

## GENERAL CORRESPONDENCE.

I think, upon principle and authority, the note in question was dishonored at the time it was transferred to the plaintiff. And that neither the wants or convenience of business call for any change of the rule.

The charge of the judge therefore, and his refusal to charge as requested, were correct. The order of the General Term should be reversed, and the judgment rendered for the defendant on the verdict.

For reversal, Earl, C.J., Grover, Hunt, Foster, and Smith, JJ.

For affirmance, Lott and Sutherland, JJ.

Order of General Term reversed and judgment for defendant.—*American Law Times*.

## GENERAL CORRESPONDENCE.

*Payment into court—Costs—C. L. P. Act and Rule of Court.*

TO THE EDITORS OF THE LAW JOURNAL.

DEAR SIRS,—In reading Mr. Harrison's new Common Law Procedure Act, a discrepancy struck me as existing between section 102 of the Act and Rule 12, in regard to payment into Court. According to the section in the Act it would seem as if a defendant succeeding on the issue as to the balance of the claim over and above amount paid into court, would be entitled to the whole costs of suit, although the Rule says the costs would commence with "instructions for plea."

Further, by the section, if the plaintiff does not accept the amount paid into court in satisfaction, it would seem to be implied, that he would not be entitled to any costs, whereas the Rule gives costs up to payment into court. Has the point ever been decided in our courts?

There seems to be a difference between the English Act and ours (sec. 99), as our Act allows payment into court without a judge's order only in case of a *sole* defendant. The English Act is worded differently, and applies as well when *all* of the defendants pay in, the only necessity for an order being when such payment is made by one or more of several defendants.

Supposing a plea of *tender*, and payment into court on that plea, what is to prevent a plaintiff from taxing costs under the Rule?

Yours truly, A BARRISTER.

[We do not doubt but that there is an inconsistency between the section and Rule of Court referred to by our correspondent. The section

appears to relate to a case where payment of money is pleaded in bar of the cause of action, which, if plaintiff refuses to accept in satisfaction, and there is only one issue, viz., the issue as to the sufficiency of the payment, if found for defendant, entitles defendant to judgment and costs of suit. The rule appears to apply to a case where, besides the issue on the plea of payment of money into court, which money the plaintiff accepts in satisfaction, there are other issues in respect of other sums, or other causes of action in the same action, and defendant succeeds in defeating the residue of the claim, in which case he is entitled to the costs of the cause in respect of the defence commencing at "instructions for plea," but not before.

This we take to be the distinction between the section of the Act and the Rule of Court.

When the money paid into court is accepted in satisfaction, and the only issue is on the plea of payment into court, plaintiff is entitled under the section to the costs of the suit. If other issues, then plaintiff is entitled under the Rule of Court to the costs of the cause in respect to that part of his claim so satisfied, not to the time the money is paid in and taken out, without reference to the other issues.

Eds. L. J.]

*Husband and wife—Trespass.*

TO THE EDITORS OF THE LAW JOURNAL.

GENTLEMEN,—Can you give me any information upon the following point: A., an infant having a guardian appointed by Surrogate Court, marries. Before coverture a trespass is committed upon real estate of infant. In whose name can the suit be brought? Must the husband necessarily be a party? Can the infant sue in her own name by her guardian, ignoring the husband?

An answer to the above will greatly oblige,  
AN OLD SUBSCRIBER.

COUNTY OF YORK WINTER ASSIZES will commence on the 9th January, 1871.

The Commissioners to revise the Statutes of the United States—Messrs. Chas. P. James, Benjamin Vaughan Abbott and Victor C. Barringer—have organized this Fall in Wash-