
Province of Manitoba.

KING'S BENCH.

Mathers, J.]

[Nov. 28, 1907.]

CANADA ELEVATOR CO. v. KAMINSKI.

Practice—Payment into Court—Condition sought to be imposed on plaintiff getting money out of Court.

The defendant paid into Court under Rule 530 of the King's Bench Act the sum of \$853 in satisfaction of a specified part of the plaintiff's cause of action and his pleading stated that he was "content that the same be paid out to the plaintiffs after payment of the defendant's costs of action."

Held, that the plaintiffs were entitled under Rule 532 to an order for payment of the money out to them free from the condition sought to be imposed by the defendant. Money cannot be paid into Court except under Rule 530 in satisfaction of the cause or part of the cause of action or one or more of the causes of action for which the plaintiff sues, and when it is so paid in there is nothing in any of the rules to enable a defendant to prevent the subsequent rules from operating, and under them the plaintiff is entitled to take it out in satisfaction of the cause of action for which it was paid in.

Wheeler v. United Telephone Co., 13 Q.B.D. 597, followed.
Galt, for plaintiffs. *Dennistoun*, for defendant.

Mathers, J.]

BROCK v. ROYAL LUMBER CO. [Dec. 30, 1907.]

Contract—Penalty or liquidated damages.

The defendants entered into an agreement to purchase 1,500 tons of coal from the plaintiffs and to accept delivery between Oct. 1, 1906, and April 1, 1907. The defendants were not obliged to order any particular quantity in any one month, but were at liberty to order portions of the whole at such times within the six months as they might deem best. They were to pay for each amount ordered at the time of the order and for