

CHAPTER XVII

ORIGINATING SUMMONS

238. Who may apply for the issue of originating summons and in respect of what matters. - The executors or administrators of a deceased person or any of them and the trustees under any deed or instrument or any of them, and any person claiming to be interested in the relief sought as creditor, devisee, legatee, heir or legal representative, or as beneficiary under the trusts of any deed or instrument, or as claiming by assignment or otherwise under any such creditor or other person as aforesaid, may apply for the issue of an Originating Summons returnable before the Judge in Chambers for such relief of the nature or kind following as may by summons be specified and circumstances of the case may require (that is to say), the determination, without an administration of the estate or trust, of any of the following questions or matters. :-

- (a) any question affecting the rights or interest of the person claiming to be creditor, devisee, legatee, heir or legal representative or beneficiary ;
- (b) the ascertainment of any class of creditors, devisees, legatees, heirs, legal representatives, beneficiaries or others;
- (c) the furnishing of any particular accounts by the executors, administrators or trustees and the vouching (when necessary) of such accounts;
- (d) the payment into Court of any moneys in the hands of the executors, administrators or trustees;
- (e) directing the executors, administrators or trustees to do or abstain from doing any particular act in their character as such executors, administrators or trustees;
- (f) the approval of any sale, purchase, compromise or other transaction;
- (g) the determination of any question arising in the administration of the estate or trust.

239. Order for administration of estate or of the trust. - Any of the persons named in the last preceding rule may, in like manner, apply for and obtain an order for-

- (a) the administration of the estate of the deceased;

- (b) the administration of the truth.

240. Persons to be served with the summons. - The persons to be served with the summons under the last two preceding rule shall be the following (that is to say) –

A. where the summons is issued at the instance of an executor or administrator or trustee:-

- (a) for the determination of any question under sub-section (a) (e) (f) or (g) of rule 238, the persons whose rights or interests are sought to be affected;
- (b) for the determination of any question under sub-section (b) of rule 238, all persons claiming to be members of the class;
- (c) for the determination of any question under sub-section (c) of rule 238, all persons interested in taking such accounts;
- (d) for the determination of any question under sub-section (d) of rule 238, all persons interested in such money;
- (e) for relief under sub-section (a) of rule 239, the heirs, legal representatives, residuary devisees and residuary legatees;
- (f) for relief under sub-section (b) of rule 239, the beneficiaries;
- (g) if there be more than one executor or administrator or trustee and they do not all concur in having the summons issued, those who do not concur.

B. Where the summons is issued at the instance of any person other than the executors, administrators or trustees, the said executors, administrators or trustees.

241. Vendor or purchaser may apply for the issue of originating summons. –

A vendor or purchaser of immovable property or their representatives respectively may, at any time or times and from time to time, apply for the issue of an Originating Summons returnable before the Judge in Chambers for the determination of any questions which may arise in respect of any requisitions or objections or any claim for compensation, or any other question arising out of or connected with the contract, not being a question affecting the existence or validity of the contract.

242. Persons to be served with such summons. – The summons under the last preceding rule shall be served upon such persons as under the existing practice would be the proper defendants to a suit for the specific performance of the contract out of which the question to be settled arises.

243. Mortgagee or mortgagor may apply for issue of originating summons. – Any mortgagee, whether legal or equitable, or any mortgagor or any person entitled to or having property subject to a legal or equitable charge, or any person having the right to foreclose or redeem any mortgage, whether legal or equitable, may apply for the issue of an Originating Summons, returnable before the Judge in Chambers, for such relief of the nature or kind following as may by the summons be specified and as the circumstances of the case may require, (that is to say) sale, foreclosure, delivery of possession by the mortgagor, redemption, reconveyance and delivery of possession by the mortgagee.

244. A partner may apply for issue of originating summons.- Any partner in a firm or his legal representatives may apply for the issue of an Originating Summons returnable before the Judge in Chambers against his partners or former partners or their legal representatives (if any) for the purpose of having the partnership dissolved (if it be still subsisting) and for the purpose of taking the accounts of and winding up such partnership and for the determination of any question arising in such partnership, whether to be dissolved or wound up or not.

245. Person interested under deed etc. may apply for issue of originating summons.- Any person claiming to be interested under a deed, will or other written instrument, may apply for the issue of an Originating Summons returnable before the Judge in Chambers for the determination of any question of construction arising under the instrument and for a declaration of the rights of the person interested.

246. Court not bound to determine question of construction.- The Court or the Judge in chambers shall not be bound to determine any such question of construction if in its or his opinion it ought not to be determined on Originating summons.

247. Upon what persons originating summons under rules 243 and 245 to be served. – The summons under rules 243 and 245 shall be served upon the persons who would be proper defendants under the existing practice if the same relief were sought in a suit.

248. Service on other persons by direction. - The Judge may, in all cases, direct that such other persons to be served with an Originating Summons as he may think fit.

249. Complaint to be filed. – An Originating summons shall be in form No. 23 and shall specify the relief sought and shall be signed by the Prothonotary and Senior Master before being issued. The person entitled to apply shall present with it to the Prothonotary

and Senior Master a plaint without a prayer setting forth concisely the facts upon which the relief sought by the summons is founded. The plaint shall specify at the end but not in the form of a prayer the relief which is sought by the summons. No documents shall be annexed to the plaint, unless greater brevity or clearness would be gained by reference to annexed documents as opposed to setting out in the plaint itself the contents of documents which are not annexed thereto.

250. Plaint to be numbered with letters O.S. – The plaint when accepted shall be filed and numbered as an ordinary suit and entered in the Register of Suits, but after the serial number the letter “O.S.” shall be placed to distinguish it from plaints filed in ordinary suits.

251. Service of originating summons. - The Originating Summons together with a copy of the plaint shall be served by the Advocate on record at whose instance the summons is issued and the summons after service shall be filed in the proceedings.

252. Returnable date of originating summons. - Originating Summons shall, in ordinary cases, be made returnable fifteen clear days after service, but the Prothonotary and Senior Master may fix such longer period as to him may seem proper.

253. No obligation to file written statement or affidavit in reply. – A Written Statement or affidavit may be made in answer to the plaint but there shall be no obligation to make the same unless the Court otherwise directs.

254. When originating summons may be supported by evidence. – On the hearing of the Originating Summons if the parties thereto do not agree as to the correctness of the facts set forth in the plaint, the Judge may order the summons to be supported by such evidence as he may think necessary and may give such directions as he may think just for the trial of any questions arising thereout. The Judge may direct such amendment to be made in the plaint and summons as may seem to him to be necessary to make them accord with the existing state of facts, so as properly to raise the questions in issue between the parties.

255. What may be done on hearing originating summons. – The Judge hearing an Originating Summons may, if he thinks fit, adjourn the summons into Court. If the Judge considers that the matters in respect of which relief is sought cannot conveniently and properly be disposed of on an Originating Summons, he may refuse to pass any order on the summons, may dismiss the same and refer the parties to a suit in the ordinary course, and in such case may make such order as to costs already incurred as may seem to him to be just.

256. When cost of originating summons may be allowed as in a defended suit. – Where an originating summons is adjourned into Court, the Judge may, if he thinks the

question to be determined is of sufficient importance, order the costs to be taxed on the same scale as in a defended suit. In all other cases, the cost of one Advocate will be allowed to the plaintiff, and to each person or set of persons, having divergent interests.

257. When costs of ordinary suit may be allowed as in an originating summons. - Where at the hearing of a suit filed in the ordinary way it shall appear to the Judge that the party instituting the suit might have obtained the desired relief by Originating Summons, he may direct that such party shall only be allowed on taxation such costs as would have been allowed in an Originating Summons.

258. Order made on originating summons to be drawn up as decree of Court. If the Judge is of opinion that the matter is fit to be dealt with on an Originating Summons, he may pronounce such Judgment as the nature of the case shall require, and any order made by him shall be drawn up as a decree of the Court, provided that if the Judge dismisses the summons under rule 255, it shall be sufficient for him to make an order to that effect which shall be filed in the proceedings.

259. Directions as to carriage or execution of decree. – The Judge may give any directions touching the carriage or execution of such decree or the service thereof upon persons not parties, as he may think fit.

260. Subsequent summons about same estate. – When an Originating Summons has been issued under rule 238 or rule 239 every subsequent summons relating to the same estate or trust shall, so far as possible, be heard by the Judge who heard the Original Summons.

261. Order II, Rule 2 of the Code of Civil Procedure not to apply to plaints filed in support of originating summons. – Nothing in Order II, Rule 2, of the Code of Civil Procedure shall apply to plaints filed to support an Originating Summons or to any proceedings thereunder.
