

the time limited in section 3 of the Magistrates' Courts Amendment Act, 1909, the plaintiff may upon the written application in the Form No. 133 to the Court, on the day appointed for the hearing of the action, apply to have judgment entered by default for any sum not exceeding the sum claimed in his statement of claim, and the sum to which he is entitled for costs up to the date of hearing. Upon the plaintiff appearing on the date of hearing, and lodging Form No. 133, and paying the prescribed fee for entering judgment by default, the Court shall enter up judgment, and it will not be necessary for the plaintiff to wait until the judgment is so entered. The case need not be called out in Court. No fee shall be payable for lodging Form No. 133 with the Clerk.

NOTE.—The following are instances of claims for a liquidated demand in money on which a plaintiff may proceed under the last paragraph, 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 guarantee, whether under seal or not, when the claim on the guarantee against the principal is in respect of such debt, or liquidated demand, bill, cheque, or note.

In paying money into Court the defendant shall sign in duplicate the notice hereof in such one of the Forms Nos. 31 or 32 as may be appropriate. The Clerk shall thereupon note the fact of such payment and attach the original notice to the plaint-note, and the duplicate shall be served on the plaintiff. If the plaintiff gives notice the day before the hearing of the acceptance of part of a claim so paid into Court, in the Form No. 25, the action shall cease. If the plaintiff does not accept, in satisfaction of the cause of action in respect of which the payment into Court has been made, the sum so paid in, but proceeds with the action in respect of such cause of action or any part thereof, the money shall remain in Court and be subject to the order of the Court, and shall not be paid out of Court except in pursuance of a direction of the Magistrate or Justices.

24. Production of Documents.

Notice to admit or produce documents may be according to the Forms Nos. 44 to 47, with such variations as circumstances may require. An affidavit by the party, his solicitor, or the clerk of either, of the service of any notice to admit or to produce shall in all cases be sufficient *prima facie* evidence of the service of the notice and of the time when it was served. Application may be made to the Magistrate at any convenient time in Chambers for an order under section 83 of the Act. Such order may be in the Form No. 43.

25. Discontinuance.

The memorandum or notice of discontinuance provided for in section 106 of the Act shall be in one of the Forms Nos. 37 or 38, and shall be signed by or on behalf of the party or parties to the action.

On any such notice being filed, signed on behalf of both parties to the action, a discontinuance shall be entered up and signed by the Clerk of the Court forthwith; but if such notice is signed on behalf of the plaintiff only, discontinuance shall not be entered until the day appointed for the hearing, and costs may then be awarded by the Court on the application of the defendant. If no application is made for costs on the day of hearing the defendant shall be deemed to have abandoned his claim to them.

26. Striking-out of Action, and Reinstatement; Costs thereupon.

If at the time and place of hearing, or at any continuation or adjournment of the Court or action, neither party appears, the action shall be struck out.

The action may be reinstated—

- (a.) When neither party has appeared, on the application of the plaintiff made on the same day without notice of reinstatement to the defendant, or within seven days on notice:
- (b.) When the defendant has appeared on the application of the plaintiff, within seven days with notice of reinstatement to the defendant.

When the Court orders such action to be reinstated on any subsequent day or after the defendant has appeared, the notice to the defendant may be in the Form No. 54, or in such other form as the Court orders, and such notice, unless the Court otherwise orders, shall be served five clear days at least before the day to which the hearing is adjourned.

This rule shall apply, *mutatis mutandis*, to applications for the examination of witnesses in accordance with section 87 of the Act. If any such application is struck out by the Court for examination on non-appearance of parties, the Clerk shall forward forthwith to the Court for hearing a certificate in the Form No. 52. If at the time appointed the party applying to take evidence fails to appear at the Court for examination, but the opposite party appears, then the opposite party shall be entitled to such reasonable costs as the Court may order; and the Clerk shall forward to the Court for hearing a certificate of the allowance of such costs in the Form No. 53.