

**1961/174**

## THE SUPREME COURT AMENDMENT RULES 1961

COBHAM, Governor-General

### ORDER IN COUNCIL

At the Government Buildings at Wellington this 19th day of December 1961

Present:

THE RIGHT HON. KEITH HOLYOAKE PRESIDING IN COUNCIL

PURSUANT to the Judicature Act 1908 and the Crown Proceedings Act 1950, 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 at least four of the other members of the Rules Committee constituted under the Judicature Amendment Act 1930 (of whom at least one was a Judge of the Supreme Court), hereby makes the following rules.

### RULES

1. (1) These rules may be cited as the Supreme Court Amendment Rules 1961, and shall be read together with and deemed part of the Code of Civil Procedure set out in the Second Schedule to the Judicature Act 1908 (hereinafter referred to as the Code).

(2) These rules shall come into force on the 1st day of January 1962.

2. Rule 90 of the Code (which relates to the striking out and adding of parties) is hereby amended by adding the following proviso:

“Provided that the Crown shall not be added as a defendant unless the Court or Judge is satisfied that the Crown has had—

“(a) Previous 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; and

“(b) Not less than seven days previous notice of the application or proposal to add the Crown as a defendant.”

3. (1) The Code is hereby amended by revoking rule 93 (as amended by subclause (1) of rule 2 of the Supreme Court Amendment Rules (No. 2) 1954\*), and rule 94, and substituting the following rule:

“93. Procedure when defendant added or substituted—(1) Where any party makes an application to add or substitute a defendant he shall at the same time apply for directions as to the future conduct of the action.

“(2) On any such application the Court or a Judge may give such directions as are necessary.

“(3) Without limiting the generality of the provisions of subclause (2) of this rule, it is hereby declared that on any such application the Court or Judge may give directions as to—

“(a) The time within which the plaintiff may file an amended statement of claim:

“(b) The documents which the plaintiff is to be required to serve on the new defendant and the time within which those documents must be served:

“(c) The place at which the new defendant is to file his statement of defence and the time within which it must be filed and served:

“(d) The sittings of the Court at which the action is to be heard.”

(2) Rule 94A of the Code (as inserted by rule 8 of the Supreme Court (Crown Proceedings) Rules 1952\*) is hereby consequentially amended by omitting the figures “94”, and substituting the figures “93”.

4. Rule 172 of the Code (as amended by subclause (1) of rule 2 of the Supreme Court Amendment Rules (No. 2) 1954) is hereby further amended by revoking the second proviso thereto.

5. The Code is hereby further amended by revoking rule 205A (as inserted by Order in Council dated the 20th day of January 1913†), and substituting the following rule:

“205A. Copy of affidavit to be served—(1) Every party as soon as possible after filing an affidavit in any contentious proceeding shall deliver a true copy thereof to every other party, and unless impracticable shall also deliver a true copy of every exhibit thereto.

“(2) Legible carbon duplicates of typewritten affidavits and exhibits may be used for delivery under this rule.”

6. The Code is hereby further amended by revoking rule 250 (as substituted by Order in Council dated the 25th day of October 1911‡ and as amended by subclause (1) of rule 2 of the Supreme Court Amendment Rules (No. 2) 1954), and substituting the following rule:

“250. Setting down action for trial—(1) Every action that is to be tried at any sitting of the Court shall be entered by the plaintiff or defendant in a list to be kept for that purpose by the Registrar, and notice of such entry shall be given to every other party as soon as possible thereafter and not later than the last day for making the entry in the list.

“(2) Such entry shall be made at least 10 clear days before the day appointed for the sitting of the Court, and except by leave of the Court or a Judge no action shall be tried at such sitting which has not been so entered.”

7. The Code is hereby further amended by inserting, after rule 253, the following rule:

“254. Jury notices—Where either party to an action to which section 2 of the Judicature Amendment Act (No. 2) 1955 applies requires the action to be tried before a Judge and a jury he shall give notice to that effect to the Court and to the other party in his praecipe entering

\*S.R. 1952/122

†Gazette, 1913, Vol. I, p. 175

‡Gazette, 1911, Vol. II, p. 3268

the action for trial where he is the party who makes such entry, or, where the other party has entered the action for trial before a Judge alone, he shall give such notice in the form No. 19 in the First Schedule hereto within four days from the last day when that entry could be made for that sitting:

“Provided that where the plaintiff enters the action for trial before a Judge alone the defendant may give the said notice within the time limited by the foregoing provisions of this rule or within the time fixed for filing his statement of defence, whichever is the later.”

8. The Code is hereby further amended by revoking rule 373 (as amended by subclause (1) of rule 2 of the Supreme Court Amendment Rules (No. 2) 1954, and substituting the following rule:

“**373. How property to be sold**—(1) All sales under a writ of sale shall be by public auction or, with the consent of the parties or upon order of the Court or a Judge made on the application of either party, by private treaty, and may be of all the property seized in one lot or in several lots.

“(2) Unless the Court or a Judge otherwise directs, all such sales shall be for cash before delivery, conveyance, assignment, or transfer, and shall be of the estate, right, title, or interest only of the party against whom such writ has been issued in the chattels or land put up for sale.”

9. The Code is hereby further amended by revoking rule 375, and substituting the following rule:

“**375. Powers of officer at sale by auction**—Where any sale under a writ of sale is to be by way of public auction the officer to whom the writ is directed shall have the right to bid for or buy in the property, or place a reserve upon the same, and he may put it up for sale as often as may be required until it is sold.”

10. The Code is hereby further amended by revoking rule 559, and substituting the following rule:

“**559. Where action might have been brought in inferior Court**—If the plaintiff in an action recovers less than the sum of £500, or the value of any chattels recovered is assessed at less than £500, and the action was one that might have been brought in an inferior Court, the plaintiff shall not be entitled to any greater sum for costs and disbursements than he would have recovered in the inferior Court, unless the Judge before whom the action was tried certifies that the case was a proper one to bring in the Supreme Court.”

11. The First Schedule to the Code is hereby amended by revoking Form 19, and substituting the new form set out in the Schedule hereto.

## SCHEDULE

Rule 11

### *New Form Inserted in First Schedule to Code*

Rule 254

#### “No. 19—NOTICE REQUIRING JURY

TAKE notice that I require this action to be tried before a Judge and a jury of four [*or twelve*] persons.”

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 make various amendments to the Code of Civil Procedure. They come into force on 1 January 1962.

Rule 2: Rule 90 of the Code has been amended so that the Crown may not be added as a defendant unless the Crown has had—

- (a) Previous 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; and
- (b) Not less than seven days previous notice of the application or proposal to add the Crown as a defendant.

Rule 3: Rules 93 and 94 of the Code dealing with the procedure to be followed when a new defendant is added as a party to an action have been revoked and a new rule substituted.

Rule 4 revokes the second proviso to rule 172 of the Code. This revocation enables witnesses to be subpoenaed from any part of New Zealand.

Rule 5 substitutes a new rule 205A in the Code. This rule deals with the service of copies of affidavits in contentious proceedings. It has been amended so that copies of exhibits must be served with copies of affidavits unless it is impracticable to do so.

Rule 6 substitutes a new rule 250 in the Code. It provides that actions must be set down for trial at least 10 clear days before the day appointed for the sitting of the Court, instead of at least 6 clear days before that day as at present.

Rule 7 inserts a new rule 254 in the Code. This rule sets out the procedure to be adopted where a party to an action to which section 2 of the Judicature Amendment Act (No. 2) 1955 applies requires that action to be tried before a jury.

Rule 8 substitutes a new rule 373 in the Code. This new rule allows property seized under a writ of sale to be sold by private treaty with the consent of the parties or upon the order of the Court or a Judge made on the application of either party.

Rule 9 substitutes a new rule 375 in the Code. This new rule applies to all property, including land, sold under a writ of sale by public auction. It specifies the powers of the officer to whom the writ is directed.

Rule 10 substitutes a new rule 559 in the Code. This new rule limits the costs and disbursements that may be recovered by a plaintiff who brings an action in the Supreme Court when that action was one that might have been brought in an inferior Court where the sum recovered or the value of the chattels recovered is less than £500. At present only the plaintiff's costs are limited in these circumstances, not his disbursements, and then only when he recovers less than £50.

Rule 11 substitutes a new form 19 in the First Schedule to the Code. This is a form of notice requiring an action to be tried before a jury. The amendment is consequential on the amendment made by rule 7 of these rules.

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Issued under the authority of the Regulations Act 1936.

Date of notification in *Gazette*: 21 December 1961.

These regulations are administered in the Department of Justice.