

## SCHEDULE 1

### **The Rules of the Supreme Court (Northern Ireland) 1980** COMMENCEMENT AND PROGRESS OF PROCEEDINGS

## ORDER 13

### DEFAULT OF APPEARANCE TO WRIT

#### **Claim for liquidated demand**

1.—(1) Where a writ is indorsed with a claim against a defendant for a liquidated demand only, then, if that defendant fails to enter an appearance, the plaintiff may, after the time limited for appearing, enter final judgment against that defendant for a sum not exceeding that claimed by the writ in respect of the demand and for costs, and proceed with the action against the other defendants, if any.

(2) A claim shall not be prevented from being treated for the purposes of this rule as a claim for a liquidated demand by reason only that part of the claim is for interest accruing after the date of the writ, at an unspecified rate, but any such interest shall be computed from the date of the writ to the date of entering judgment at the rate of 5 per cent.

(3) Before final judgment is entered under this rule an affidavit must be filed specifying the amount then actually due to the plaintiff.

[E.r. 1]

#### **Claim for unliquidated damages**

2. Where a writ is indorsed with a claim against a defendant for unliquidated damages only, then; if that defendant fails to enter an appearance, the plaintiff may, after the time limited for appearing, enter interlocutory judgment against that defendant for damages to be assessed and costs, and proceed with the action against the other defendants, if any.

[E.r. 2]

#### **Claim for detention of goods**

3.—(1) Where a writ is indorsed with a claim against a defendant relating to the detention of goods only, then, if that defendant fails to enter an appearance, the plaintiff may, after the time limited for appearing and subject to Order 42, rule 6—

(a) at his option enter either—

(i) interlocutory judgment against that defendant for delivery of the goods or their value to be assessed and costs, or

(ii) interlocutory judgment for the value of the goods to be assessed and costs, or

(b) apply by summons for judgment against that defendant for delivery of the goods without giving, him the alternative of paying their assessed value,

and in, any case proceed with the action against the other defendants, if any.

(2) A summons under paragraph (1)(b) must be supported by affidavit and notwithstanding Order 65, rule 9, the summons and a copy of the affidavit must be served on the defendant against whom judgment is sought.

[E.r. 3]

*Status: This is the original version (as it was originally made). This item of legislation is currently only available in its original format.*

### **Claim for possession of land**

4.—(1) Where a writ is indorsed with a claim against a defendant for possession of land only, then, subject to paragraphs (2), (3) and (4), if that defendant fails to enter an appearance the plaintiff may, after the time limited for appearing, and on producing a certificate by his solicitor, or (if he sues in person) an affidavit, stating that he is not claiming any relief in the action of the nature specified in Order 88 rule 1, enter judgment for possession of the land as against that defendant and costs, and proceed with the action against the other defendants, if any.

(2) The plaintiff shall not be entitled, except with the leave of the Court, to enter judgment under this rule unless he produces a certificate by his solicitor, or (if he sues in person) an affidavit, stating that the claim does not relate to a dwelling-house.

(3) The plaintiff shall not be entitled, except with the leave of the Court, to enter judgment under this rule where the writ is indorsed with a claim against a defendant for possession of land for non-payment of rent unless he produces a certificate by his solicitor, or (if he sues in person) an affidavit, stating that the land does not comprise or include a holding agricultural or pastoral or partly agricultural and partly pastoral.

(4) The plaintiff shall not be entitled to enter judgment under this rule where the writ is indorsed with a claim against a defendant for possession of land for non-payment of rent unless he files an affidavit made by the landlord, his agent, receiver or clerk, stating that there was at the date of issue of the writ at least one year's rent due over and above all just and fair allowances.

(5) An application for leave to enter judgment under paragraph (2) or (3) shall be by summons stating the grounds of the application, and the summons must, unless the Court otherwise orders and notwithstanding anything in Order 65, rule 9, be served on the defendant against whom it is sought to enter judgment.

(6) If the Court refuses leave to enter judgment, it may make or give any such order or directions as it might have made or given had the application been an application for judgment under Order 14, rule 1.

(7) Where there is more than one defendant, any judgment entered under this rule shall contain a stay of enforcement against any defendant unless and until judgment for possession of the land has been entered against all the defendants.

(8) Where the plaintiff is a superior landlord and he applies under paragraph (3) for leave to enter judgment against a defendant who is an immediate landlord the Court may, having regard to the provisions of section 12 of the Land Law (Ireland) Act 1896(1):—

- (a) give such directions as to notice to tenants and otherwise and grant leave subject to such limitations as to enforcement of the judgment and such provisions as to costs as it thinks just:
- (b) on proof by affidavit that the non-payment of rent by the defendant is due to the non-payment of rent by the tenant of the holding, issue a certificate to that effect.

[E.r. 4]

### **Mixed claims**

5. Where a writ issued against any defendant is indorsed with two or more of the claims mentioned in the foregoing rules, and no other claim, then, if that defendant fails to enter an appearance, the plaintiff may, after the time limited for appearing, enter against that defendant such judgment in respect of any such claim as he would be entitled to enter under those rules if that were the only claim indorsed on the writ, and proceed with the action against the other defendants, if any.

[E.r. 5]

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(1) 1896 c. 47

## **Other claims**

6.—(1) Where a writ is indorsed with a claim of a description not mentioned in rules 1 to 4, then, if any defendant fails to enter an appearance, the plaintiff may, after the time limited for appearing and upon filing an affidavit proving due service of the writ on that defendant and, where the statement of claim was not indorsed on or served with the writ, upon serving a statement of claim on him, proceed with the action as if that defendant had entered an appearance.

(2) Where a writ issued against a defendant is indorsed as aforesaid, but by reason of the defendant's satisfying the claim or complying with the demands thereof or any other like reason it has become unnecessary for the plaintiff to proceed with the action, then, if the defendant fails to enter an appearance, the plaintiff may, after the time limited for appearing, enter judgment with the leave of the Court against that defendant for costs.

(3) An application for leave to enter judgment under paragraph (2) shall be by summons which must, unless the Court otherwise orders, and notwithstanding anything in Order 65, rule 9 be served on the defendant against whom it is sought to enter judgment.

[E.r. 6]

## **Proof of service of writ**

7.—(1) Judgment shall not be entered against a defendant under this Order unless—

- (a) an affidavit is filed by or on behalf of the plaintiff proving due service of the writ or notice of the writ on the defendant; or
- (b) the plaintiff produces the writ indorsed by the defendant's solicitor with a statement that he accepts service of the writ on the defendant's behalf.

(2) Where, in an action begun by a writ, an application is made to the Court for an order affecting a party who has failed to enter an appearance, the Court hearing the application may require to be satisfied in such manner as it thinks fit that the party is in default of appearance.

(3) Where, after judgment has been entered under this Order against a defendant purporting to have been served by post under Order 10, rule 1(2)(a), the copy of the writ sent to the defendant is returned to the plaintiff through the post undelivered to the addressee, the plaintiff shall, before taking any step or further step in the action or the enforcement of the judgment, either—

- (a) make a request for the judgment to be set aside on the ground that the writ has not been duly served, or
- (b) apply to the Court for directions.

(4) A request under paragraph (3)(a) shall be made by producing to an officer of the office in which the judgment was entered, and leaving with him for filing, an affidavit stating the relevant facts, and thereupon the judgment shall be set aside and the entry of the judgment and of any proceedings for its enforcement made in the book kept in the office for that purpose shall be marked accordingly.

(5) An application under paragraph (3)(b) shall be made ex parte by affidavit stating the facts on which the application is founded and any order or direction sought, and on, the application the Court may—

- (a) set aside the judgment; or
- (b) direct that, notwithstanding the return of the copy of the writ, it shall be treated as having been duly served, or
- (c) make such other order and give such other direction as the circumstances may require.

[E.r. 7]

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**Setting aside judgment**

8. Without prejudice to rule 7(3) and (4), the Court may, on such terms as it thinks just, set aside or vary any judgment entered in pursuance of this Order.

[E.r. 9]