vince of Nova Scotia, and a certificate of the judge of that court, showing that security had been given by her, upon her appointment as guardian, in respect of the insurance moneys in question, were received as evidence in support of the petition.

A. E. Hoskin for the petitioner.

Court of Appeal.] [Nov. 13.

SOLMES *v.* STAFFORD.

Summary judgment—Rule 739—Action of foreign judgment—Variation—Writ of summons—Special indorsement—Amendment—Interest—Unliquidated damages—Rules 245, 711—Motion for judgment—Rule 757, scope of.

Where the plaintiff indorsed his writ of summons with a claim for the amount of a foreign judgment and interest, and after the issue of such writ and while a motion for summary judgment under Rule 739 was pending, the foreign judgment was varied on appeal by reducing the amount;

Held, that, even if the claim for interest did not stand in the way, the indorsement could not be amended upon the motion for summary judgment so as to accord with the foreign judgment as varied, and the plaintiff's proper course was to abandon his motion and move for leave to amend the indorsement, or to discontinue the action altogether.

Gurney v. *Small*, (1891) 2 Q.B. 584, and *Paxton* v. *Baird*, (1893) 1 Q.B. 139, followed.

Interest upon the amount of a foreign judgment from the date of its entry is not payable by contract nor by statute, nor is it awarded by the judgment as a continuing obligation, but is recoverable only as unliquidated damages, and cannot be the subject of a special indorsement.

And while, for the purpose of obtaining judgment by default, the plaintiff may indorse his writ specially for a liquidated demand and also for a further claim under Rule 711, yet if he wishes to be in a position to move for summary judgment under Rule 739 he must bring himself strictly within Rule 245, as having indorsed his writ only with a claim which is the subject of a special indorsement under that Rule.

Judgment of the Common Pleas Division, 16 P.R. 78, affirmed on these three points.

Hollender v. *Fjoulkes*, 16 P.R. 175, and *Munro* v. *Pike*, 15 P.R. 164, approved.

Hay v. *Johnston*, 12 P.R. 596, overruled.

Huffman v. *Doner*, *ib.*, 492, and *Mackenzie* v. *Ross*, 14 P.R. 299, commented on.

Sheba Gold Mining Co. v. *Trubshawe*, (1892) 1 Q.B. 674, and *Wilks* v. *Wood*, *ib.*, 684, followed.

Where an order for summary judgment under Rule 739 is set aside on appeal, Rule 757 cannot be made available for the purpose of turning the appeal into a motion for judgment and granting a yet more summary judgment.

Judgment of the Common Pleas Division reversed on this point.

Alan Cassels for the appellant.

Aylesworth, Q.C., for the respondent.