

## SCHEDULE 1

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

## ORDER 19

### DEFAULT OF PLEADINGS

#### **Default in service of statement of claim**

1. Where the plaintiff is required by these Rules to serve a statement of claim on a defendant and he fails to serve it on him, the defendant may, after the expiration of the period fixed by or under these Rules for service of the statement of claim, apply to the Court for an order to dismiss the action, and the Court may by order dismiss the action or make such other order on such terms as it thinks just.

[E.r. 1]

#### **Default of defence claim for liquidated demand**

2.—(1) Where the plaintiff's claim against a defendant is for a liquidated demand only, then, if that defendant fails to serve a defence on the plaintiff, the plaintiff may, after the expiration of the period fixed by or under these Rules for service of the defence, 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) Order 13, rule H2) and (3), shall apply for the purposes of this rule as it applies for the purposes of that rule.

[E.r. 2]

#### **Default of defence : claim for unliquidated damages**

3. Where the plaintiff's claim against a defendant is for unliquidated damages only, then, if that defendant fails to serve a defence on the plaintiff, the plaintiff may, after the expiration of the period fixed by or under these Rules for service of the defence, 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. 3]

#### **Default of defence : claim for detention of goods**

4.—(1) Where the plaintiff's claim against a defendant relates to the detention of goods only, then, if that defendant fails to serve a defence on the plaintiff, the plaintiff may, after the expiration of the period fixed by or under these rules for the service of the defence 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.

*Status: This is the original version (as it was originally made).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

(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. 4]

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

5.—(1) Where the plaintiff's claim against a defendant is for possession of land only, then, subject to paragraphs (2), (3) and (4), if that defendant fails to serve a defence on the plaintiff, the plaintiff may, after the expiration of the period fixed by or under these Rules for service of the defence, 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. 5]

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(1) 1896 c. 47

### **Default of defence: mixed claims**

6. Where the plaintiff makes against a defendant two or more of the claims mentioned in rules 2 to 5, and no other claim, then, if that defendant fails to serve a defence on the plaintiff, the plaintiff may, after the expiration of the period fixed by or under these Rules for service of the defence, 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 made, and proceed with the action against the other defendants, if any.

[E.r. 6]

### **Default of defence: other claims**

7.—(1) Where the plaintiff makes against a defendant or defendants a claim of a description not mentioned in rules 2 to 5, then, if the defendant or all the defendants (where there is more than one) fails or fail to serve a defence on the plaintiff, the plaintiff may, after the expiration of the period fixed by or under these Rules for service of the defence, apply to the Court for judgment, and on the hearing of the application the Court shall give such judgment as the plaintiff appears entitled to on his statement of claim.

(2) Where the plaintiff makes such a claim as is mentioned in paragraph (1) against more than one defendant, then, if one of the defendants makes default as mentioned in that paragraph, the plaintiff may—

- (a) if his claim against the defendant in default is severable from his claim against the other defendants, apply under that paragraph for judgment against that defendant, and proceed with the action against the other defendants; or
- (b) set down the action on motion for judgment against the defendant in default at the time when the action is set down for trial, or is set down on motion for judgment, against the other defendants.

(3) An application under paragraph (1) must be by summons or motion.

[E.r. 7]

### **Default of defence to counterclaim**

8. A defendant who counterclaims against a plaintiff shall be treated for the purposes of rules 2 to 7 as if he were a plaintiff who had made against a defendant the claim made in the counterclaim and, accordingly, where the plaintiff or any other party against whom the counterclaim is made fails to serve a defence to counterclaim, those rules shall apply as if the counterclaim were a statement of claim, the defence to counterclaim a defence and the parties making the counterclaim and against whom it is made were plaintiffs and defendants respectively, and as if references to the period fixed by or under these Rules for service of the defence were references to the period so fixed for service of the defence to counterclaim.

[E.r. 8]

### **Setting aside judgment**

9. 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]