

proposition that such interest is payable by law or upon contract implied, and that a jury should be instructed that they must allow it.

Notwithstanding some American decisions that an account stated entitles the creditor to interest—see *McClelland v. West*, 70 Penn. 183, 187; *Case v. Hotchkiss*, 1 Abb. App. Dec. (N.Y.) 324, 326; *Patterson v. Choate*, 9 Wend. 441, 446—I think the weight of English authority is against that proposition, and that, in the absence of an allegation that a fixed time for payment was agreed upon or that a demand for payment was subsequently made, or of an account indorsed shewing that the parties had themselves in adjusting their accounts allowed interest upon balances outstanding (*Nichol v. Thompson*, 1 Camp. 52 n.), it cannot be said that a creditor upon an account stated is entitled to claim interest either by law or upon implied contract, though a jury might and probably would allow such interest as damages.

It follows, I think, that the claim for interest made by plaintiff George was not a proper subject of special indorsement.

The judgment in *George v. Green* was signed on 6th October, 1890. At this time there was not the power of amendment of a special indorsement, upon motion for judgment after appearance, now conferred by Rule 603 (3). Prior to this amendment of Rule 603 it was held that a plaintiff seeking such summary judgment must come "with all his tackle in order:" *Paxton v. Baird*, [1893] 1 Q. B. 139; and could not ask to have a defective indorsement made good by amendment: *Clarkson v. Dwan*, 17 P. R. 208; or be allowed to sign judgment for so much of his claim as was susceptible of special indorsement: *Solmes v. Stafford*, 16 P. R. 264, 269, 270; *Wilks v. Wood*, [1892] 1 Q. B. 684, 686. If such amendment should not formerly have been made on a motion for judgment upon which the defendant was represented, a fortiori it would seem that it should not have been made to cure a judgment entered against a defendant in his absence for default of appearance. I cannot understand why, except for the special provision as to default judgments to which I allude below, a plaintiff's motion for judgment after appearance was properly refused because of a defect in his special indorsement, which he then sought to cure by amendment, if a judgment entered for default of appear-