

PART D. —
SERVICE OF PROCESSES
ISSUE OF SUMMONS TO THE DEFENDANT.

1. **Summons for final disposal or settlement issues:** - In Order V Rule 5, of the Code of Civil Procedure, it is laid down that the Court shall determine, at the time of issuing the summons, whether it shall be for the settlement of issues only, or for the final disposal of the suit, and the summons shall contain a direction accordingly; and a proviso to the rule adds that in every suit heard by a Court of Small Causes the summons must be for the final disposal of the suit.
2. **When summonses for final disposal may Issues:-** In determining whether the summons shall be for the settlement of issues only, or for the final disposal of the case, the Court must be guided by the nature of the suit, and the probability or otherwise of the facts stated in the plaint being disputed by the defendant on grounds which will require the production of much evidence or will involve much contention. Where the case appears simple, and it seems probable that a correct judgment can be formed at the first hearing from the examination of the parties or their agents, and such evidence, oral or documentary, as they can bring with them, the summons should be for the final disposal of the case.
3. **Adjournment of case in case of summonses for final disposal:-** It will however, be remembered that when the summons is for final disposal, the Court is not bound to dispose of the case on the date fixed for hearing, but can adjourn the case to another date, to enable the parties to produce evidence when this seems necessary in the interests of justice, and especially when there is reason to believe, that one party has been taken by surprise by the pleadings of, or statements made on examination by the other.
4. **Suitors should be made to know what summons for final disposal means:-** Care should be taken to make suitors understand, in cases in which the summons is for final disposal, that all their evidence must be produced on the day fixed for disposal.
5. **Distinctive colour of summons for final disposal:-** The form of summons for the final disposal of a suit should be printed in the vernacular on coloured paper, as this will tend to impress the distinction between this form and that for settlement of issues, both upon the minds of the people, and upon the officers of the Courts. Presiding Officers should take care in such cases that the plaintiff understands that, if he wishes for the assistance of the Court for the purpose of causing the production of his evidence, he must make timely application.
6. **Summons to be signed and sealed. Copy of plaint to accompany it:-** Summonses should be clearly and legibly written and signed and, the seal of the Court must be affixed. Order V, Rule 1 (3) of the Code requires that the summons shall be signed by the Judge or such officer as he appoints. In Courts, provided with a Superintendent or Clerk of Court he may be authorized to sign summonses; in all other Courts the Reader may be authorized to sign them. The signature should in all cases be fully and legibly written. A copy or concise statement of the plaint should be attached to each summons.
7. **References:-** As regards the general procedure to be followed in effecting service of processes, personal attention to service and proof of service, special procedure in the case of Government servants, and persons in Military employ, etc., the time to be allowed for service of processes in foreign countries, Chapter 7, Volume IV, "Processes—Civil Courts" may be referred to. For service of Processes of Appellate Courts-- See Chapter 14-B, Volume I.