

1975/140



THE SUPREME COURT AMENDMENT RULES 1975

DENIS BLUNDELL, Governor-General
ORDER IN COUNCIL

At the Government House at Wellington this 9th day of June 1975

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 at least two of the other members of the Rules Committee (of whom at least one was a Judge of the Supreme Court), hereby makes the following rules.

RULES

1. Title and commencement—(1) These rules may be cited as the Supreme Court Amendment Rules 1975, 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 28th day after the date of their notification in the *Gazette*.

2. Payment into Court—Rule 213 of the Code (as substituted by rule 2 of the Supreme Court Amendment Rules 1967*) is hereby amended by adding to the proviso the words “and in granting such leave the Judge may make such incidental orders as he thinks proper”.

3. Payment in respect of general damages only—(1) The Code is hereby further amended by inserting, after rule 213 (as so substituted), the following rule:

“213A. (1) Where any payment under rule 213 is in respect of general damages only, the plaintiff, if he wishes to accept such payment in satisfaction of his claim for general damages, shall, within the period

of 7 days prescribed by rule 216, file in Court and serve upon the defendant a notice in the form 15 in the First Schedule hereto.

“(2) Where any such payment is accepted, the provisions of rule 220 as to costs shall apply accordingly.

“(3) The acceptance of any such payment shall not preclude the plaintiff from pursuing any other claim that he has in the action, including any claim for special damages, but his statement of claim shall be deemed to be amended by the deletion of all matters referring solely to the claim for general damages.”

(2) Rule 214 of the Code is hereby amended by omitting the words “such payment”, and substituting the words “any payment under rule 213”.

(3) Rule 221 is hereby amended by inserting, after the words “paid into Court”, the words “(or, in the case of a payment in satisfaction of general damages only, to recover a greater sum for general damages than the sum paid into Court)”.

4. Costs where plaintiff refuses payment in satisfaction of general damages, recovers less, and another issue has been tried—The Code is hereby amended by inserting, after rule 221, the following rule:

“221A. In any case where—

“(a) A payment under rule 213 is by way of satisfaction of general damages only; and

“(b) That payment is not accepted by the plaintiff; and

“(c) The plaintiff fails at the trial to recover a greater sum of money by way of general damages than the sum paid into Court; and

“(d) Any other issue, such as an issue concerning special damages, has also been tried,—

the Judge, if he thinks fit, may make such separate order as to the costs relating to such issue as he thinks proper.”

5. Award of interest—Rule 304 of the Code is hereby amended by inserting after the words “such rate”, the words “(not exceeding the rate for the time being prescribed by or under section 87 of the Judicature Act 1908)”.

6. Interest on judgment debts—(1) The Code is hereby amended by revoking rule 305 (as amended by rule 2 of the Supreme Court Amendment Rules (No. 3) 1951*), and substituting the following rule:

“305. (1) Every judgment debt shall carry interest from the time of judgment being given until the same is satisfied.

“(2) Such interest shall be at the rate for the time being prescribed by or under section 87 of the Judicature Act 1908.

“(3) Such interest may be levied upon any writ of execution upon the judgment.”

(2) The Code is hereby further amended by omitting from rule 446 (as amended by rule 3 of the Supreme Court Amendment Rules (No. 3) 1951*) the words “of five pounds per centum per annum”, and substituting the words “for the time being prescribed by or under section 87 of the Judicature Act 1908”.

(3) The First Schedule to the Code is hereby consequentially amended—

- (a) By omitting from form No. 29 the words “five pounds for every one hundred pounds by the year”, and substituting the words “[Insert rate for the time being prescribed by or under section 87 of the Judicature Act 1908]”:
- (b) By omitting from form No. 30 the words “six pounds per centum per annum”, and substituting the words “[Insert rate for the time being prescribed by or under section 87 of the Judicature Act 1908]”:
- (c) By omitting from form No. 33c (as inserted by Order in Council made on the 25th day of October 1911†) the words “£5 per centum per annum”, and substituting the words “[Insert rate for the time being prescribed by or under section 87 of the Judicature Act 1908]”.

(4) Rule 2 of the Supreme Court Amendment Rules (No. 3) 1951* is hereby consequentially revoked.

7. Opinion of Court or Judge in connection with taking of accounts—Rule 442 of the Code is hereby amended by inserting, after the words “the opinion of the”, the words “Court or a”.

8. Judgment to include interest in action on bill of exchange—(1) The Code is hereby amended by revoking rule 491 (as amended by rule 3 of the Supreme Court Amendment Rules (No. 3) 1951*), and substituting the following rule:

“491. (1) On filing an affidavit of service of such writ within the jurisdiction of the Court, or an order for leave to proceed on substituted service or without service, the plaintiff may at once sign final judgment for any sum not exceeding the sum endorsed on the writ as principal, together with interest to the date of judgment and such sum as he may be entitled to for costs.

“(2) Interest shall be at the rate claimed in the writ unless that rate exceeds the rate for the time being prescribed by or under section 87 of the Judicature Act 1908.

“(3) If the rate claimed exceeds the rate for the time being prescribed by or under section 87 of the Judicature Act 1908 or if no rate is mentioned in the writ, interest shall be at the rate so prescribed.”

(2) Rule 3 of the Supreme Court Amendment Rules (No. 3) 1951* is hereby consequentially revoked.

9. Place for filing application for probate or administration—(1) The Code is hereby amended by revoking rule 517 (as substituted by an Order in Council made on the 24th day of February 1909 and as amended by rule 5 of the Supreme Court Amendment Rules 1951 and by rule 3 (1) of the Supreme Court Amendment Rules 1973), and substituting the following rule:

“517. (1) Every notice of motion for probate of the will or for letters of administration of the estate and effects of any deceased person, and all affidavits, documents, and papers connected therewith, shall be filed in the registry nearest by the most practicable route to the place where the deceased resided at the time of his death.

“(2) If the deceased was not resident in New Zealand, such notice of motion, affidavits, documents, and papers shall be filed in the registry nearest by the most practicable route to the place where the property of the deceased is situated, and if such property is situated in more than one place in New Zealand, then in the registry at the City of Wellington, or in such other registry as the Court or a Judge may on motion made before the filing allow. In every case of such order being made notice thereof shall be sent by the Registrar to the Registrar at Wellington.

“(3) If the notice of motion shall have been filed in a wrong registry, the Court or a Judge may order it, and all documents filed therewith, to be transferred to the proper registry.”

(2) The First Schedule to the Code (as amended by Order in Council made on the 24th day of February 1909) is hereby amended by revoking paragraph (1) of forms Nos. 34, 37, 38, and 38A, and substituting in each case the following paragraph:

“(1) That I knew _____, of _____, now deceased, when alive, and that the said _____ was resident at _____, and that the Registry Office of this Court nearest by the most practicable route to the place where the said _____ resided is at _____.”

(3) The Supreme Court Amendment Rules 1951 are hereby consequentially amended by revoking so much of rule 5 as relates to rule 517 of the Code.

(4) The Supreme Court Amendment Rules 1973 are hereby consequentially amended by revoking so much of the First Schedule as relates to rule 517 of the Code and so much of the Second Schedule as relates to paragraph (1) of forms Nos. 34, 37, 38, and 38A, in the First Schedule to the Code.

10. Consequential amendments—(1) Rule 385B of the Code (as inserted by Order in Council made on the 25th day of October 1911*) is hereby amended by omitting the words “for arrest in different Sheriffs’ districts”, and substituting the words “to different Sheriffs”.

(2) The First Schedule to the Code is hereby amended by omitting from the heading to form No. 13A (as inserted by Order in Council made on the 10th day of June 1911†) the word “District”, and substituting the word “Registry”.

(3) The First Schedule to the Code is hereby further amended by omitting from form No. 29, and also from forms Nos. 31, 32, and 33, the words “EDWARD THE SEVENTH, by the Grace of God, of the United Kingdom of Great Britain and Ireland and of the British Dominions beyond the Seas, King, Defender of the Faith:

“To the Sheriff of _____: Greeting”, and substituting in each case the words “ELIZABETH THE SECOND, by the Grace of God Queen of New Zealand and Her Other Realms and Territories, Head of the Commonwealth, Defender of the Faith:

“To the Sheriff at _____: Greeting”.

P. G. MILLEN,
Clerk of the Executive Council.

*Gazette, 1911, p. 3268

†Gazette, 1911, p. 1937

EXPLANATORY NOTE

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

These rules, which come into force on the 28th day after the date of their notification in the *Gazette*, make a number of amendments to the Code of Civil Procedure.

Rule 2 amends the proviso to rule 213 so that where a Judge gives special leave to make a payment into Court he may make such incidental orders as he thinks proper.

Rules 3 and 4 deal with liability for costs where payment into Court in respect of general damages only is made.

Rules 5, 6, and 8 deal with the award of interest on judgments and the rate of interest on judgment debts. Rules 304, 305, 446, and 491 are amended. In each case the rate of interest that may be awarded or is payable is related to the rate for the time being prescribed by or under section 87 of the Judicature Act 1908. That rate is at present $7\frac{1}{2}$ percent per annum.

Rule 7 amends rule 442 of the Code. Under that rule any party may refer any point arising in relation to the taking of accounts or the making of inquiries to the Judge who made the order requiring the accounts to be taken or the inquiries to be made. The amendment has the effect of allowing any such point to be dealt with by any Judge.

Rule 9 changes the place at which applications for probate or administration are to be filed. At present they are filed in the registry nearest to the place where the deceased resided or was domiciled at the time of his death.

After these regulations come into force such applications are to be filed in the registry nearest by the most practicable route to the place where the deceased resided at the time of his death.

Rule 10 makes amendments that are consequential on amendments to the Judicature Act 1908 and on the adoption of a new royal title.

Issued under the authority of the Regulations Act 1936.

Date of notification in *Gazette*: 12 June 1975.

These rules are administered in the Department of Justice.