EXPLANATORY NOTE

(This Note is not part of the Rules, but is intended to indicate their general purport.)

These Rules add Stockton-on-Tees to the list of towns at which matrimonial causes may be tried, and make it clear that a party who wishes to resist a claim for costs or damages by making allegations against the party claiming them must file an answer.

1954 No. 796 (L. 6)

The Non-Contentious Probate Rules, 1954

Made - - - -	15*th June*, 1954
Laid before Parliament	21*st June*, 1954
Coming into Operation	1*st October*, 1954

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I, the Right Honourable Frank Boyd, Baron Merriman, President of the Probate, Divorce and Admiralty Division of the High Court of Justice, in exercise of the powers conferred on me by section 2 (5) of the Colonial Probates Act, 1892(**a**) and section 100 of the Supreme Court of Judicature (Consolidation) Act, 1925(**b**), and with the concurrence of the Lord Chancellor and the Lord Chief Justice of England, do hereby make the following Rules:—

Citation and commencement

1. These Rules may be cited as the Non-Contentious Probate Rules, 1954, and shall come into operation on the first day of October, 1954.

Interpretation

2.—(1) The Interpretation Act, 1889(**c**) shall apply to the interpretation of these Rules as it applies to the interpretation of an Act of Parliament.

(**a**) 55 & 56 Vict. c. 6. (**b**) 15 & 16 Geo. 5. c. 49. (**c**) 52 & 53 Vict. c. 63.

(2) In these Rules, unless the context otherwise requires—

"The Act" means the Supreme Court of Judicature (Consolidation) Act, 1925;

"Authorised officer" means any officer of a registry who is for the time being authorised by the President to administer any oath or to take any affidavit required for any purpose connected with his duties;

"The Crown" includes the Crown in right of the Duchy of Lancaster and the Duke of Cornwall for the time being;

"England" includes Wales;

"Gross value" in relation to any estate means the value of the estate without deduction for debts, incumbrances, funeral expenses or estate duty;

"Oath" means the oath required by rule 6 to be sworn by every applicant for a grant;

"Personal applicant" means a person other than a trust corporation who seeks to obtain a grant without employing a solicitor, and "personal application" has a corresponding meaning;

"The President" means the President of the Probate Division;

"The principal probate registrar" means the Senior Registrar of the principal registry or, in his absence, the senior of the registrars in attendance;

"The principal registry" means the principal probate registry;

"Registrar" mean a registrar of the principal registry or a district probate registrar, except in rules 45 and 46 where "registrar" means a registrar of the principal registry;

"Registry" means the principal registry or a district probate registry;

"Statutory guardian" means a surviving parent of an infant who is the guardian of the infant by virtue of section 4 of the Guardianship of Infants Act, 1925(a);

"Testamentary guardian" means a person appointed by deed or will to be guardian of an infant under the power conferred by section 5 of the Guardianship of Infants Act, 1925;

"The Treasury Solicitor" means the solicitor for the affairs of Her Majesty's Treasury and includes the solicitor for the affairs of the Duchy of Lancaster and the solicitor of the Duchy of Cornwall;

"Will" includes a nuncupative will and any testamentary document or copy or reconstruction thereof.

(3) A form referred to by number means the form so numbered in the First Schedule; and such forms shall be used wherever applicable, with such variations as a registrar may in any particular case direct or approve.

Applications for grants through solicitors

3.—(1) Subject to section 153 of the Act (which prescribes the places where applications for second and subsequent grants may be made), a person applying for a grant through a solicitor may apply otherwise than by post at any registry and may apply by post at such registries as the President may direct.

(2) Every solicitor through whom an application for a grant is made shall give the address of his place of business within the jurisdiction.

(a) 15 & 16 Geo. 5. c. 45.

Personal applications

4.—(1) A personal applicant may apply for a grant otherwise than by post at any registry or to an officer attending at such place as the President may direct.

(2) A personal applicant may not apply through an agent, whether paid or unpaid, and may not be attended by any person acting or appearing to act as his adviser.

(3) No personal application shall be received or proceeded with if—

(*a*) it becomes necessary to bring the matter before the court on motion or by action;

(*b*) an application has already been made by a solicitor on behalf of the applicant and has not been withdrawn;

(*c*) the registrar otherwise directs.

(4) After a will has been deposited in a registry by a personal applicant, it may not be delivered to the applicant or to any other person unless in special circumstances the registrar so directs.

(5) A personal applicant shall produce a certificate of the death of the deceased or such other evidence of the death as the registrar may approve.

(6) A personal applicant shall supply all information necessary to enable the papers leading to the grant to be prepared in the registry, or may himself prepare such papers and lodge them unsworn.

(7) Unless the registrar otherwise directs, every oath, affidavit or bond required on a personal application (other than a bond given by a corporation in accordance with rule 38) shall be sworn or executed by all the deponents or obligors before an authorised officer.

(8) No legal advice shall be given to a personal applicant by any officer of a registry and every such officer shall be responsible only for embodying in proper form the applicant's instructions for the grant.

(9) Nothing in this rule shall affect the right of a personal applicant to apply for a grant to an officer of Customs and Excise under section 33 of the Customs and Inland Revenue Act, 1881(**a**), and section 16 of the Finance Act, 1894(**b**).

Duty of registrar on receiving application for grant

5.—(1) A registrar shall not allow any grant to issue until all inquiries which he may see fit to make have been answered to his satisfaction.

(2) The registrar may require proof of the identity of the deceased or of the applicant for the grant beyond that contained in the oath.

(3) Except with the leave of two registrars, no grant of probate or of administration with the will annexed shall issue within seven days of the death of the deceased and no grant of administration shall issue within fourteen days thereof.

Oath in support of grant

6.—(1) Every application for a grant shall be supported by an oath in the form applicable to the circumstances of the case, which shall be contained in an affidavit sworn by the applicant, and by such other papers as the registrar may require.

(a) 44 & 45 Vict. c. 12. (b) 57 & 58 Vict. c. 30.

(2) On an application for a grant of administration the oath shall state whether, and if so, in what manner, all persons having a prior right to a grant have been cleared off, and whether any minority or life interest arises under the will or intestacy.

(3) Where the deceased died on or after the 1st January, 1926, the oath shall state whether, to the best of the applicant's knowledge, information and belief, there was land vested in the deceased which was settled previously to his death and not by his will and which remained settled land notwithstanding his death.

(4) Where the deceased died domiciled outside England, the oath shall state where the deceased died domiciled.

(5) A statement that the deceased died domiciled in England may be included in a grant at the request of the applicant if the oath states that the deceased died so domiciled and—

(*a*) it appears from the Inland Revenue affidavit that the deceased left personal property in Scotland, or

(*b*) the oath states that the deceased left property in Northern Ireland, or

(*c*) the oath contains such other information as may be necessary to satisfy the registrar about the necessity for including in the grant a statement as to the deceased's domicile.

Grant in additional name

7. Where it is necessary to describe the deceased in a grant by some name in addition to his true name, the applicant shall state in the oath the true name of the deceased and shall depose that some part of the estate, specifying it, was held in the other name, or as to any other reason that there may be for the inclusion of the other name in the grant.

Marking of wills

8. Every will in respect of which an application for a grant is made shall be marked by the signatures of the applicant and the person before whom the oath is sworn, and shall be exhibited to any affidavit which may be required under these Rules as to the validity, terms, condition or date of execution of the will:

Provided that where the registrar is satisfied that compliance with this rule might result in the loss of the will, he may allow a photographic copy thereof to be marked or exhibited in lieu of the original document.

Engrossments for purposes of record

9.—(1) Where the registrar considers that in any particular case a photographic copy of the original will would not be satisfactory for purposes of record, he may require an engrossment suitable for photographic reproduction to be lodged.

(2) Where a will contains alterations which are not admissible to proof, there shall be lodged an engrossment of the will in the form in which it is to be proved.

(3) Any engrossment lodged under this rule shall reproduce the punctuation, spacing and division into paragraphs of the will and, if it is one to which paragraph (2) of this rule applies, it shall be made bookwise on durable paper following continuously from page to page on both sides of the paper.

(4) Where any pencil writing appears on a will, there shall be lodged a facsimile copy of the will or of the pages or sheets containing the pencil writing, in which there shall be reproduced in red ink those portions which appear in pencil in the original.

Evidence as to due execution of will

10.—(1) Where a will contains no attestation clause or the attestation clause is insufficient or where it appears to the registrar that there is some doubt about the due execution of the will, he shall, before admitting it to proof, require an affidavit as to due execution from one or more of the attesting witnesses or, if no attesting witness is conveniently available, from any other person who was present at the time the will was executed.

(2) If no affidavit can be obtained in accordance with the last foregoing paragraph, the registrar may, if he thinks fit having regard to the desirability of protecting the interests of any person who may be prejudiced by the will, accept evidence on affidavit from any person he may think fit to show that the signature on the will is in the handwriting of the deceased, or of any other matter which may raise a presumption in favour of the due execution of the will.

(3) If the registrar, after considering the evidence—

(*a*) is satisfied that the will was not duly executed, he shall refuse probate and shall mark the will accordingly;

(*b*) is doubtful whether the will was duly executed, he may refer the matter to the court on motion:

Provided that a district probate registrar shall not refuse probate and mark the will accordingly without first obtaining the directions of a registrar of the principal registry unless he is satisfied by the evidence of the attesting witnesses that the will was not duly executed, nor shall he refer a case of doubt to the court on motion without first obtaining the like directions.

Execution of will of blind or illiterate testator

11. Before admitting to proof a will which appears to have been signed by a blind or illiterate testator or by another person by direction of the testator, or which for any other reason gives rise to doubt as to the testator having had knowledge of the contents of the will at the time of its execution, the registrar shall satisfy himself that the testator had such knowledge.

Evidence as to terms, condition and date of execution of will

12.—(1) Where there appears in a will any obliteration, interlineation, or other alteration which is not authenticated in the manner prescribed by section 21 of the Wills Act, 1837(**a**), or by the re-execution of the will or by the execution of a codicil, the registrar shall require evidence to show whether the alteration was present at the time the will was executed and shall give directions as to the form in which the will is to be proved:

Provided that this paragraph shall not apply to any alteration which appears to the registrar to be of no practical importance.

(2) If from any mark on a will it appears to the registrar that some other document has been attached to the will, or if a will contains any reference to another document in such terms as to suggest that it ought to be incorporated in the will, the registrar may require the document to be produced and may call for such evidence in regard to the attaching or incorporation of the document as he may think fit.

(**a**) 7 Will. 4 & 1 Vict. c. 26.

(3) Where there is doubt as to the date on which a will was executed, the registrar may require such evidence as he thinks necessary to establish the date.

Attempted revocation of will

13. Any appearance of attempted revocation of a will by burning, tearing or otherwise, and every other circumstance leading to a presumption of revocation by the testator, shall be accounted for to the registrar's satisfaction.

Affidavit as to due execution, terms etc., of will

14. A registrar may require an affidavit from any person he may think fit for the purpose of satisfying himself as to any of the matters referred to in rules 11, 12 and 13, and in any such affidavit sworn by an attesting witness or other person present at the time of the execution of a will the deponent shall depose to the manner in which the will was executed.

Wills not proved under section 9 of Wills Act, 1837

15. Nothing in rule 10, 11, 12 or 13 shall apply to any will which it is sought to establish otherwise than by reference to section 9 of the Wills Act, 1837, as explained by the Wills Act Amendment Act, 1852(**a**), but the terms and validity of any such will shall be established to the registrar's satisfaction.

Wills of persons on military service and seamen

16. If it appears to the registrar that there is *prima facie* evidence that a will is one to which section 11 of the Wills Act, 1837, as amended by any subsequent enactment, applies, the will may be admitted to proof if the registrar is satisfied that it was signed by the testator or, if unsigned, that it is in the testator's handwriting.

Wills of naval personnel

17. Every application for a grant in respect of the estate of a person who has at any time served in a capacity to which the Navy and Marines (Wills) Act, 1865(**b**), applies shall be supported by a certificate of the Inspector of Seamen's Wills as to the existence of any will in his custody:

Provided that no such certificate shall be required where—

(*a*) the application relates to a will made after the deceased had ceased to serve in such capacity as aforesaid which revokes all previous wills made by him, or

(*b*) the deceased was at the date of his death in receipt of a pension in respect of his service.

Evidence of foreign law

18. Where evidence of the law of a country outside England is required on any application for a grant, the affidavit of any person who practises, or has practised, as a barrister or advocate in that country and who is conversant with its law may be accepted by the registrar unless the deponent is a person claiming to be entitled to the grant or his attorney, or is the spouse of any such person or attorney:

Provided that the registrar may accept the affidavit of a solicitor practising in Scotland, Northern Ireland, the Channel Islands, the Isle of Man or the Republic of Ireland as to the law of the country in which he practises, and may in special circumstances accept the affidavit of any other person who

(a) 15 & 16 Vict. c. 24. (b) 28 & 29 Vict. c. 72.

does not possess the qualifications required by this rule if the registrar is satisfied that by reason of such person's official position or otherwise he has knowledge of the law of the country in question.

Order of priority for grant where deceased left a will

19. Where the deceased died on or after the 1st January, 1926, the person or persons entitled to a grant of probate or administration with the will annexed shall be determined in accordance with the following order of priority, namely:—

(i) The executor;

(ii) Any residuary legatee or devisee holding in trust for any other person;

(iii) Any residuary legatee or devisee for life;

(iv) The ultimate residuary legatee or devisee or, where the residue is not wholly disposed of by the will, any person entitled to share in the residue not so disposed of (including the Treasury Solicitor when claiming *bona vacantia* on behalf of the Crown) or, subject to paragraph (3) of rule 25, the personal representative of any such person:

Provided that where the residue is not in terms wholly disposed of, the registrar may, if he is satisfied that the testator has nevertheless disposed of the whole or substantially the whole of the estate as ascertained at the time of the application for the grant, allow a grant to be made (subject however to rule 37) to any legatee or devisee entitled to, or to a share in, the estate so disposed of, without regard to the persons entitled to share in any residue not disposed of by the will;

(v) Any specific legatee or devisee or any creditor or, subject to paragraph (3) of rule 25, the personal representative of any such person or, where the estate is not wholly disposed of by the will, any person who, notwithstanding that the amount of the estate is such that he has no immediate beneficial interest therein, may have a beneficial interest in the event of an accretion thereto;

(vi) Any legatee or devisee, whether residuary or specific, entitled on the happening of any contingency, or any person having no interest under the will of the deceased who would have been entitled to a grant if the deceased had died wholly intestate.

Grants to attesting witnesses etc.

20. Where a gift to any person fails by reason of section 15 of the Wills Act, 1837 (which provides that gifts to attesting witnesses or their spouses shall be void), such person shall not have any right to a grant as a beneficiary named in the will, without prejudice to his right to a grant in any other capacity.

Order of priority for grant in case of intestacy

21.—(1) Where the deceased died on or after the 1st January, 1926, wholly intestate, the persons having a beneficial interest in the estate shall be entitled to a grant of administration in the following order of priority, namely:—

(i) The surviving spouse;

(ii) The children of the deceased (including any persons entitled by virtue of any enactment to be treated as if they were the children of the deceased born in lawful wedlock), or the issue of any such child who has died during the lifetime of the deceased;

(iii) The father or mother of the deceased or, in the case of an illegitimate person who died on or after the 1st January, 1927, without having been legitimated, his mother;

(iv) Brothers and sisters of the whole blood, or the issue of any deceased brother or sister of the whole blood who has died during the lifetime of the deceased.

(2) If no person in any of the classes mentioned in sub-paragraphs (ii) to (iv) of the last foregoing paragraph has survived the deceased, then, in the case of—

(*a*) a person who died before the 1st January, 1953, wholly intestate, or

(*b*) a person dying on or after the 1st January, 1953, wholly intestate without leaving a surviving spouse,

the persons hereinafter described shall, if they have a beneficial interest in the estate, be entitled to a grant in the following order of priority, namely:—

(i) Brothers and sisters of the half blood, or the issue of any deceased brother or sister of the half blood who has died during the lifetime of the deceased;

(ii) Grandparents;

(iii) Uncles and aunts of the whole blood, or the issue of any deceased uncle or aunt of the whole blood who has died during the lifetime of the deceased;

(iv) Uncles and aunts of the half blood, or the issue of any deceased uncle or aunt of the half blood who has died during the lifetime of the deceased.

(3) In default of any person having a beneficial interest in the estate, the Treasury Solicitor shall be entitled to a grant if he claims *bona vacantia* on behalf of the Crown.

(4) If all persons entitled to a grant under the foregoing provisions of this rule have been cleared off, a grant may be made to a creditor of the deceased or to any person who, notwithstanding that he has no immediate beneficial interest in the estate, may have a beneficial interest in the event of an accretion thereto.

(5) Subject to paragraph (3) of rule 25, the personal representative of a person in any of the classes mentioned in paragraphs (1) and (2) of this rule or the personal representative of a creditor shall have the same right to a grant as the person whom he represents:

Provided that the persons mentioned in sub-paragraphs (ii) to (iv) of paragraph (1) and in paragraph (2) of this rule shall be preferred to the personal representative of a spouse who has died without taking a beneficial interest in the whole estate of the deceased as ascertained at the time of the application for the grant.

(6) Where the deceased died on or after the 1st January, 1950, the provisions of the Adoption Act, 1950(a), shall apply in determining the entitlement to a grant as they apply to the devolution of property on intestacy.

Right of assignee to a grant

22. Where the only person entitled to the estate of the deceased, whether under a will or on intestacy, has assigned his whole interest in the estate, the assignee shall replace the assignor in the order of priority for a grant.

(a) 14 Geo. 6. c. 26.

Joinder of administrator

23.—(1) An application to join with a person entitled to a grant of administration a person entitled in a lower degree shall, in default of renunciation by all persons entitled in priority to such last-mentioned person, be made by summons to a registrar of the principal registry.

(2) An application to join with a person entitled to a grant of administration a person having no right thereto shall be made by summons to a registrar of the principal registry:

Provided that there may without any such application be joined with a person entitled to administration—

(*a*) on the renunciation of all other persons entitled to join in the grant, any kin of the deceased having no beneficial interest in the estate, in the order of priority described in rule 21;

(*b*) unless a registrar otherwise directs, any person whom the guardian of an infant may nominate for the purpose under paragraph (4) of rule 31;

(*c*) a trust corporation.

(3) A summons under paragraph (1) or (2) of this rule shall be served on all persons entitled in the same degree as the applicant as well as on all persons entitled in a lower degree in priority to the person sought to be joined.

Additional personal representatives

24.—(1) An application under subsection (2) of section 160 of the Act to add a personal representative shall be made by summons to a registrar of the principal registry and shall be supported by an affidavit by the applicant, the consent of the person proposed to be added as personal representative and such other evidence as the registrar may require.

(2) A summons under paragraph (1) of this rule shall be served on the existing personal representative if he is not himself the applicant.

(3) On any such application the registrar may direct that a note shall be made on the original grant of the addition of a further personal representative, or he may impound or revoke the grant or make such other order as the circumstances of the case may require.

Grants where two or more persons entitled in same degree

25.—(1) A grant may be made to any person entitled thereto without notice to other persons entitled in the same degree.

(2) A dispute between persons entitled to a grant in the same degree shall be brought by summons before a registrar of the principal registry.

(3) Unless a registrar otherwise directs, administration shall be granted to a living person in preference to the personal representative of a deceased person who would, if living, be entitled in the same degree and to a person not under disability in preference to an infant entitled in the same degree.

Exceptions to rules as to priority

26.—(1) Nothing in rule 19, 21, 23 or 25 shall operate to prevent a grant being made to any person to whom a grant may or may require to be made under any enactment.

(2) The rules mentioned in the last foregoing paragraph shall not apply where the deceased died domiciled outside England, except in a case to which the proviso to rule 29 applies.

Grants to persons having spes successionis

27. Where the beneficial interest in the whole estate of the deceased is vested absolutely in a person who has renounced his right to a grant, administration may with the consent of that person be granted to the persons who would be entitled to his estate if he had himself died intestate:

Provided that—

(*a*) administration shall not be granted under this rule unless the persons so entitled are not under disability and do not exceed four in number and they apply jointly for the grant;

(*b*) a surviving spouse shall not be regarded as a person in whom the estate has vested absolutely unless he would be entitled to the whole of the estate, whatever its value may be.

Grants in respect of settled land

28.—(1) In this rule "settled land" means land vested in the deceased which was settled previously to his death and not by his will and which remained settled land notwithstanding his death.

(2) The special executors in regard to settled land constituted by section 22 of the Administration of Estates Act, 1925(a), shall have a prior right to a grant of probate limited to the settled land.

(3) The person or persons entitled to a grant of administration limited to settled land shall be determined in accordance with the following order of priority, namely:—

(i) The trustees of the settlement at the time of the application for the grant;

(ii) Where there are no such trustees and the settlement arises under a will or intestacy, the personal representative of the settlor;

(iii) The personal representative of the deceased.

(4) Where the persons entitled to a grant in respect of the free estate are also entitled to a grant of the same nature in respect of settled land, a grant expressly including the settled land may issue to them.

(5) Where there is settled land and a grant is made in respect of the free estate only, the grant shall expressly exclude the settled land.

Grants where deceased died domiciled outside England

29. Where the deceased died domiciled outside England, an application may be made to a registrar of the principal registry for an order for a grant—

(*a*) to the person entrusted with the administration of the estate by the court having jurisdiction at the place where the deceased died domiciled,

(*b*) to the person entitled to administer the estate by the law of the place where the deceased died domiciled,

(*c*) if there is no such person as is mentioned in paragraph (*a*) or (*b*) of this rule or if in the opinion of the registrar the circumstances so require, to such person as the registrar may direct,

(*d*) if, by virtue of section 160 of the Act, a grant is required to be made to, or if the registrar in his discretion considers that a grant should be made to, not less than two administrators, to such person as the registrar may direct jointly with any such person as is mentioned in paragraph (*a*) or (*b*) of this rule or with any other person:

(a) 15 & 16 Geo. 5. c. 23.

Provided that without any such application as aforesaid—

(*a*) probate of any will which is admissible to proof may be granted—

(i) if the will is in the English or Welsh language, to the executor named therein;

(ii) if the will describes the duties of a named person in terms sufficient to constitute him executor according to the tenor of the will, to that person;

(*b*) where the whole of the estate in England consists of immovable property, a grant limited thereto may be made in accordance with the law which would have been applicable if the deceased had died domiciled in England.

Grants to attorneys

30. Where a person entitled to a grant resides outside England, administration may be granted to his lawfully constituted attorney for his use and benefit, limited until such person shall obtain a grant or in such other way as the registrar may direct:

Provided that where the person so entitled is an executor, administration shall not be granted to his attorney without notice to the other executors, if any, unless such notice is dispensed with by the registrar.

Grants on behalf of infants

31.—(1) Where the person to whom a grant would otherwise be made is an infant, administration for his use and benefit until he attains the age of twenty-one years shall, subject to paragraphs (3) and (5) of this rule, be granted—

(*a*) to the statutory or testamentary guardian of the infant or to any guardian appointed by a court of competent jurisdiction, or

(*b*) if there is no such guardian able and willing to act and the infant has attained the age of sixteen years, to any next of kin nominated by the infant or, where the infant is a married woman, to any such next of kin or to her husband if nominated by her.

(2) Any person nominated under sub-paragraph (*b*) of the last foregoing paragraph may represent any other infant whose next of kin he is, being an infant below the age of sixteen years entitled in the same degree as the infant who made the nomination.

(3) Notwithstanding anything in this rule, administration for the use and benefit of the infant until he attains the age of twenty-one years may be granted to any person assigned as guardian by order of a registrar of the principal registry in default of, or jointly with, or to the exclusion of, any such person as is mentioned in paragraph (1) of this rule; and such an order may be made on application by the intended guardian, who shall file an affidavit in support of the application and, if required by the registrar, an affidavit of fitness sworn by a responsible person.

(4) Where, by virtue of section 160 of the Act, a grant is required to be made to not less than two administrators and there is only one person competent and willing to take a grant under the foregoing provisions of this rule, administration may, unless a registrar otherwise directs, be granted to such person jointly with any other person nominated by him as a fit and proper person to take the grant.

(5) Where an infant who is sole executor has no interest in the residuary estate of the deceased, administration for the use and benefit of the infant until he attains the age of twenty-one years shall, unless a registrar of the principal registry otherwise directs, be granted to the person entitled to the residuary estate.

(6) An infant's right to administration may be renounced only by a person assigned as guardian under paragraph (3) of this rule and authorised to renounce by a registrar of the principal registry.

Grants where infant co-executor

32.—(1) Where one of two or more executors is an infant, probate may be granted to the other executor or executors not under disability, with power reserved of making the like grant to the infant on his attaining the age of twenty-one years, and administration for the use and benefit of the infant until he attains the age of twenty-one years may be granted under rule 31 if and only if the executors who are not under disability renounce or, on being cited to accept or refuse a grant, fail to make an effective application therefor.

(2) An infant executor's right to probate on attaining the age of twenty-one years may not be renounced by any person on his behalf.

Grants in case of mental or physical incapacity

33.—(1) Where a registrar is satisfied that a person entitled to a grant is by reason of mental or physical incapacity incapable of managing his affairs, administration for his use and benefit, limited during his incapacity or in such other way as the registrar may direct, may be granted—

(*a*) in the case of mental incapacity, to the person authorised by the Court of Protection to apply for the grant, or

(*b*) where there is no person so authorised, or in the case of physical incapacity—

(i) if the person incapable is entitled as executor, to the person entitled to the residuary estate of the deceased;

(ii) if the person incapable is entitled otherwise than as executor, to the person who would be entitled to a grant in respect of his estate if he had died intestate;

or to such other person as a registrar of the principal registry may by order direct.

(2) No grant of administration shall be made under this rule unless all persons entitled in the same degree as the person incapable have been cleared off.

(3) In the case of mental incapacity, notice of intended application for a grant under this rule shall be given to the Court of Protection, except where the person incapable is an executor with no beneficial interest in the estate.

(4) In the case of physical incapacity, notice of intended application for a grant under this rule shall be given to the person alleged to be so incapable.

Grants to trust corporations and other corporate bodies

34.—(1) Where a trust corporation applies for a grant through one of its officers, such officer shall lodge a certified copy of the resolution authorising him to make the application and shall depose in the oath that the corporation is a trust corporation within the meaning of section 175 of the Act as extended by section 3 of the Law of Property (Amendment) Act, 1926(**a**), and that it has power to accept a grant:

(a) 16 & 17 Geo. 5. c. 11.

Provided that it shall not be necessary to lodge a certified copy of the resolution where the trust corporation is a person holding an official position if the person through whom the application is made is included in a list filed with the principal probate registrar of persons authorised to make such applications.

(2) Where a trust corporation applies for a grant of administration otherwise than as attorney for some person, there shall be lodged with the application the consents of all persons entitled to a grant and of all persons interested in the residuary estate of the deceased, unless the registrar directs that such consents be dispensed with on such terms, if any, as he may think fit.

(3) Where a corporation (not being a trust corporation) would, if an individual, be entitled to a grant, administration for its use and benefit, limited until further representation is granted, may be granted to its nominee or, if the corporation has its principal place of business outside England, its nominee or lawfully constituted attorney, and a copy of the resolution appointing the nominee or, as the case may be, the power of attorney, sealed by the corporation or otherwise authenticated to the registrar's satisfaction, shall be lodged with the application for the grant, and the oath shall state that the corporation is not a trust corporation.

Renunciation of probate and administration

35.—(1) Renunciation of probate by an executor shall not operate as renunciation of any right which he may have to a grant of administration in some other capacity unless he expressly renounces such right.

(2) Unless a registrar of the principal registry otherwise directs, no person who has renounced administration in one capacity may obtain a grant thereof in some other capacity.

(3) A renunciation of probate or administration may be retracted at any time on the order of a registrar of the principal registry:

Provided that only in exceptional circumstances may leave be given to an executor to retract a renunciation of probate after a grant has been made to some other person entitled in a lower degree.

Consent of administrator of enemy property

36. On an application for a grant—

(*a*) in respect of the estate of a deceased person who was at the date of his death resident in Bulgaria, Germany, Hungary, Japan or Roumania, or

(*b*) to any person resident in one of those countries or to the attorney of any such person,

there shall, if the deceased died before the 6th October, 1952, be lodged the consent in writing of the appropriate authority, which shall be obtained through the Administration of Enemy Property Department of the Board of Trade.

Notice to Crown of intended application for grant

37. In any case in which it appears that the Crown is or may be beneficially interested in the estate of a deceased person, notice of intended application for a grant shall be given by the applicant to the Treasury Solicitor, and the registrar may direct that no grant shall issue within a specified time after the notice has been given.

Administration bonds

38.—(1) Every administration bond shall be in form 1 and the signature of the administrator and any surety (not being, in either case, a corporation) shall be attested by an authorised officer, commissioner for oaths or other person authorised by law to administer an oath and, in the case of the administrator, his signature shall, if not attested by an authorised officer, be attested by the person before whom the oath was sworn.

(2) Except in a case to which paragraph (3) of this rule applies or where the registrar otherwise directs, there shall be two sureties to every administration bond:

Provided that not more than one surety shall be required if the gross value of the estate does not exceed £50 or the proposed surety is a corporation.

(3) No surety shall be required on an application for a grant of administration—

(*a*) by a trust corporation, whether alone or jointly with an individual;

(*b*) by a servant of the Crown acting in his official capacity;

(*c*) by a nominee of a public department or of a local authority within the meaning of the Local Government Act, 1933(a);

(*d*) by trustees of a settlement in the case of a grant limited to the settled land;

(*e*) where the deceased left no estate;

(*f*) limited to the prosecution or defence of an action or to an application in the Chancery Division.

(4) The registrar shall so far as possible satisfy himself that every surety to an administration bond is a responsible person.

(5) Unless otherwise directed by order of a registrar of the principal registry, no person shall be accepted as a surety unless he is resident in the United Kingdom, the Channel Islands or the Isle of Man.

(6) No officer of a registry shall become a surety without the leave of the registrar.

(7) Where the proposed surety is a corporation (other than a trust corporation being a person holding an official position), there shall be filed an affidavit by the proper officer of the corporation to the effect that it has power to act as surety and has executed the bond in the manner prescribed by its constitution, and containing sufficient information as to the financial position of the corporation to satisfy the registrar that its assets are sufficient to satisfy all claims which may be made against it under any administration bond in respect of which it is or is likely to become a surety:

Provided that the principal probate registrar may, instead of requiring an affidavit in every case, accept an affidavit made not less often than once in every year together with an undertaking by the corporation to notify the principal probate registrar forthwith in the event of any alteration in its constitution affecting its power to become surety to administration bonds.

(8) An application under section 167 of the Act for an order to assign an administration bond shall be made by summons to a registrar of the principal registry and the summons shall be served on the administrator and on every surety.

(a) 23 & 24 Geo. 5. c. 51.

Particulars of estate to be filed, and sureties to justify, in certain cases

39. Where application is made for a grant of administration—

(*a*) in default of appearance by any person cited to accept or refuse a grant who has not been personally served with the citation ;

(*b*) to any person, not being a person authorised by the Court of Protection to apply for the grant, for the use and benefit of a person incapable of managing his affairs (except where the person incapable is an executor with no beneficial interest in the estate) ;

(*c*) to a guardian for the use and benefit of an infant ;

(*d*) to a person authorised by an order to take a grant under section 73 of the Court of Probate Act, 1857(**a**), or section 162 of the Act,

(*e*) to a person who has obtained leave under rule 52 to swear to the death of the deceased,

(*f*) to an administrator pending suit appointed under section 163 of the Act,

(*g*) in any other case if the registrar so requires,

a declaration on oath by the applicant for the grant, setting out particulars of the estate of the deceased, shall be filed in the registry, and every surety to the administration bond shall justify:

Provided that unless the registrar otherwise directs this rule shall not apply where the gross value of the estate to be administered under the grant does not exceed £50.

Resealing of Scottish confirmations and Northern Irish grants, and transmission of English grants to Northern Ireland

40.—(1) Except as otherwise provided by section 168 of the Act, an application for the resealing of a confirmation granted in Scotland shall be made at the principal registry by or on behalf of the person to whom the grant was made.

(2) An application for the resealing of probate or letters of administration granted by the High Court of Justice in Northern Ireland shall be made at the principal registry by or on behalf of the person to whom the grant was made, so, however, that the principal probate registrar shall, subject to section 169 of the Act, reseal any grant sent to him for the purpose, together with the appropriate fee, by a probate registrar in Northern Ireland.

(3) An application for the resealing by the High Court of Justice in Northern Ireland of a grant made in England may be lodged by or on behalf of the person to whom the grant was made at the principal registry or, if the grant issued out of a district probate registry, at that registry, for transmission to the proper officer in Northern Ireland.

Resealing under Colonial Probates Acts, 1892 *and* 1927

41.—(1) An application under the Colonial Probates Acts, 1892 and 1927, for the resealing of probate or administration granted by the court of a country to which those Acts apply shall be made in the principal registry by the person to whom the grant was made or by any person authorised in writing to apply on his behalf.

(2) On any such application—

(*a*) an Inland Revenue affidavit shall be lodged as if the application were one for a grant in England ;

(**a**) 20 & 21 Vict. c. 77.

(*b*) if a registrar of the principal registry so requires, the application shall be advertised in such manner as he may direct and shall be supported by an oath sworn by the person making the application ;

(*c*) where it is sought to reseal a grant of administration, a bond in form 2 shall be given by the administrator or by the person applying on his behalf and the provisions of rule 38 shall apply with any necessary modifications:

Provided that where the proper officer of the court by which the grant was made certifies that security has been given in a sum sufficient to cover the property, if any, to which the grant will relate after it has been resealed, the registrar may if he thinks fit dispense with a bond.

(3) Except by leave of a registrar of the principal registry, no grant shall be resealed unless it was made to such a person as is mentioned in paragraph (*a*) or (*b*) of rule 29 or to a person to whom a grant could be made under the proviso to that rule.

(4) No limited or temporary grant shall be resealed except by leave of a registrar of the principal registry.

(5) Every grant lodged for resealing shall include a copy of any will to which the grant relates or shall be accompanied by a copy thereof certified as correct by or under the authority of the court by which the grant was made, and where the copy of the grant required to be deposited under subsection (1) of section 2 of the Colonial Probates Act, 1892, does not include a copy of the will, a copy thereof shall be deposited in the principal registry at the same time as the copy of the grant.

(6) The registrar shall send notice of the resealing to the court which made the grant.

(7) Where notice is received in the principal registry of the resealing of an English grant, notice of any amendment or revocation of the grant shall be sent to the court by which it was resealed.

Amendment and revocation of grant

42. If a registrar of the principal registry is satisfied that a grant should be amended or revoked he may make an order accordingly:

Provided that except in special circumstances no grant shall be amended or revoked under this rule except on the application or with the consent of the person to whom the grant was made.

Certificate of delivery of Inland Revenue affidavit

43. The certificate of delivery of an Inland Revenue affidavit required by section 30 of the Customs and Inland Revenue Act, 1881, to be borne by every grant shall be in form 3.

Caveats

44.—(1) Any person who wishes to ensure that no grant is sealed without notice to himself may enter a caveat in any registry.

(2) Any person who wishes to enter a caveat (in this rule called " the caveator ") may do so by completing form 4 in the appropriate book at the registry and obtaining an acknowledgment of entry from the proper officer, or by sending through the post at his own risk a notice in form 4 to the district probate registry in which he wishes the caveat to be entered.

(3) Where the caveat is entered by a solicitor on the caveator's behalf, the name of the caveator shall be stated in form 4.

(4) Except as otherwise provided by this rule, a caveat shall remain in force for six months from the date on which it is entered and shall then cease to have effect, without prejudice to the entry of a further caveat or caveats.

(5) The principal probate registrar shall maintain an index of caveats entered in any registry and on receiving an application for a grant in the principal registry, or a notice of an application for a grant made in a district probate registry, he shall cause the index to be searched and shall notify the appropriate registrar in the event of a caveat having been entered against the sealing of a grant for which application has been made in a district probate registry.

(6) The registrar shall not allow any grant to be sealed if he has knowledge of an effective caveat in respect thereof:

Provided that no caveat shall operate to prevent the sealing of a grant on the day on which the caveat is entered.

(7) A caveat may be warned by the issue from the principal registry of a warning in form 5 at the instance of any person interested (in this rule called "the person warning") which shall state his interest and, if he claims under a will, the date of the will, and shall require the caveator to give particulars of any contrary interest which he may have in the estate of the deceased; and every warning shall be served on the caveator.

(8) A caveator who has not entered an appearance to a warning may at any time withdraw his caveat by giving notice at the registry at which it was entered and the caveat shall thereupon cease to have effect and, if it has been warned, the caveator shall forthwith give notice of withdrawal of the caveat to the person warning.

(9) A caveator having an interest contrary to that of the person warning may, within eight days of service of the warning upon him inclusive of the day of such service, or at any time thereafter if no affidavit has been filed under paragraph (11) of this rule, enter an appearance in the principal registry by filing form 6 and making an entry in the appropriate book, and shall forthwith thereafter serve on the person warning a copy of form 6 sealed with the seal of the registry.

(10) A caveator having no interest contrary to that of the person warning but wishing to show cause against the sealing of a grant to that person may, within eight days of service of the warning upon him inclusive of the day of such service, or at any time thereafter if no affidavit has been filed under paragraph (11) of this rule, issue and serve a summons for directions, which shall be returnable before a registrar of the principal registry.

(11) If the time limited for appearance has expired and the caveator has not entered an appearance, the person warning may file in the principal registry an affidavit showing that the warning was duly served and that he has not received a summons for directions under the last foregoing paragraph, and thereupon the caveat shall cease to have effect.

(12) Unless a registrar of the principal registry by order made on summons otherwise directs—

(*a*) a caveat in respect of which an appearance to a warning has been entered shall remain in force until the commencement of a probate action;

(*b*) any caveat in force at the commencement of a probate action or of proceedings by way of citation or motion shall (subject to the provisions of paragraph (8) of this rule) remain in force until an application for a grant is made by the person shown to be entitled thereto by the decision of the court in such action or proceedings, and upon such application any caveat entered by a party who had notice of the action or proceedings shall cease to have effect.

(13) Except with the leave of a registrar of the principal registry, no further caveat may be entered by or on behalf of any caveator whose caveat has ceased to have effect under paragraph (11) or (12) of this rule.

(14) In this rule "grant" includes a Scottish confirmation and a grant made by any court outside England which is produced for resealing by the High Court.

Citations

45.—(1) Every citation shall issue from the principal registry and shall be settled by a registrar before being issued.

(2) Every averment in a citation, and such other information as the registrar may require, shall be verified by an affidavit sworn by the person issuing the citation (in these Rules called "the citor") or, if there are two or more citors, by one of them:

Provided that the registrar may in special circumstances accept an affidavit sworn by the citor's solicitor.

(3) The citor shall enter a caveat before issuing a citation.

(4) Every citation shall be served personally on the person cited unless the registrar, on cause shown by affidavit, directs some other mode of service, which may include notice by advertisement.

(5) Every will referred to in a citation shall be lodged in a registry before the citation is issued, except where the will is not in the citor's possession and the registrar is satisfied that it is impracticable to require it to be lodged.

(6) A person who has been cited to appear may, within eight days of service of the citation upon him inclusive of the day of such service, or at any time thereafter if no application has been made by the citor under paragraph (5) of rule 46 or paragraph (2) of rule 47, enter an appearance in the principal registry by filing form 6 and making an entry in the appropriate book, and shall forthwith thereafter serve on the citor a copy of form 6 sealed with the seal of the registry.

Citation to accept or refuse or to take a grant

46.—(1) A citation to accept or refuse a grant may be issued at the instance of any person who would himself be entitled to a grant in the event of the person cited renouncing his right thereto.

(2) Where power to make a grant to an executor has been reserved, a citation calling on him to accept or refuse a grant may be issued at the instance of the executors who have proved the will or of the executors of the last survivor of deceased executors who have proved.

(3) A citation calling on an executor who has intermeddled in the estate of the deceased to show cause why he should not be ordered to take a grant may be issued at the instance of any person interested in the estate

at any time after the expiration of six months from the death of the deceased:

Provided that no citation to take a grant shall issue while proceedings as to the validity of the will are pending.

(4) A person cited who is willing to accept or take a grant may apply *ex parte* to a registrar for an order for a grant on filing an affidavit showing that he has entered an appearance and that he has not been served by the citor with notice of any application for a grant to himself.

(5) If the time limited for appearance has expired and the person cited has not entered an appearance, the citor may—

(*a*) in the case of a citation under paragraph (1) of this rule, apply to a registrar for an order for a grant to himself;

(*b*) in the case of a citation under paragraph (2) of this rule, apply to a registrar for an order that a note be made on the grant that the executor in respect of whom power was reserved has been duly cited and has not appeared and that all his rights in respect of the executorship have wholly ceased;

(*c*) in the case of a citation under paragraph (3) of this rule, apply to a registrar by summons (which shall be served on the person cited) for an order requiring such person to take a grant within a specified time.

(6) An application under the last foregoing paragraph shall be supported by an affidavit showing that the citation was duly served and that the person cited has not entered an appearance.

(7) If the person cited has entered an appearance but has not applied for a grant under paragraph (4) of this rule, or has failed to prosecute his application with reasonable diligence, the citor may—

(*a*) in the case of a citation under paragraph (1) of this rule, apply by summons to a registrar for an order for a grant to himself;

(*b*) in the case of a citation under paragraph (2) of this rule, apply by summons to a registrar for an order striking out the appearance and for the endorsement on the grant of such a note as is mentioned in subparagraph (*b*) of paragraph (5) of this rule;

(*c*) in the case of a citation under paragraph (3) of this rule, apply by summons to a registrar for an order requiring the person cited to take a grant within a specified time;

and the summons shall be served on the person cited.

Citation to propound a will

47.—(1) A citation to propound a will shall be directed to the executors named in the will and to all persons interested thereunder, and may be issued at the instance of any citor having an interest contrary to that of the executors or such other persons.

(2) If the time limited for appearance has expired and no person cited has entered an appearance, or if no person who has appeared proceeds with reasonable diligence to propound the will, the citor may apply on motion for an order for a grant as if the will were invalid.

Address for service

48. All caveats, citations, warnings and appearances shall contain an address for service within the jurisdiction.

Application for order to bring in a will or to attend for examination

49.—(1) An application under section 26 of the Court of Probate Act, 1857, for an order requiring a person to bring in a will or to attend for examination may be made to a judge by summons, which shall be served on every such person as aforesaid.

(2) An application under section 23 of the Court of Probate Act, 1858(a), for the issue by a registrar of the principal registry of a subpoena to bring in a will shall be supported by an affidavit setting out the grounds of the application, and if any person served with the subpoena denies that the will is in his possession or control he may file an affidavit to that effect.

Limited grants under section 155 *of Act*

50. An application for an order for a grant under section 155 of the Act limited to part of an estate shall, where the gross value of the estate wherever situated (excluding any trust estate) does not exceed £3000, be made to a registrar of the principal registry, and shall in any other case be made by summons to a judge, and shall be supported by an affidavit stating—

(*a*) whether the application is made in respect of the real estate only or any part thereof, or real estate together with personal estate, or in respect of a trust estate only;

(*b*) whether the estate of the deceased is known to be insolvent;

(*c*) that the persons entitled to a grant in respect of the whole estate in priority to the applicant have been cleared off.

Grants of administration under discretionary powers of court, and grants ad colligenda bona

51. An application for an order for—

(*a*) a grant of administration under section 73 of the Court of Probate Act, 1857, or section 162 of the Act, or

(*b*) a grant of administration *ad colligenda bona,*

shall, where the gross value of the estate wherever situated (excluding any trust estate) does not exceed £3000, be made to a registrar of the principal registry, and shall in any other case be made by summons to a judge, and shall be supported by an affidavit setting out the grounds of the application.

Applications for leave to swear to death

52. An application for leave to swear to the death of any person shall, where the gross value of the estate wherever situated (excluding any trust estate) does not exceed £3000, be made to a registrar of the principal registry, and shall in any other case be made by summons to a judge, and shall be supported by an affidavit setting out the grounds of the application, which shall contain particulars of all policies of insurance on the life of the presumed deceased:

Provided that—

(*a*) if the death is presumed to have occured through the loss of a ship or aircraft without leaving any survivor and it appears from the records of the principal registry that leave has already been granted by a judge to swear to the death of any other person in consequence of such loss, or

(a) 21 & 22 Vict. c. 95.

(*b*) if the deceased died domiciled outside England and the court having jurisdiction at the place where he died domiciled has made an order presuming his death and vesting his estate in the persons entitled thereto,

the application shall be made to a registrar of the principal registry whatever the value of the estate.

Grants in respect of nuncupative wills and of copies of wills

53.—(1) An application for an order admitting to proof a nuncupative will, or a will contained in a copy, a completed draft, a reconstruction or other evidence of its contents where the original will is not available, may be made to the court on motion or to a registrar of the principal registry:

Provided that where a will is not available owing to its being retained in the custody of a foreign court or official, a duly authenticated copy of the will may be admitted to proof without any such order as aforesaid.

(2) The application shall be supported by an affidavit setting out the grounds of the application and by such evidence on affidavit as the applicant can adduce as to—

(*a*) the due execution of the will,

(*b*) its existence after the death of the testator, and

(*c*) the accuracy of the copy or other evidence of the contents of the will,

together with any consents in writing to the application given by any persons not under disability who would be prejudiced by the grant.

Grants durante absentia

54. An application for an order for a grant of special administration under section 164 of the Act where a personal representative is residing outside England shall be made to the court on motion.

Application for order where case pending in district probate registry

55. An application to a registrar of the principal registry for an order—

(*a*) under rule 29, for a grant where the deceased died domiciled outside England,

(*b*) under paragraph (3) of rule 31, assigning a person to be guardian of an infant,

(*c*) under paragraph (1) of rule 33, for a grant on behalf of a person incapable of managing his affairs,

(*d*) under paragraph (5) of rule 38, enabling a person resident outside the United Kingdom, the Channel Islands or the Isle of Man to become a surety to an administration bond,

(*e*) under rule 50, for a grant limited to part of an estate,

(*f*) under rule 51, for a grant under section 73 of the Court of Probate Act, 1857, or section 162 of the Act or for a grant *ad colligenda bona*,

(*g*) under rule 52, granting leave to swear to the death of any person,

(*h*) under rule 53, admitting to proof a nuncupative will or a will of which the original is not available,

may be lodged at the district probate registry at which the application for a grant has been or is to be made.

Notice of election by surviving spouse to redeem life interest

56.—(1) Where a surviving spouse who is the sole personal representative of the deceased is entitled to a life interest in part of the residuary estate and elects under section 47A of the Administration of Estates Act, 1925, to have the life interest redeemed, he may give written notice of the election to the principal probate registrar in pursuance of subsection (7) of that section by filing a notice in form 7 in the principal registry or in the district probate registry from which the grant issued.

(2) Where the grant issued from a district probate registry, the notice shall be filed in duplicate.

(3) A notice filed under this rule shall be noted on the grant and the record and shall be open to inspection.

Information as to grants in district probate registries to be sent to principal registry

57.—(1) The notice of an application for a grant made in a district probate registry required by subsection (1) of section 152 of the Act to be sent to the principal registry shall be in the form of an index card, stating the full name and address of the deceased, his age, if known, and the date of his death.

(2) The list of grants made by a district probate registrar required by subsection (5) of the said section 152 to be sent to the principal registry shall be sent once in every week, and shall include the full name of every person in respect of whose estate a grant has been made and the name of the county or town in which he resided, and a copy of every grant mentioned in such list shall be sent by the district probate registrar to the principal registry for filing.

Issue of copies of original wills and other documents

58.—(1) Where copies are required of original wills or other documents deposited under section 170 of the Act, such copies may be photographic copies sealed with the seal of the registry and issued as office copies and, where such office copies are available, copies certified under the hand of a registrar to be true copies shall be issued only if it is required that the seal of the court be affixed thereto.

(2) Copies, not being photographic copies, of original wills or other documents deposited under the said section 170 shall be examined against the documents of which they purport to be copies only if so required by the person demanding the copy, and in such case the copy shall be certified under the hand of a registrar to be a true copy and may in addition be sealed with the seal of the court.

Taxation of costs

59.—(1) Every bill of costs (other than a bill delivered by a solicitor to his client which falls to be taxed under the Solicitors Act, 1932(a)) shall be referred to a registrar of the principal registry for taxation and may be taxed by him or such other taxing officer as the President may appoint.

(2) The party applying for taxation shall file the bill and give to any other parties entitled to be heard on the taxation not less than three clear

(a) 22 & 23 Geo. 5. c. 37.

days' notice of the time appointed for taxation, and shall at the same time, if he has not already done so, supply them with a copy of the bill.

(3) If any party entitled to be heard on the taxation does not attend within a reasonable time after the time appointed, the taxing officer may proceed to tax the bill upon being satisfied that such party had due notice of the time appointed.

(4) The fees payable on taxation shall be paid by the party on whose application the bill is taxed and shall be allowed as part of the bill.

Power to require application to be made by summons or motion

60. A registrar of the principal registry may require any application made to him to be brought before him by summons, and may require any application made to him, whether by summons or otherwise, to be brought before a judge by summons or before the court on motion.

Exercise of powers of judge during Long Vacation

61. All powers exercisable under these Rules by a judge in chambers may be exercised during the Long Vacation by a registrar of the principal registry.

Appeals from registrars

62.—(1) Any person aggrieved by a decision or requirement of a district probate registrar may appeal by summons to a registrar of the principal registry.

(2) Any person aggrieved by a decision or requirement of a registrar of the principal registry may appeal by summons to a judge.

(3) If, in the case of an appeal under either of the two last foregoing paragraphs, any person besides the appellant appeared or was represented before the registrar from whose decision or requirement the appeal is brought, the summons shall be issued within seven days thereof for hearing on the first available day and shall be served on every such person as aforesaid.

Service of notice of motion and summons

63.—(1) A judge or registrar of the principal registry may direct that a notice of motion or summons for the service of which no other provision is made by these Rules shall be served on such person or persons as the judge or registrar may direct.

(2) Where by these Rules or by any direction given under the last foregoing paragraph a notice of motion or summons is required to be served on any person, it shall be served—

(*a*) in the case of a notice of motion, not less than five clear days before the day named in the notice for hearing the motion;

(*b*) in the case of a summons, not less than two clear days before the day appointed for the hearing, unless a judge or registrar of the principal registry, at or before the hearing, dispenses with service on such terms, if any, as he may think fit.

Notices etc.

64. Unless a registrar otherwise directs or these Rules otherwise provide, any notice or other document required to be given to or served on any person

may be given or served by leaving it at, or by sending it by prepaid registered post to, that person's address for service or, if he has no address for service, his last known address.

Affidavits

65. Every affidavit used in non-contentious probate business shall be in the form required by the Rules of the Supreme Court in the case of affidavits to which those Rules apply.

Time

66. The provisions of Order 64 of the Rules of the Supreme Court shall apply to the computation, enlargement and abridgement of time under these Rules, except that nothing in that Order shall prevent time from running in the Long Vacation.

Application to pending proceedings

67. Subject in any particular case to any direction given by a judge or registrar, these Rules shall apply to any proceeding which is pending on the date on which they come into operation as well as to any proceeding commenced on or after that date:

Provided that where the deceased died before the 1st January, 1926, the right to a grant shall, subject to the provisions of any enactment, be determined by the principles and rules in accordance with which the court would have acted at the date of the death.

Revocation of previous Rules

68.—(1) The Rules, Orders and Instructions set out in the Second Schedule are hereby revoked.

(2) The following amendments shall be made in the Rules, Orders and Tables of Fees for the Court of Probate in respect of Contentious Business, dated July 30, 1862(a):—

(*a*) rules 7 to 12 shall be revoked;

(*b*) in rule 73 the words "and by motion upon affidavit when no suit is pending" shall be deleted.

Dated the fifteenth day of June, 1954.

Merriman, P.

We concur

Simonds, C.

Goddard, C.J.

(a) Rev. XXII, p. 118.

FIRST SCHEDULE

Rule 38

FORM 1

Administration Bond

In the High Court of Justice
Probate, Divorce and Admiralty Division
The (1) Probate Registry

(1) Insert " Principal " or "— District " (stating name).

(2) Insert full names, addresses and descriptions of principals and sureties.

Know all Men by these Presents that We (2)

(3) Unless otherwise directed, the sum to be inserted should be double the gross value of the estate.

(4) Individuals bind themselves, their executors and administrators. Trust and other Corporations bind themselves and their successors.

are jointly and severally bound unto the Principal Probate Registrar in the sum of (3) pounds, for the payment of which to the said Registrar we bind ourselves and each of us and our (4)

Sealed with our Seal(s)

Dated the day of 19 .

(5) Insert full name of principal.

(6) Set out the capacity in which application for the grant is made (which must agree with that stated in the oath).

(7) Name and address of the deceased.

(8) " and codicils ", if any.

(9) Delete if deceased died intestate.

(10) Insert any limitation on the estate to be administered, or any extension to include settled land. On an application for a second or subsequent grant insert " left unadministered by " [previous grantee]. If the grant is to be a limited one, give particulars.

(11) On a creditor's application insert here:—" paying all and singular the debts owed by the said deceased at his death in due course of administration, rateably and proportionately and according to the priority required by law, not, however, preferring his own debt by reason of his being administrator nor the debt of any other person ".

(12) If the deceased died testate this paragraph should be deleted.

The condition of this obligation is such that if the above-named (5)
the (6)
of (7)
deceased, who died on the day of
and the intended administrator [with the will (8) annexed] (9) of all the estate which by law devolves to and vests in the personal representative of the said deceased (10)

do, when lawfully called on in that behalf, make or cause to be made a true and perfect inventory of the said estate which has or shall come to the hands, possession or knowledge of the said intended administrator, and do exhibit the said inventory or cause it to be exhibited in the (1) Probate Registry whenever required by law so to do;

and do well and truly administer the said estate according to law (11);

and further do make or cause to be made a true and just account of the administration of the said estate whenever required by law so to do;

and further do, if so required, render and deliver up the letters of administration in the High Court of Justice if it shall hereafter appear that any will was made by the said deceased which is exhibited in the said Court with a request that it be allowed and approved accordingly; (12)

then this obligation shall be void and of no effect, but shall otherwise remain in full force and effect.

Signed, sealed and delivered
by the within-named
in the presence of

(13) In the case of the intended administrator, the bond must, unless attested by an authorised officer of a registry, be attested by the person before whom the oath was sworn. Attestation is not required in the case of a corporation.

A Commissioner for Oaths
[*or other person authorised by law to administer an oath*] (13)

[The Common Seal of
was hereunto affixed in the presence of

Rule 41

FORM 2

Administration Bond on application for resealing under Colonial Probates Acts, 1892 *and* 1927

[*Heading and Obligation of Bond as in Form* 1. *The penalty, unless otherwise directed, should be double the gross value of the estate to which the grant relates on resealing.*]

(1) Insert full name(s), address(es) and description(s) of person(s) to whom the grant was made.

The condition of this obligation is such that if (1)
of

(2) " and codicils ", if any.
(3) Delete if deceased died intestate.

the administrator(s) [with the will (2) annexed] (3) acting by the

(4) Description of Court by which grant was issued.

authority of (4) , under Letters of Administration [with the will (2) annexed] (3) issued at on the day of 19 , and now about to be sealed in England under the Colonial Probates Acts, 1892 and 1927, of the estate of (5)

(5) Name and address of the deceased.

deceased who died on the day of 19

do, when lawfully called on in that behalf, make or cause to be made a true and perfect inventory of the estate of the said deceased in England which has or shall come to the hands, possession or knowledge of the said administrator, and do exhibit the said inventory or cause it to be exhibited in the Principal Probate Registry whenever required by law so to do;

and do well and truly administer the said estate according to law;

and further do make or cause to be made a true and just account of the administration of the said estate in England whenever required by law so to do;

then this obligation shall be void and of no effect, but shall otherwise remain in full force and effect.

Signed, sealed and delivered
by the within-named

in the presence of

(6) Where the application requires to be supported by an oath sworn by the applicant, his signature must, unless attested by an authorised officer of a registry, be attested by the person before whom the oath was sworn. Attestation is not required in the case of a corporation.

A Commissioner for Oaths
[*or other person authorised by law to administer an oath*] (6)

[The Common Seal of
was hereunto affixed in the presence of]

FORM 3 Rule 43

Certificate of delivery of Inland Revenue affidavit

And it is hereby certified that an Inland Revenue affidavit has been delivered wherein it is shown that the gross value of the said estate in Great Britain (exclusive of what the said deceased may have been possessed of or entitled to as a trustee and not beneficially) amounts to £ and that the net value of the estate amounts to £ .

And it is further certified that it appears by a receipt signed by an Inland Revenue officer on the said affidavit that £ on account of estate duty and interest on such duty has been paid.

FORM 4 Rule 44 (2)

Caveat

In the High Court of Justice
Probate, Divorce and Admiralty Division
The (1) Probate Registry

(1) Insert "Principal", or "—District" (stating name).

Let no grant be sealed in the estate of ,
late of (2) deceased, who died on the
day of 19 , at ,
without notice to (3)

(2) Full name and address of the deceased.

(3) Name(s) of party or parties by whom or on whose behalf the caveat is entered.

Dated this day of 19 .
(*Signed*) (4)

(4) To be signed by the caveator's solicitor or by the caveator if acting in person.

whose address for service is:—

Solicitor for the said (5)

(5) If the caveator is acting in person, substitute "In person".

FORM 5 Rule 44 (7)

Warning to Caveator

In the High Court of Justice
Probate, Divorce and Admiralty Division
The Principal Probate Registry

To of
a party who has entered a caveat in the estate of
deceased.

You are hereby warned within eight days after service hereof upon you, inclusive of the day of such service,—

(1) to enter an appearance either in person or by your solicitor, at the Principal Probate Registry, Somerset House, Strand, London, W.C.2, setting forth what interest you have in the estate of the above-named
of
deceased contrary to that of the party at whose instance this warning is issued; or

(2) if you have no contrary interest but wish to show cause against the sealing of a grant to such party, to issue and serve a summons for directions by a registrar of the said registry.

And take notice that in default of your so doing the court may proceed to issue a grant of probate or administration in the said estate notwithstanding your caveat.

Dated the day of 19 .

Registrar.

Issued at the instance of

[*Here set out the name and interest (including the date of the will, if any, under which the interest arises) of the party warning, the name of his solicitor and the address for service. If the party warning is acting in person, this must be stated.*]

Rules 44 (9), 45 (6) FORM 6

Appearance to warning or citation

In the High Court of Justice

Probate, Divorce and Admiralty Division

The Principal Probate Registry

(1) Delete whichever is inapplicable.

Caveat No. dated the day of 19 (1)

Citation dated the day of 19 (1)

Full name and address of deceased:—

Full name and address of person warning [*or* citor]:—

(2) Here set out the interest of the person warning, or citor, as shown in warning or citation.

(2)

Full name and address of caveator [*or* person cited]:—

(3) Here set out the interest of the caveator or person cited, stating date of the will, if any under which such interest arises.

(3)

Enter an appearance for the above-named caveator [*or* person cited] in this matter.

Dated the day of 19 .

(*Signed*)

whose address for service is:—

Solicitor (*or*, " In person ").

FORM 7 Rule 56

Notice of election to redeem life interest

In the High Court of Justice
Probate, Divorce and Admiralty Division
The Principal Probate Registry

In the estate of deceased.

Whereas of , died on the day of 19 wholly/partially intestate leaving his/her lawful wife/husband and lawful issue of the said

And whereas Probate/Letters of Administration of the estate of the said were granted to me, the said [and to of] at the (1) Probate Registry on the day of 19 ;

And whereas [the said has ceased to be a personal representative because] and I am [now] the sole personal representative:

Now I, the said , hereby give notice in accordance with section 47A of the Administration of Estates Act, 1925, that I elect to redeem the life interest to which I am entitled in the estate of the late by retaining £ its capital value, and £ , the costs of the transaction.

Dated the day of 19 .

(*Signed*)

(1) Insert "Principal", or "— District", stating name.

To the Principal Probate Registrar.

SECOND SCHEDULE Rule 68

Rules, Orders and Instructions Revoked

Rules, Orders and Instructions for the Registrars of the Principal Registry of the Court of Probate in respect of Non-Contentious Business, dated July 30, 1862 (Rev. XXII, p. 155).

Rules, Orders and Instructions for the Registrars of the District Registries of the Court of Probate in respect of Non-Contentious Business, dated January 27, 1863 (Rev. XXII, p. 198).

Amending Rule and Order for the Court of Probate in Non-Contentious Business, dated December 29, 1865 (Rev. XXII, p. 155).

Amending Rules and Orders for the Registrars of the Principal Registry of the Court of Probate in Non-Contentious Business, dated January 14, 1871 (Rev. XXII, p. 155).

Amending Rules and Orders for the District Registrars of the Court of Probate in respect of Non-Contentious Business, dated January 14, 1871 (Rev. XXII, p. 199).

Rules, Orders and Instructions as to Personal Applications for Grants of Probate or Letters of Administration, dated February 11, 1874 (Rev. XXII, p. 251).

Rules, Orders and Instructions as to Personal Applications for Grants of Probate or Letters of Administration in the District Registries of the Court of Probate, dated February 11, 1874 (Rev. XXII, p. 253).

Amending Rules and Orders for the Registrars of the Court in Non-Contentious Probate Business, dated March 21, 1882 (Rev. XXII, pp. 155, 199).

Amending Rules, Orders and Instructions for the Registrars of the Court in Non-Contentious Probate Business, dated March 29, 1887 (Rev. XXII, pp. 155, 199).

Rules for the Registrars of the Principal Probate Registry in Non-Contentious Business for carrying out the provisions of the Colonial Probates Act, 1892, dated December 7, 1892 (Rev. XXII, p. 155).

Additional Rule and Order for the Registrars of the Principal and District Probate Registries with regard to Non-Contentious Business, dated August 1, 1894—S.R. & O. 1894/34 (Rev. XXII, pp. 155, 199: 1894, p. 426).

Additional Rules and Orders for the Registrars of the Principal and District Probate Registries with regard to Non-Contentious Business, dated December 11, 1896—S.R. & O. 1896/1095 (Rev. XXII, pp. 155, 199: 1896, p. 584).

Additional Rule and Order for the Registrars of the Principal and District Probate Registries with regard to Non-Contentious Business, dated November 20, 1897—S.R. & O. 1897/867 (Rev. XXII, pp. 155, 199: 1897, p. 612).

Additional Rules and Orders for the Registrars of the Principal and District Probate Registries with regard to Non-Contentious Business, dated January 24, 1921—S.R. & O. 1921/649 (Rev. XXII, pp. 155, 199: 1921, p. 1287).

The Non-Contentious Probate Rules, 1925—S.R. & O. 1925/1231 (Rev. XXII, pp. 155, 199: 1925, p. 1539).

The Non-Contentious Probate Rules, 1933—S.R. & O. 1933/985 (Rev. XXII, p. 155: 1933, p. 1823).

The Non-Contentious Probate Rules, 1934—S.R. & O. 1934/366 (Rev. XXII, pp. 155, 199: 1934 II, p. 604).

The Non-Contentious Probate Rules, 1937—S.R. & O. 1937/113 (Rev. XXII, p. 155: 1937, p. 2244).

The Non-Contentious Probate Rules, 1939—S.R. & O. 1939/1514 (Rev. XXII, pp. 155, 199, 251, 253: 1939 II, p. 3123).

The Non-Contentious Probate Rules, 1943—S.R. & O. 1943/897 (Rev. XXII, pp. 155, 199: 1943 I, p. 936).

The Non-Contentious Probate Rules, 1947—S.R. & O. 1947/1393 (Rev. XXII, pp. 155, 199: 1947 I, p. 2084).

The Non-Contentious Probate Rules, 1948—S.I. 1948/1204 (Rev. XXII, p. 155: 1948 I, p. 4056).

The Non-Contentious Probate Rules, 1949—S.I. 1949/876 (Rev. XXII, p. 155: 1949 I, p. 4013).

The Non-Contentious Probate Rules, 1950—S.I. 1950/287 (Rev. XXII, p. 155: 1950 II, p. 981).

The Non-Contentious Probate Rules, 1952—S.I. 1952/1878 (1952 III, p. 3365).

The Non-Contentious Probate (No. 2) Rules, 1952—S.I. 1952/2048 (1952 III, p. 3365).

EXPLANATORY NOTE

(This Note is not part of the Rules, but is intended to indicate their general purport.)

These Rules replace the existing Rules and Instructions governing non-contentious probate business listed in the Second Schedule, as well as many of the practice notes and directions relating to such business. The opportunity has been taken of making a number of amendments in the existing practice, of which the following are among the more important:—

(1) The rules dealing with the order of priority for a grant set out the rights of classes already recognised in practice, and make certain other minor changes. (Rules 19 and 21.)

(2) An infant's right to nominate a guardian to take a grant on his behalf is restricted to an infant over 16 who wishes to nominate his nearest relative. (Rule 31.)

(3) The need for obtaining the consent of the administrator of enemy property is confined to Bulgaria, Germany, Hungary, Japan and Roumania and to cases in which the deceased died before the 6th October, 1952. (Rule 36.)

(4) Applications for orders for grants *ad colligenda bona* or under section 155 or 162 of the Supreme Court of Judicature (Consolidation) Act, 1925, or for leave to swear to death must, where the estate does not exceed £3,000, be made to a registrar of the principal registry, and in other cases to a judge by summons. (Rules 50, 51, 52.)

(5) Applications for resealing under the Colonial Probates Acts, 1892 and 1927, need not be advertised and no oath is necessary unless a registrar of the principal registry otherwise directs. No formal power of attorney is required in such cases. (Rule 41.)

(6) If the deceased was domiciled outside England, this must be stated in the oath. (Rule 6.)

(7) A solicitor entering a caveat must disclose the name of the person for whom he is acting. (Rule 44.)

1954 No. 407 (L. 4)

The Rules of the Supreme Court (No. 1) 1954

Made - - - -	*26th March*, 1954
Laid before Parliament	*29th March*, 1954
Coming into Operation	*5th April*, 1954

We, the Rule Committee of the Supreme Court, hereby make the following Rules:—

1. The following paragraph shall be added to Rule 4 of Order VII (which relates to change of solicitors):—

"(5) Notwithstanding anything in paragraph (1) of this Rule, where the certificate of an assisted person within the meaning of the Legal Aid (General) Regulations, 1950(a), is revoked or discharged, the solicitor who has acted for the assisted person shall cease to be the solicitor acting in the cause or matter as soon as his retainer has determined under paragraph (2) of Regulation 12 of the said Regulations; and if the party whose certificate has been revoked or discharged desires to proceed with the cause or matter without legal aid and appoints the solicitor or another solicitor to act on his behalf, the provisions of paragraph (7) of Rule 2 shall apply as if such party had previously sued or defended in person."

2. These Rules may be cited as the Rules of the Supreme Court (No. 1) 1954, and shall come into operation on the fifth day of April, 1954.

* Dated the twenty-sixth day of March, 1954.

Simonds, C.
Goddard, C.J.
Raymond Evershed, M.R.
Merriman, P.
D. B. Somervell, L.J.
H. B. Vaisey, J.
J. N. Gray.
R. G. Micklethwait.
W. Charles Norton.

(a) S.I. 1950/1359 (1950 I, p. 1199).