

MAXIMILIAN EUGENE DAWSON &
 ALFRED GENET - - - - - *Appellants.*

23rd January
 1920.

v.

ESTHER SHAW - - - - - *Respondent.*

*Order on Originating summons—Time of operation—Relief of
 one Acting Chief Justice by another.*

On 19th May, 1919, McDonnell, Acting C.J., made an order on an originating summons, the formal order on which was drawn up and signed by him on a subsequent day. Later in the same day as that on which the order was made, King-Farlow, J., of the Gold Coast, arrived in the Colony and took the oaths on assuming the office of Acting C.J.

Held that the assumption of office of King-Farlow, J., did not relate back to the first moment of the day upon which he took the oaths, and that an order on an originating summons dates from the day upon which it is pronounced.

Appeal from an Order made by McDonnell, Acting C.J., in the
 Supreme Court of the Colony of Sierra Leone.

A. J. Shorunkeh-Sawjerr for the Appellant cites:—

Eady v. Elsdon (1901), 2 K.B. at p. 467.

In re Pearce (1899), W.N., p. 114.

Graham for the Respondent.

PURCELL, C.J.

This is an appeal from an Order dated 19th May, 1919, made by the Acting Chief Justice McDonnell upon an originating summons for the determination of certain questions arising from the terms employed in the will of the late Joseph Jackson Shaw.

I am satisfied that at the time when Mr. McDonnell made the order appealed against in the present case, he was still Acting Chief Justice, that the arrival in the Colony of Mr. Justice King-Farlow, who was to relieve him in that office, did not affect his status until Mr. King-Farlow had taken the oath of allegiance and the Judicial oath before His Excellency. That Mr. King-Farlow's assumption to the Acting Chief Justice-ship did not relate back to the first moment of the day upon which he took those oaths, but dated from the moment at which he took them. Proceedings commenced by an originating summons constitute an action (Annual Practice, 1920, p. 8), an

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order upon which dates from the day upon which it is pronounced, as was pointed out by the Acting Chief Justice King-Farlow, as Counsel admits, on the hearing of the summons filed on 12th June. Finally, the signing of the formal order upon an originating summons is a ministerial and not a judicial act.

As the usual procedure in interlocutory summonses has, by a misapprehension, hitherto been followed in originating summonses in this Colony, I hold that each party should bear its own costs in this appeal.

PENNINGTON, J.

I concur.

McDONNELL, Acting J.

I concur.