

BY JUDGMENT BY DEFAULT.

221. If the relief claimed by the plaintiff be payment of a liquidated demand in money, and the defendant do not file his statement of defence within the time limited in the writ of summons, the plaintiff may at once sign final judgment for any sum not exceeding the sum claimed in his statement of claim, together with interest (if any) therein specified to the date of such judgment, and the sum to which he is entitled for costs up to the date of signing judgment.

Note.—The following are instances of claims for a liquidated demand in money in which a plaintiff may proceed under the above rule, namely Claims on simple contract debts, or on bills of exchange, promissory notes, cheques, or on bond or contract under seal for payment of a liquidated amount of money, or on statute where the sum sought to be recovered is a fixed sum of money, or in the nature of a debt, or on a guaranty, whether under seal or not, when the claim against the principal is in respect of such debt, or liquidated demand, bill, cheque, or note.

222. If the relief claimed by the plaintiff be the recovery of land, and the defendant do not file his statement of defence within the time limited for that purpose in the writ of summons, or if the statement of defence be limited to part only of the land claimed, the plaintiff may at once sign judgment that the person whose title is asserted in the statement of claim do recover possession of the land claimed, or any part thereof to which the statement of defence does not apply: Provided that when service has been made under Rule the plaintiff shall not be at liberty to sign judgment by default without leave of the Court or of a Judge.

223. If the relief sought by the plaintiff be the recovery of chattels, and the defendant do not file his statement of defence within the time limited in the writ of summons for that purpose, or if the statement of defence be limited to part only of the chattels claimed, the plaintiff may sign judgment that he do recover possession of the chattels claimed, or any of them to which the statement of defence does not apply, or the value thereof.

224. If possession of the chattels claimed be not recovered before the day mentioned in the writ of summons for the trial of the action, the plaintiff may have the action tried on that day for the purpose of assessing the value of such property.

225. If the relief sought by the plaintiff be payment of an unliquidated demand in money, and the defendant do not file his statement of defence within the time limited in the writ of summons, the action shall be tried at the time mentioned in the writ of summons, for the purpose of assessing damages.

226. On any trial for assessment of damages under Rules 224 and 225, the defendant, except by leave of the Court or a Judge, shall not be allowed to adduce evidence, save in mitigation of damages.

227. In all other actions in which the defendant, or any defendant, has not filed a statement of defence within the time limited in the writ of summons, the plaintiff may move for such judgment against a defendant who has not filed a statement of defence as he may consider himself entitled to, and any judgment may be given on such motion that might have been given on the trial of the action.

228. When the plaintiff's statement of claim contains more than one cause of action, the plaintiff may proceed separately under the foregoing Rules Nos. 221 to 227, both inclusive, in respect of any or each cause of action to which no statement of defence has been filed.

229. In actions against several defendants, if any defendant fail to file a statement of defence the action shall be tried in the ordinary way; but such defendant shall not, except by leave of the Court, be permitted at the trial to offer any evidence, save in mitigation of damages.

230. An affidavit of service of the writ of summons and, if the writ of summons has not been served personally on the defendant, or on a solicitor authorized to accept service on his behalf, verifying the statement of claim, must be filed before judgment by default can be obtained.

231. Any judgment obtained by default may be set aside or varied by the Court or a Judge on such terms as may seem just.

232. A plaintiff shall not be entitled to sign judgment by default under the foregoing rules against an idiot or lunatic defendant for whom a solicitor has been appointed guardian *ad litem*, and who has declined to continue the defence of the action under Rule 66, but the Court or a Judge may authorize the plaintiff to pay all disbursements necessary for having the action brought to trial, and allow the plaintiff to add the amount of such disbursements, or any part thereof, to any costs the plaintiff may recover in the action.

BY DISCONTINUANCE.

233. The plaintiff may, at any time before trial, discontinue his action, either wholly or as to any cause of action, by filing in the office of the Court in which the statement of defence is to be filed a memorandum in the Form No. in the Schedule hereto.

234. A copy of such memorandum shall be served upon the defendant by the plaintiff.

235. A plaintiff so discontinuing shall pay to the defendant the costs to which he is entitled in respect of such discontinuance, and the defendant may sign judgment for such costs.

236. The discontinuance of an action shall not be a defence to any subsequent action on the cause of action discontinued.

BY STAY OF PROCEEDINGS.

237. If an action be brought pending a reference which it has been agreed shall operate as a stay of proceedings, or otherwise contrary to good faith, the Court or a Judge may order the action to be stayed, whether such agreement were made under the authority of the Court or not.

238. When two actions are brought by the same plaintiff, grounded on or arising out of the same subject-matter, but seeking different forms of relief, yet so that the plaintiff cannot have both, the Court or a Judge will require the plaintiff to elect, within a time to be fixed for that purpose, in which of the actions he will proceed, and will stay proceedings in the meantime. An election having been made in favour of one, the other shall be dismissed with costs.

239. When two actions are instituted by creditors for the administration of the estate of the same deceased debtor, the Court or a Judge may at any time order that one of such actions be stayed.