

STATUTORY RULES.

No. 7 of 1927.

CENTRAL COURT OF THE TERRITORY OF PAPUA.

RULES OF COURT.

As of Thursday the sixteenth day of September, A.D., 1926.

It is ordered by the Honourable Sir John Hubert Plunkett Murray, Knight Commander of the Most Distinguished Order of Saint Michael and Saint George, and the Honourable Charles Edward Herbert, Judges of the Central Court of the Territory of Papua, in pursuance and execution of all powers and authorities enabling them in that behalf that the Rules of the said Court for regulating the practice and procedure in respect to the service of documents and the examination of witnesses in and the service of documents in the Territory of Papua of foreign countries with which a Convention in that behalf has been or shall be made shall be as follows :—

Citation.

1. These Rules may be cited as the *Rules of Court (Foreign Conventions)*, 1926.

Service of documents abroad.

2. Where leave is given in a civil or commercial cause or matter to serve any writ or summons, originating summons, notice or other document in France, or in any other foreign country with which a Convention in that behalf has been or shall be made, the following procedure shall, subject to any special provisions contained in the Convention, be adopted :—

- (1) The party bespeaking such service shall file in the Registry a Request in the Form No. 1 in the Schedule which form may be varied as may be necessary to meet the circumstances of the particular case in which it is used. Such Request shall state the medium through which it is desired the service shall be effected, i.e., whether (a) directly through the British Consul or (b) through the foreign judicial authority, and shall be accompanied by the original document and a translation thereof in the language

of the country in which service is to be effected, certified by or on behalf of the person making the request and a copy of each for every person to be served and any further copies which the Convention may require, unless the service is required to be made on a British subject directly through the British Consul in which case the translation and copies thereof need not accompany the Request unless the Convention expressly requires that they should do so.

- (2) The documents to be served shall be sealed with the seal of the Central Court for use out of the jurisdiction and shall be forwarded by the Registrar of the Central Court to the Lieutenant-Governor for transmission to the foreign country.
- (3) An official certificate, transmitted through the diplomatic channel by the foreign judicial authority, or by a British Consular authority, to the Central Court, establishing the fact and the date of the service of the document, shall be deemed to be sufficient proof of such service, and shall be filed of record as, and be equivalent to, an Affidavit of Service within the requirements of the Rules in that behalf.
- (4) In cases where a Writ of Summons or notice thereof is served pursuant to this Rule and an official certificate of service is produced, no endorsement of service under Rule 20 of the "Rules of Civil Procedure" shall be required.

3. Rule 2 shall not apply to or render invalid or insufficient any mode of service in any foreign country with which a Convention has been or shall be made which is otherwise valid or sufficient according to the procedure of the Central Court and which is not expressly excluded by the Convention made with such foreign country.

Service of foreign documents in the Territory of Papua.

4. Where in any civil or commercial cause or matter pending before a Court or Tribunal in France, or in any foreign country with which a Convention in that behalf has been or shall be made, a Request for service of any document on a person in the Territory of Papua is received by the Registrar of the Central Court from the Consular or other authority of such country, the following procedure shall, subject to any special provisions contained in the Convention, be adopted :—

- (1) The service shall be effected by the delivery of the original or a copy of the document, as indicated in the request, and the copy of the translation, to the party or person to be served in person by the person whom a Judge of the Central Court may from time to time appoint for the purpose, or by the authorized agent of such person.
- (2) No Court fees shall be charged in respect of the service. The particulars of charges of the person or agent employed to effect service shall be submitted to the Taxing Officer of the Central Court who shall certify the amount properly payable in respect thereof.
- (3) The Registrar of the Central Court shall transmit to the Consular or other authority making the Request a certificate establishing the fact and the date of the service in person, or indicating the reasons for which it has not been possible to effect it, and at the same time shall notify to the said Consular or other authority the amount of the charges certified under Paragraph (2) hereof.

Examination of witnesses abroad.

5. Where an order is made for the issue of a Request to examine a witness or witnesses in France, or in any other foreign country with which a Convention in that behalf has been or shall be made, the following procedure shall be adopted :—

- (1) The party obtaining such order shall file in the Registry an undertaking in the Form No. 3 in the Schedule which form may be varied as may be necessary to meet the circumstances of the particular case in which it is used.
- (2) Such undertaking shall be accompanied by—
 - (a) a request in the Form No. 4 in the Schedule with such variation as may be directed in the order for the issue thereof, together with a translation of such Request in the language of the country in which the same is to be executed;
 - (b) a copy of the interrogatories (if any) to accompany the request, and a translation thereof;
 - (c) a copy of the cross-interrogatories (if any), and a translation thereof.

6. Where an order is made for the examination of a witness or witnesses before the British Consular authority in France, or in any other foreign country with which a Convention in that behalf has been or shall be made, such order shall be in the Form No. 2 in the Schedule which form of order may be varied as may be necessary to meet the circumstances of the particular case in which it is used.

THE SCHEDULE.

No. 1. (Title, etc.)

(a) Name of country. I [*or we*] hereby request that a notice of a writ of summons [*or as the case may be, describing the document*] in this action be transmitted through the proper channel to (a) for service (b) on the defendant at (c) or elsewhere in (a)

(c) If under Rule 1 add "Directly through the British Consul" or "by the Foreign Judicial authority."

And I [*or we*] hereby personally undertake to be responsible for all expenses incurred by His Majesty's Principal Secretary of State for Foreign Affairs in respect of the service hereby requested, and on receiving due notification of the amount of such expenses I [*or we*] undertake to pay the same to the Registrar of the Central Court, and to produce the receipt for such payment to the proper officer of the Central Court.

Dated this _____ day of _____, 19____

Signature of Solicitor.

No. 2. (Title, etc.)

Upon hearing the solicitors on both sides, and upon reading the Affidavit of

It is ordered that the British Consul or his Deputy at _____ be appointed as Special Examiner for the purpose of taking the examination, cross-examination and re-examination viva voce on oath or affirmation, of _____ witnesses on the part of the

at _____
 aforesaid. The Examiner shall be at liberty to invite the attendance of the said witnesses and the production of documents, but shall not exercise any compulsory powers. Otherwise such examination shall be taken in accordance with the English procedure. The _____ solicitors to give to the _____ solicitors _____ day's notice in writing of the date on which they propose to send out this order to _____ for execution, and that _____ days after the service of such notice the solicitors for the plaintiffs and defendants, respectively, do exchange the names of their agent at _____ to whom notice relating to the examination of the said witnesses may be sent. And that _____ days (exclusive of Sundays) prior to the examination of any witness hereunder notice of such examination shall be given by the agent of the party on whose behalf such witness is to be examined to the

agent of the other party (unless such notice be dispensed with). And that the depositions when so taken, together with any documents referred to therein, or certified copies of such documents, or of extract therefrom, be transmitted by the Examiner, under seal, to the Registrar of the Central Court of the Territory of Papua, Port Moresby, Papua, on or before the _____ day of _____ next, or such further or other day as may be ordered, there to be filed in the proper office. And that either party be at liberty to read and give such depositions in evidence on the trial of this action, saving all just exceptions. And that the trial of this action be stayed until the filing of such depositions. And that the costs of and incident to this application and such examination be costs in the action.

Dated the _____ day of _____, 19 _____

(NOTE.—If the Convention requires that the invitation or notice to the witnesses must expressly state that no compulsory powers may be used, this requirement must be complied with.)

No. 3.
(Heading.)

I [*or we*] hereby undertake to be responsible for all expenses incurred by his Majesty's Secretary of State for Foreign Affairs in respect of the letter of request issued herein on the day of _____, 19 _____, and on receiving due notification of the amount of such expenses undertake to pay the same as directed by the Registrar of the Central Court.

The following have been appointed as agents for the parties in connection with the execution of the above letter of request:—

Plaintiffs Agent,
of _____
Defendant's Agent,
of _____

Dated the _____ day of _____, 19 _____
Solicitor for _____

No. 4.

To the Competent Judicial Authority of _____ of _____ in the _____

WHEREAS a civil [*commercial*] action is now pending in the Central Court of the Territory of Papua in which _____ is plaintiff and _____ is defendant. And in the said action the plaintiff claims _____

And whereas it has been represented to the said Court that it is necessary, for the purpose of justice and for the due determination of the matters in dispute between the parties, that the following persons should be examined as witnesses upon oath touching such matters, that is to say:

_____ of _____ of _____ and _____ of _____

And it appearing that such witnesses are resident within your jurisdiction.

Now, I, _____, the Registrar of the Central Court of the Territory of Papua, have the honour to request and do hereby request, that for the reasons aforesaid and for the assistance of the said Court you will be pleased to summon the said witnesses (and such other witnesses as the agents of the said plaintiff and defendant shall humbly request you in writing so to summon) to attend at such time and place as you shall appoint before you, or such other person as according to your procedure is competent to take the examination of witnesses, and that you will cause such witnesses to be examined (upon the interrogatories which accompany this letter of request) viva voce touching the said matters in question in the presence of the agent of the plaintiff and defendant or such of them as shall, on due notice given, attend such examination.

And I further have the honour to request that you will permit the agents of both the said plaintiff and defendant, or such of them as shall be present, to be at liberty to examine (upon interrogatories and viva voce upon the subject-matter thereof or arising out of the answers thereof) such witnesses as may, after due notice in writing, be produced on their behalf, and give liberty to the other party to cross-examine the said witnesses (upon cross-interrogatories and viva voce), and the party producing the witness for examination liberty to re-examine him viva voce.

And I further have the honour to request that you will be pleased to cause (the answers of the said witnesses and all additional viva voce questions, whether on examination, cross-examination or re-examination) the evidence of such witnesses to be reduced into writing, and all books, letters, papers and documents produced upon such examination to be duly marked for identification, and

that you will be further pleased to authenticate such examination by the seal of your tribunal or in such other way as is in accordance with your procedure, and to return the same together with (the interrogatories and cross-interrogatories, and) a note of the charges and expenses payable in respect of the execution of this request through the British Consul from whom the same was received for transmission to the Central Court of the Territory of Papua.

And I further beg to request that you will cause me, or the agents of the parties if appointed, to be informed of the date and place where the examination is to take place.

Given under our Hands and the Seal of the Central Court, at Port Moresby, this sixteenth day of September, in the year of Our Lord One thousand nine hundred and twenty-six.

L.S.

J. H. P. MURRAY, J.
C. E. HERBERT, J.

ALFRED J. BATES,
Registrar.

Approved in Legislative Council this thirteenth day of June, in the year of Our Lord One thousand nine hundred and twenty-seven.

L. H. HILDER,
Clerk of Legislative Council.

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