

SYNOPSIS

1. List of witnesses and summons to witnesses
- 1A. Production of witnesses without summons
2. Expenses of witness to be paid into Court on applying for summons
3. Tender of expenses to witness
4. Procedure where insufficient sum paid in
5. Time, place and purpose of attendance to be specified in summons
6. Summons to produce document
7. Power to require persons present in Court to give evidence or produce document
8. Summons how served
9. Time for serving summons
10. Procedure where witness fails to comply with summons
11. If witness appears, attachment may be withdrawn
12. Procedure if witness fails to appear
13. Mode of attachment
14. Court may of its own accord summon as witnesses strangers to suit
15. Duty of persons summoned to give evidence or produce document
16. When they may depart
17. Application of rules 10 to 13
18. Procedure where witness apprehended cannot give evidence or produce document
19. No witness to be ordered to attend in person unless resident within certain limits
20. Consequence of refusal of party to give evidence when called on by Court
21. Rules as to witnesses to apply to parties summoned

1. List of witnesses and summons to witnesses

(1) On or before such date as the Court may appoint, and not later than fifteen days after the date on which the issues are settled, the parties shall present in Court a list of witnesses whom they propose to call either to give evidence or to produce documents and obtain summonses to such persons for their attendance in Court.

(2) A party desirous of obtaining any summons for the attendance of any person shall file in Court an application stating

~~~~~

therein the purpose for which the witness is proposed to be summoned.

(3) The Court may, for reasons to be recorded, permit a party to call, whether by summoning through Court or otherwise, any witness, other than those whose names appear in the list referred to in sub-rule (1), if such party shows sufficient cause for the omission to mention the name of such witness in the said list.

(4) Subject to the provisions of sub-rule (2), summonses referred to in this rule may be obtained by the parties on an application to the Court or to such officer as may be appointed by the Court in this behalf within five days of presenting the list of witnesses under sub-rule (1).

#### **1A. Production of witnesses without summons**

A Subject to the provisions of sub-rule (3) of rule 1, any party to the suit may, without applying for summons under rule 1, bring any witness to give evidence or to produce documents.

#### **2. Expenses of witness to be paid into Court on applying for summons**

(1) The party applying for a summons shall, before the summons is granted and within a period to be fixed which shall not be later than seven days from the date of making applications under sub-rule (4) of rule 1 pay into Court such a sum of money as appears to the Court to be sufficient to defray the travelling and other expenses of the person summoned in passing to and from the Court in which he is required to attend, and for one day's attendance.

(2) Experts.—In determining the amount payable under this rule, the Court may, in the case of any person summoned to give

~~~~~

~~~~~

evidence as an expert, allow reasonable remuneration for the time occupied both in giving evidence and in performing any work of an expert character necessary for the case.

(3) Scale of expenses.—Where the Court is subordinate to a High Court, regard shall be had, in fixing the scale of such expenses, to any rules made in that behalf.

(4) Expenses to be directly paid to witnesses.—Where the summons is served directly by the party on a witness, the expenses referred to in sub-rule (1) shall be paid to the witness by the party or his agent.

### **3. Tender of expenses to witness**

The sum so paid into Court shall be tendered to the person summoned, at the time of serving the summons, if it can be served personally.

### **4. Procedure where insufficient sum paid in**

(1) Where it appears to the Court or to such officer as it appoints in this behalf that the sum paid into Court is not sufficient to cover such expenses or reasonable remuneration, the Court may direct such further sum to be paid to the person summoned as appears to be necessary on that account, and, in case of default in payment, may order such sum to be levied by attachment and sale of the movable property of the party obtaining the summons, or the Court may discharge the person summoned without requiring him to give evidence; or may both order such levy and discharge such person as aforesaid.

(2) Expenses of witnesses detained more than one day.—Where it is necessary to detain the person summoned for a longer period than one day, the Court may, from time to time, order the party at

~~~~~

~~~~~

whose instance he was summoned to pay into Court such sum as is sufficient to defray the expenses of his detention for such further period, and, in default of such deposit being made, may order such sum to be levied by attachment and sale of the movable property of such party; or the Court may discharge the person summoned without requiring him to give evidence; or may both order such levy and discharge such person as aforesaid.

## **5. Time, place and purpose of attendance to be specified in summons**

Every summons for the attendance of a person to give evidence or to produce a document shall specify the time and place at which he is required to attend, and also whether his attendance is required for the purpose of giving evidence or to produce a document or for both purposes; and any particular document, which the person summoned is called on to produce shall be described in the summons with reasonable accuracy.

## **6. Summons to produce document**

Any person may be summoned to produce a document, without being summoned to give evidence; and any person summoned merely to produce a document shall be deemed to have complied with the summons if he causes such document to be produced instead of attending personally to produce the same.

## **7. Power to require persons present in Court to give evidence or produce document**

Any person present in Court may be required by the Court to give evidence or to produce any document then and there in his possession or power.

## **7A. Summons given to party for service**

~~~~~

~~~~~

(1) The Court may, on the application of any party for the issue of a summons for the attendance of any person, permit such party to effect service of such summons on such person and shall, in such a case, deliver the summons to such party for service.

(2) The service of such summons shall be effected by or on behalf of such party by delivering or tendering to the witness personally a copy thereof signed by the Judge or such officer of the Court as he may appoint in this behalf and sealed with the seal of the Court.

(3) The provisions of rules 16 and 18 of Order V shall apply to a summons personally served under this rule as if the person effecting service were a serving officer.

(4) If such summons, when tendered, is refused or if the person served refuses to sign and acknowledgement of service or for any reason such summons cannot be served personally, the Court shall, on the application of the party, re-issue such summons to be served by the Court in the same manner as a summons to a defendant.

(5) Where a summons is served by a party under this rule, the party shall not be required to pay the fees otherwise chargeable for the service of summons.

## **8. Summons how served**

Every summons under this Order, not being a summons delivered to a party for service under rule 7A, shall be served as nearly as may be in the same manner as a summons to a defendant and the rules in Order V as to proof of service shall apply in the case of all summonses served under this rule.

## **9. Time for serving summons**

~~~~~

~~~~~

Service shall in all cases be made a sufficient time before the time specified in the summons for the attendance of the person summoned, to allow him a reasonable time for preparation and for travelling to the place .at which his attendance is required.

#### **10. Procedure where witness fails to comply with summons**

(1) Where a person has been issued either to attend to give evidence or to produce a document, fails to attend or to produce the document in compliance with such summons, the Court—

(a) shall, if the certificate of the serving officer has not been verified by the affidavit, or if service of the summons has affected by a party or his agent, or

(b) may, if the certificate of the serving officer has been so verified, examine on oath the serving officer or the party or his agent, as the case may be, who has effected service, or cause him to be so examined by any Court, touching the service or non-service of the summons.

(2) Where the Court sees reason to believe that such evidence or production is material, and that such person has, without lawful excuse, failed to attend or to produce the document in compliance with such summons or has intentionally avoided service, it may issue a proclamation requiring him to attend to give evidence or to produce the document at a time and place to be named therein; and a copy of such proclamation shall be affixed on the outer door or other conspicuous part of the house in which he ordinarily resides.

(3) In lieu of or at the time of issuing such proclamation, or at any time afterwards, the Court may, in its discretion, issue a warrant, either with or without bail, for the arrest of such person, and may make an order for the attachment of his property to such

~~~~~

~~~~~

amount as it thinks fit, not exceeding the amount of the costs of attachment and of any fine which may be imposed under rule 12:

Provided that no Court of Small Causes shall make an order for the attachment of immovable property

### **11. If witness appears, attachment may be withdrawn**

Where, at any time after the attachment of his property, such person appears and satisfies the Court,—

(a) that he did not, without lawful excuse, fail to comply with the summons or intentionally avoid service, and,

(b) where he has failed to attend at the time and place named in a proclamation issued under the last preceding rule, that he had no notice of such proclamation in time to attend, the Court shall direct that the property be released from attachment, and shall make such order as to the costs of the attachment as it thinks fit.

### **12. Procedure if witness fails to appear**

(1) The Court may, where such person does not appear, or appears but fails so to satisfy the Court, impose upon him such fine not exceeding five hundred rupees as it thinks fit, having regard to his condition in life and all the circumstances of the case, and may order his property, or any part thereof, to be attached and sold or, if already attached under rule 10, to be sold for the purpose of satisfying all costs of such attachment, together with the amount of the said fine, if any:

Provided that, if the person whose attendance is required pays into Court the costs and fine aforesaid, the Court shall order the property to be released from attachment.

~~~~~

~~~~~

(2) Notwithstanding that the Court has not issued a proclamation under sub-rule (2) of rule 10, nor issued a warrant nor ordered attachment under sub-rule (3) of that rule, the Court may impose fine under sub-rule (1) of this rule after giving notice to such person to show cause why the fine should not be imposed.

### **13. Mode of attachment**

The provisions with regard to the attachment and sale of property in the execution of a decree shall, so far as they are applicable, be deemed to apply to any attachment and sale under this Order as if the person whose property is so attached were a judgment-debtor.

### **14. Court may of its own accord summon as witnesses strangers to suit**

Subject to the provisions of this Code as to attendance and appearance and to any law for the time being in force, where the Court at any time thinks it necessary to examine any person, including a party to the suit and not called as a witness by a party to the suit, the Court may, of its own motion, cause such person to be summoned as a witness to give evidence, or to produce any document in his possession, on a day to be appointed, and may examine him as a witness or require him to produce such document.

### **15. Duty of persons summoned to give evidence or produce document**

Subject as last aforesaid, whoever is summoned to appear and give evidence in a suit shall attend at the time and place named in the summons for that purpose, and whoever is summoned to produce a document shall either attend to produce it, or cause it to be produced, at such time and place.

~~~~~


16. When they may depart

(1) A person so summoned and attending shall, unless the Court otherwise directs, attend at each hearing until the suit has been disposed of.

(2) On the application of either party and the payment through the Court of all necessary expenses (if any), the Court may require any person so summoned and attending to furnish security to attend at the next or any other hearing or until the suit is disposed of and, in default of his furnishing such security, may order him to be detained in the civil prison.

17. Application of rules 10 to 13

The provisions of rules 10 to 13 shall, so far as they are applicable, be deemed to apply to any person who having attended in compliance with a summons departs, without lawful excuse, in contravention of rule 16.

18. Procedure where witness apprehended cannot give evidence or produce document

Where any person arrested under a warrant is brought before the Court in custody and cannot, owing to the absence of the parties or any of them, give the evidence or produce the document which he has been summoned to give or produce, the court may require him to give reasonable bail or other security for his appearance at such time and place as it thinks fit, and, on such bail or security being given, may release him, and, in default of his giving such bail or security, may order him to be detained in the civil prison.

19. No witness to be ordered to attend in person unless resident within certain limits

~~~~~

No one shall be ordered to attend in person to give evidence unless he resides—

- (a) within the local limits of the Court’s ordinary jurisdiction, or
- (b) without such limits but at a place less than one hundred or (where there is railway or steamer communication or other established public conveyance for five-sixths of the distance between the place where he resides and the place where the Court is situate) less than five hundred kilometres distance from the court-house: Provided that where transport by air is available between the two places mentioned in this rule and the witness is paid the fare by air, he may be ordered to attend in person.

**20. Consequence of refusal of party to give evidence when called on by Court**

Where any party to a suit present in Court refuses, without lawful excuse, when required by the Court, to give evidence or to produce any document then and there in his possession or power, the Court may pronounce judgment against him or make such order in relation to the suit as it thinks fit.

**21. Rules as to witnesses to apply to parties summoned**

Where any party to a suit is required to give evidence or to produce a document, the provisions as to witnesses shall apply to him so far as they are applicable.

~~~~~