

Serial Number 1951/261

THE SUPREME COURT AMENDMENT RULES (NO. 3) 1951

B. C. FREYBERG, Governor-General

ORDER IN COUNCIL.

At the Government House at Wellington, this 14th day of
November 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 Honourable the Acting Chief Justice and six 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. 3) 1951.

(2) These rules shall come into force on the seventh day after the date of their notification in the *Gazette*.

2. Rule 305 of the Code of Civil Procedure set out in the Second Schedule to the Judicature Act 1908 is hereby amended by omitting the word "six", and substituting the word "five".

3. Rules 446, 447, and 491 of the said Code are hereby amended by omitting the word "eight", and substituting in each case the word "five".

4. Rule 419 of the said Code, as inserted by rule 6 of the Supreme Court Amendment Rules 1951,* is hereby amended by adding to clause (1) the following paragraph :—

“(h) The Public Trust Office Act 1908, section 13 (1), 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.”

* Statutory Regulations 1951, Serial number 1951/75, page 230.

5. (1) The First Schedule to the said Code is hereby amended by revoking form No. 36, and substituting the following form :—

“ Rules 531x, 419]

“ No. 36—PROBATE

“ BE it known to all men that on this day of 19.. the last will of deceased, who died on or about the day of 19.., a copy of which is hereunto annexed, has been exhibited, read, and proved before [or, where probate is granted by a Registrar under rule 419, exhibited, read, and proved in Chambers before Mr. Registrar at acting under rule 419 of the Code of Civil Procedure], and administration of the estate, effects, and credits of the deceased has been and is hereby granted to, the executor named in the said will, being first sworn faithfully to execute the said will by paying the debts and legacies of the deceased so far as the property extends and the law binds and, whenever ordered so to do, to file in this Court and verify by affidavit a true, full, and perfect inventory of all the estate, effects, and credits of the deceased which shall have come into your hands, possession, or knowledge, and also a full, distinct, and proper account of your execution of the will, reserving nevertheless to this Court full power and authority to grant like probate and administration to, the other executors named in the will, whenever they shall appear before this Court and sue for the same.

“ Given under the Seal of the Supreme Court of New Zealand at, this day of 19...

“
“ Registrar.”

(2) Paragraph (n) of rule 2 of the Supreme Court (Miscellaneous) Amendment Rules 1936,* and rule 6 of the Supreme Court Amendment Rules 1940, No. 2†, are hereby consequentially revoked.

6. (1) The First Schedule to the said Code is hereby further amended by revoking form No. 39 (as substituted by rule 9 of the Supreme Court Amendment Rules 1940, No. 2†), and substituting the following form :—

“ Rules 531x, 419]

“ No. 39—LETTERS OF ADMINISTRATION WITH WILL ANNEXED

“ To, widow [or widower or next-of-kin] of, deceased [or as the case may be].

“ WHEREAS the said died on or about the day of 19.., leaving a will which has been duly proved in this Court: And whereas the executors named in the will have not applied for probate [or no executor is named in the will, or, as the case may be, stating the circumstances giving rise to a grant of letters of administration with will annexed]: [And, when letters of administration are granted by a Registrar under rule 419, whereas letters of administration, with the will annexed, of the estate of the deceased have this day been granted in Chambers by Mr. Registrar at, acting under rule 419 of the Code of Civil Procedure:] You are therefore fully empowered and authorized by these presents to administer the estate, effects, and credits of the deceased, and to demand and recover whatever debts may belong to his estate, and to pay whatever debts the deceased owed and also the legacies contained in the said will, so far as the said estate, effects, and credits extend; you having already been sworn faithfully to execute the will and, whenever ordered so to do, to file in this Court and verify by affidavit a true, full, and perfect inventory of all the estate, effects, and credits of the deceased which shall have come into your hands, possession, or knowledge, and also a full, distinct, and proper account of your execution of the will. You are therefore by these presents constituted administratrix [or administrator] with the will annexed of all the estate, effects, and credits of the deceased.

“ Given under the Seal of the Supreme Court of New Zealand at, this day of 19...

“
“ Registrar.”

* Gazette, 26 March 1936, Vol. I, p. 536.

† Statutory Regulations 1940, Serial number 1940/182, page 589.

(2) Rule 9 of the Supreme Court Amendment Rules 1940, No. 2,* is hereby consequentially revoked.

7. (1) The First Schedule to the said Code is hereby further amended by revoking form No. 40 (as substituted by rule 10 of the Supreme Court Amendment Rules 1940, No. 2*), and substituting the following form:—

“ Rules 531x, 419]

“ No. 40—LETTERS OF ADMINISTRATION WITHOUT A WILL

“ To, widow [or widower or next-of-kin] of, deceased [or as the case may be].

“ WHEREAS the said died intestate on or about the day of 19. . . : [And, when letters of administration are granted by a Registrar under rule 419, whereas letters of administration of the estate of the deceased have this day been granted in Chambers by Mr. Registrar at, acting under rule 419 of the Code of Civil Procedure:] You are therefore fully empowered and authorized by these presents to administer the estate, effects, and credits of the deceased, and to demand and recover whatever debts may belong to his estate, and to pay whatever debts the deceased owed, so far as the said estate, effects, and credits extend; you having already been sworn faithfully to administer the same and, whenever ordered so to do, to file in this Court and verify by affidavit a true, full, and perfect inventory of all the estate, effects, and credits of the deceased which shall have come into your hands, possession, or knowledge, and also a full, distinct, and proper account of your administration of the estate. You are therefore by these presents constituted administratrix [or administrator] of all the estate, effects, and credits of the deceased.

“ Given under the Seal of the Supreme Court of New Zealand at, this day of 19. . .

“ Registrar.”

(2) Rule 10 of the Supreme Court Amendment Rules 1940, No. 2,* is hereby consequentially revoked.

8. The said Code is hereby amended by inserting, after rule 597B, the following rule:—

“ 597c. (1) Notwithstanding anything in rule 597A, while this rule continues in force, every document to be filed in any Registry of the Court shall be prepared in accordance with this rule.

“ (2) The margin shall be 1 in.

“ (3) Single spacing shall be used where practicable, except between paragraphs.

“ (4) If the contents of the document can be legibly and clearly written, typewritten, or printed on one side of a single sheet of quarto paper, that paper shall be used.

“ (5) If reasonably stout and opaque paper is used,—

“ (a) The document shall be legibly and clearly written, typewritten, or printed bookwise, using both sides of every sheet, including, if necessary, the inside of the endorsement sheet:

“ (b) Where the entire contents of the document are on one side of a single sheet, the endorsement shall be on the back of that sheet:

“ (c) The lines on both sides of each sheet shall register back to back.

* Statutory Regulations 1940, Serial number 1940/182, page 589.

“(6) In all other respects, the document shall conform to the requirements of rules 597A and 597B.

“(7) This rule shall not apply to any document prepared before the coming into force of this rule.”

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 amend the Code of Civil Procedure of the Supreme Court in respect of the matters set out below.

Rates of Interest.—Rules 2 and 3 reduce the rate of interest on judgment debts, and on debts and legacies payable under an order for accounts, to 5 per cent.

Powers of Registrars.—Rule 4 extends the existing powers of Registrars at Auckland, Wellington, Christchurch, and Dunedin so as to enable them to exercise in Chambers the jurisdiction of a Judge to consent, on application by executors or administrators under section 13 (1) of the Public Trust Office Act 1908, to the appointment of the Public Trustee as sole executor or sole administrator in an estate.

Probate and Administration Forms.—By rules 5, 6, and 7 the forms of probate and letters of administration are re-enacted with the inclusion of references, where applicable, to the granting of probate and administration by Registrars.

Preparation of Court Documents.—Rule 8 temporarily modifies the requirements of the Code as to the preparation of Supreme Court documents. The effect is as follows :—

- (1) For all documents, the margin is reduced to 1 in. ; and single spacing is to be used, except between paragraphs.
- (2) For documents covering only one side of a single sheet, quarto paper is to be used where possible.
- (3) Where reasonably stout and opaque paper is used, both sides of each sheet (including, if necessary, the inside of the endorsement sheet) are to be used, with the lines registering back to back ; and, where the document covers only one side of a single sheet, the endorsement is to be on the back of that sheet.

Issued under the authority of the Regulations Act 1936.

Date of notification in *Gazette* : 15th day of November 1951.

These regulations are administered in the Department of Justice.