

slander, malicious arrest or prosecution, criminal conversation, or debauching of the plaintiff's daughter or servant, may pay money into Court. This section is a copy of section 21 of Stat. 3 & 4 W. 4, c. 42, except that the latter requires the leave of Court or of a judge for the payment. The Rules of Court in England require that such payment shall in all cases be pleaded, and the same practice appears to be required here by the letter of sec. 20,^{31a} which is substantially a copy of a rule of Trinity Term, 1 Vict., with this difference, however, that the Code seems to contemplate that the plaintiff may turn out not to be entitled to the whole sum paid into Court, if he refuse to take it out in full discharge of the action, the words being, "that the plaintiff may reply that the sum paid into Court is not enough to satisfy the claim of the plaintiff in respect of the matter to which the plea is pleaded; and in the event of an issue thereon being found for the defendant, the defendant shall be entitled to his costs of suit,³² and the plaintiff to so much of the sum paid into Court as shall be found for him;" on which it may possibly be contended, that it is the business of the jury not only to find the precise issue whether the sum paid into Court is enough to satisfy the plaintiff's claim, but also to find whether the plaintiff is entitled to anything, and how much.³³ The English

court on account of either or all of said causes of action. Code 1911, Art. 75, secs. 20, 21.

A plea of tender must be accompanied by a *proferet in curia*. *Soper v. Jones*, 56 Md. 503; *Bonaparte v. Thayer*, 95 Md. 556. And payment into court under these sections is a species of tender. *Gamble v. Sentman*, 68 Md. 75. In this case defendant pleaded tender as to part of plaintiff's claim, and brought that sum, \$160.00, into court. Plaintiff replied that the sum tendered was not enough, &c. The jury rendered a sealed verdict for the plaintiff for \$160.00 without stating (as they should have done) whether it was for the sum paid in or not. It was held that the true meaning of the verdict was that the plaintiff was entitled to the sum paid into court and no more, and that judgment should, under the statute, have been entered for the defendant with costs taxed in his favor.

^{31a} See note 31 *supra*.

³² *Gamble v. Sentman*, 68 Md. 77; *Palatine Ins. Co. v. O'Brien*, 109 Md. 112; *Crook v. Ins. Co.*, 112 Md. 284.

³³ **Effect of plea of tender and payment into court.**—In *Palatine Ins. Co. v. O'Brien*, 107 Md. 352, it was held that the effect of pleas of tender and of payment into court under these sections was to admit the liability of the defendant and that the issue was merely as to the extent of the liability. The court in its opinion, after quoting from the earlier case of *Gamble v. Sentman*, 68 Md. 71, says: "the concluding paragraph of the law as above quoted, plainly indicates that where the plaintiff replies that the money paid in is not enough to satisfy his claim, it is the duty of the court to hold on to the money until the issue on that replication is decided, and then to pay over to the plaintiff *only so much of it as the jury may find to be due him*," (the italics are the writer's). In a subsequent appeal in the same case, however, where the verdict of the jury was for the exact sum paid in, it seems to have been held that payment into court estops the defendant from afterwards denying that the sum paid in is due. *Palatine Ins. Co. v. O'Brien*, 109 Md. 100. Cf. *McCullough v. Hellweg*, 67 Md. 276.