

Serial Number 1951/294

THE DESTITUTE PERSONS REGULATIONS 1951

FREYBERG, Governor-General

ORDER IN COUNCIL

At the Government House at Wellington, this 19th day of
December 1951

Present :

HIS EXCELLENCY THE GOVERNOR-GENERAL IN COUNCIL

PURSUANT to the Destitute Persons Act 1910, His Excellency the Governor-General, acting by and with the advice and consent of the Executive Council, hereby makes the following regulations.

REGULATIONS

1. (1) These regulations may be cited as the Destitute Persons Regulations 1951.

(2) These regulations shall come into force on the 1st day of January 1952.

NOTICE TO LANDLORD OF ORDER VESTING OR REVESTING TENANCY

2. The notice referred to in subsection (1) of section 4 of the Destitute Persons Amendment Act 1951 may be in the form numbered 1 in the Schedule hereto.

APPLICATION FOR CANCELLATION OR VARIATION OF VESTING OR REVESTING ORDER

3. An application by a landlord, under section 4 of the Destitute Persons Amendment Act 1951, for the cancellation or variation of a vesting or revesting order shall be in the form numbered 2 in the Schedule hereto. The application shall be filed in the Court in which the vesting or revesting order was made.

EXAMINATION OF WITNESSES OUT OF COURT

4. (1) Where on any complaint or application under the Destitute Persons Act 1910, or on any information for an offence against section 61 of that Act, any person, whether a party to the proceedings or not,—

- (a) Is resident more than twenty miles from the Court where the hearing of the proceedings is appointed to be held ; or
- (b) Is about to go and remain beyond that distance until after the hearing ; or
- (c) Is or is likely to be unable to attend the hearing, whether through sickness or other cause,—

the party desiring to use the evidence of himself or of that person at the hearing may give notice of his desire to the Registrar (in these regulations referred to as the examining Registrar) of the Court in

which it is intended that the examination hereinafter mentioned shall take place (in these regulations referred to as the Court for examination).

(2) The notice shall be in the form numbered 3 in the Schedule hereto, and shall be filed in duplicate and shall specify the name of each person intended to be examined.

5. Immediately upon receiving the notice, the examining Registrar shall appoint a time and place for the examination and notify the applicant thereof, and, if the proceedings are not proceedings of his Court, shall send the duplicate of the notice, with a memorandum of the time and the place appointed for the taking of the examination, to the Registrar of the Court (in these regulations referred to as the Court of hearing) in which the proceedings are pending.

6. (1) The Registrar of the Court of hearing shall, forthwith after appointing the time and place for holding the examination or, as the case may be, after receiving notice of the application, give notice in the form numbered 4 in the Schedule hereto to all interested parties, other than the applicant, of the intention to hold the examination and of the time and place appointed therefor.

(2) The notice shall be served in the same manner as if it were a summons to a defendant on an information :

Provided that where any party is represented in the proceedings by a solicitor or a Maintenance Officer, it shall be sufficient compliance with this regulation if the notice is left with that solicitor or Maintenance Officer :

Provided also that a Magistrate may, if he thinks fit, by writing under his hand, dispense with service.

7. The Registrar of the Court of hearing shall, forthwith after service on such parties as aforesaid, send to the examining Registrar a copy of the last-mentioned notice, with an affidavit of service thereof, or, as the case may require, a copy of the Magistrate's note dispensing with service, and a certified copy of the relevant information, complaint, or application.

8. Summonses to witnesses to attend the examination and to produce documents may be issued by any Justice of the Peace or any Registrar of a Magistrate's Court, and the procedure in respect thereof and on the examination shall be the same in all respects as if the examination were the hearing of an information or complaint under the Destitute Persons Act 1910.

9. (1) The examination of witnesses shall take place before a Magistrate or before the Registrar and may be in Court or in Chambers, except that the examining Magistrate or Registrar may, if he thinks fit, examine any witness at any other place. The examination may be adjourned from time to time and from place to place.

(2) The examining Magistrate or Registrar may administer an oath to each witness, who may be examined, cross-examined, and re-examined as at the hearing of an information or complaint.

(3) The deposition shall be taken down in writing—

(a) In the presence of the examining Magistrate or Registrar ; and

(b) Not ordinarily by question and answer, but so as to represent as nearly as may be practicable the statements of the witness.

(4) The examining Magistrate or Registrar may put down or cause to be put down any particular question or answer, if there appears to be any special reason for doing so, and may put any question to the witness as to the meaning of any answer or as to any matter arising in the course of the examination.

(5) An examining Registrar shall not have power to decide upon the admissibility of any evidence, but if any evidence is objected to he shall take down the question and the answer thereto or admit the document, as the case may be, and make a note of the objection on the deposition, and the question of admissibility shall be decided by the Magistrate at the hearing.

(6) If the witness objects to any question put to him before an examining Registrar, the question and the objection shall be taken down in the deposition, and the validity of the objection shall be decided by the Magistrate at the hearing.

(7) Where an examination is before a Registrar and any witness refuses or neglects to attend in answer to a witness summons issued under these regulations, or, having attended, refuses to be sworn or to answer any lawful question, or to produce any document, the examination shall be adjourned, and the adjourned examination shall be held before a Magistrate at a time and place to be appointed by him.

10. (1) When the examination of each witness has been concluded, the deposition shall be read over to the witness, and each page thereof shall be signed by him and by the examining Magistrate or Registrar. If the witness refuses to sign the deposition, the examining Magistrate or Registrar shall make a note of the refusal on the deposition, and the deposition may be tendered in evidence, notwithstanding that it is not signed by the witness.

(2) The forms numbered 5 and 6 in the Schedule hereto shall be attached to the depositions, which, together with any exhibits suitably marked, shall be transmitted to the Court of hearing.

11. Allowances for solicitors, not exceeding £1 1s. in respect of each party, and allowances for witnesses in accordance with the prescribed scale, shall be certified by the examining Magistrate or Registrar in the form numbered 7 in the Schedule hereto :

Provided that in every case the costs to be allowed shall be in the discretion of the Court of hearing.

12. If at the time appointed or at any adjournment thereof the party applying to take evidence fails to appear, or fails to proceed with the examination, the application shall be struck out and the examining Magistrate or Registrar shall forthwith send to the Court of hearing a certificate in the form numbered 8 in the Schedule hereto ; and if the opposite party appears, the examining Magistrate or Registrar shall forward a certificate of costs in accordance with the provisions of regulation 11 hereof.

13. Evidence given in accordance with these regulations may be tendered in the proceedings in respect of which the examination took place as if the evidence were given in the course of the hearing in those proceedings, and the signature of the examining Magistrate or Registrar to the deposition shall be judicially noticed without any proof thereof.

14. Where it is proved to the satisfaction of a Magistrate that proceedings for the examination of a witness under these regulations have been taken for the purpose of delay or other improper purpose,

or that there is undue delay in the holding of the examination, the Court of hearing may proceed in the proceedings without waiting for the examination of the witness.

15. The pendency of any examination under the provisions of these regulations shall not suspend or prevent the exercise by any Magistrate of any power or jurisdiction which he would otherwise possess in respect of the information, complaint, or application.

16. The regulations prescribing forms to be used under the Destitute Persons Act 1910, and published in the *Gazette* of the 27th day of July 1911 at page 2314, are hereby amended by revoking the forms numbered 18, 19, and 20.

SCHEDULE

Form No. 1

[Reg. 2]

NOTICE TO LANDLORD

The Destitute Persons Amendment Act 1951, Section 4

In the Magistrate's Court at

To [Name and address].

WHEREAS an order, a copy of which is hereto annexed marked "A," was made in this Court vesting (or revesting) the tenancy of the dwellinghouse situated at in

You are hereby notified that you may, within fourteen days after the service upon you of this notice, apply to a Magistrate for the cancellation or variation of the order.

Dated at, this day of 19...

.....
Registrar.

Form No. 2

[Reg. 3]

NOTICE OF APPLICATION BY LANDLORD FOR CANCELLATION OR VARIATION OF VESTING OR REVESTING ORDER

In the Magistrate's Court held at

Between

....., of, [Occupation],
Complainant,

and

....., of, [Occupation],
Defendant.

TAKE notice that I,, of, [Occupation], will apply to a Magistrate at on day, the day of, 19.., at o'clock in the noon, for the cancellation or variation of the vesting (or revesting) order made in this Court on the day of, 19.., in respect of the premises at in, of which I am the landlord.

The grounds of my application are :

Signature

To the Registrar of the Magistrate's Court at, and to

SCHEDULE—continued

Form No. 3

[Reg. 4 (2)

NOTICE OF DESIRE TO TAKE EVIDENCE OF WITNESS RESIDENT AT A DISTANCE FROM, OR UNABLE TO ATTEND AT, COURT OF HEARING

(Title as in Form No. 2)

TAKE notice that I, the above-named complainant (or defendant), desire to use at the hearing of these proceedings the evidence of (myself and) [State full name, occupation, and address of any person whose evidence is desired to be taken], whose place of residence is more than twenty miles from the Court where the hearing is appointed to be held (or who is about to go and remain, until after the hearing, at a distance of more than twenty miles from the Court of hearing), (or who is (likely to be) unable to attend the hearing because of [State cause]), and I desire you to appoint a time and place for the examination of such witnesses.

Dated at, this day of 19...

(Solicitor for) Applicant.

To the Registrar of the Magistrate's Court at, being the Court for examination.

I hereby appoint day, the day of 19.., at the hour of in the noon, and the Magistrate's Court at, as the time and place for taking the above-mentioned examination.

Dated at, this day of 19...

Examining Registrar.

Form No. 4

[Reg. 6 (1)

NOTICE OF TIME AND PLACE FOR EXAMINATION

(Title as in Form No. 2)

TAKE notice that the complainant (or defendant) has given notice that he desires to have the examination of (himself and), of, and, of, taken at the Magistrate's Court at

And take notice that day, the day of 19.., at the hour of in the noon, has been appointed as the time, and the Magistrate's Court at as the place, for taking the examination, and that you may appear at the time and place aforesaid, by yourself or your counsel, and cross-examine the person or persons there examined.

Dated at, this day of 19..

Registrar of the Court of Hearing.

To the above-named.....

Form No. 5

[Reg. 10 (2)

EVIDENCE OF WITNESSES EXAMINED AT ANOTHER COURT

(Title as in Form No. 2)

EVIDENCE of witnesses taken at the Magistrate's Court at (being the Court for examination), on day, the day of 19.., before the undersigned.

Examining Magistrate (or Registrar).

Mr. appears for the complainant.

Mr. appears for the defendant.

(NOTE.—The depositions should be typewritten on separate sheets, which should be attached securely to this form. Commence the evidence of each witness with the words: "This deponent,, on his oath, says:". Each page must be signed by witness and the examining Magistrate or Registrar.)

SCHEDULE—continued

Form No. 6

[Reg. 10 (2)]

[Sequel to Form No. 5]

THE foregoing depositions of, written on sheets of paper numbered consecutively from 1 to and now fixed together and signed by me, were taken and sworn before me in accordance with the regulations under the Destitute Persons Act 1910 at on this day of 19

.....
Examining Magistrate (or Registrar).

Form No. 7

[Reg. 11]

CERTIFICATE OF COSTS

(Title as in Form No. 2)

It is hereby certified that the following are the costs allowed to the on the examination of witnesses at this day of 19

.....
Examining Magistrate (or Registrar).

Complainant's costs, viz.,—	£	s.	d.	Defendant's costs, viz.,—	£	s.	d.
Solicitor's fee	:	:	Solicitor's fee	:	:
Witness	:	:	Witness	:	:
Witness	:	:	Witness	:	:
Witness	:	:	Witness	:	:
Total	£	:	:	Total	£	:	:

Form No. 8

[Reg. 12]

CERTIFICATE OF NON-APPEARANCE

(Title as in Form No. 2)

It is hereby certified that the application of the complainant (or defendant) to take the evidence of was called this day, but, neither of the parties having appeared, the application was struck out (or the only having appeared, the application was struck out, with costs, as in the certificate annexed hereto).

Dated at, this day of 19

.....
Examining Magistrate (or Registrar).

T. J. SHERRARD,
Clerk of the Executive Council.

EXPLANATORY NOTE

[This note is not part of the regulations, but is intended to indicate their general effect.]

Regulation 2 of these regulations prescribes the form of notice to be given by the Registrar of a Magistrate's Court to a landlord when the Court has made an order vesting or re-vesting the tenancy of a dwellinghouse in separation proceedings. The notice informs the landlord of his right to apply for the cancellation or variation of the order. Regulation 3 prescribes the form of the application that may be made by the landlord.

Regulations 4 to 16 provide procedure for the taking of evidence, in proceedings under the Destitute Persons Act 1910, by a Magistrate or a Registrar in cases where a party or a witness is or will be absent from the hearing. These regulations are based on the similar provisions of the Magistrates' Courts Rules 1948.

Issued under the authority of the Regulations Act 1936.

Date of notification in *Gazette*: 20th day of December 1951.

These regulations are administered in the Department of Justice.