

specially indorsed under Order III, Rule 6, has been included in the indorsement on the writ, the Judge may, if he shall think fit, forthwith amend the indorsement by striking out such claim, or, may deal with the claim specially indorsed as if no other claim had been included in the indorsement, and allow the action to proceed as respects the residue of the claim."

The intention and effect of the above-quoted provision was somewhat considered in a later case, (*i*), in which the views expressed by the learned Judges in the Divisional Court, and Court of Appeal, seem to be summed up pretty well in counsel for plaintiff's statement, (*j*). that "Order XIV, Rule 1, (b), applies where something is included in the indorsement which cannot be specially indorsed at all; it has no application to the case of a mere incomplete or defective special indorsement; such an indorsement is curable by amendment, without leave."

Commenting on the effect of the last-cited decision, Osler, J.A., says, (*k*): "While not relaxing in any the least degree the former decisions, it shows, nevertheless, that by exercising the right of amendment given by the Rules, the plaintiff may amend his special indorsement, and so convert a faulty one, (where the claim is one which may be specially indorsed), into a good one. This he may do even after the motion for judgment has been launched."

Of the same tenor are the remarks of the learned editors of the *Yearly Practice for 1903*; who say (*l*): "This Rule, (Order XIV, Rule 1, (b)), does not affect the decisions as to what is, and what is not a good special indorsement; but, where a special indorsement is partly good and partly bad, it enables the Master, on the hearing of the application for judgment, to expunge, or to ignore the bad part. It is, therefore, no longer fatal to the application if, at the time when the summons is taken out, the indorsement on the writ is not a good special indorsement. The Rule does not apply where the indorsement is deficient, and something must be added in order to make it a good special indorsement . . . ; and such a case is governed by the Rules as to power of amendment by parties. It applies only where the indorsement contains too much." . . .

(*i*) *Roberts v. Plant* (1895), 1 Q.B. 597.

(*j*) *Ibid.*

(*k*) *Clarkson v. Dwan*, *supra*.

(*l*) *Ibid.*