 1921.

Copies of the Rules may be obtained on application to Messrs. S. K. Broadbent & Co., Ltd., price 3d. each.

By Order,

B. E. SARGEAUNT,

Government Secretary.

Government Office,

Isle of Man.

14th July, 1921.

---

## RULES OF COURT, 1921.

---

### **Rules of Court made by the Governor with the advice and assistance of the Judges of the High Court under the provisions of the Judicature Amendment Act, 1921.**

---

1. The following Rules may be cited as "The Rules of Court, 1921," and shall come into operation in the manner and at the time specified by the 35th section of the Isle of Man Judicature Act, 1883, and shall also apply to all proceedings taken on or after the date on which such Rules come into operation in all causes and matters then pending.

2. "Non-contentious business" shall include all common form business as defined by the Ecclesiastical Civil Judicature Transfer Act, 1884.

The expression "next of kin" in these Rules means such persons as would be entitled to distributive shares of the personal estate of the deceased in case he had died intestate.

The expression "will" shall include a codicil unless inconsistent with the context.

3. Application for probate or Letters of Administration may be made at the Rolls Office, Douglas, in all cases.

4. Such applications may be made through an advocate or in person by executors or parties entitled to apply for grants of administration, but these latter applications will not be received by letter nor through the medium of any agent.

5. Probate or Letters of Administration shall not be issued by the Chief Clerk until all the enquiries which he is required to make or sees fit to institute or direct have been answered to his satisfaction. The Chief Clerk is notwithstanding to afford as great facility for the obtaining grants of probate or administration as is consistent with the due regard to the prevention of error or fraud.

#### INTERLINEATIONS AND ALTERATIONS.

6. Interlineations and alterations are invalid unless they existed in the will at the time of its execution, or, if made afterwards, unless they have been executed and attested in the mode required by the Wills Act, 1869, or unless they have been rendered valid by the re-execution of the will, or by the subsequent execution of a codicil thereto.

7. When interlineations or alterations appear in the will (unless duly executed or recited in, or otherwise identified by, the attestation clause) an affidavit or affidavits in proof of their having existed in the will before its execution must be filed except when the alterations are merely verbal, or when they are of but small importance and are evidenced by the initials of the attesting witnesses.

#### ERASURES AND OBLITERATIONS.

8. Erasures and obliterations are not to prevail unless proved to have existed in the will at the time of its execution, or unless the alterations thereby effected in the will are duly executed and attested, or unless they have been rendered valid by the re-execution of the will, or by the subsequent execution of a codicil thereto. If no satisfactory evidence can be adduced as to the time when such erasures and obliterations were made, and the words erased or obliterated be not entirely effaced, but can upon inspection of the paper be ascertained, they must form part of the probate.

9. In every case of words having been erased or obliterated which might have been of importance, an affidavit must be required.

#### DEEDS, &c., REFERRED TO IN A WILL.

10. If a will contain a reference to any deed, paper, memorandum, or other document, of such a nature as to raise a question whether it ought or ought not to form a constituent part of the will, the production of such deed, paper, memorandum, or other document must be required, with a view to ascertain whether it be entitled to probate; and, if not produced, its non-production must be accounted for.

11. No deed, paper, memorandum, or other document can form part of a will unless it was in existence at the time when the will was executed.

#### APPEARANCE OF THE PAPER.

12. If there are any vestiges of sealing wax or wafers or other marks upon the testamentary papers, leading to the inference that a paper, memorandum or other document has been annexed or attached to the same, they must be satisfactorily accounted for, or the production of such paper, memorandum or other document must be required; and, if not produced, its non-production must be accounted for.

13. Any appearance of an attempted cancellation of a paper by burning, tearing, obliteration or otherwise, and every circumstance leading to a presumption of abandonment or revocation of a paper on the part of the testator must be accounted for.

#### WILLS OF MARRIED WOMEN.

14. (a) Whenever an application for probate of the will of a married woman, or of the will of a widow made during coverture, or for Letters of

Administration with such wills annexed, is made, and the Married Women's Property Dower and Widowright Act, 1921, does not apply, it shall be stated in the application whether the deceased was entitled to:—

- (1) Unsettled real estate;
- (2) Unsettled personal estate;
- (3) Real estate settled for her separate use;
- (4) Real estate settled for her appointment;
- (5) Personal estate for her separate use;
- (6) Personal estate for her appointment;

and in the grant of probate or administration with the will annexed the power or authority under which the will purports to have been made must be specified.

(b) In granting probate of the will of a married woman or of the will of a widow made during coverture or Letters of Administration with such wills annexed made under the powers conferred on married women by the Married Women's Property Dower and Widowright Act, 1921, it shall not be necessary to recite in the grant or in the oath the separate personal estate of the testatrix or the power or authority under which the will has been or purports to have been made.

#### CODICILS.

15. The above Rules respecting wills apply equally to codicils.

#### PROCEDURE.

16. Application for probate or Letters of Administration shall be made in the prescribed form with such modification as circumstances may require. Such application shall set out the name, address, and occupation of the deceased; the names, addresses and occupations of the petitioners; the date and place of death of the deceased; whether the deceased left a will or died intestate; if such will has been proved in any other country; the date and particulars of such probate; the next of kin of the deceased resident in the Isle of Man, distinguishing between those who are of full age and those who are under age, and the approximate gross value of the personal estate in the Isle of Man. The statements in the petition shall be verified by the affidavit of some competent person.

17. Where the deceased left a will, such will shall be proved by the affidavit of one of the subscribing witnesses thereto, or if such witnesses are dead, or by absence, illness or otherwise unable to make such affidavit, by the affidavit of some other person present at the execution of the will; but if no affidavit of any such person can be obtained, evidence or affidavit of that fact must be procured, and of the handwriting of the deceased and of the subscribing witnesses, and also of any circumstances which may raise a presumption in favour of the due execution.

18. The petition with the affidavit of verification and affidavit as to the due execution of the will with the bail bond required by section 17 of the Ecclesiastical Civil Judicature Transfer Act, 1884, and the will or an authenticated copy thereof when the will has been proved outside the Island shall be lodged at the Rolls Office with the appropriate fee stamps attached thereto.

19. The petitioners may lodge with the foregoing papers a consent in the appropriate form, or as near thereto as circumstances will permit, duly signed and witnessed by the next of kin of the deceased of full age resident in this Isle to the grant of probate or Letters of Administration or by an advocate on behalf of them. Where all the next of kin of full age resident within this Isle do not so consent, the Chief Clerk shall send notice in the appropriate form by registered post to such next of kin as have not consented, intimating that the papers have been lodged for probate of the will or Letters of Administration of the estate of the deceased and informing such next of kin that a grant will be made in terms of such application unless an objection thereto is lodged in the Rolls Office within seven days from the date of posting of such notice.

20. Where the papers are in order and the next of kin consent, or where notice has been given by the Chief Clerk to such next of kin, and no objection is lodged by them within the prescribed time, the Chief Clerk shall notify the petitioners or the advocate for the petitioners that probate or Letters of Administration will be granted on the appropriate oath being taken before the Chief Clerk, or before any captioning authority. The form of the oath shall be sent by the Chief Clerk with such intimation to one of the petitioners or to the advocate for the petitioners.

21. Where any doubt arises as to the due execution of the will or as to any alterations, interlineations, erasures or obliterations therein, or as to the persons entitled to probate or Letters of Administration, or as to any other matter in connection with such probate or Letters of Administration, or should

any of the next of kin lodge notice of objection to the grant of probate or Letters of Administration, the Chief Clerk shall refer the matter to the Judge, and shall notify the petitioners or their advocate, and the person objecting, thereof, and the application shall thereupon be dealt with in the court as a contentious matter.

#### AFFIDAVITS.

22. Every affidavit is to be drawn in the first person, and the addition and true place of abode and description of every deponent making it is to be inserted therein.

23. In every affidavit made by two or more persons, the names of the several persons making it are to be written in the jurat.

24. Where an affidavit is made by any person who is blind or who, from his or her signature or otherwise, appears to be illiterate, the Chief Clerk or other authority before whom such affidavit is made is to state in the jurat that the affidavit was read in the presence of the person making the same, and that such person seemed perfectly to understand the same, and also made his or her mark, or wrote his or her signature in the presence of the Chief Clerk or other authority before whom the affidavit was made.

#### BLIND AND ILLITERATE TESTATORS.

25. The Chief Clerk is not to allow probate of the will or administration with the will annexed, of any blind or obviously illiterate or ignorant person to issue unless he has previously satisfied himself that the said will was read over to the testator before its execution or that the testator had at such time knowledge of its contents.

#### NOTICES TO ATTORNEY-GENERAL.

26. In all cases where application is made for probate or Letters of Administration (either with or without a will annexed) of the goods of a bastard dying a bachelor, spinster, widower or widow without issue, or of a person dying without known relatives, notice of such application is to be given to His Majesty's Attorney-General in order that he may determine whether he will interfere on the part of the Crown, and no grant is to be issued until the Attorney-General has signified the course which he thinks proper to take.

27. The Chief Clerk shall in terms of Section 26 of the Judicature Amendment Act, 1921. when so requested, supply such particulars of applications under these Rules as would be given in public on the hearing of an uncontested petition in Court.

#### FORMS.

28. The Clerk of the Rolls may from time to time prescribe the forms to be used in connection with applications under these Rules, and such forms shall be supplied by the Chief Clerk to any advocate or executor or party claiming to be entitled to apply for a grant of administration, but such latter person must apply for the same in person and not by letter or through the medium of any agent.

Given under my hand the 12th day of July, 1921.

W. FRY, M.G.,  
Lieutenant-Governor.

The above Rules of Court were laid before the Tynwald Court on the 12th day of July, 1921.

W. FRY, M.G.,  
Lieutenant-Governor.

G. FRED CLUCAS,  
Speaker of the House of Keys.