

of trust on the part of the defendants in the investment of money upon mortgage. There was no indorsement of the character of parties. The defendants appeared, and the plaintiff thereupon delivered a statement of claim in which it was set forth that the plaintiff was the administrator of one who was in her lifetime entitled to the moneys invested by the defendants. It was shown that one of the defendants was fully aware of all the facts of the case and of the capacity in which the plaintiff sued.

Upon a motion by the defendants to strike out the statement of claim as embarrassing in that it did not follow the writ,

Held, that the defendants by entering an appearance, instead of moving against the writ, had waived the irregularity of the plaintiff in not stating the character of the parties, as required by Rule 224.

Held, also, that as the statement of claim showed the character in which the plaintiff was suing, it was not necessary to amend the writ.

E. Taylour English for the plaintiff.

Langton, Q.C., for the defendants.

BOYD, C.]

DAVIDSON v. GURD.

Summary judgment—Rule 739—Writ of summons—Special indorsement—Rule 245—Action for indemnity against mortgages—Covenant, express or implied—Equitable obligation—Preliminary contract—Amendment.

The plaintiffs sued the defendant for moneys alleged to have been paid by them for interest upon certain mortgages and for the principal due under certain other mortgages. The writ of summons was specially indorsed, and contained a statement that the defendant was liable to pay the mortgages by virtue of a certain covenant made by him with one T. on a certain date, and assigned by T. to the plaintiffs. Upon a motion by the plaintiffs for summary judgment under Rule 739, it appeared that the deed alleged to contain the covenant made by the defendant with T. did not in fact contain any express covenant to pay the mortgages; but by it T. conveyed the lands in question to the defendant "subject to all mortgages registered against the lands," and the deed was not executed by the defendant. The plaintiffs,

however, sought to support the indorsement by reference to the preliminary contract between the defendant and T., which contained an offer to assume and to covenant to pay off the mortgages.

Held, that, although the deed expressed an equitable obligation by the defendant to indemnify T., there was no covenant in any sense; and the plaintiffs could not invoke the benefit of the preliminary contract, for the indorsement must be complete in itself, containing everything which entitles the plaintiffs to recover; and the court will not encourage an amendment for the purpose of upholding a summary judgment.

Fruhauf v. Grosvenor, 8 Times L.R. 744, followed.

Held, also, that Rule 245, specifying the different kinds of actions in which writs may be specially indorsed, does not extend to the case of an action upon an implied covenant.

J. A. Paterson for the plaintiffs.

F. E. Hodgins for the defendant.

Flotsam and Jetsam.

AMONG the many curious customs still existent in England is that of the Crown supplying venison twice a year to London's lord mayor, sheriffs, recorder, chamberlain, town clerk, common sergeant, and remembrancer, each of whom receives his proper quota of deer. The early charters granted to the citizens secured to them their supply of game, and the present custom is the relic of the bygone age.

PERHAPS one of the most eloquent and distinguished lawyers of Maine at the close of the revolutionary war was William Symmes, of Portland. He was arguing a motion one day before Judge Thacher, and persisted, though constantly interrupted by the court.

Thacher grew impatient, and said: "Mr. Symmes, you need not persist in arguing the point, for I am not a court of errors, and cannot give a final judgment." "I know," answered Symmes, "that you can't give a final judgment; but as to your not being a court of errors, I will not say."—*Ex.*

IT is stated that at the doors of the registry offices in the Madras Presidency stand persons who for four annas will identify any witness