The plaintiff's counsel contended that the answers of the jury constituted a verdict. The learned Chief Justice was not able to accede to that view. Section 61 of the Judicature Act indicates that answers to questions and a verdict are not the same. Where questions are submitted to the jury to be answered, there never can be a verdict.

That having happened here, there was no verdict, nor was there any judgment in the plaintiff's favour until that of the Supreme Court of Canada, and the date of the order of that Court was the earliest moment from which the plaintiff was entitled to interest.

It was also argued that the order of the Supreme Court of Canada was the order which the trial Judge should have made on the 3rd June, 1897—the day of the trial—and therefore the plaintiff was entitled to amend the judgment entered below as of its date, by directing payment to the plaintiff of the $1,500 mentioned in the order of the Supreme Court. This argument was based upon the theory that the order of an appellate Court is the order which the Court below must necessarily have made. Such is not the law. The power of an appellate Court is not limited to correcting errors below. For example, where, pending an appeal, the law has been varied, the appellate Court may apply the new law, thus making an order which the Court below would not have been entitled to make: Quilter v. Mapleson (1882), 9 Q.B.D. 672; Borthwick v. Elderslie Steamship Co., [1905] 2 K.B. 516. It is the duty of an appellate Court to make such order, whether corrective or otherwise, as the case may require; and its order, when made, unless otherwise provided, must be interpreted as determining the rights of the parties as of the date of the order. Here the Supreme Court of Canada, by its order of the 3rd October, 1899, determined that on that day, not on an earlier day, the plaintiff was entitled to judgment for $1,500.

The Supreme Court, if it had seen fit, might have awarded interest to the plaintiff. It did not do so; and the proper inference was, not that the Court omitted to make the order which, the case called for, but that it did not consider the plaintiff, in all the circumstances, entitled to interest. Until the 3rd October, 1899, the plaintiff ws not entitled to damages. On that day, for the first time, he became entitled. The defendants' indebtedness to the plaintiff on that day, and no other day, was res judicata; and it was not competent for the Court below to increase the amount found due to the plaintiff by the Supreme Court.

The appeal should be dismissed with costs.