



THE SUPREME COURT AMENDMENT RULES (NO. 2) 1954

C. W. M. NORRIE, Governor-General

ORDER IN COUNCIL

At the Government House at Wellington this 6th day of October 1954

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 six of the other members of the Rules Committee constituted under the Judicature Amendment Act 1930 (two of such other members being Judges of the Supreme Court), hereby makes the following rules.

RULES

1. (1) These rules may be cited as the Supreme Court Amendment Rules (No. 2) 1954, 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 1955.

2. (1) The rules of the Code specified in the First Schedule hereto are hereby amended by inserting after the word "Court", to the extent specified in that Schedule, the words "or a Judge".

(2) Rule 607 of the Code is hereby amended by revoking the definition of the term "Court".

3. The Code is hereby further amended by revoking rules 394 to 426, and also the heading to Part VI, and substituting the following headings and rules:

"PART VI—INTERLOCUTORY AND ORIGINATING APPLICATIONS

"394. (1) Subject to the provisions of this rule, this Part of these rules shall apply to—

"(a) Every interlocutory application in any proceedings, subject, in the case of any application that may be made orally, to any necessary modifications:

“(b) Every originating application for which no other form of originating process is prescribed by these rules or by the Declaratory Judgments Act 1908.

“(2) Subject to the provisions of rule 426H, this Part of these rules shall not apply to proceedings under the Bankruptcy Act 1908, the Divorce and Matrimonial Causes Act 1928, the Companies Act 1933, or Part IV of the Administration Act 1952, except so far as any provision of this Part is applied by rules of Court made under any of those enactments.

“ APPLICATIONS TO COURT OR IN CHAMBERS

“395. (1) Any application to the Court or to a Judge that is not required by law to be made to a Judge in Chambers may be made to the Court or to a Judge in open Court.

“(2) Any application to a Judge that is not required by law to be made in open Court may be made in Chambers.

“396. Any application which, having been made to the Court, should under any enactment or these rules have been made to a Judge in Chambers, and any application which, having been made to a Judge in Chambers, should under any enactment or these rules have been made to the Court, may be treated by the Court or Judge as if it had been properly made, and may accordingly be dealt with in the proper manner, on such terms as to adjournment or notice or payment of additional Court fees or payment of costs or otherwise as the Court or Judge thinks fit; and any necessary amendments to the application may be made at the hearing.

“397. (1) Where any application to the Court is not expressly required by any enactment or by these rules to be dealt with in open Court, it may be dealt with by a Judge in Chambers for Court; and the Judge may from time to time adjourn any such application from Court to Chambers or from Chambers to Court.

“(2) A Judge sitting in Chambers under this rule may exercise any power conferred by any enactment or by these rules on the Court or on a Judge, other than a power that is expressly required to be exercised in open Court.

“ MODE OF APPLICATION

“398. (1) Except as otherwise provided by rules 385H, 433, 482, and 487, every application to which this Part of these rules applies, whether it is to be made to the Court or to a Judge in Chambers or otherwise, shall be made by motion.

“(2) This rule shall apply notwithstanding any provision in any enactment requiring that any such application be made by petition or by summons or by Judge's summons or in a summary way or manner.

“ NOTICE OF MOTION

“399. Subject to the provisions of rule 400, a notice in writing of any intended motion, in form 33E in the First Schedule hereto, shall, at least three clear days before the day named in the notice for hearing the motion, be filed in the Court and served on all parties affected thereby.

“400. (1) Subject to the provisions of rule 426, where a notice of motion *ex parte*, in form 33F in the First Schedule hereto, is filed in the Court, the Court or a Judge may at any time after the filing make an order thereon if an *ex parte* application is authorized by any enactment or by these rules, or if the Court or Judge is satisfied—

“(a) That the delay that would be caused by proceeding on notice would or might entail irreparable injury; or

“(b) That the application appears to affect the party moving only, or is in respect of a matter of routine, or is of so unimportant a nature that the interests of any other party to the proceedings cannot be affected thereby.

“(2) An order may be made under this rule to have effect for such time, and on such terms as to costs or otherwise, and subject to such undertaking (if any) as the Court or Judge thinks just.

“401. Every notice of motion, except a motion for a new trial or for attachment or a motion based on grounds of fraud, shall either state precisely the grounds on which it is intended to move or refer to the grounds appearing in an affidavit sworn by a person whose name is stated in the notice of motion:

“Provided that the Court or Judge may make an order on any other grounds, or where no grounds are stated in the notice, if it seems expedient to do so.

“402. Every notice of motion for a new trial or for attachment, and every notice of motion based on grounds of fraud, shall state precisely the grounds on which it is intended to move:

“Provided that any such notice of motion may also refer to the grounds appearing in an affidavit sworn by a person whose name is stated in the notice of motion.

“403. Every notice of motion, including every notice of motion for the grant in common form of probate or letters of administration, that is intended to be moved *ex parte* and is not intended to be moved by the applicant in person shall be subscribed with a certificate signed personally in his own name by the solicitor engaged in the proceedings, or by counsel, in the following form: ‘Certified pursuant to the rules of Court to be correct’.

“404. In the case of every motion for an order under the provisions of any enactment other than the Judicature Act 1908, being a motion to which rule 403 applies, there shall be set out in the notice of motion, or by addition to the certificate subscribed thereto, or in a memorandum referred to in the certificate and filed with the papers, a reference to the enactment and the sections or other provisions thereof that are relied on in support of the motion, together with a reference to any decided case, or any passage in any recognized text book, that is relied on in support of the motion:

“Provided that the setting out of any such reference shall not be deemed to dispense with the need of properly intituling the proceedings as being in the matter of any enactment from which the Court or Judge derives jurisdiction.

“405. Every solicitor or counsel certifying a notice of motion to be moved *ex parte* shall personally satisfy himself that the papers are regular and in order and that the order applied for is one that ought to be made, and shall be responsible to the Judge for the regularity of the papers on which the motion is founded.

“STAY OF PROCEEDINGS

“406. Where there is filed a notice of motion relating to a step in an action which the party applying has a limited time for taking, the Court or a Judge may, on the *ex parte* application of that party, direct that the notice of motion shall operate as a stay of proceedings from the time at which it is set down for hearing until it is disposed of.

“TIME FOR SERVICE

“407. Where by these rules or by any enactment any application is required to be made within a limited time, the application shall be deemed to be made in time if notice of motion is filed and served within the time so limited, or, in the case of a notice of motion *ex parte*, is filed within that time.

“408. The Court or a Judge may, on the *ex parte* application of the plaintiff, grant him leave to serve any notice of motion on any defendant along with the writ of summons or other originating process or at any time after the service of the writ of summons or other originating process and before the expiration of the time limited for filing a statement of defence.

“409. At any time after the expiration of the time limited for filing a statement of defence the plaintiff may, without leave, serve a notice of motion on any defendant who, having been duly served with the writ of summons or other originating process, has not filed and served a statement of defence.

“FILING DOCUMENTS BY POST

“410. (1) Any applicant in person who does not reside in the city or borough in which is situated the registry in which a notice of motion or any other document is to be filed, or any solicitor who does not practise in that city or borough, may send the notice of motion or document, with the proper fees, by prepaid registered postal packet addressed to the Registrar of the Supreme Court at the place where it is to be filed.

“(2) The Registrar shall acknowledge the receipt of all documents sent by post, and shall advise the date appointed for the hearing of any notice of motion and the result of any *ex parte* application for which no attendance has been required.

“USE OF AFFIDAVITS

“411. If already filed in the Court, affidavits made previously in the same cause, and, with the leave of the Court or a Judge, affidavits made previously in any other cause between the same parties, may be used on the argument of any motion, if prior notice of the intention to use them has been given.

“412. (1) Except by leave of the Court or a Judge, no affidavit shall be read in support of any motion unless, if sworn to support the motion, it has been filed and served not later than the time required for the filing and service of the notice of motion or unless, if already filed in the Court, notice of intention to use it has been so served.

“(2) Except by leave of the Court or a Judge, no affidavit shall be read in opposition to a motion unless it has been filed on the day before the hearing and served on all parties affected before noon on that day.

“ 413. Any party may, by leave of the Court or a Judge, read any affidavit in answer to an affidavit of any other party on any new matter arising out of the last-mentioned affidavit, irrespective of the time when the answering affidavit was filed or served.

“ DISPOSAL OF *Ex Parte* APPLICATIONS

“ 414. (1) Counsel or solicitors will not be heard, and need not in the first instance attend, on the consideration of a motion intended to be moved *ex parte*, unless so required by a Judge or unless by an appointment to be obtained through the Registrar.

“(2) If there is any irregularity in the papers, or if it appears to the Judge to be doubtful whether the order ought to be made, the attention of the solicitor will be drawn to the irregularity through the Registrar, or notice will be given through the Registrar that the consideration of the motion is required to be attended by counsel or a solicitor.

“ 415. (1) Where a notice of motion *ex parte* is not within the Registrar's jurisdiction and is filed during the absence of a Judge, the papers shall, at the request of the solicitor concerned, be forwarded from the registry in which they are filed to a Registrar who has jurisdiction, or, if there is no such Registrar, to the Registrar at the town where the Judge ordinarily presiding in the judicial district in which that registry is situated may be for the time being, to be laid before the Judge.

“(2) When the motion has been dealt with in accordance with these rules, the Registrar to whom the papers were forwarded shall return them to the registry in which they were filed.

“ DISPOSAL OF APPLICATIONS *Inter Partes*

“ 416. Any motion for an order in proceedings *inter partes*, in respect of which there is filed a draft order consented to in writing by all necessary parties or by their counsel or solicitors, may be dealt with in accordance with rule 415, which shall apply with the necessary modifications.

“ 417. (1) Motions made on notice shall be called upon in the order in which the notices of motion have been filed.

“(2) If any party or person serving a notice of motion fails to appear in support of his motion, any party on whom the notice of motion has been served may apply to have the motion struck out, and the Court or Judge may make such order with reference thereto and to the payment of the costs of the last-mentioned party as may appear just.

“ 418. If on the hearing of a motion the Court or Judge is of opinion that notice should have been or should be served on any person, the Court or Judge may either dismiss the motion or, in order that notice may be so served, adjourn the hearing on such terms (if any) as the Court or Judge thinks fit.

“ 419. (1) The hearing of any motion may from time to time be adjourned on such terms (if any) as the Court or Judge thinks fit.

“(2) A notice of motion for hearing in Court or in Chambers which cannot be heard on the day named therein or on any day to which the hearing has been adjourned shall stand adjourned until the next ensuing day on which there is an ordinary sitting in Court or in Chambers, as the case may require.

“420. If owing to the importance of any application or the length of time likely to be occupied, or for any other reason, the Judge in Chambers thinks it desirable that the application should be heard in Court, he may direct that it be so heard, or may adjourn it to be so heard.

“421. On the hearing of any motion made on notice the party giving notice shall be heard first in support of the motion, and then the parties opposing the motion shall be heard, and then the party moving shall be heard in reply:

“Provided that the Court or Judge may direct that any party be first heard.

“COMPLETION OF ORDERS

“422. (1) The order obtained on any motion shall be drawn up by the party in whose favour it was made and submitted to the proper officer for approval. Form 33G in the First Schedule hereto may be used.

“(2) The order shall specify the date, including the day of the week, on which it was made.

“(3) An order made by the Court shall, when it is approved, be signed by the Registrar and sealed with the seal of the Court.

“(4) An order made by a Judge in Chambers, not being an order made by a Judge sitting in Chambers for Court, shall be headed with the words ‘In Chambers’, and when it is approved it shall either—

“(a) Be personally signed by the Judge by whom the order was made; or

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

“(5) The original order shall then be filed with the proceedings.

“423. (1) Duplicates of any such order may be issued to any party properly applying therefor.

“(2) A duplicate of an order made by a Judge in Chambers and signed by the Judge personally shall be sufficient if it is signed by the Registrar and sealed with the seal of the Court.

“(3) Every duplicate so issued shall be en faced with the word ‘duplicate’.

“424. If the party in whose favour an order is made fails to have the order drawn up and signed or sealed within six days after the day when it was made, any other party to the proceedings may have it drawn up and signed or sealed.

“425. It shall not be necessary, unless the Court or Judge otherwise directs, to draw up, sign, or seal—

“(a) An order dismissing an application, whether or not costs are allowed to any party thereon:

“(b) An order made *inter partes* that enlarges the time for taking any proceeding or doing any act or adjourning any trial, hearing, or other proceeding:

“(c) An order fixing a time for the substantive hearing of any application or the trial or hearing of any matter:

“(d) An order giving leave for the issue of any writ, other than a writ of summons or writ of attachment:

- “(e) An order giving directions as to the service of an originating summons, where service is not directed to be effected on a person under disability or acting in a representative capacity:
- “(f) An order directing the entry or sealing of a judgment or order which is in due course entered or sealed as ordered:
 “Provided that an order granting leave to sign judgment shall be duly drawn up and signed or sealed:
- “(g) An order granting leave for the amendment of any writ, order, or proceedings, or for the filing of any document, or for the doing or waiving of any act by the Registrar or any other officer of the Court except a solicitor.

“ VARIATION AND RESCISSION OF ORDERS

“426. Any party or person against whom an order has been made *ex parte* may at any time move to vary or rescind the order.

“426A. (1) Any party affected by any order made or decision given in Chambers, or in Court for Chambers, may apply to the Court to vary or rescind the order or decision, except where the jurisdiction of the Court is expressly excluded by any enactment or where the order has been made or the decision given on written consent.

“(2) Subject to the provisions of rule 426 hereof, an application under this rule shall be filed—

“(a) If it 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 it 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.

“(3) The application shall not be a stay of proceedings unless the Court or a Judge so orders.

“426B. Where a party fails on a motion from a substantial defect in his case as shown in his affidavits, he shall not apply again on amended affidavits unless, under special circumstances, leave to apply again is given by the Court or a Judge; and if leave is given it may be on such terms as the Court or Judge thinks reasonable and just:

“Provided that leave to apply may be given by a Judge in Chambers only if the original motion was heard in Chambers.

“426c. If any order is fraudulently or improperly obtained, the order and any proceedings under it may be rescinded by the Court.

“426D. (1) If any order contains a clerical mistake or an error arising from any accidental slip or omission, whether the mistake, error, slip or omission was made by a ministerial officer of the Court or not, or if any order is so drawn up as not to express what was actually decided and intended, the order may be corrected by the Court or a Judge, or, where the order was made by a Registrar, then by a Registrar.

“(2) An order under this rule may be made on application in Chambers, whether the order sought to be corrected was made in Court or in Chambers:

“Provided that a Judge or Registrar may in his discretion entertain an application made orally.

“(3) An application under this rule may be made *ex parte* if the order sought to be corrected was made *ex parte*, or if no party other than the party seeking the correction appeared on the hearing of the original application.

“(4) Neither an order made under this rule nor a refusal to make an order under this rule shall be varied or rescinded:

“Provided that this subclause shall not prejudice the right of any party to apply for a variation or rescission of the original order, whether it is corrected or not; and the time limited for any such application shall run as if the date of the making of the correcting order, or of the refusal to make a correcting order, were substituted for the date of the making of the original order.

“ COSTS

“426E. (1) The costs of a motion shall be in the discretion of the Court or a Judge. If in disposing of any motion the Court or Judge says nothing as to costs, each party shall pay his own costs, and no subsequent application shall be made for them.

“(2) If costs are allowed, all usual and proper disbursements, including agency charges, shall, unless the Court or Judge otherwise orders, also be deemed to be allowed though not expressly mentioned.

“ SUMMONSES

“426F. (1) Such of the foregoing rules relating to notices of motion as deal with service, setting down, reading affidavits, disposal, orders, and costs shall apply, subject to this rule and with any necessary modifications, to summonses.

“(2) A summons may be made returnable at any time, and affidavits in support of or in opposition thereto may be filed at any time before the hearing.

“(3) If a Judge is of opinion that a summons has been made returnable within an unreasonably short time, he may order the party issuing the summons to pay the costs of any adjournment.

“ POWERS OF REGISTRARS

“426G. 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 any 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 under rule 406:

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

“(e) 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 counsel or solicitors.

“426H. (1) The Registrars for the time being exercising their office at the registries at Auckland, Wellington, Christchurch, and Dunedin shall have the jurisdiction and powers of a Judge sitting in Chambers conferred by the following enactments, namely:

“(a) Section 4 of the Administration Act 1952, but only where the estate in New Zealand is sworn at a sum not exceeding £5,000:

“(b) Sections 6, 25 (1), and 65 of the Administration Act 1952:

“(c) Section 13 (1) of the Public Trust Office Act 1908, but only where the estate in New Zealand of which it is desired to appoint the Public Trustee sole executor or sole administrator is or was sworn at a sum not exceeding £5,000:

“(d) Section 13 (1) of the Chattels Transfer Act 1924, but only in respect of the extension of time for the registration of an instrument or of an affidavit of renewal of an instrument:

“(e) Sections 24 and 25 of the Evidence Act 1908:

“(f) Section 16 of the Finance Act 1926:

“(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 any such Registrar has jurisdiction under this rule, he shall be entitled to exercise, as ancillary to that jurisdiction, all powers that a Judge might exercise in like circumstances.

“(3) The jurisdiction and powers conferred by this rule 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.

“426I. 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 to a Judge if the application relates to a matter within the Registrar’s jurisdiction.

“426J. The jurisdiction conferred on Registrars by rules 426G and 426H shall not be exercised otherwise than in Chambers.

“426K. (1) An order made by a Registrar, when it is drawn up, shall—

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

“(b) Be signed by a Registrar or a 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) Form 33H in the First Schedule hereto may be used.

“426L. (1) Every application to a Judge in Chambers to vary or rescind the order or decision of a Registrar shall be filed—

“(a) If it 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 it 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.

“(2) The application shall not be a stay of proceedings unless the Court or a Judge so orders, or unless the Registrar so orders pursuant to rule 426G.

“426M. Nothing in these rules shall be deemed to confer any jurisdiction on a Deputy Registrar.”

4. The Code is hereby further amended by omitting the heading “Accounts, Inquiries, etc.” before rule 427, and substituting the heading “PART VI_A—ACCOUNTS, INQUIRIES, ETC.”.

5. The Code is hereby further amended in the manner indicated in the Second Schedule hereto.

6. (1) The First Schedule to the Code is hereby amended as follows:

(a) By omitting from form 25 the words “[or I do order if the application is made in Chambers]”, and substituting the words “[or, if the order is made in Chambers, the Honourable Mr Justice hereby orders]”:

(b) By omitting from form 26 the words “[or I do order, when the motion is made in Chambers]”, and substituting the words “[or, if the order is made in Chambers, the Honourable Mr Justice hereby orders]”:

(c) By omitting from form 27 the words “[or I do order]”, and substituting the words “[or, if the order is made in Chambers, the Honourable Mr Justice hereby orders]”:

(d) By omitting from form 33_A the words “I do order”, and substituting the words “it is ordered [or, if the order is made in Chambers, the Honourable Mr Justice hereby orders]”; and by omitting the words “And I order”, and substituting the word “And”:

(e) By omitting from form 33_B the words “at his Chambers, Supreme Court House, at 11 o'clock in the forenoon”, and substituting the words “at his Chambers, Supreme Court House, at o'clock in the forenoon on day, the day of 19.....”:

(f) By omitting from forms 36, 39, and 40 (as substituted by regulations 5 to 7 of the Supreme Court Amendment Rules (No. 3) 1951) the words “rule 419” wherever those words appear, and substituting in each case the words “rule 426H”.

(2) The said First Schedule is hereby further amended by revoking form 33_E, as inserted by rule 7 of the Supreme Court Amendment Rules 1951*, and substituting the new forms 33_E to 33_H set out in the Third Schedule hereto.

7. Table C in the Third Schedule to the Code is hereby consequentially amended by revoking paragraphs 30 and 33 (as substituted by subclause (2) of rule 2 of the Supreme Court Amendment Rules 1954†), and substituting the following paragraphs:

“30. Motions and other applications in Court not specially provided for: £2 2s. to £21, as certified for or ordered.

“33. Motions and other applications in Chambers: £2 2s. to £15 15s., as certified for or ordered.”

8. The rules specified in the Fourth Schedule hereto are hereby revoked.

* Statutory Regulations 1951, Serial number 1951/75, page 282.

† Statutory Regulations 1954, Serial number 1954/37, page 170.

SCHEDULES

FIRST SCHEDULE

Rule 2 (1)

RULES OF CODE AMENDED

(By inserting, after the word "Court", the words "or a Judge")

Rule Amended	Extent of Amendment
34	Where the word " Court " first and last appears.
40	
41	Wherever the word " Court " appears.
42	
47	Wherever the word " Court " appears.
48	
49	Where the word " Court " first and last appears.
51 ^{AD} *	
52	
53	Where the word " Court " first and last appears.
55	
58	Where the word " Court " last appears.
62	
65	
66	Where the word " Court " first and last appears.
73	
79	
86	
87	Wherever the word " Court " appears.
90	Where the word " Court " first and secondly appears.
92	
93	
95	
96	Wherever the word " Court " appears.
99 ^A	
99 ^C	Where the word " Court " last appears.
99 ^E	Wherever the word " Court " appears.
99 ^F	
99 ^G	
99 ^H	Wherever the word " Court " appears.
99 ^J	
99 ^M	Where the word " Court " first, secondly, and thirdly appears.
100	Wherever the word " Court " appears.
101	
102	
107	
108	Wherever the word " Court " appears.

* See rule 6 (1) of the Supreme Court Amendment Rules (No. 2) 1951, Statutory Regulations 1951, Serial number 1951/157, page 502.

FIRST SCHEDULE—*continued*RULES OF CODE AMENDED—*continued*

(By inserting, after the word "Court", the words "or a Judge")

Rule Amended	Extent of Amendment
118	Where the word "Court" secondly and last appears.
119	Where the word "Court" first appears.
133	
134*	
135*	} Wherever the word "Court" appears.
135A*	
135B*	
135F*	
135G*	
147	Where the word "Court" first and secondly appears.
150	
151	
152	} Wherever the word "Court" appears.
153	
154	
155	Where the word "Court" first and secondly appears.
157	Wherever the word "Court" appears.
158	
159	Where the word "Court" first and last appears.
163	Where the word "Court" first and secondly appears.
165	
172	Where the word "Court" secondly, thirdly, fifthly, and sixthly appears.
177	Where the word "Court" first and last appears.
177A	Where the word "Court" first, secondly, and last appears.
178	
182	Where the word "Court" secondly appears.
184	
188E	Wherever the word "Court" appears.
205	
206	} Wherever the word "Court" appears.
210	
224 (b)	
227	Where the word "Court" thirdly and last appears.
232 (a)	
236	
237	
240A	
242	Where the word "Court" first appears.
243	

* See rule 3 of the Supreme Court Amendment Rules 1950, Statutory Regulations 1950, Serial number 1950/58, page 199.

FIRST SCHEDULE—*continued*RULES OF CODE AMENDED—*continued*

(By inserting, after the word " Court ", the words " or a Judge ")

Rule Amended	Extent of Amendment
244	
246	
249	
250	Where the word " Court " last appears.
252	Where the word " Court " first appears.
265	
270	
273	Where the word " Court " last appears.
295	
299	
302	
312	
313	Where the word " Court " last appears.
314	Where the word " Court " first appears.
318	
319	
320	Wherever the word " Court " appears.
321	
322	
325	Where the word " Court " first and last appears.
327	
332	Wherever the word " Court " appears.
335	Where the word " Court " first appears.
337	Wherever the word " Court " appears.
346	
347	Wherever the word " Court " appears.
348	
351	} Wherever the word " Court " appears.
352	
353	
354	Where the word " Court " first appears.
355	Wherever the word " Court " appears.
357	
373	
386	
392	Where the word " Court " last appears.
436	
446	
450	
452	Where the word " Court " last appears.
453	} Wherever the word " Court " appears.
455	
457	
458	
459	

FIRST SCHEDULE—*continued*RULES OF CODE AMENDED—*continued*

(By inserting, after the word "Court", the words "or a Judge")

Rule Amended	Extent of Amendment
460	
476	Where the word "Court" first appears.
477	Wherever the word "Court" appears.
478	
479	
480	Where the word "Court" first, secondly, and fourthly appears.
485	} Wherever the word "Court" appears.
488	
498	
510	
515	
516	Wherever the word "Court" appears.
524	
531c	Where the word "Court" first appears.
531o*	Wherever the word "Court" appears.
531y	
532	
541A	
541B	Wherever the word "Court" appears.
541D	
541E	
555	Wherever the word "Court" appears.
568	Where the word "Court" first appears.
574	
576B†	
576c†	Wherever the word "Court" appears.
577	
577A‡	
580	
582	Wherever the word "Court" appears.
586	
592	
593	
594	
599	

* See rule 3 of Supreme Court Amendment Rules 1940, Statutory Regulations 1940, Serial number 1940/182, page 589.

† See rule 10 of Supreme Court Amendment Rules 1951, Statutory Regulations 1951, Serial number 1951/157, page 502.

‡ See rule 7 of Supreme Court Amendment Rules 1944, Statutory Regulations 1944, Serial number 1944/35, page 104.

SECOND SCHEDULE

Rule 5

MISCELLANEOUS AMENDMENTS

Rule Amended	Nature of Amendment
49	By omitting the words "its discretion" in both places where those words appear, and substituting in each case the words "its or his discretion".
54	By omitting the words "the Judge", and substituting the words "the Court or a Judge".
66	By omitting the words "as it thinks fit", and substituting the words "as the Court or Judge thinks fit".
92	By omitting the words "in a summary manner".
99j	By omitting the words "or by summons".
124	By omitting the words "on summons"; and by omitting the words "as it deems reasonable", and substituting the words "as it or he thinks reasonable".
135B*	By omitting the words "as it thinks fit", and substituting the words "as it or he thinks fit".
149	By omitting the words "apply for leave of the Court to".
152	By omitting the words "in a summary way".
162	By omitting the words "the last preceding rule", and substituting the words "rule 161".
177A	By inserting, after the words "under the hand of a Judge", the words "or a Registrar".
177E	By inserting, after the words "under the hand of a Judge", the words "or a Registrar".
188E	By omitting the words "if it thinks fit", and substituting the words "if it or he thinks fit".
206	By omitting the words "by summons".
207	By omitting the words "under the last rule the Judge", and substituting the words "under rule 206 the Court or a Judge"; and by omitting the words "as he thinks just", and substituting the words "as the Court or Judge thinks just".
232	By omitting from paragraph (a) the words "rule 395", and substituting the words "rule 399".
240A	By omitting from paragraph (a) the words "at its discretion", and substituting the words "at its or his discretion"; by omitting from the same paragraph the words "as it thinks proper", and substituting the words "as the Court or Judge thinks proper"; by omitting from paragraph (b) the words "by summons, which shall be taken out"; and by omitting from paragraph (c) the words "by summons".

* See rule 3 of the Supreme Court Amendment Rules 1950, Statutory Regulations 1950, Serial number 1950/58, page 200.

SECOND SCHEDULE—*continued*MISCELLANEOUS AMENDMENTS—*continued*

Rule Amended	Nature of Amendment
246	By omitting the words " a married woman ", and substituting the word " an "; and by omitting the words " such married woman ", and substituting the word " the ".
247	By omitting the words " a married woman ", and substituting the word " an ".
313	By omitting the words " in a summary way ".
335	By omitting the words " on summons by ", and substituting the words " on the motion of ".
427	By omitting the word " summons ", in both places where it appears, and substituting in each case the word " application ".
429	By omitting the word " summons ", and substituting the word " application ".
453	By omitting the word " petition ", and substituting the word " motion ".
455	By omitting the words " as it thinks just ", and substituting the words " as it or he thinks just ".
468	By omitting from paragraph (b) the words " rule 396 ", and substituting the words " rule 400 "; and by omitting from paragraph (d) the words " rule 395 ", and substituting the words " rule 399 ".
482	By omitting from paragraph (d) the words " the Judge may ".
516	By omitting the words " as it thinks just ", and substituting the words " as it or he thinks just ".
531F	By omitting the words " the 21st and 22nd sections of the Administration Act 1908 ", and substituting the words " section 6 of the Administration Act 1952 "; and by omitting the words " by the Court ".
540	By omitting the words " the Judge ", and substituting the words " the Court or a Judge ".
541	By omitting the words " the Judge ", and substituting the words " the Court or a Judge ".
541B	By omitting the words " it to decide ", and substituting the words " it or him to decide "; and by omitting the words " it may determine whether it should ", and substituting the words " the Court or Judge may determine whether to ".
541D	By omitting the words " it to determine whether it should ", and substituting the words " it or him to determine whether to ".
541E	By omitting the words " it to determine whether it should ", and substituting the words " it or him to determine whether to ".

SECOND SCHEDULE—*continued*MISCELLANEOUS AMENDMENTS—*continued*

Rule Amended	Nature of Amendment
547	By omitting the words “ the Judge ”, and substituting the words “ the Court or a Judge ”.
554	By omitting the words “ rules 550 and 557 ”, and substituting the words “ rules 550 and 551 ”.
568	By omitting the words “ the Court in its discretion ”, and substituting the words “ the Court or a Judge in its or his discretion ”; and by omitting the words “ as it thinks fit ”, and substituting the words “ as it or he thinks fit ”.
582	By omitting the words “ as it thinks fit ”, and substituting the words “ as it or he thinks fit ”.
596	By omitting the word “ summons ”, and substituting the word “ motion ”.
597A	By inserting in paragraph (d), after the word “ Judge ”, the words “ or the Registrar ”; by omitting from paragraph (e) the words “ or summons ”; by omitting from paragraph (e) the words “ Summons for Directions ”, and substituting the words “ Notice of Motion for Directions ”; by omitting from paragraph (g) the words “ or summons ”; and by inserting, after paragraph (e), the following paragraph: “ (ee) Motions to be moved <i>ex parte</i> shall be so indorsed.”
599	By omitting the words “ or summons taken out ”.

THIRD SCHEDULE

Rule 6 (2)

NEW FORMS INSERTED IN FIRST SCHEDULE TO CODE

Rule 399

“ NO. 33E—NOTICE OF MOTION TO THE COURT OR A JUDGE IN CHAMBERS
Inter Partes

TAKE notice that on day, the day of 19...., at o'clock in the noon or so soon thereafter as counsel [or *parties*] can be heard, counsel for the above-named plaintiff [or as *the case may be*] will move this Honourable Court at [or at before the Judge in Chambers] for an order that [*Here set out clearly the order that is sought*] and directing that the costs of the plaintiff [or as *the case may require*] of and incidental to this application and the order thereon be fixed and be costs in the cause [or be fixed and be costs of the plaintiff in any event or be reserved or as *the case may be*] and for such further or other order as in the circumstances may appear just upon the grounds [*If grounds are to be stated in the notice, here set out precisely the grounds on which it is intended to move*] [and upon the grounds appearing by the affidavit of E. F. filed herein].

Dated this day of 19....

Counsel for [or Solicitor for] the above-named plaintiff [or as *the case may require*].

To the Registrar of the Supreme Court at, and to the above-named defendant C. D. and his solicitor Mr G. H. [or as *the case may be*].

[NOTE.—*In an originating motion, an address for service should be added pursuant to rule 583.*]

Rule 400

“ NO. 33F—NOTICE OF MOTION TO THE COURT OR A JUDGE IN CHAMBERS
Ex Parte

TAKE notice that counsel for the above-named plaintiff [or as *the case may be*] will move this Honourable Court [or the Judge in Chambers] for an order [*etc., as in form 33E.*]

Dated this day of 19....

To the Registrar of the Supreme Court at

Certified pursuant to the rules of Court to be correct.

This application is made in reliance on section of the Act 19.... and rule of the Code of Civil Procedure. The attention of the Court is respectfully drawn to the case of

.....
Counsel moving.

Rule 422

“NO. 33G—ORDER MADE BY THE COURT OR A JUDGE IN CHAMBERS

[For a Court order—

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

Before the Honourable Mr Justice

[For a Chambers order—

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 [*or as the case may be*] dated the day of 19...., and the affidavit of E. F. filed herein [*Refer also to any other documentary evidence*] [and it appearing that, etc.], and upon hearing Mr of counsel [*or solicitor*] on behalf of the plaintiff and Mr of counsel [*or solicitor*] on behalf of the defendant consenting hereto [*or as the case may be*], this Court [*or the Honourable Mr Justice*] hereby orders that, and hereby further orders that the defendant pay to the plaintiff the sum of £....., together with disbursements to be fixed by the Registrar, for his costs of and incidental to the said notice of motion and this order [*or as the case may be*].

[For a Court order—

By the Court.

.....
(Signature of Registrar and Seal of the Court)]

[For a Chambers order—

.....
(Signature of Judge or Signature of Registrar and Seal of the Court)]

Rule 426K

“NO. 33H—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 [*or as the case may be*] dated the day of 19...., and the affidavit of E. F. filed herein [*Refer also to any other documentary evidence*] [and it appearing that, etc.], and upon hearing Mr of counsel [*or solicitor*] on behalf of the plaintiff and Mr of counsel [*or solicitor*] on behalf of the defendant consenting hereto [*or as the case may be*], Mr Registrar, acting under rules and of the Code of Civil Procedure, hereby orders that, and hereby further orders that the defendant 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.”

FOURTH SCHEDULE

Rule 8

RULES REVOKED

1. The Order in Council dated 18 November 1909, making a rule relating to the posting of country applications to the Registrar (*Gazette*, 19 November 1909, Vol. II, page 3011).
2. The Supreme Court (Miscellaneous) Amendment Rules 1936: Paragraphs (e) and (f) of rule 2 (*Gazette*, 26 March 1936, Vol. I, page 536).
3. The Supreme Court Amendment Rules 1951: Rules 6 and 7 (Statutory Regulations 1951, Serial number 1951/75, page 280).
4. The Supreme Court Amendment Rules (No. 3) 1951: Rule 4 (Statutory Regulations 1951, Serial number 1951/261, page 1023).
5. The Supreme Court Amendment Rules 1953: Subclause (1) of rule 3 (Statutory Regulations 1953, Serial number 1953/121, page 627).

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.*]

The main purpose of these rules is to provide a uniform and simplified method of procedure for interlocutory and originating applications in civil proceedings in the Supreme Court. The rules also make minor amendments to the Code of Civil Procedure.

Rule 2: At present some of the powers of dealing with various matters, such as the granting of leave or giving directions for steps in proceedings, are expressly given to the Court, and others are expressly given to the Court or a Judge. This rule amends the rules set out in the First Schedule by altering references to the Court to references to the Court or a Judge.

Rule 3 substitutes for rules 394 to 426 a new Part VI of the Code, dealing with interlocutory and originating applications. The new Part applies to all interlocutory applications, and to all originating applications for which no other form of originating process is prescribed by the Code or by the Declaratory Judgments Act 1908. It does not apply, however, to proceedings under the Bankruptcy Act 1908, the Divorce and Matrimonial Causes Act 1928, the Companies Act 1933, or Part IV of the Administration Act 1952.

All applications to which the new Part VI applies are to be made by way of notice of motion, but may in certain cases be dealt with on motions made *ex parte* (new rules 398 to 400). Petitions will not be used. Summonses will not be used except for applications to commit to prison under the Imprisonment for Debt Limitation Act 1908 (rule 385H of the Code), summonses to accounting parties to appear for examination on disputed items of accounts (rule 433 of the Code), and interpleader proceedings (rules 482 and 487 of the Code).

The remaining rules of the new Part VI deal with the procedure on applications, including the forms of motions, filing and service, the use of affidavits, the disposal of applications, the forms of orders, and the variation and rescission of orders. The existing rules relating to the jurisdiction and powers of Registrars are also re-enacted.

Rule 4: The existing rules 427 to 453, dealing with accounts and inquiries, now become Part VIA of the Code.

Rule 5: This rule makes the miscellaneous amendments set out in the Second Schedule. That Schedule includes an amendment to rule 149, permitting the filing of a special statement of defence within seven days after a new ground of defence has arisen, without the necessity of obtaining the prior leave of the Court; and amendments to rules 246 and 247, abolishing the requirement of prior leave to set down a special case to which a married woman is a party.

Rule 6 makes consequential amendments to forms 25 to 27 (charging orders), 33A (order for the arrest of an absconding debtor), 33B (summons for committal), and 36, 39, and 40 (probate and letters of administration). It also prescribes the new forms of notice of motion, and of orders thereon, set out in the Third Schedule.

Rule 7 makes consequential amendments to the wording of the scale of costs relating to applications to the Court or in Chambers.

Rule 8 consequentially revokes the rules set out in the Fourth Schedule.

Issued under the authority of the Regulations Act 1936.

Date of notification in *Gazette*: 7 October 1954.

These regulations are administered in the Department of Justice.