

Serial Number 1950/58

THE SUPREME COURT AMENDMENT RULES 1950

B. C. FREYBERG, Governor-General

ORDER IN COUNCIL

At the Government House at Wellington, this 19th day of
April, 1950

Present :

HIS EXCELLENCY THE GOVERNOR-GENERAL IN COUNCIL

PURSUANT to the Judicature Act, 1908, His Excellency the Governor-General, acting by and with the advice and consent of the Executive Council and with the concurrence of the Right Honourable the Chief Justice and six of the other members of the Rules Committee constituted under the Judicature Amendment Act, 1930 (three of such other members being Judges of the Supreme Court), doth hereby make the following rules.

R U L E S

1. These rules may be cited as the Supreme Court Amendment Rules 1950.

2. These rules shall come into force on the 1st day of May, 1950.

3. Rules 134 and 135 of the Code of Civil Procedure set forth in the Second Schedule to the Judicature Act, 1908, are revoked, and the following rules substituted :—

“ 134. The Court may adjourn the hearing of a counter-claim if it appears that the plaintiff will be prejudiced by the trial taking place as hereinbefore provided.

“ Counter-claim Against Plaintiff and Other Persons

“ 135. If the defendant has a counter-claim against the plaintiff along with any other person, whether a party to the action or not, for any relief relating to or connected with the original subject of the action, he may, with the prior leave of the Court, without issuing a writ of summons, file a statement of such counter-claim within the time limited for filing his statement of defence or such further time as the Court may allow.

“ 135A. Application for leave to file a statement of counter-claim against the plaintiff along with any other person shall be made on motion supported by affidavit and may be made *ex parte* unless the Court directs that notice thereof be given whether to the plaintiff or to any other person against whom it is sought to raise the counter-claim. It shall be a sufficient ground for refusing an order for leave to file a statement of counter-claim that in the opinion of the Court the plaintiff would thereby be unduly delayed in his relief or that in the opinion of the Court the order might be set aside under Rule 135G.

“ 135B. On the hearing of the same or a subsequent application the Court may give such directions as it thinks fit, including directions as to the time within which defendants to the counter-claim are to be required to file statements of defence to the counter-claim and as to the time for the trial of the claim or counter-claim.

“ 135C. In a statement of defence and counter-claim against the plaintiff along with any other person the defendant shall add to the title thereof a further title similar to the title in a writ of summons in the manner set out in form No. 8B in the First Schedule hereto.

“ 135D. Rule 132 shall, with the necessary modifications, apply to the filing and service of a counter-claim against the plaintiff along with other persons subject to the terms of any order made under Rule 135B.

“ 135E. Copies of a counter-claim served on any person other than the plaintiff shall have annexed thereto a notice in the form No. 8B in the First Schedule hereto under the seal of the Court, and a copy of the notice shall be filed in the Court.

“ 135F. The Court may adjourn the hearing of such counter-claim if it appears that the plaintiff or any person joined with the plaintiff as defendant to the counter-claim will be prejudiced by the trial taking place as hereinbefore provided or ordered.

“ 135G. The Court may at any time set aside or vary an order made under Rule 135A or 135B. In particular it shall, unless the Court otherwise decides, be a sufficient ground for setting aside the order that a person other than the plaintiff is thereby required to attend a sitting of the Court at a place where he could not be required to attend if he had been made defendant to an independent action instituted against him in respect of the subject of the counter-claim by the person who in the action before the Court is plaintiff by counter-claim.

“ 135H. If in any case in which the defendant sets up any counter-claim against the plaintiff, whether alone or along with any other person, the action of the plaintiff is stayed, discontinued, or dismissed, the counter-claim may nevertheless be proceeded with.”

4. Rule 227 of the said Code is amended by inserting, next after the word “ apply ”, the following words: “ together with judgment for the costs of the action up to the date of signing judgment ”.

5. Rule 228 of the said Code is amended by adding thereto the following words: “ together with judgment for the costs of the action up to the date of signing judgment ”.

6. Rule 340 of the said Code is amended by adding thereto the following words: “ including, in the case of a writ which is issued against a person and which is also a writ of possession, the fees and expenses incidental to the execution of the writ as a writ of possession ”.

7. Rule 362 of the said Code is amended by omitting the amount “ £50 ”, and substituting the amount “ £100 ”.

8. The said Code is amended by revoking Rule 588, and substituting the following heading and rules :—

“ Translations Into Maori ”

“ 588. Any Maori upon whom in any action or other proceedings a document is served shall be entitled on application, written or oral, to the Registrar made within three days after and excluding the date

of service on stating a postal address for service thereof (if no regular address for service has already been furnished in the proceedings) to receive a translation of the document into the Maori language.

“ 588A. Where a translation has been applied for under the last preceding rule the following provisions shall apply :—

- “(a) The translation shall be prepared by the party or person on whose part the document was served and shall be certified as correct by a person holding a licence as an interpreter of the first grade under the Maori Land Act, 1931, or by some person authorized by the Court or a Judge in that behalf :
- “(b) The translation may be served personally or by despatching the same by registered post addressed to the Maori at the postal address stated by him to the Registrar, and if so served shall be deemed to be served when it would be delivered or available for delivery at its address in the ordinary course of registered post :
- “(c) The document shall, unless the Court or a Judge otherwise orders, be deemed not to have been served until the translation is so served :
- “(d) The action or proceeding in which the document is issued shall, unless the Court or a Judge otherwise orders, be stayed as far as the Maori is concerned until the translation is so served :
- “(e) Every subsequent document served on the Maori in the action or proceeding and every writ of execution or other process issued against him to enforce any judgment entered or order made in the action or proceeding shall, unless the Court or a Judge otherwise orders, or unless the Maori is at the time represented by a solicitor, be accompanied by a translation into the Maori language complying with the requirements of this rule :

“ Provided that the execution of any writ of execution against a Maori shall not be invalid by reason only of its not being accompanied by a translation into the Maori language.

“ 588B. The Court or a Judge may at any time order that a translation into the Maori language complying with the requirements of Rule 588A of any document theretofore served or thereafter to be served upon a Maori concerned in an action or other proceeding be served on that Maori although no application for a translation has been made under Rule 588, and such order may be made subject to such terms and conditions as the Court or Judge thinks proper, and the Court or Judge may grant any adjournment of the proceedings that is deemed to be necessary in the interests of justice.

“ 588c. The costs of preparing and certifying and serving any translation required under Rule 588 or Rule 588B shall be in the discretion of the Court as costs in the cause.

“ 588D. For the purposes of Rules 588, 588A, and 588B the term ‘Maori’ has the same meaning as in the Maori Land Act, 1931.”

9. The said Code is amended by revoking Rule 596A as enacted by Order in Council made on the 1st day of November, 1926, and inserting next following Rule 596 the following heading and rules :—

“ Action and Other Proceedings Removed From a Magistrate’s Court

“ 596A. Where, pursuant to an order made under section 43 or section 44 of the Magistrates’ Courts Act, 1947 (other than an order for a writ of certiorari), that an action be transferred to the Supreme Court, the papers in the action are received by the Registrar, the Registrar shall forthwith without fee file the same.

“ 596B. The action shall thereupon for the purposes of these rules be deemed to have been commenced in the manner hereinbefore prescribed for an action commenced by writ of summons and by a writ of summons service of which was effected on the defendant on the day on which the order transferring the action was made.

“ 596C. The papers in the action shall be filed in an office of the Court at which, pursuant to Rules 4, 8, and 9 hereof, a statement of defence to an action commenced by writ of summons could be required to be filed, and, except as the Court or a Judge may otherwise order, the provisions of Rule 584 relating to addresses for service shall apply with all necessary modifications.

“ 596D. All proceedings in the action filed in the Supreme Court after the transfer shall be intitled as if the action had been commenced in the Supreme Court.

“ 596E. The Court or a Judge may, if deemed necessary, direct the plaintiff to file and serve, within such time or times as may be fixed for that purpose, an amended or more explicit statement of claim.

“ 596F. If a statement of defence was not served on the plaintiff and filed in the Magistrate’s Court before the order transferring the action was made, or if it was so served but not so filed or so filed but not so served, it shall be served on the plaintiff and filed in the office of the Court to which the action is transferred (or such one of these steps shall be taken as the case may require) within such one of the times specified in Table A of the Third Schedule hereto as is applicable to the case, the time being computed from the constructive date of service fixed by Rule 596B.

“ 596G. If a statement of defence was served on the plaintiff or filed in the Magistrate’s Court before the order transferring the action was made, the Court or a Judge may, if deemed necessary, direct the defendant to file and serve, within such time or times as may be fixed for that purpose, an amended or more explicit statement of defence.

“ 596H. The place where and the time when the defendant shall be required to attend at a sitting of the Court for the trial of the action shall be the place where and the time when the defendant would have been required to attend had the action been commenced by writ of summons served on the constructive date of service fixed by Rule 596B.

“ 596I. Where pursuant to an order made by a Magistrate under section 44 of the Magistrates’ Courts Act, 1947, that proceedings other than an action be transferred to the Supreme Court, the provisions of Rules 596A to 596D shall apply with all necessary modifications and the documents filed pursuant to Rule 596A shall be deemed to have

been originally filed in the Supreme Court in accordance with these rules, but from and after the filing thereof the practice and procedure of the Court in relation to the proceedings shall be regulated by these rules.

“ 596K. An application to the Court under section 45 of the Magistrates’ Courts Act, 1947, for an order that any proceedings be transferred to the Supreme Court shall if the application is that of the party putting forward a counter-claim or set-off and counter-claim be made within ten days after the counter-claim or set-off and counter-claim are filed in the Magistrate’s Court, and if the application is that of the party against whom the counter-claim or set-off and counter-claim is made be made within ten days after service upon him of the counter-claim or set-off and counter-claim.

“ 596L. At any time after an application for transfer is filed, the Court or a Judge may order the proceedings in the Magistrate’s Court to be stayed pending the disposal of the application, and such order may, if the Court or Judge thinks fit, be made *ex parte* and may be made subject to such conditions or undertakings as the Court or Judge thinks fit to impose.

“ 596M. Where an order that proceedings be transferred to the Supreme Court is made under section 45 of the Magistrates’ Courts Act, 1947, the provisions of Rules 596A to 596H shall apply with all necessary modifications :

“ Provided that if the order directs that proceedings on the counter-claim or set-off and counter-claim alone be transferred, references in the rules last aforesaid to the plaintiff shall be construed as references to the party putting forward the counter-claim or set-off and counter-claim and references to the defendant as references to the party against whom the counter-claim or set-off and counter-claim is made.”

10. The First Schedule is amended by inserting, next after form No. 8A thereof, the following form :—

“ NO. SB.—NOTICE TO ACCOMPANY COUNTER-CLAIM AGAINST PERSON OTHER THAN PLAINTIFF

“ (Rule 135E)

“ In the Supreme Court of New Zealand, }
 “ District, }
 “ Registry. }

“ Between A.B., Plaintiff,
 and C.D., Defendant

(by original action),
 and between the said C.D., Plaintiff,
 and the said A.B. and E.F., De-
 fendants

(by counter-claim).

“ Counter-claim Notice

“ To E.F., of, &c. (*Full name, residence, and calling*).

“ Take notice that the statement of defence and counter-claim a copy of which is hereto annexed has been filed in this Court claiming against you the relief therein specified :

“ And take notice that if you wish to dispute the counter-claim you must within clear days after and exclusive of the day on which this notice is served upon you file in the office of this Court at [*Here insert place where statement of defence is to be filed*] a statement of your defence to the counter-claim. In default of your so doing the said C.D. may proceed on his counter-claim in your absence and judgment thereon may be enforced against you pursuant to the rules of the Court.

“ And take further notice that you are hereby summoned to attend the sittings of the Court at [*Here specify place at which action is to be tried*] commencing on the day of [*Here specify first sittings at which action may be tried*] and if you fail so to appear the counter-claim may be heard and determined in your absence.

“ Issued under the seal of the Supreme }
Court at this }
day of, 19... } [SEAL]

“ This notice is issued by the above-named defendant, C.D., in person [or by his solicitor, Y.Z.], whose address for service is

11. The form No. 22 in the First Schedule to the said Code is amended by inserting, next after the words “ statement of claim ”, the following words : “ and £ for costs ”.

12. Table C of the Third Schedule to the said Code is amended by revoking item 36 thereof, and substituting the following :—

“ 36. In addition to the foregoing items, all disbursements for—

- “ (i) Fees of Court ;
- “ (ii) Witnesses’ allowances actually paid by the party according to the scales set out in Table E ;
- “ (iii) Agency charges if specially allowed ;
- “ (iv) Interpreters’ fees and allowances actually paid by the party according to the scales set out in Table E : and
- “ (v) Other necessary payments.”

13. Table E of the Third Schedule to the said Code is revoked, and the following table substituted :—

“ TABLE E.—SCALE OF WITNESSES’ ALLOWANCES AND INTERPRETERS’ FEES AND ALLOWANCES

“ *Section I—Witnesses’ Personal Allowances*

“ (a) To a medical or other witness attending to give evidence strictly as an expert :—

“ (i) For every day when required to be absent from his usual place of residence or business for three hours or less	£ s. d. 1 1 0
“ (ii) For every day when required to be absent from his usual place of residence or business for more than three hours	2 2 0
“ (iii) In addition to the above-mentioned allowance there may be allowed to a witness called to give evidence strictly as an expert, for any analysis, preparation of maps, plans, or reports or other work necessarily undertaken in preparation for giving evidence, a qualifying fee not exceeding for every hour engaged	1 1 0

“ (b) To a witness over the age of sixteen years, for attendance to give evidence otherwise than strictly as an expert :—

“ (i) For every day when required to be absent from his usual place of residence or business for three hours or less	0 12 0
“ (ii) For every day when required to be absent from his usual place of residence or business for more than three hours	1 4 0

“ Provided that a smaller amount may be allowed to a witness under the age of twenty-one years if the authority fixing the allowable disbursements thinks that a smaller amount would be adequate compensation.

“ (c) If satisfied that the attendance of a witness under the age of sixteen years has resulted in a loss of earnings to that witness, the authority fixing the allowable disbursements may allow to that witness as compensation for that loss a personal allowance at a rate not exceeding the rate hereinbefore prescribed for witnesses over the age of sixteen years.

“ Section 2—Interpreters’ Fees

- “(d) To an interpreter :—
- | | | | |
|---|---|----|----|
| “(i) If required to be absent from his usual place of residence or business for any time not exceeding three hours .. | £ | s. | d. |
| “(ii) For every additional hour or fraction thereof .. | 0 | 7 | 0 |
| “ Provided that the total fees for any one day shall not exceed | 2 | 2 | 0 |
- “(e) For written translations of documents :—
- “(i) For translation from English into Maori or Maori into English, the fees for the time being prescribed as maximum fees chargeable by licensed interpreters by regulations made under the Maori Land Act, 1931 :
- “(ii) For translation into English from any other language or from English into any other language, such fee as the authority fixing the allowable disbursements thinks to be just and reasonable :
- “(iii) The foregoing fees include the provision of one copy for the use of the Court and two other copies for use of the parties in the case.

“ Section 3—Travelling-allowances and Disbursements

- “(f) In addition to the above-mentioned allowances and fees, the following travelling-allowances shall be allowed to a witness or interpreter who is necessarily absent overnight from his usual place of residence :—
- | | | | |
|---|---|----|---|
| “(i) Where the total period of absence does not exceed eighteen hours | 0 | 15 | 0 |
| “(ii) Where the total period of absence exceeds eighteen hours but does not exceed twenty-four hours .. | 1 | 0 | 0 |
| “(iii) And, after the first twenty-four hours, for each subsequent six hours or part thereof | 0 | 5 | 0 |
- “ Provided that where steamer fare payable to or on behalf of a witness or interpreter includes the provision of sleeping-accommodation the period of absence from home shall not be deemed to include steamer-travelling time ; but the actual cost, not exceeding 2s. 6d. a meal, of necessary refreshments during the period of such travelling may be allowed.
- “(g) Where a witness under the age of sixteen years is not necessarily absent overnight, and is not allowed any payment by way of personal allowance for his attendance, he may be allowed :—
- | | | | |
|--|---|---|---|
| “(i) If he is able to return to his usual place of residence before 6 p.m., the actual cost of one meal, but not exceeding for any one day | 0 | 2 | 6 |
| “(ii) If he is not able to return to his usual place of residence before 6 p.m., the actual cost of two meals, but not exceeding for any one day | 0 | 5 | 0 |

“ Section 4—Locomotion Expenses

- “(h) Locomotion expenses shall be allowed as follows : To interpreters and witnesses residing beyond a distance of three miles from the Court or other place at which attendance is required :—
- “(i) In public conveyances, such sum as may be fixed by the authority fixing the allowable disbursements, having regard to the class of accommodation available :
- “(ii) Where no means of public conveyance is available, a mileage rate of 1s. a mile one way.
- “(j) Where a witness is a medical practitioner using his own motor-car, or a motor-car hired for his personal use, whether a public conveyance is available or not, there may be allowed to him, instead of the expenses specified in the last preceding clause, mileage at the rate of 1s. a mile one way for every mile not exceeding fifty miles between his place of residence and the Court or other place at which his attendance is required.

“ Section 5—General

- “(k) The Court may authorize the amounts and rates prescribed in this table to be exceeded for any special reason.
- “(l) The Court, in any exceptional case, where the attendance of an interpreter or witness requires his prolonged absence from his usual place of residence, may allow such smaller sum as it thinks proper instead of the fees and allowances specified in this table.
- “(m) Where it is necessary that a witness under the age of sixteen years be accompanied by a parent or guardian, there may be allowed to such parent or guardian the witnesses’ allowances hereinbefore prescribed as if he were himself a witness.
- “(n) Where by reason of the illness or infirmity of a witness, being a witness who is necessarily required to be absent from his usual place of residence, it is necessary that he be accompanied by an attendant, the attendant may be allowed the travelling-allowances or disbursements prescribed in clause (f) of this table and the locomotion expenses prescribed in clause (h) hereof.”

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.]

Counter-claim.—The Supreme Court has decided that the rules as heretofore existing limit the right to counter-claim to proceedings against the plaintiff alone, and has said that it would seem desirable that a defendant filing a counter-claim should be entitled to add as defendants to the counter-claim parties other than the plaintiff where the causes of action alleged arose out of the same transactions or series of transactions. The amended rules are intended to give effect to this recommendation.

Costs in Default Actions.—Notwithstanding section 4 of the Judicature amendment Act, 1923, the Supreme Court has decided that upon a judgment signed by default for the recovery of possession of land costs cannot be awarded under R. 227; and the same principle may well apply under R. 228. These rules are now brought into line with R. 226, by giving express power to allow costs. R. 340 is consequentially amended.

Execution.—The exemption from distress of household effects, tools, &c., hitherto standing at £50, is raised to £100, so as to bring it into line with the corresponding provisions of the Bankruptcy Act, 1908 (as amended), and the Magistrates’ Courts Act, 1947.

Translations into Maori.—The provision about translations for Maori parties, which has been a rule of the Supreme Court since 1856, is assimilated to that of the Magistrates’ Courts Rules 1948. It is believed that at the present time no one is literate in Maori who is not also literate in English; but the right of a Maori party to a translation is still given, subject to his asking for it.

Transfer of Magistrate’s Court Proceedings.—Substituted rules relating to the transfer of proceedings from a Magistrate’s Court are necessitated by the provisions of the Magistrates’ Courts Act, 1947, which altered the law to which the previous Supreme Court rules applied.

Witnesses’ Allowances.—A fresh Table E (witnesses’ allowances and interpreters’ fees and allowances) is enacted, bringing the amounts into line with those allowable in civil proceedings in a Magistrate’s Court, and in criminal cases. The adjustment of terminology required in this table is attended with consequential recasting of the wording of Item 36 of Table C, to which Table E is an appendage.

Issued under the authority of the Regulations Act, 1936.
Date of notification in *Gazette*: 20th day of April, 1950.
These regulations are administered in the Department of Justice.