



## THE SUPREME COURT AMENDMENT RULES 1976

DENIS BLUNDELL, Governor-General

### ORDER IN COUNCIL

At the Government House at Wellington this 11th day of October 1976

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 1976, 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. Cross-examination of deponent**—(1) The Code is hereby amended by revoking rule 182 (as amended by rule 2 (1) of the Supreme Court Amendment Rules (No. 2) 1954\*), and substituting the following rule:

“182. (1) Where the evidence in any civil proceeding is to be given by affidavit, any party desiring to cross-examine a deponent who has made an affidavit filed on behalf of an opposite party may serve on that opposite party a notice in writing (which may be by letter addressed to the opposite party’s solicitor) requiring the production of the deponent for cross-examination before the Court at the trial.

“(2) Such notice shall be served, and copies thereof filed in the Court and delivered to all other parties to the action who have taken any step in the proceedings, not less than 3 clear days before the day fixed for the trial.

“(3) Unless the deponent is produced accordingly his affidavit shall not be used as evidence except by the special leave of the Court.”

(2) Rule 183 of the Code is hereby consequentially amended by omitting the words “to whom the notice mentioned in the last preceding rule is given”, and substituting the words “on whom the notice mentioned in rule 182 (1) is served”.

(3) The Supreme Court Amendment Rules (No. 2) 1954\* are hereby consequentially amended by revoking so much of the First Schedule as relates to rule 182 of the Code.

**3. Evidence on interlocutory applications**—(1) The Code is hereby amended by revoking rule 184 (as amended by rule 2 (1) of the Supreme Court Amendment Rules (No. 2) 1954\*), and substituting the following rule:

“184. (1) Where evidence is required upon any interlocutory application, that evidence shall be given by affidavit, but the Court or a Judge may, on the application of any party, order that the evidence or any part thereof may be given orally, and may order the attendance for cross-examination of any person making any affidavit in support of or in opposition to any such motion.

“(2) An order under subclause (1) of this rule shall be made only in special circumstances.”

(2) The Supreme Court Amendment Rules (No. 2) 1954\* are hereby consequentially amended by revoking so much of the First Schedule as relates to rule 184 of the Code.

**4. New heading**—The Code is hereby amended by inserting, after rule 184 (as substituted by rule 3 (1) of these rules), the following heading:

*“Affidavits: General Provisions”.*

**5. Exemption from seizure**—(1) Rule 362 of the Code (as amended by rule 11 of the Supreme Court (Miscellaneous) Amendment Rules 1939†, rule 7 of the Supreme Court Amendment Rules 1950‡, and section 7 (1) of the Decimal Currency Act 1964) is hereby amended by omitting the expression “\$200”, and substituting the expression “\$400”.

(2) The Supreme Court Amendment Rules 1950 are hereby consequentially amended by revoking rule 7.

**6. Writ of summons on bill of exchange amended**—The First Schedule to the Code is hereby amended by omitting from form No. 3 the words “obtain leave from a Judge or Registrar of the Supreme Court of New Zealand to defend this action in our said Court, the said ..... may proceed to judgment and execution”, and substituting the words “apply for leave to defend this action and unless on such application you obtain such leave from a Judge or Registrar of this Court, the plaintiff may proceed to judgment and execution”.

P. G. MILLEN,  
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, which come into force on the 28th day after the date of their notification in the *Gazette*, amend the Code of Civil Procedure.

Rule 2 substitutes a new rule 182 in the Code. The rule enables persons who make affidavits to be brought before the Court for cross-examination. The purpose of new rule 182 is to define a simple means of giving notice of cross-examination in all civil proceedings (and not just those commenced by writ of summons) and to define the time for giving that notice in relation to the hearing. The notice is to be served on the party who has filed the affidavit in question. In addition copies of the notice are to be filed in Court and delivered to all other parties who have taken any step in the proceedings. Rule 183 (subject to a consequential amendment) will continue to apply to the party served.

Rule 3 substitutes a new rule 184 in the Code. The new rule 184 restates the general practice on giving evidence in interlocutory matters. Evidence in such matters is to be given by affidavit unless the Court or a Judge, on the application of any party, orders that evidence be given orally or that a deponent attend for cross-examination.

Rule 4 inserts a new heading.

Rule 5 amends rule 362 of the Code. This rule states what may be seized under a writ of sale. Personal and family clothing, furniture and household effects, and tools or implements of trade, not exceeding in all \$200 in value are exempt from seizure. This exemption is now increased by substituting \$400 for \$200.

Rule 6 amends the form of the bill writ. The terms in which the writ is expressed are brought into line with the terms of the rules that govern its use.

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Issued under the authority of the Regulations Act 1936.

Date of notification in *Gazette*: 14 October 1976.

These rules are administered in the Department of Justice.