trial and out of litigation, ought to be deemed rather the opposite of an evil. And why should a party have three months or three days or three minutes to do that which he is altogether relieved from doing—in this case to deliver a pleading which he is not required and there is no need to deliver? There is no injustice or inconvenience in this solution of the difficulty. On the other hand, if the learned Master were right, the plaintiff could at his option render entirely futile the provisions of the Rule under which the defence was delivered, and bring about the anomaly, and wasted cost, of a defence duly delivered being rendered wholly ineffectual by the plaintiff choosing needlessly to deliver a statement of claim, instead of doing that which would be just as effectual and would harmonize everything—amend.

Which ever view of the question is taken, some difficulty is met. In this view of it, the plaintiff does not get three months' time to bring forth an unnecessary (having regard to the power to amend) pleading. The words of paragraph (b) of Rule 243 give that right, although the defendant may have appeared and stated that he does not require the delivery of a statement of claim, but not although he may, as the Rules permit and require—in Rule 586—have delivered a statement of defence. On the other hand, if the statement of claim may be delivered notwithstanding the delivery of the statement of defence, a plaintiff can, at his will, deprive a defendant of the right, conferred by Rule 247, in fact turn it into a dead letter, and all done under it into wasted energy and expense, without any substantial reason for the waste. And also some violence is done to Rule 256, which requires a plaintiff to reply, if he desires to reply, within three weeks after the defence has been delivered; and again to Rule 300 as to amending.

The provisions of the Rules in plaintiff's favour are not rendered wholly ineffectual; he may deliver a statement of claim within the three months if no statement of defence is delivered within the eight days, notwithstanding that the appearance may have stated that a statement of claim was not required.

For some purposes the indorsement upon the writ must be considered a pleading; that is made plain by the recent amendment of Rule 300. I would have thought it must always have been so where no other statement of claim was delivered and the defendant had pleaded to it as the plaintiff's statement of claim.