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STATUTORY INSTRUMENTS

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**1981 No. 1687**

**The County Court Rules 1981**

**ORDER 11**

**PAYMENT INTO AND OUT OF COURT**

**Payment into court before judgment**

1.—(1) In any action for a debt or damages any defendant may at any time before judgment pay money into court—

- (a) in satisfaction of the plaintiff's cause of action or, where two or more causes of action are joined in the action, in satisfaction of any or all of those causes of action; or
- (b) on account of a sum admitted by him to be due to the plaintiff in respect of the plaintiff's cause or causes of action.

(2) Where the amount paid into court under paragraph (1) is less than the amount claimed, the payment shall be treated as being made under sub-paragraph (b) unless it is accompanied by notice stating that it is made in satisfaction of the plaintiff's cause or causes of action.

(3) Where a payment under paragraph (1) is made by one or more but not all of several defendants, it shall be accompanied by a notice stating the name and address of each defendant making the payment.

(4) A defendant may, without leave, give notice of an increase in a payment made under paragraph (1)(a) but, subject to that and without prejudice to paragraph (6), a notice of payment may not be withdrawn or amended without the leave of the court, which may be granted on such terms as may be just.

(5) Where two or more causes of action are joined in the action, any notice given under paragraph (2) shall—

- (a) state that the payment is made in respect of all those causes of action or specify the cause or causes of action in respect of which the payment is made, and
- (b) where the defendant desires to make separate payments in respect of any two or more of the causes of action, specify the sum paid in respect of each.

For the purposes of this paragraph a payment stated to be made in satisfaction of the plaintiff's claim shall be treated as being made in satisfaction of all the causes of action.

(6) Where a single sum of money is paid into court under this rule in respect of two or more causes of action, then, if it appears to the court that the plaintiff is embarrassed by the payment, the court may, subject to paragraph (7), order the defendant to amend the notice of payment so as to specify the sum paid in respect of each cause of action.

(7) Where a cause of action under the Fatal Accidents Act 1976 and a cause of action under the Law Reform (Miscellaneous Provisions) Act 1934 are joined in an action, with or without any other cause of action, the causes of action under the said Acts shall, for the purpose of paragraph (6), be treated as one cause of action.

(8) For the purposes of this rule a plaintiff's cause of action in respect of a debt or damages shall be construed as a cause of action in respect also of such interest as might be included in the judgment, whether under section 3 of the Law Reform (Miscellaneous Provisions) Act 1934 or otherwise, if judgment were given at the date of the payment into court.

(9) Where a payment under paragraph (1) is made by a defendant who makes a counterclaim against the plaintiff for a debt or damages, the notice given under paragraph (2) must state, if it be the case, that in making the payment the defendant has taken into account and intends to satisfy the cause of action in respect of which he counterclaims or, if two or more causes of action are joined in the counterclaim, all those causes of action or such of them as may be specified in the notice.

(10) On receipt of a payment by a defendant under paragraph (1) the proper officer shall, if time permits, send notice thereof to every other party to the action.

### **Payment of whole sum**

2.—(1) Where the only relief claimed in an action is the payment of money and the whole amount is paid into court under rule 1, the action shall be stayed except for the purposes of paragraphs (2) and (3) of this rule and rules 4 and 6.

(2) Where the action is for a debt or liquidated demand and the money was paid by the defendant within 14 days after the service of the summons on him, together with the costs stated on the summons, the defendant shall not be liable for any further costs unless the court otherwise orders.

(3) In any case to which paragraph (2) does not apply, the defendant shall not be liable for any costs incurred after receipt by the plaintiff of the notice of payment into court, but—

- (a) except as provided in sub-paragraph (b), the plaintiff may lodge for taxation a bill of the costs incurred by him before receipt of the notice and, if the costs allowed on taxation are not paid within 14 days after taxation, may have judgment entered for them and the costs of entering judgment;
- (b) if an order is required under rule 4(2) for payment of the money out of court, the plaintiff may apply for an order for such costs.

(4) Paragraphs (2) and (3) are without prejudice to the provisions of Order 10, rules 10 and 11, Order 19, rule 6, and Order 38, rule 3(4).

### **Acceptance of lesser sum**

3.—(1) Where the amount paid into court by the defendant under rule 1(1)(a) in satisfaction of the plaintiff's cause or causes of action is less than the amount claimed or there is also a claim for some relief other than the payment of money, then, subject to paragraph (2), the plaintiff may—

- (a) where the money was paid in respect of the cause of action or all of the causes of action in respect of which he claims, accept the money in satisfaction of such cause or causes of action, or
- (b) where the money was paid in respect of some only of the causes of action in respect of which he claims, accept in satisfaction of any such cause or causes of action the sum specified in the notice of payment into court,

by giving notice of acceptance to the proper officer and to every other party to the action within 14 days after the receipt by the plaintiff of notice of payment into court but in any case not less than 3 days before the hearing of the action begins.

(2) Where after the hearing of an action has begun—

- (a) money is paid into court under rule 1(1)(a), or
- (b) money in court is increased by a further payment into court under that rule,

the plaintiff may accept the money in accordance with paragraph (1) within 14 days after receipt of notice of the payment but in any case before the court begins to deliver judgment.

(3) On receipt by the proper officer of the plaintiff's notice of acceptance, proceedings in respect of the cause or causes of action to which the notice relates shall be stayed except for the purposes of this rule.

(4) Where notice of acceptance is given in a case to which paragraph (1)(a) applies and—

- (a) the action is for a debt or liquidated demand, and
- (b) the money was paid by the defendant within 14 days after service of the summons on him, together with the costs which would be stated on a summons for that amount,

the defendant shall not be liable for any further costs unless the court otherwise orders.

(5) Where notice of acceptance is given in any case to which paragraph (4) does not apply and the notice relates to the whole claim or, if it relates to one or more of several causes of action, the plaintiff at the same time gives notice that he abandons the other cause or causes of action, then—

- (a) except as provided in sub-paragraph (b) the plaintiff may lodge for taxation a bill of the costs incurred by him before receipt of the notice of payment into court and, if the costs allowed on taxation are not paid within 14 days after taxation, may have judgment entered for them and the costs of entering judgment;
- (b) if an order is required under rule 4(2) for payment of the money out of court, the plaintiff may apply for an order for such costs.

(6) Where money is paid into court by a defendant who made a counterclaim and the notice of payment stated, in relation to any sum so paid, that in making the payment the defendant had taken into account and satisfied the cause or causes of action, or the specified cause or causes of action in respect of which he claimed, then, on the plaintiff accepting that sum, all further proceedings on the counterclaim or in respect of the specified cause or causes of action, as the case may be, against the plaintiff shall be stayed.

(7) The foregoing paragraphs are without prejudice to the provisions of Order 10, rules 10 and 11, Order 19, rule 6, and Order 38, rule 3(4).

### **Payment out of court**

4.—(1) Where proceedings are stayed under rule 2(1) or 3(3), the plaintiff shall, subject to the following paragraphs of this rule, be entitled to have paid out to him the sum paid into court in satisfaction of his claim or, if the stay is in respect of some only of the plaintiff's causes of action, in satisfaction of that cause or those causes of action.

(2) Subject to the provisions of this rule, money paid into court—

- (a) by one or more but not all of defendants sued jointly or in the alternative;
- (b) with a defence of tender before action;
- (c) in an Admiralty action;
- (d) in proceedings to which Order 10, rule 11, relates, or
- (e) in satisfaction either of causes of action arising under the Fatal Accidents Act 1976 and the Law Reform (Miscellaneous Provisions) Act 1934 or a cause of action arising out of the first-mentioned Act where more than one person is entitled to the money,

shall not be paid out of court except in pursuance of an order of the court.

(3) Where in a case to which paragraph (2)(a) relates the plaintiff discontinues the action against the other defendants and those defendants consent in writing to the payment out of the money, it may be paid out without an order of the court.

(4) Where a party entitled to money in court is a person in respect of whom a certificate is or has been in force entitling him to legal aid under Part I of the Legal Aid Act 1974, payment shall be made only to that party's solicitor or, if he is no longer represented by a solicitor, to the Law Society.

### **Late acceptance**

5.—(1) If in a case to which rule 3(1) relates the plaintiff fails to give notice of acceptance within the time limited by that rule, he may give notice at any subsequent time before the hearing of the action begins and thereupon, subject to the provisions of this rule, rule 3 shall apply as if the notice had been given within the time so limited.

(2) Paragraph (5)(a) of rule 3 shall not apply but in the circumstances to which that paragraph relates the plaintiff may apply for an order for the costs incurred by him before the receipt of the notice of payment into court.

(3) Notwithstanding the provisions of rule 4(1) the money in court shall not be paid out without an order of the court.

(4) An application for an order under paragraph (2) or (3) shall be made on notice to the defendant, and on the application the court may order the plaintiff to pay any costs reasonably incurred by the defendant since the date of payment into court.

### **Payment of hospital expenses**

6. Where in an action or counterclaim for bodily injury arising out of the use of a motor vehicle on a road or in a place to which the public have a right of access—

- (a) the claim for damages includes a sum for hospital expenses, and
- (b) the party against whom the claim is made, or an authorised insurer within the meaning of Part VI of the Road Traffic Act 1972, pays the amount for which he is or may be liable under section 154 of that Act in respect of treatment afforded by a hospital to the person in respect of whom the claim is made,

the party against whom the claim is made shall, within 7 days after the payment is made, give notice of the payment to the proper officer and to every other party to the action.

### **Non-disclosure of payment into court**

7.—(1) Subject to paragraph (2), no statement of the fact that money has been paid into court under rule 1(1)(a) in satisfaction of the plaintiff's cause or causes of action shall be contained in the pleadings or inserted in the documents for the use of the court at the hearing of the action or of any issue as to debt or damages, and no communication of that fact shall be made to the court at any such hearing, until all questions of liability and of the amount of the debt or damages have been decided, but the court shall, in exercising its discretion as to costs, take into account, to such extent, if any, as may be appropriate in the circumstances, both the fact that money has been paid into court and the amount of the payment.

(2) Nothing in paragraph (1) shall apply in relation to an action in which—

- (a) a defence of tender before action is pleaded, or
- (b) all further proceedings are stayed by virtue of rule 3(3) after the hearing has begun, or
- (c) the defence for which section 2 of the Libel Act 1843 provides is pleaded.

### **Counterclaim**

**8.** A plaintiff against whom a counterclaim is made and any other defendant to a counterclaim may pay money into court in accordance with rule 1 and rules 1 to 7 (except rules 2(2) and 3(4) and (6)) shall apply accordingly with the necessary modifications.

### **Money paid into court under order**

**9.—(1)** Subject to paragraph (2), money paid into court under an order shall not be paid out except in pursuance of an order of the court.

(2) Unless the court otherwise orders, a party who has paid money into court in pursuance of an order made under Order 9, rule 14, or Order 13, rule 1(8)(c), or Order 37, rule 8(1)—

- (a) may by notice to the proper officer and to every other party appropriate the whole or any part of the money and any additional payment, if necessary, to any particular claim made by the other party and specified in the notice, or
- (b) if he pleads a tender, may by his defence appropriate the whole or part of the money as payment into court of the money alleged to be tendered;

and money appropriated in accordance with this rule shall be deemed to be money paid into court in accordance with rule 1 or money paid into court with a plea of tender, as the case may be, and this Order shall apply accordingly.