

tion, induce a defendant to believe, that the only point to be tried, is a question of fraud, and suffers him to prepare his evidence accordingly, he will not be allowed, to object to that evidence at the trial, on the ground that the contract has been admitted, by the defendant's having paid a sum of money into court generally on the whole declaration: and in an action against a justice of the peace, for an act done in his official capacity, the bringing money into court, by virtue of a statute, does not, it is said, admit the right of action.

Payment of money into court, is proved by the production of the *rule* of court, or an office copy, as it is not sufficient to call the *attorney* who has taken the money out of court.

IV.

Particulars of demand are of two sorts, 1st, Particulars Such as are delivered by one party to another, in the course of business; which though they are strong presumptive evidence, that there are no items, but what are mentioned in the bill of *particulars*, within the period which it purports to include, yet the party will not be precluded from showing, that other items have been omitted by mistake; 2dly, They are such, as are delivered under a judge's order for that purpose, which are more conclusive, as they effectually preclude the party delivering them from giving evidence of any demand, differing either in *nature*, or in the *title* on which the plaintiff sues, from that mentioned in the particulars delivered; as when a declaration contains counts on a promissory note, together with the money counts; and the particulars of demand includes only the note, the plaintiff will not be allowed to prove the *consideration*, for which the note was given; and if he cannot recover upon the note, on account of its not having a proper