

it appears to us, with out much success. The defendant had, within the time allowed for appearance, filed his appearance and also his defence in which he stated that he did not require any statement of claim as he was entitled to do under Rules 171 and 247. He took out the usual order to produce documents, with which the plaintiffs complied, and thereafter the plaintiffs delivered a statement of claim which the defendant moved to set aside for irregularity (1) on the ground that the plaintiffs had no right to deliver a statement of claim after a defence had been filed, and (2) because, as was alleged, the statement of claim went beyond the claim made in the indorsement on the writ. The Master dismissed the motion, holding that notwithstanding the defendant had dispensed with a statement of claim, the plaintiffs were nevertheless entitled to deliver one within the ordinary time after appearance under Rule 243 (b). Mr. Justice Meredith came to the conclusion that when the defendant dispenses with a statement of claim, the indorsement on the writ becomes the statement of claim, and is amendable, as of course, like an ordinary statement of claim under Rule 300. So far so good, and with that conclusion we have no fault to find. Where we venture to think the learned Judge erred was in not following out his own reasoning to its legitimate conclusion, having regard to the provisions of Rule 309, "a proceeding shall not be defeated by any formal objection." Granted that the indorsement was the statement of claim, granted that it might be amended under Rule 300, does it not follow that the statement of claim sought to be set aside, ought to have been treated, as what in substance it actually was, viz.: an amended statement of claim. Surely it is going back to the days of technical objections to set aside a pleading merely because it omits to state on its face that it is an amended pleading when that fact is visible in every line of its contents. If this document had been indorsed "amended statement of claim" it would, according to Mr. Justice Meredith's reasoning have been all right and unassailable, but because it happened to omit the word "amended" it was set aside. This seems like a step in a retrograde direction and not like the forward view generally characteristic of that excellent Judge.