

money shall remain in Court subject to the provisions hereinafter mentioned.

(b) If the plaintiff accepts the money so paid in he shall after service of such notice in the Form No. 4 in Appendix B as is in Rule 7 mentioned, or after delivery of a reply accepting the money, be entitled to have the money paid out to himself on request or to his solicitor on the plaintiff's written authority unless the Court or a Judge shall otherwise order.

(c) If the plaintiff does not accept in satisfaction of the claim or cause of action in respect of which the payment into Court has been made, the sum so paid in, but proceeds with the action in respect of such claim or cause of action or any part thereof, the money shall remain in Court and be subject to the order of the Court or a Judge and shall not be paid out of Court except in pursuance of an order. Such order may be made at any time before or at or after the trial of the action. If the plaintiff proceeds with the action in respect of such claim or cause of action or any part thereof and recovers less than the amount paid into Court the amount paid in shall, subject to the set off of costs hereinafter provided for, be applied, so far as is necessary, in satisfaction of the plaintiff's claim, and of any costs awarded to the plaintiff, and the balance (if any) shall under such order be repaid or credited to the defendant. If the defendant succeeds in respect of such claim or cause of action the whole amount shall under such order be repaid or credited to him.

The order for payment out of the money so in Court shall not, except on special grounds, be made until after the taxation of the costs of the action, and the money shall then be paid out to the party or parties entitled after setting off damages and the costs allowed to either party and after proper credits have been given for all sums recovered by or ordered to be paid to either of the parties in the action or counterclaim if any. A plaintiff who does not accept money paid into Court with a denial of liability but proceeds to trial and does not recover more than the sum paid into Court shall not be allowed his costs of the issues as to liability unless the Judge is satisfied that there were reasonable grounds for not accepting the sum paid in.

7. The plaintiff, when payment into Court is made before delivery of defence, may within seven days after the receipt of notice of such payment, or when such payment is first signified in a defence, may, before reply, or where no reply is ordered, within ten days from delivery of defence or the last of the defences, accept in satisfaction of the claim or cause of action in respect of which such payment has been made the sum so paid in, in which case he shall give notice to the defendant in the Form No. 4 in Appendix B., and shall be at liberty, in case the entire claim or cause of action is thereby satisfied, to tax his costs after the expiration of four days from the service of such notice, unless the Court or a judge shall otherwise order, and in case of non-payment of the costs within 48 hours after such taxation to sign judgment for his costs so taxed.

8. Where money is paid into Court in two or more actions which are consolidated, and the

plaintiff proceeds to trial in one, and fails, the money paid in and the costs in all the actions shall be dealt with under this Order in the same manner as in the action tried.

8A. When in an action against two or more defendants money is paid into Court by one or some but not all of them in respect of a cause of action for which the defendants are sued jointly and the plaintiff accepts the sum so paid in he shall in addition to giving the notice in the Form 4 in Appendix B., give notice to the other defendants of his having accepted the money so paid in, and thereupon all further proceedings in respect of the joint cause of action, except as to costs, shall be stayed and the Court or Judge may upon application by any party make such order as may appear to be just as to the costs of the plaintiff and of the defendants (other than the defendant or defendants who has made the payment into Court) incurred in respect of the cause of action satisfied by such payment. If the plaintiff does not accept the money so paid in by one of two or more defendants in respect of a joint cause of action, but proceeds to trial and recovers less than the amount paid into Court, the Court or Judge may make such order as may appear to be just in respect of the costs of the joint cause of action as between the plaintiff and the defendants other than the defendant or defendants who has or have made the payment.

9. A plaintiff or any person made defendant to a counterclaim may, in answer to a counterclaim, pay money into Court in satisfaction thereof, subject to the like conditions as to costs and otherwise as upon payment into Court by a defendant.

10. Where money is paid into Court in the King's Bench Division under the certificate of a master or associate, such payment must be expressly authorised in such certificate.

11. Money paid into Court under an order of the Court or a Judge or certificate of a master or associate shall not be paid out of Court except in pursuance of an order of the Court or a Judge. Provided that, where before the delivery of defence, money has been paid into Court by the defendant pursuant to an order under the provisions of Order XIV, he may (unless the Court or a Judge shall otherwise order) by his pleading appropriate the whole or any part of such money, and any additional payment if necessary, to the whole or any specified portion of the plaintiff's claim, or if he pleads a tender may appropriate the whole or any part of the money in Court as payment into Court of the money alleged to have been tendered; and the money so appropriated shall thereupon be deemed to be money paid into Court pursuant to the preceding Rules of this Order relating to money paid into Court or money paid into Court with a plea of tender as the case may be, and shall be subject in all respects thereto.

#### ORDER XXXIX.

Rules 1 to 8 (both inclusive) of Order XXXIX of the Rules of the Supreme Court, 1883, are hereby repealed, and the following Rules shall stand in lieu thereof, viz.:—

#### NEW TRIAL.

Application for New Trial to be made to Court of Appeal.

1. Every application for a new trial or to set aside a verdict, finding, or judgment where