

Serial Number 1952/242



**THE MAGISTRATES' COURTS RULES 1948,  
AMENDMENT NO. 1**

C. W. M. NORRIE, Governor-General  
**ORDER IN COUNCIL**

At the Government Buildings at Wellington, this 17th day of  
December 1952

Present:

THE HON. K. J. HOLYOAKE PRESIDING IN COUNCIL

PURSUANT to the Magistrates' Courts Act 1947 and the Crown Proceedings Act 1950, His Excellency the Governor-General, acting by and with the advice and consent of the Executive Council, hereby makes the following rules.

**RULES**

1. (1) These rules may be cited as the Magistrates' Courts Rules 1948, Amendment No. 1, and shall be read together with and deemed part of the Magistrates' Courts Rules 1948\* (hereinafter referred to as the principal rules).

(2) These rules shall come into force on the 1st day of January 1953.

**PART I—CROWN PROCEEDINGS**

**INTERPRETATION**

2. (1) Rule 5 of the principal rules is hereby amended by inserting, after the definition of the term "affidavit", the following definition:—

" 'Civil proceedings', in relation to the Crown, has the same meaning as in the Crown Proceedings Act 1950: ".

(2) The said rule is hereby further amended by inserting, after the definition of the term "Court", the following definition:—

" The 'Crown' has the same meaning as in the Crown Proceedings Act 1950: ".

(3) The said rule 5 is hereby further amended by adding the following words:—

"References to actions or proceedings for the recovery of land or chattels shall be construed as including actions or proceedings against the Crown for an order declaring that the plaintiff is entitled as against the Crown to the land or chattels or to the possession thereof."

\* Statutory Regulations 1948, Serial number 1948/197, page 655.

## WHERE PROCEEDINGS MAY BE COMMENCED

3. Rule 26 of the principal rules (which relates to actions) is hereby amended by adding the following subclause:—

“(5) The foregoing provisions of this rule shall not apply to any action against the Crown (whether alone or with any other person); and any such action as aforesaid shall, except where by any Act or rule it is otherwise provided, be commenced in the Court nearest to the place where the cause of action or some material part thereof arose:

“Provided that if there is any reasonable doubt as to the Court in which any action should be commenced under this subclause, the action may be commenced in the Court nearest to the place where the plaintiff or one of the plaintiffs resides or carries on business.”

4. Rule 30 of the principal rules (which relates to originating applications) is hereby amended by adding the following as subclause (2) thereof:—

“(2) Paragraphs (a) and (c) of subclause (1) of this rule shall not apply in the case of an originating application to which the Crown (whether alone or with any other person) is respondent. If there is any reasonable doubt as to the Court in which any such originating application should be commenced under paragraph (b) of the said subclause (1), the application may be commenced in the Court nearest to the place where the applicant or one of the applicants resides or carries on business.”

## DEFAULT ACTION

5. Rule 73 of the principal rules is hereby amended by inserting in subclause (2) (which relates to the cases in which default actions shall not be brought), after paragraph (a), the following paragraph:—

“(aa) Against the Crown; or”.

## STATEMENT OF CLAIM

6. Rule 77 of the principal rules is hereby amended by inserting, after subclause (2), the following subclause:—

“(2A) Where the action is against the Crown and is instituted against the Attorney-General, the statement of claim shall give, in addition to the particulars required by the foregoing provisions of this rule, particulars of the Government Departments and officers of the Crown concerned.”

## SERVICE

7. The principal rules are hereby amended by inserting, after rule 84, the following heading and rule:—

“*Service on the Attorney-General in Proceedings Against the Crown*

“84A. In any civil proceedings against the Crown that are instituted against the Attorney-General, and in any civil proceedings to which the Crown is joined by joining the Attorney-General as a party or third party, all documents required to be served on the Attorney-General shall be served in accordance with section 16 of the Crown Proceedings Act 1950.”

**8.** Rule 107 of the principal rules (which relates to the service of ordinary summonses) is hereby amended by omitting from subclause (2) the words "Service shall be effected not less than ten clear days before the day of hearing", and substituting the words "Service shall be effected—

- "(a) In the case of an action against the Crown, not less than thirty-five clear days before the day of hearing:
- "(b) In any other case, not less than ten clear days before the day of hearing".

#### DEFENCE

**9.** Rule 113 of the principal rules is hereby amended by revoking subclause (1), and substituting the following subclause:—

"(1) A defendant in an ordinary action who disputes his liability for the whole or part of any claim shall serve on the plaintiff and file in the Court office a notice of intention to defend in the form No. 26. The notice shall be served and filed—

- "(a) Where the action is against the Crown, within twenty-eight days after the service of the summons on the Crown, inclusive of the day of service:
- "(b) In any other case, within seven days after the service of the summons on the defendant, inclusive of the day of service."

#### COUNTERCLAIM AND SET-OFF

**10.** Rule 119 of the principal rules is hereby amended by revoking subclause (1), and substituting the following subclauses:—

"(1) A defendant in an ordinary action who intends to set up a counterclaim shall serve on the plaintiff and file in the Court office a statement of his counterclaim, giving such particulars thereof as would be necessary in the case of a claim. The statement shall be headed with the word 'Counterclaim' and shall in all other respects conform to the rules as to statements of claim.

"(1A) The counterclaim shall be served and filed—

- "(a) Where the action is against the Crown, within twenty-eight days after the service of the summons on the Crown, inclusive of the day of service:
- "(b) In any other case, within seven days after the service of the summons on the defendant, inclusive of the day of service."

**11.** The principal rules are hereby further amended by inserting, after rule 120, the following heading and rule:—

#### *"Set-off or Counterclaim in Crown Proceedings*

"120A. (1) In any action by the Crown, rules 114 to 120 hereof shall have effect subject to the following modifications:—

- "(a) If the action is for the recovery of taxes, duties, or penalties, the defendant shall not be entitled to avail himself of any set-off or counterclaim:
- "(b) If the action is of any other nature, the defendant shall not be entitled to avail himself of any set-off or counterclaim arising out of a right or claim to repayment in respect of any taxes, duties, or penalties:

“(c) In any case, the defendant shall not be entitled without the leave of a Magistrate, to be obtained on application of which not less than seven clear days’ notice has been given to the Crown, to avail himself of any set-off or counterclaim if either the subject matter of the set-off or counterclaim does not relate to the Government Department or officer of the Crown in whose name the proceedings are brought, or the proceedings are brought in the name of the Attorney-General.

“(2) In any action against the Crown, the Crown shall not be entitled without the leave of a Magistrate, to be obtained on application of which not less than seven clear days’ notice has been given to the plaintiff, to avail itself of any set-off or counterclaim—

“(a) Where the Crown is sued in the name of the Attorney-General:

“(b) Where the Crown is sued in the name of a Government Department or officer of the Crown, if the subject matter thereof does not relate to that Department or officer.”

#### THIRD-PARTY NOTICE

12. The principal rules are hereby further amended by inserting, after rule 138, the following heading and rule:—

##### *“Third-party Proceedings Against the Crown*

“138A. Where a defendant applies for leave to issue a third-party notice for service on the Crown—

“(a) A copy of the notice served on the plaintiff in accordance with rule 138 (2) hereof shall be served on the Crown not less than seven clear days before the hearing of the application, and the Crown shall be entitled to appear at the hearing:

“(b) Such leave shall not be granted unless the Magistrate is satisfied that the Crown has had notice in writing giving reasonable particulars of the circumstances in which it is alleged that the liability of the Crown has arisen and of the Government Departments and officers of the Crown concerned.”

#### DISCOVERY, INSPECTION, AND PRODUCTION OF DOCUMENTS

13. The principal rules are hereby further amended by inserting, after rule 162, the following heading and rule:—

##### *“Application of This Part to Crown Proceedings*

“162A. In any civil proceedings to which the Crown is a party or third party, the provisions of this Part of these rules shall have effect subject to the following modifications:—

“(a) An order against the Crown under this Part may be made only by a Magistrate:

“(b) An order for discovery against the Crown under rule 155 hereof shall not be issued without the leave of a Magistrate obtained upon an application of which not less than seven clear days’ notice has been given to the Crown:

- “(c) An order for inspection under rule 156 (5) or rule 157 hereof, or an order under rule 160 or rule 161 hereof, shall not be made against the Crown except on an application of which not less than seven clear days' notice has been given to the Crown:
- “(d) Any affidavit to be made in answer to any order made against the Crown under this Part shall be made by such officer of the Crown as the Magistrate shall direct:
- “(e) Nothing in this Part, or in any order thereunder, shall be construed as requiring disclosure, whether to the Court or to any person, of the existence of any document if, in the opinion of a Minister of the Crown, it would be injurious to the public interest to disclose the existence of the document.”

#### GARNISHEE PROCEEDINGS

14. The principal rules are hereby further amended by inserting, after rule 278, the following heading and rule:—

##### *“Garnishee Proceedings Against the Crown*

“278A. In the case of garnishee proceedings against the Crown as sub-debtor, the provisions of this Part shall have effect subject to the following modifications:—

- “(a) This Part shall not apply to any debt that is excepted by the proviso to section 26 of the Crown Proceedings Act 1950:
- “(b) The affidavit to be filed pursuant to rule 266 hereof shall give, in addition to the particulars prescribed by form No. 85, particulars of the circumstances in which it is alleged that the liability of the Crown has arisen, and of the Government Department or officer of the Crown concerned:
- “(c) The garnishee summons to be served on the sub-debtor pursuant to rule 267 hereof shall be served on the Crown not less than thirty-five clear days before the day of hearing:
- “(d) The time within which, under rule 271 (1) hereof, there may be filed a notice in the form No. 88 that the sub-debtor disputes the debt claimed shall be twenty-eight days:
- “(e) The provisions of rule 270 (2) and rule 271 (3) hereof shall have effect subject to section 24 of the Crown Proceedings Act 1950.”

#### SAVING

15. Where before the commencement of these rules any civil proceedings have been commenced by or against the Crown in any Magistrate's Court pursuant to the Crown Proceedings Act 1950, and those proceedings are pending or in progress at the commencement of these rules, the provisions of the principal rules, as amended by this Part of these rules, shall, subject to the provisions of the Crown Proceedings Act 1950, apply to those proceedings:

Provided that nothing in this Part shall invalidate any act or thing done in or in connection with any such proceedings before the commencement of these rules.

## PART II—MISCELLANEOUS

**16.** (1) The principal rules are hereby further amended by inserting, after rule 9, the following heading and rule:—

*“Intituling of Forms*

“9A. (1) In any plaint note or other originating document, or in any statement of claim, summons to defendant or sub-debtor, third party notice, judgment, or order, the proceedings shall be properly intituled showing the Court in which the action or matter is proceeding, and the distinguishing number, and the names, addresses, and occupations of the parties. The form No. 1 may be used.

“(2) Subclause (1) of this rule shall apply to every other document, including any affidavit, filed, issued, or served by any party:

“Provided that in the case of any such document—

“(a) Surnames of individuals, where required to be inserted, shall be set out at length, but first or Christian names may, unless necessary to distinguish two or more persons required to be named, be indicated by initials only:

“(b) Where more persons than one are joined in the same interest, it shall be sufficient to set out the name of the person first named in the originating document filed in the proceedings, followed by the words ‘and another’ or ‘and others’, as the case may require:

“(c) Addresses and descriptions of persons, unless necessary to distinguish two or more persons required to be named, and indications of the interest in which a person is a party to the proceedings may be omitted:

“(d) The names of bodies corporate shall be set out without abbreviation, but the document need not state the fact of incorporation, or describe the mode of incorporation, or refer to the registered office of the body corporate, or make any other addition:

“(e) The intituling of a document in a matter need not state the Act by which the Court is given power to deal with the matter:

“(f) Where proceedings are intituled in the matter of an estate or settlement or other instrument, the matter may be described with corresponding brevity.”

(2) Rule 9 of the principal rules is hereby amended by revoking subclause (3).

**17.** Rule 18 of the principal rules is hereby amended as follows:—

(a) By revoking subclause (2):

(b) By omitting from subclause (3) the words “the number and”.

**18.** (1) Rule 77 of the principal rules is hereby amended by inserting in subclause (2), after the words “sold and delivered”, the words “or of payment for services rendered”.

(2) The Second Schedule to the principal rules is hereby amended by revoking form No. 19, and substituting the form No. 19 set out in the Schedule hereto.

**19.** Rule 108 of the principal rules is hereby amended by adding to subclause (1) the following proviso:—

“Provided that any such summons may be served by leaving it for the defendant at his place of abode with a member of the defendant’s family residing with him and appearing to be over the age of eighteen years. For the purposes of this proviso, the expression ‘member of the

defendant's family' means a father, mother, wife, husband, child, brother, sister, half-brother, or half-sister of the defendant."

**20.** Form No. 23 in the Second Schedule to the principal rules is hereby amended by inserting, after the first paragraph, the following paragraph:—

"(or, in the case of a default summons, by leaving the same for him at his place of abode at ..... with ....., his ....., residing with him and appearing to be over the age of eighteen years)".

**21.** Rule 215 of the principal rules is hereby amended by adding the following as subclause (2) thereof:—

"(2) An application for further relief under this rule may be heard and determined by the Magistrate by whom leave was so reserved or by any other Magistrate."

**22.** The principal rules are hereby further amended by inserting, after rule 223, the following heading and rule:—

*"Entry of Judgment Removed by Certificate"*

"223A. (1) Upon the filing in a Court of a certificate issued under any of the provisions of sections 68 to 70 of the Act, the Registrar of that Court shall enter in the civil record book particulars of the judgment or order or decree, showing the date of the judgment, order, or decree, and shall add to the entry the following memorandum:—

"Entered this ..... day of ..... 19...., pursuant to a certificate of a judgment (or order or decree) of the ..... Court at ....., which certificate is dated the ..... day of ..... 19....".

"(2) On completion of such entry and memorandum as aforesaid the Registrar shall sign the entry."

**23.** Rule 245 of the principal rules is hereby amended by adding to subclause (2) the words "The provisions of rule 336 (2) hereof shall not apply to this rule".

**24.** Rule 259 of the principal rules is hereby amended by omitting from subclause (1) the words "may apply to the Magistrate", and substituting the words "may apply to a Magistrate".

**25.** Rule 271 of the principal rules is hereby amended by adding to subclause (1) the words "No fee shall be payable for filing the notice".

**26.** (1) Rule 313 of the principal rules is hereby amended by inserting, at the beginning of subclause (2), the words "Subject to the provisions of subclause (3) of this rule".

(2) The said rule 313 is hereby further amended by adding the following subclause:—

"(3) The appropriate fees specified in the Third Schedule hereto shall be payable in respect of proceedings under section 152 of the Property Law Act 1952 (which relates to the service of notices)."

**27.** The Third Schedule to the principal rules is hereby amended by omitting from paragraph (b) of clause (5) of the notes at the end of that Schedule the word "or", and by adding to the said clause (5) the following paragraphs:—

"(d) In respect of any application for payment out of the Court of moneys paid into Court:

"(e) In respect of the filing of any agreement not to appeal."

**28.** The Fifth Schedule to the principal rules is hereby amended by inserting in clauses 1, 2, and 9, after the words "statement of claim" in each case, the words "or counterclaim".

## SCHEDULE

"R. 77 (2)]

[M.C. 19

## "STATEMENT OF CLAIM

(For services rendered or goods sold and delivered)

(General title—Form 1)

THE plaintiff claims £..... (or the balance of £.....) for services [Here describe services generally—e.g., painting, &c.] rendered (or for goods [Here describe goods—e.g., groceries, &c.] sold and delivered) by the plaintiff to the defendant on the ..... (or between ..... and .....), the particulars of which have already been delivered.

[Where the claim is for the balance of an account, show full amount and give credit for any amounts paid.]

This statement of claim is filed by ....., whose address for service is at .....

[Not printed]"

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

## EXPLANATORY NOTE

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

## Part I—Crown Proceedings

This Part of these rules makes such modifications of the Magistrates' Courts Rules 1948 as are necessary for the purposes of civil proceedings by or against the Crown under the Crown Proceedings Act 1950.

## Part II—Miscellaneous

*Rule 16:* The effect of this rule is that, in headings to documents, names, addresses, and occupations of parties to proceedings need only be set out in full in plaint notes or other originating documents, statements of claim, summonses to defendants or sub-debtors, third party notices, judgments, and orders. In headings in other documents in the proceedings, except where full descriptions are necessary to distinguish parties,—

- (a) Initials may be used instead of Christian names:
- (b) Addresses and descriptions may be omitted:
- (c) Where more persons than one are joined in the same interest, the words "and another" or "and others" may be used after the first name:
- (d) The full name of a corporate body is a sufficient description, without reference to the fact or mode of its incorporation, its registered office, or other matters:
- (e) The Act conferring jurisdiction need not be stated:
- (f) Corresponding brevity may be used in references to estates, settlements, and other instruments.

*Rule 17* makes it unnecessary for Registrars to give separate numbers to entries in the minute book. Each minute is headed with the plaint number under rule 18 (3) of the principal rules.

*Rule 18* provides for a new form of statement of claim which will be sufficient where the claim is for goods supplied or services rendered and the plaintiff has previously given written particulars to the defendant. Before this amendment the form was available only in the case of claims for goods supplied.

*Rule 19* provides that a default summons may be served by leaving it for the defendant, at his or her place of abode, with the wife or husband of the defendant, or with certain other members of the defendant's family residing with him and appearing to be over the age of eighteen. *Rule 20* consequentially amends the form of affidavit of service.



*Rule 21* makes it clear that where a plaintiff claims the recovery of goods and money due under a hire-purchase agreement, and obtains an interim judgment for possession of the goods with leave to apply for further relief on the rest of his claim, the later application may be dealt with either by the Magistrate who gave the interim judgment or by any other Magistrate.

*Rule 22* prescribes the procedure to be followed by the Registrar in recording a judgment removed into his Court by certificate of judgment.

*Rule 23:* Under rule 245 of the principal rules an application for a distress warrant to enforce a judgment is not to be filed until the expiry of forty-eight hours after the judgment. Under the general provisions of rule 336 (2), where forty-eight hours is required to elapse under any rule days on which the Court office is not open do not count in calculating the forty-eight hours. This amendment excludes the operation of the latter rule in the case of distress warrants.

*Rule 24:* Under the principal rules, where judgment is given for the recovery of specific chattels, the plaintiff may later apply to the Magistrate who gave the judgment to fix the value of the chattels for the purposes of levying execution. This amendment enables the application to be made to any Magistrate.

*Rule 25* provides that no fee is payable on the filing by a sub-debtor of a notice disputing liability in garnishee proceedings.

*Rule 26* provides for the payment of the usual Court fees on an application for directions as to service of notices under the Property Law Act 1952.

*Rule 27* provides that no fees are payable on an application for an order for payment out of the Court office of money paid into Court, or on an agreement not to appeal.

*Rule 28* makes it clear that solicitors' costs may be allowed for the preparation of a counterclaim as in the case of a statement of claim.

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Issued under the authority of the Regulations Act 1936.

Date of notification in *Gazette*: 18 December 1952.

These regulations are administered in the Department of Justice.