

the ingredients which go to make up a specially indorsed writ. It had the words 'statement of claim' at the top of it, and it was signed by a solicitor. But every averment necessary to make it a specially indorsed writ between those two was wanting. Therefore, it was not a specially indorsed writ. If the plaintiff's contention is sound, it follows that every writ to recover possession of land, on the ground of rent being due, may be launched in the form of what is in substance an ordinary writ, and then changed into a specially indorsed one, when the plaintiff comes to move for judgment. The plaintiff is bound to exercise an option under Order III. Rule 6, as to which form of writ he will issue. Where does the option come in, if a writ can be issued in the ordinary form first, and changed afterwards into a specially indorsed one? There is no option at all exercised. I think if a plaintiff has issued what is in substance a specially indorsed writ, there is power to amend, but he cannot change an ordinary writ into a specially indorsed one, by supplying the substantial particulars." Fitzgibbon, L.J., after stating that "in practice cases we must be careful not to limit the beneficial operation of the Rules of Court unnecessarily," lays it down that "if a plaintiff wants to get summary judgment, he must exercise the option given to him by the Order of specially indorsing his writ, and he must do this at the issue of the writ, and before it is served on the defendant. Furthermore, the special indorsement *must* be to the effect of the appropriate form in Appendix C." "I have no hesitation," says the last-named learned Judge, "in holding that this option cannot be exercised for the first time after service. If a plaintiff has issued and served an ordinary writ, not specially indorsed, that writ cannot afterwards be changed into a specially indorsed one. I do not dispute, nor do I desire to define, the power to *amend*; I deny the power to *create* a specially indorsed writ after service." The opinion of Holmes, L.J., in the same case, was that "a statement of claim indorsed on a writ of summons may be amended like any other statement of claim." "On a motion for judgment," Holmes, L.J., goes on to say, "the Court often exercises its discretion in allowing an omission to be supplied, or an averment to be struck out or altered by way of an amendment. But I am of opinion that the order allowing the amendment in this case is wrong in principle, inasmuch as to enable a plaintiff to obtain a summary judgment for possession, it has changed the whole character of the indorsement on the writ. . . . The plaintiff was given a right to obtain summary judgment, provided the writ of summons is