case at all, but is merely an attempt by a person who has been disappointed in failing to extract as large a sum of money from the coffers of the government as he wished and hoped to do, to litigate the matter further, and in order to enable him to do so, it has been urged upon us with great insistence that a grave act of injustice will ensue unless we accede to this application. For myself I think the time has come when this court should speak with no uncertain voice on the question of these applications by a would-be appellant who has merely neglected to take advantage of the machinery which the law allows him with regard to appealing. I think that this court should let it be known that in future it will not, except under very peculiar and extraordinary circumstances, grant special leave to appeal. I do not think that this can be too widely understood or recognised. So far as the present application is concerned, and for the reasons I have already stated, I think that this application should be dismissed with costs.

We desire to express our obligations to Mr. de Hart for the very great assistance he rendered to this court in so ably and lucidly marshalling all the necessary authorities.

McDONNELL, Ag. J. and **SAWREY-COOKSON, J.** concurred.

Application dismissed.

IN THE ESTATE OF PARKER (DECEASED), HAGEN and ANOTHER v. JOHN and OTHERS

Full Court (Purcell, C.J., Sawrey-Cookson, J. and McDonnell, Ag. J.): February 14th, 1922

[1] **Civil Procedure — law applicable — Rules of Supreme Court, 1908, O.LXV, r. 2 does not permit importation of every English provision omitted from local Rules — order to be interpreted strictly — if English statute largely embodied in local provision, presumption that any departure from original intentional:** Since the Rules of the Supreme Court of Sierra Leone embody many, but not all, of the provisions contained in the English Rules of the Supreme Court, there is a presumption that any departure from the English Rules is intentional; O.LXV, r. 2 of the Rules of the Supreme Court, 1908, which provides for the application of English rules when no other provision is made and when they may be conveniently applied in Sierra Leone, should therefore be strictly interpreted and does not permit the importation of every English provision omitted from the local rules (page 24, line 17 — page 25, line 26; page 26, lines 7—12).

[2] **Civil Procedure — originating summons — application — only used for seeking construction of instruments or declarations of rights — not to be used for matters requiring account, enquiry and relief:** An originating summons should be used only for those purposes prescribed by O.LII of the Rules of the Supreme Court, 1908, *i.e.*, applications for the construction of a will or other written instrument and for declarations of the rights of the persons interested; the Supreme Court cannot therefore deal, on an originating summons, with questions and matters concerning the estate of a deceased person which require account, enquiry and relief (page 23, line 31 — page 24, line 3; page 24, lines 26—41; page 25, lines 11—21) such matters (*per* Sawrey-Cookson, J., page 26, lines 13—19) being dealt with by administration suit.

[3] **Civil Procedure — procedure to obtain construction of document — originating summons under O.LII — procedure not to be used for matters requiring account, enquiry and relief:** See [2] above.

[4] **Jurisprudence — reception of English law — incorporation of English law — civil procedure — since local Rules of Court largely embody English Rules, presumption that any departure from original intentional:** See [1] above.

[5] **Statutes — interpretation — reference to statutes in pari materia — English prototype statutes — if English statute largely embodied in local provision, presumption that any departure from original intentional:** See [1] above.

[6] **Succession — executors and administrators — liability to account — not enforceable on originating summons — matters requiring account, enquiry and relief to be dealt with by administration suit:** See [2] above.

The plaintiffs applied to the Supreme Court by an originating summons for the determination of various matters concerning the estate of a deceased testator, and requiring account, enquiry and relief.

By their originating summons the plaintiffs sought an order under O.LV, rr. 3 and 4 of the English Rules of the Supreme Court that account, enquiry and relief should be taken, made and given. On a preliminary issue the Supreme Court (Purcell, C.J.) questioned whether O.LV, rr. 3 and 4 of the English Rules applied in Sierra Leone and stated a case to the Full Court asking whether on the true construction of O.LII of the local Rules of the Supreme Court, 1908 the court could deal, on an originating summons, with such matters.

In the Full Court the plaintiffs contended that although O.LV, rr. 3 and 4 of the English Rules had been omitted from the local Rules of the Supreme Court, 1908, which otherwise largely embodied the English provisions, the order was in fact applicable

in Sierra Leone by virtue of O.LXV, r. 2 of the local Rules, whereby English rules may be applied in Sierra Leone where no other provision has been made and when it is convenient so to do, and that an originating summons was therefore the correct form of application in the present case.

In reply the defendants contended that since O.LII of the local Rules set out certain matters which could validly be dealt with on an originating summons, it could not be said that "no other provision is made" by the Rules, and that O.LXV, r. 2 did not therefore have the effect of importing the terms of O.LV, rr. 3 and 4 of the English Rules into Sierra Leone, and the present application should not therefore have been made by originating summons.

The case stated was answered in the negative.

Legislation construed:

Rules of the Supreme Court, 1908, O.LII:

> "1. In the Supreme Court any person claiming to be interested under a deed, will, or other written instrument, may apply by originating summons for the determination of any question of construction arising under the instrument, and for a declaration of the rights of the persons interested.
>
> 2. The Court may direct such persons to be served with the summons as they may think fit.
>
> 3. The application shall be supported by such evidence as the Court may require.
>
> 4. The Court shall not be bound to determine any such question of construction if in their opinion it ought not to be determined on originating summons."

O.LXV, r. 2: The relevant terms of this order are set out at page 24, lines 19—25.

Hotobah During for the appellants;
Boston for the respondents.

McDONNELL, Ag. J.:

The question in this case stated is whether the Supreme Court can, on an originating summons, deal with questions and matters requiring account, enquiry and relief, as set out in the originating summons appended to the case.

On the one hand it is urged that O.LII of the local rules, which is a reproduction *mutatis mutandis* of O.LIVA of the *White Book*, is the only provision in force in this Colony prescribing the purposes for which an originating summons may be employed, and that, in consequence, its use must be confined to applications for the construction of written instruments and declarations of the rights of the persons interested.

On the other hand it is urged that O.LXV, r. 2, of the local rules imports O.LV, rr. 3 and 4, of the *White Book* into the practice of this Colony.

Order LV, r. 3, enables the personal representatives of a deceased person, the trustees under any instrument and certain other interested persons to approach the Chancery Division for certain forms of relief or for the determination of certain questions, as are respectively set forth in sub-rr. (*a*) to (*g*) of the rule in question.

Order LV, r. 4, enables any of the persons named in the last rule, by originating summons, to obtain orders for the administration of the real or personal estate of the deceased or of the trust as the case may be. It will be seen that these two rules enable originating summonses to be employed for much wider purposes than are contemplated under O.LIVA of the *White Book* and O.LII of our rules.

One has to bear in mind the exact purport of our O.LXV, r. 2, the essential parts of which are as follows:

> "Where no other provision is made by these rules, or by . . . the Supreme Court Ordinance, 1904 . . . or by those portions of the . . . Judicature Acts . . . which apply to this colony, the procedure and practice which were in force in . . . England on the 1st day of January, 1905, so far as they can be conveniently applied to the circumstances of this colony shall be in force in the Supreme Court."

It may be said with truth that the local rules are an abridgment of the *White Book* embodying such of the provisions of the latter as were considered suitable to a small colony. The words upon which I lay stress in O.LXV, r. 2, are at the beginning "*where no other provision is made . . .*" and at the end — "*. . . so far as they can be conveniently applied to the circumstances of this colony . . . .*"[Emphasis supplied.]

Now the legislature in approving our rules inserted in O.LII a paraphrase of O.LIVA with its heading "DECLARATION ON ORIGINATING SUMMONS," it inserted in O.LI a paraphrase of O.LIV with its heading "APPLICATIONS AND PROCEEDINGS AT CHAMBERS" and omitted, I cannot but suppose deliberately, the whole of O.LV with its heading "CHAMBERS IN THE CHANCERY DIVISION," which is sub-divided into parts, of which Part II, beginning with r. 3, has a sub-heading "*Administrations and Trusts; Foreclosure and Redemption.*" Why were some orders included and others omitted?

The position of our rules in relation to the contents of the *White Book* of 1905, both of which are statutory enactments subject to the rules of statutory interpretation, is analogous to the case of a subsequent statute re-enacting some of the sections of a former statute, but departing from its provisions in certain respects. The presumption in such a case is that the departure is intentional.

One can well believe that the procedure in Chancery chambers was considered unsuitable to the needs of this Colony and that omission to provide for it was intentional.

To interpret O.LXV, r. 2, in such a way as to enable *any* provision contained in the *White Book* of 1905 to be applied here would, in my opinion, lead to an absurdity, by making the preceding 64 orders of our rules a superfluous redundancy, and would be repugnant to the principle of selection of English orders suitable to local use, upon which our rules appear clearly to be based.

When the draftsman has, as we must suppose deliberately, inserted one form of procedure under originating summons we cannot, I hold, under O.LXV, r. 2, import all the remaining forms, on the ground that "no other provision is made" by our rules; and when the draftsman has, as we must again suppose, deliberately omitted the whole of O.LV dealing with chambers in the Chancery Division, we must, I hold, refuse to import any of its rules on the ground that, to use the words of the conclusion of O.LXV, r. 2, they cannot "be conveniently applied to the circumstances of this colony."

For these reasons, albeit it has been submitted that at a former sitting of the Full Court a contrary opinion was expressed on grounds which are not set forth on the record, I hold that the answer to the case stated must be in the negative.

PURCELL, C.J. concurred.

SAWREY-COOKSON, J.:

I agree, but think I might usefully add that I had no doubt after hearing Mr. During's argument that O.LXV, r. 2 operated so as to admit of recourse being had to O.LV, r. 4 of the *White Book*, despite the fact of the omission of the whole of that order from what may be referred to as "the local orders." It appeared to me, indeed, that the words in O.LXV, *viz.*: "Where no other provision is made . . . ." must mean, if they were to mean anything at all, that if it is found that certain of the machinery supplied by the

White Book is required and can conveniently be applied here, then by all means have recourse to it, although you may find no reference whatever to it in the local orders.

But I am no longer free from this doubt when I consider, and am faced by, the fact that both of the local orders, LI and LII, do clearly make provision for the disposal of several matters by way of originating summonses.

When, therefore, it is found that provision is made for proceeding by way of originating summons in certain respects and matters, it surely cannot be held that the condition required to be satisfied before the *White Book* is resorted to and comprised in the words — "Where no other provision is made by these rules . . . ." has been complied with.

I agree, therefore, that the whole of O.LV of the *White Book* was intentionally omitted, and that the questions and matters here sought to be dealt with by originating summons must be dealt with by a method which the legislature must be taken to have decided in its wisdom was the better suited to the requirements and convenience of this Colony, *i.e.*, by administration suit.

Case stated answered in the negative.

PAUL v. SAMUELS and THORPE

Full Court (Purcell, C.J., Sawrey-Cookson, J. and McDonnell, Ag. J.): February 14th, 1922

[1] **Criminal Law — assault — lawful excuse — no assault if churchwardens use reasonable force to remove intruder from pew assigned to another:** The Constitution of the Sierra Leone Church, art. 13 confers an unfettered discretion upon its churchwardens, under the directions of the Parochial Committee, to allot pews and re-allot them whenever they may consider it necessary to do so and they may therefore deprive a parishioner of his pew despite the fact that he has paid his pew rent regularly; the churchwardens are also entitled to use a reasonable amount of force to remove a parishioner who intrudes on a pew assigned to another (page 28, lines 33 — page 29, line 18; page 30, lines 36—41; page 31, lines 5—27).

[2] **Ecclesiastical Law — churchwardens — functions — seating of parishioners — Constitution of Sierra Leone Church, art. 13 confers unfettered discretion on churchwardens to allot pews — regular payment of pew rent does not entitle parishioner to retain pew — churchwardens may use reasonable force to remove intruder from pew:** See [1] above.