

**Serial Number 1951/157**

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**THE SUPREME COURT AMENDMENT RULES (NO. 2) 1951**

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B. C. FREYBERG, Governor-General

ORDER IN COUNCIL

At the Government House at Wellington, this 18th day of  
July, 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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R U L E S

1. (1) These rules may be cited as the Supreme Court Amendment Rules (No. 2) 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. The said Code is hereby amended by inserting, after rule 47, and before the heading "Service out of New Zealand", the following rule:—

"47A. (1) Notwithstanding anything in the following rules, the parties to any contract may agree—

"(a) That the Court shall have jurisdiction to entertain any action in respect of the contract; and, moreover, or in the alternative,

"(b) That service of any writ of summons in any such action may be effected at any place within or out of the jurisdiction on any party or on any person on behalf of any party or in any manner specified or indicated in the contract.

"(2) Service of any such writ of summons at the place (if any) or on the party or on the person (if any) or in the manner (if any) specified or indicated in the contract shall be deemed to be good and effective service wherever the parties are resident, and if no place or mode or person is so specified or indicated service out of the jurisdiction of the writ may be ordered.

“(3) Where the parties to any contract agree that any writ of summons may be served out of the jurisdiction as aforesaid, references in the contract and in this rule to the writ shall, subject to any express provision of the contract and unless the context thereof otherwise requires, be deemed for the purposes of this rule to include references to any petition, originating summons, summons, motion, order, notice, or other originating or interlocutory proceeding, and to notice of any such proceeding as aforesaid.”

4. (1) Rule 48 is hereby amended by revoking paragraph (b), and substituting the following paragraph:—

“(b) Where the contract sought to be enforced or rescinded, dissolved, annulled, or otherwise affected in any action, or for the breach whereof damages or other relief is demanded in the action—

“(i) Was made or entered into in New Zealand; or

“(ii) Was made by or through an agent trading or residing within New Zealand; or

“(iii) Was to be wholly or in part performed in New Zealand; or

“(iv) Was by its terms or by implication to be governed by New Zealand law:”.

(2) The said rule 48 is hereby further amended by adding the following paragraphs:—

“(f) Where the action is for the execution of the trusts of any written instrument of which the person to be served is a trustee and which ought to be executed according to the law of New Zealand:

“(g) Where any relief is sought against any person domiciled or ordinarily resident in New Zealand:

“(h) Where any person out of New Zealand is a necessary or proper party to an action properly brought against some other person duly served or to be served within New Zealand:

“(i) Where the action is for the administration of the personal estate of any deceased person who at the time of his death was domiciled in New Zealand:

“(j) Where the action is brought under the Carriage by Air Act, 1940.”

5. The said Code is hereby further amended by inserting, after rule 51A and before the heading “Service Abroad Where Conventions Exist”, the following heading and rule:—

“SERVICE ABROAD IN ACTIONS UNDER THE CARRIAGE BY  
AIR ACT, 1940

“51AA. Where for the purpose of an action under the Carriage by Air Act, 1940, and the Convention therein set out leave is given to serve a notice of a writ of summons upon a High Contracting Party to the Convention other than His Majesty, the provisions of rules 51AB and 51AC shall apply.

“51AB. The notice shall be transmitted by the Registrar to the Minister of External Affairs together with a copy thereof translated into an official language of the country of the defendant and with a request for the further transmission of the documents to the Government of that country.

“51AC. An official certificate transmitted by the Minister of External Affairs to the Registrar certifying that the notice was delivered on a specified date to the Government of the country of the defendant shall be deemed to be sufficient proof of service and shall be filed on record as, and be equivalent to, an affidavit of service.”

6. (1) The said Code is hereby further amended by inserting, after rule 51AC (as inserted by the last preceding rule), the following heading and rule :—

“ EXTENSION OF FOREGOING RULES TO OTHER DOCUMENTS

“51AD. The foregoing rules relating to service out of New Zealand of a writ of summons or notice of a writ of summons shall, with the necessary modifications, apply to any petition, originating summons, or other originating proceeding or notice thereof, and to any summons, motion, order, notice, or other interlocutory proceeding in any proceedings duly originated which, or a notice of which, as the case may be, should in the opinion of the Court be allowed to be served out of New Zealand.”

(2) Rule 51H is hereby consequentially revoked.

7. Rule 51B is hereby amended by omitting the words “ rules 51C to 51H ”, and substituting the words “ rules 51C to 51F ”.

8. Rules 51E and 51F are hereby amended by omitting the word “ Under-Secretary ”, and substituting the words “ Permanent Head ”.

9. Rule 284 is hereby amended by omitting the words “ within four days after trial ”, and substituting the words “ within seven days after trial ”.

10. The said Code is hereby further amended by inserting, after rule 576A, the following rules :—

“576B. Without ordering taxation of costs, the Court may direct the Registrar to ascertain what amount should be allowed in respect of witnesses’ expenses and other disbursements to a party to whom costs are given.

“576C. Where under these rules or by a direction of the Court the Registrar has ascertained or fixed the amount of any costs or disbursements or the head under which costs should be allowed, and it appears that the Registrar has acted erroneously, whether as to amount or principle, the Court may, on the application of any party dissatisfied therewith, refer the matter to the Registrar with such directions as may be requisite.”

11. The forms numbered 34, 37, 38, and 38A in the First Schedule to the said Code are hereby amended by omitting from clause (2) of each of the said forms the words “ after death ”.

T. J. SHERRARD,  
Clerk of the Executive Council.

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## 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.

*Contracts.*—*Rule 3* enables the Court to give effect to contractual provisions as to the places where writs of summons and other processes may be served.

*Service Out of New Zealand.*—*Rules 4, 5, 6, and 7* extend the provisions relating to service of processes out of New Zealand. *Rule 8* corrects a designation which has become obsolete.

*Time for Moving for New Trial.*—*Rule 9* extends this time from four to seven days.

*Costs (Rule 10).*—The new rule 576B makes it clear that the Court may delegate to the Registrar the fixing of the amount of disbursements to be included in party and party costs. The new rule 576C allows a review of action by a Registrar relating to costs or disbursements which fall short of taxation. It is complementary to rule 574 (which allows a review of taxation).

*Probate and Administration.*—*Rule 11* omits redundant words from the forms of affidavit.

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Issued under the authority of the Regulations Act, 1936.

Date of notification in *Gazette*: 19th day of July, 1951.

These regulations are administered in the Department of Justice.