

Notwithstanding this rule the plaintiff has filed a new statement of claim. This second statement of claim the defendants move to strike out. What the plaintiff has done is in effect to file two statements of claim. This is a practice which is not warranted by the Rules. Where a plaintiff specially indorses his writ that constitutes his statement of claim, and I do not think he is at liberty to deliver any other statement of claim without leave. After a defence has been filed he may amend the indorsement and if need be file an amended statement of claim under Rule 127, but he cannot before defence deliver a new statement of claim or amend the indorsement on the writ without the leave of the Court.

In the present case the new statement of claim appears to be a mere reiteration of the special indorsement, and no reason is suggested why it should be allowed even as an amendment. I therefore conclude that the order should go as asked striking it out and the defendants should have the costs of the motion in any event of the action.

The defendants ask an extension of time for filing a defence, or that the affidavit filed may be ordered to constitute the defence. I do not see anything in the Rules authorising me to declare that the affidavit constitutes a defence. Rule 56 in a certain event constitutes it a defence, but that event has not arisen and Rule 112 appears to require that when that event has not arisen a defence should be delivered as in the ordinary course of an action. In the circumstances I think the defendant should have an extension to file a defence, say for a week from 7th October inst.

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MR. HOLMESTED, SENIOR REGISTRAR. OCTOBER 9TH, 1913.

AUBURN NURSERIES v. MCGREDY.

5 O. W. N. 104.

*Process—Writ of Summons—Service out of the Jurisdiction—Contract—Breaches—Assets in Jurisdiction—Con. Rule 25 (1) (e), (h).*

Motion by defendants to set aside an order allowing service of the writ in Ireland and also the writ and the copy and service thereof.