

DISTRICT COURT RULES (SERVICE OF SUMMONSES) OF 1ST JANUARY 1866⁽¹⁾⁽²⁾ (QUEENSLAND, ADOPTED) IN THEIR APPLICATION TO THE TERRITORY OF PAPUA.

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SUMMONS TO APPEAR TO A PLAINT.

33. The summons to appear to a plaintiff shall be in the form set forth in the Schedule, and shall be dated of the day on which the plaintiff is entered, and the date thereof shall be the commencement of the suit.

34. Such summons may be returnable either at the next Court after the entry of the plaintiff, or by leave of the Court or Registrar at any subsequent Court.

35. Where a summons is issued by leave of the Judge or Registrar, the words "by leave of the Court," or "by leave of the Registrar," as the case may be, shall be written on the face of the summons.

36. Where a summons has not been served, successive summonses may be issued without entering a new plaintiff, unless the non-service has been caused by the fact of the defendant's having removed from the address given before the entry of the plaintiff, or unless the plaintiff shall have given a wrong or insufficient address; but if the bailiff shall ascertain that the defendant has removed to some other place within

(1) Particulars of these Rules of the District Court of Queensland (which were adopted by British New Guinea and continued in force in the Territory of Papua by Section 6(1) of the *Papua Act 1905*) are set out in the following Table:—

RULES OF THE DISTRICT COURTS OF QUEENSLAND.

Description.	Rules of Court of the Possession of British New Guinea by which adopted.	Date on which adoption took effect.
<i>District Court Rules (Service of Summonses) of 1st January 1866</i> (Queensland, adopted)	<i>Rules of Civil Procedure</i>	23.11.1889 (British N.G. Govt. Gaz. of 23.11.1889)

(2) As to whether these are the District Court Rules referred to in Rule 19 of the *Rules of Civil Procedure*, see footnote (7) to the *Rules of Civil Procedure*, printed on p. 602.

(3) The *District Court Rules (Service of Summonses) of 1st January, 1866* (Queensland, adopted) were only adopted in so far as they relate to the ways in which a summons to appear to a plaintiff in the District Courts of Queensland is permitted to be served (See Rule 19 of the *Rules of Civil Procedure*, printed on p. 602). Rules 1-32 inclusive and Rules 51-161 inclusive of the *District Court Rules (Service of Summonses) of 1st January 1866* (Queensland, adopted) do not deal with the ways in which a summons to appear to a plaintiff is permitted to be served.

the district of the Court, he shall serve the summons at such other place, endorsing on the copy thereof the new address, and the successive summons or summonses shall bear the same date and number as the summons first issued, which date and number shall be written in red ink in the plaint book, and such summonses shall be a continuance of the first summons; provided that no successive summons shall be issued on a plaint which has been entered more than three months.

37. A summons to appear to a plaint, where it is to be served in the home district, shall be served at least eight clear days, and where it is to be served in a foreign district, shall be served at least ten clear days before the return day thereof; provided that a summons may be issued at any time before the return day on production by the plaintiff to the Registrar of an affidavit showing that the defendant is about to remove out of the ordinary jurisdiction of the Court, and service of such summons at any time before the return day may be deemed good service, if at the hearing the Judge is satisfied on the evidence on oath before him that such party was about to remove out of the ordinary jurisdiction of the Court; but in any such case, whether such proof be given or not, the Judge may, in his discretion, and on such terms as he shall think fit, adjourn the hearing.

38. The service of the summons, except in the cases hereinafter specially provided for, shall be either personal or by delivering the same to some person apparently fourteen years old, at the house or place of dwelling or place of business of the defendant, but no place of business shall be deemed the place of business of the defendant unless he shall be the master, or one of the masters thereof.

39. Where a defendant is living or serving on board of any ship or vessel, it shall be sufficient service to deliver the summons to the person on board who is, at the time of such service, apparently in charge of such ship or vessel.

40. Where a defendant is residing or quartered in any barracks, and serving Her Majesty as a soldier or marine, it shall be sufficient service to deliver the summons at the barracks to the adjutant of the corps, or to any officer or sergeant of the company or troop to which such soldier or marine belongs.

41. Where a defendant is a prisoner in a gaol it shall be sufficient service to deliver the summons at the gaol to the governor or any person appearing to be the head officer in charge thereof.

42. Where a defendant is working in any mine or other works underground, it shall be sufficient service to deliver the summons at the mine or works to the engine-man, banks-man, or other person apparently in charge of the mine or works.

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43. Where the defendant is employed and dwells in any lunatic or other public asylum, or in any gaol or house of correction, it shall be sufficient service to deliver the summons to the gate-keeper or lodge-keeper of the asylum, gaol, or house of correction.

44. Service of the summons may be effected on a railway company, or other corporation, by delivering the summons to a secretary, station-master, or clerk of the defendant at any station or office within the district of the Court in which the summons is to be served.

45. Where a defendant keeps his house or place of dwelling or of business closed, in order to prevent a bailiff from serving the summons, it shall be sufficient service to affix such summons on the door of such house or place of business.

46. Where a bailiff is prevented by the violence or threats of the defendant, or of any other person or persons in concert with him, from personally serving such summons, it shall be sufficient service to leave such summons as near to the defendant, or to his house, or place of dwelling, or of business, as may be practicable.

47. Where the summons has not been served under the provisions of the last three rules, nor personally, and the defendant does not appear in person, or by a barrister, attorney, or agent, at the return day, the cause may proceed, if the Judge be satisfied, by evidence on oath before him, that the service of such summons has come to the knowledge of the defendant before the return day, but no such evidence shall be necessary in the cases specially mentioned in the last three rules, or where the service is personal.

48. Wherever a summons has been served in one of the modes hereinbefore mentioned, but it appears that it has come to the knowledge of the defendant less than eight clear days before the return day, the cause may, at the discretion of the Judge, proceed or be adjourned, whether the defendant appears or not at the hearing.

49. The above rules as to the mode, but not those as to the time of service of summons to appear to a plaint, shall apply to the mode of service of all summonses, subpoenas, processes, or notices whatsoever, except where otherwise directed by the Act, or by the rules of the Court.

50. No summonses, subpoena, order, or other process, or notice, shall be served on Sunday, Christmas Day, or Good Friday, or on any day appointed by proclamation for a public fast, humiliation, or thanksgiving, but such days shall be counted in the computation of the time required by these rules in respect of such service.

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(3) See footnote (3) printed on p. 626.