

Serial Number 1951/75

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**THE SUPREME COURT AMENDMENT RULES 1951**

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B. C. FREYBERG, Governor-General

ORDER IN COUNCIL

At the Government House at Wellington, this 3rd day of  
April, 1951

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 five 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.

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RULES

1. (1) These rules may be cited as the Supreme Court Amendment Rules 1951.

(2) These rules shall come into force on the twenty-first day after the date of their notification in the *Gazette*.

2. In these rules, the word "rule" followed by a number means the rule so numbered of the Code of Civil Procedure set forth in the Second Schedule to the Judicature Act, 1908, as heretofore amended.

3. Rule 54 is hereby amended by omitting the word "claim", and substituting the word "defence".

4. Rule 68 is hereby amended—

(a) By omitting the words "by the Court upon a petition signed by him", and substituting the words "by the Court or a Judge upon a motion moved by him":

(b) By revoking clause (2).

5. The following rules are hereby amended by inserting to the extent hereinafter specified, after the word "Court", the words "or a Judge":—

Rule 35 (wherever the word "Court" appears):

Rule 67:

Rule 71 (where the word "Court" first and last appears):

Rule 72:

Rule 75:

Rule 124 (wherever the word "Court" appears):

Rule 161:

Rule 179:

Rule 180:

Rule 342:

Rule 517 (wherever the word "Court" appears).

6. Rules 418 to 420 are hereby revoked, and the following rules substituted:—

“ 418. During the absence of a Judge or the inability of a Judge to act from any cause whatever, every Registrar shall have the jurisdiction and powers of a Judge sitting in Chambers—

“ (a) To hear and decide an application for further time for filing a statement of defence :

“ (b) To adjourn a trial, reserving to the Court or a Judge the costs of and arising out of the adjournment :

“ (c) To order a stay of proceedings upon an application being made to vary or rescind any order or decision of the Registrar :

“ (d) To make an interlocutory order in proceedings *inter partes* on receiving a draft order consented to in writing by all necessary parties or by their respective counsel or solicitors.

“ 419. (1) The Registrars for the time being exercising their office at the Registries established at Auckland, Wellington, Christchurch, and Dunedin shall have the jurisdiction and powers of a Judge sitting in Chambers conferred by the sections of Acts and rules following, that is to say:—

“ (a) The Administration Act, 1908, section 3, but only where the estate in New Zealand is sworn at a sum not exceeding £5,000 :

“ (b) The Administration Act, 1908, sections 21, 22, and 55 :

“ (c) The Chattels Transfer Act, 1924, section 13 (1), but only as to the extension of time for the registration of an instrument or an affidavit of renewal thereof :

“ (d) The Evidence Act, 1908, sections 24 and 25 :

“ (e) The Finance Act, 1926, section 16 :

“ (f) The Trustee Act, 1908, section 74 :

“ (g) Rules 35, 60, 67, 68, 69, 71, 72, 75, 124, 161, 161B, 175, 179, 180, 342, 517, and 547.

“ (2) In all matters in which a Registrar is given jurisdiction by clause (1) of this rule, he shall be entitled to exercise as ancillary to such jurisdiction all powers which a Judge might exercise in like circumstances.

“ 420. The jurisdiction and powers conferred by Rule 419 may be exercised in respect of applications filed in other Registries, whether of the same district or not, as well as in the Registry at which the Registrar exercises his office.

“ 420A. It shall not be necessary to direct any application to the Registrar, but, subject to any general or special directions of a Judge, the Registrar may dispose of any application made to the Court or a Judge if the application relates to a matter within his jurisdiction.

“ 420B. The jurisdiction conferred upon Registrars by Rule 418 and Rule 419 shall not be exercised otherwise than in Chambers.

“ 420c. (1) An order made by a Registrar when drawn up shall—

“ (a) Be headed with the words ‘ Before the Registrar at . . . . . in Chambers ’ :

“ (b) Be signed by a Registrar or Deputy Registrar and sealed with the seal of the Court :

“ (c) Refer to the rule from which the Registrar’s jurisdiction to make the order is derived.

“(2) The form numbered 33E in the First Schedule hereto may be used.

“420D. An application to a Judge in Chambers to vary or rescind the order or decision of a Registrar shall be made by notice of motion, which shall be filed—

“(a) If the application is made by a party who was present or represented when the order was made or the decision given, within seven days thereafter :

“(b) If the application is made by a party who was not so present or represented, within seven days after the receipt by him of notice of the making of the order or the giving of the decision, as the case may be, and of its effect.

“420E. An application to vary or rescind the order or decision of a Registrar shall be no stay of proceedings unless so ordered by the Court or a Judge, or by the Registrar pursuant to Rule 418.

“420F. Nothing in these rules shall be deemed to confer any jurisdiction upon a Deputy Registrar.”

7. The First Schedule to the said Code is hereby amended by inserting, after form No. 33D, the following form :—

“ Rule 420c (2) ]

“ No. 33E—ORDER MADE BY A REGISTRAR

“ Before the Registrar at ..... in Chambers

“ .....day, the ..... day of ....., 19.....

“ UPON reading [the writ of summons and statement of claim in this action and] the notice of motion of the [plaintiff] dated the ..... day of ....., 19..., and the affidavit of E. F. filed herein [refer also to any other documentary evidence] [and it appearing that, &c.], and upon hearing Mr. .... of counsel for the plaintiff and Mr. .... of counsel for the defendant consenting hereto [or as the case may be], Mr. Registrar ....., acting under Rules ..... and ..... of the Code of Civil Procedure, doth order that ....., and doth further order that the defendant do pay to the plaintiff the sum of £..... and disbursements for his costs of and incidental to the said notice of motion and this order [or as the case may be].

“ [SEAL OF THE COURT.]

.....  
Registrar.”

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.]

These rules amend the Code of Civil Procedure of the Supreme Court in respect of the matters set out below.

*Proceeding Without Service.*—Rule 3 corrects an error in the wording of the rule relating to the filing of a statement of defence where leave has been given to issue a writ and proceed without service.

*Admission of Guardian ad litem.*—At present a guardian *ad litem* must be admitted by the Court on petition. Rule 4 simplifies the procedure by allowing admission on a motion to the Court or a Judge. It also revokes the provision under which a married woman was ineligible for admission as a guardian *ad litem*.

*Powers of Registrars.*—The new Rule 418 (set out in Rule 6) extends the existing powers of a Registrar, in the absence or incapacity of a Judge, to enable him to exercise the jurisdiction and powers of a Judge sitting in Chambers in respect of the matters specified in the rule.

The new Rules 419 and 420 confer on the Registrars at Auckland, Wellington, Christchurch, and Dunedin the jurisdiction and powers of a Judge sitting in Chambers in respect of the matters specified in those rules (including the granting of probate or letters of administration where the estate in New Zealand of the deceased is sworn at a sum not exceeding £5,000).

The form of order to be made by a Registrar and the procedure on an application to a Judge to vary or rescind a Registrar's order are also prescribed.

For the purpose of making clear the extent of the jurisdiction so conferred on Registrars, *Rule 5* amends a number of rules under which jurisdiction is expressed to be vested in the "Court", but under which Judges in fact already have the power to act in Chambers by virtue of the general provisions of Rule 416 of the Code.

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Issued under the authority of the Regulations Act, 1936.

Date of notification in *Gazette*: 5th day of April, 1951.

These regulations are administered in the Department of Justice.