

*SUMMARY JUDGMENT AFTER APPEARANCE TO
SPECIALLY INDORSED WRIT.*

THE ENGLISH, IN CONTRAST WITH THE ONTARIO PRACTICE AS
TO THE CONDITIONS PRECEDENT TO THE APPLICATION
OF THIS SUMMARY REMEDY.

The Ontario Rules of Procedure which may be invoked by a plaintiff seeking summary judgment after, (603), and even before, (608), appearance to a specially indorsed writ of summons define widely, and, in part, entirely different courses from that open to a plaintiff under the English practice.

Thus, while the provisions contained in present Rule 603, evolved as they have been from provisions framed closely along the lines of the contemporary form of English Order XIV, in lesser degree resembles those of that Order in its present form, there is nothing in England corresponding to our Rule 608, enabling a plaintiff, by leave, to apply for judgment summarily "at any time after the writ (not stated to be a specially indorsed writ necessarily) has issued."

In tracing the historical development of that portion of the Ontario practice on this subject which has features in common with the English, by way of introduction to a comparative study of the two practices so related to one another, it is found that the Act of 1855, which, as noted in a previous article (*a*) embodied the same principle as was later, in more extended form, embodied in Order XIV, in terms applied to England alone (*b*); and that Act does not appear to have ever been in force here (*c*).

In our Common Law Procedure Act of 1856, however, is found the beginning of a practice which has been likened (*d*) to the one defined by the two lastly above-named English enactments. Sec. 101 of that Act of 1856 (taken from s. 52 of the English C.L.P. Act of 1852, which was (*e*) in turn, founded upon the First

(*a*) 39 C.L.J., 259.

(*b*) 18 & 19 Vict. c. 67, ss. 9 and 10.

(*c*) Strickland's Table of Public General Acts in Force 1235-1894, p. 36.

(*d*) MacLennan's Judicature Act (2nd Ed.) 216.

(*e*) Harrison's C.L.P. Acts (2nd Ed.) 156.