delivered. He also pays into court $40 which he says is enough to satisfy the plaintiff's claim.

The plaintiffs deny the alleged shortage, and assert that any loss occurred through stormy weather and was of the part of the cargo stored on deck. They refuse to accept the money paid into court.

The evidence shews that the plaintiffs' vessel was loaded at Cleveland with a cargo of coal, and sailed with it for Kingston on the evening of the 6th June. There was no charter party in the proper sense of the term, but a copy (admitted to be a true copy), was produced of a shipping note which reads thus:

"CLEVELAND, OHIO, *June 6th*, 1883.

"Shipped by Martin & Co., in good order and condition on board the schooner *Mary*, of St. Catharines, John Cornwall, master, the following articles marked and consigned as per margin to be delivered in like order and condition (danger by fire, collision and navigation only excepted) as addressed on the margin, subject to freight and charges as below.

"All property on deck at the risk of the vessel and owners, 234 tons, St. L. V. Lump Coal. Freight to be one dollar and twenty cents per ton, free in and out.

(Signed) Martin & Co.

P. D. Conger, Kingston, Ont., for Asylum.

The *Mary* arrived at Kingston on the evening of the 11th June, about 8 p.m., and early the next morning the captain reported his arrival to the cashier of the asylum. Coal for the asylum is unloaded at a slip or wharf belonging to it, some distance from the harbour. At the time of the *Mary* arriving at Kingston, another vessel, the *Craftsman*, was lying at this slip discharging a cargo of coal. The *Craftsman* was also carrying coal for the defendant in the same way as the *Mary* was. There was room for two vessels to lie at the asylum slip, but owing to the arrangement of the buildings only one could unload at a time.

Upon being told by the captain, of the *Mary's* arrival, the cashier of the asylum told him he could stay where he was until they were ready to unload him. However, he went to the asylum slip on the morning of the 13th and lay there without anything being done until the 19th, when they began to unload the *Mary* and finished doing so next day.

The plaintiffs' claim is for the delay from the morning of the 12th to the morning of the 19th. They also allege that two days ought not to have been consumed in unloading as the *Mary* could be unloaded in one day, or at most a day and a-half, but it was admitted that but for the other delay no claim would have been preferred for this.

The first question that arises is: What is the effect of the payment of money into Court by the defendant without any other defence except the counter claim of $30. Is he at liberty to dispute the allegations in the plaintiffs' statement of claim? or, must he be taken to have admitted them? Payment of money into Court is no longer considered incompatible with other defences. A defendant can, as a general rule, deny the plaintiffs' cause of action and at the same time pay money into Court: *Berdan* v. *Greenwood*, L. R. 3 Ch. D. 251; *Hawkesley* v. *Bradshaw*, L. R. 5 Q. B. D. 302.

In England the rules of pleading upon which these cases were decided, required defendant to traverse all statements they wished to put in issue. In Ontario, silence of a pleading as to any allegation contained in a previous pleading of the opposite party is not to be construed as an implied admission of the truth of such allegation.

It is, therefore, contended by the defendant that a simple plea of payment into Court here has the same effect as the same plea joined with a denial of the plaintiffs' cause of action has in England. I cannot find any decision in Ontario on the point and it will be safer for me to decide the present case on the assumption that the defendant's contention is correct.

The plaintiffs, in their statement of claim, allege that the defendant delayed the vessel for several days beyond the time allowed by the charter party—no time for unloading is mentioned in the shipping note. The plaintiffs must consequently rely on the implied contract that the vessel would not be detained more than a reasonable time in unloading. When the number of the days are fixed by the contract of affreightment, the merchant will be liable for any delay beyond these days, although the delay is not attributable to his fault, "as he has engaged that the work shall be done within the time:" Abbott on Shipping, 11th edition, p. 68. Where, however, the charter party is silent as to the time to be occupied in the discharge, the contract implied by law is that each party will use due diligence in performing the part of the duty which, by the custom of the port, falls upon him; and there is no implied contract that the discharge shall be performed in the time usually taken at the port: *Ford* v. *Coatsworth*, L. R. 4 Q. B. 127.

The contract thus implied is between the shipper and the owner of the vessel; the consignee, as such, is not a party to it or liable to an action for a breach of it: *Kemp* v. *McDougall*, 23 U. C. R. 380; *Burnet* v. *Conger*, 23 C. P. 590. And the Ontario Act, 33 Vict. cap. 19, now R. S. of O. cap. 116, sec. 5 (which is a transcript of the Imperial Act 18 and 19