If then, we apply the doctrine already stated, where written instruments pleaded as releases, have been construed by the courts, we cannot perceive that the arrangements made by the plaintiff with the defendants, is without the rule.

To give it all the weight to which it is justly entitled, it must be determined upon the same principles which control every similar case, however formal may be the evidence to establish the facts.

The result of our investigation has led us all to conclude that neither the entry on the record dismissing three of the defendants from the action, or the arrangement with the parties, which preceded that entry, and on which the agreement to dismiss was founded, can be regarded as a discharge in law of the defendants who still remain on the record.

1st. Because they are not technical releases in writing sealed by the proper party.

2nd. That if they could be construed as implying an agreement not to sue, they can avail only to the defendants with whom they were made, and cannot operate for the benefit of the defendants who set up the facts in discharge of the plaintiff's action against them

3rd. That the entry referred to dismisses the defendants only from the action, without reference to their co-defendants. It was the privilege of the plaintiff to have entered a *nol. pros.* or discontinuance as to any one or more of the defendants, and the dismissal in the case before us but produces the same result.

The plaintiff might have sued either of the defendants, or all, and as it would be no ground of defence that other parties were not joined, it must follow, the remaining defendants in the suit have no cause of complaint.

4th. That the intention of the parties, as expressed when the arrangement was made and proved by the witnesses, must be taken to qualify the agreement, and thus establish its true character, and we believe it was merely to decline to prosecute further the defendants who were dismissed, and nothing more.

Neither do the facts we have alluded to prove an accord and satisfaction, as it must be admitted, if they did, it would have the same effect as a technical release, nor do they contain the ordinary elements of what the law regards as necessary to constitute such a bar.

We have been secially referred to the case of *Ellis* v. *Bitzer*, already quoted, to change or modify the rule we have stated, but it does not, we think, conflict with the leading principle which we suppose governs all similar cases. The courts do not there assume any new rule of interpretation, or attempt to extend the operation of that which has hitherto been received, and acted on in the trial of causes, and we find nothing inconsistent, therefore, with the conclusion to which we have arrived.

Nor do we doubt, although there may be found individual judgments against joint tresspassers, the plaintiff can have but have but one satisfaction; he must elect which of the judgments he will enforce, on the same principle, were there may be different findings by the same verdict when all the trespassers are sued, the successful party must choose "*de melioribus damnis*"—he cannot claim to collect all. It follows, then, if the damages are satisfied in part, by payment or compromise whith some of the defendants, the plaintiff may still proceed against those who remain on the record, and we hold it was the duty of the judge who tried the cause at special term, to have instructed the jury as he did, to deduct in their finding whatever sum the plaintiff has already received on account of his alleged injures, from the parties who were afterwards dismissed.

This was the just application of the rule that there cannot be a double remuneration for the same wrong.

This is very distinctly stated by Upham, J., in *Snow* v. *Chandler*, 10 N. H. 95. It is, he says, that "the sum paid was not received in satisfaction of the damages, but only in part satisfaction, and the fact that it was coupled whith an engagement not to sue, does not alter the case. But to the extent of the amount paid, the defendant may avail himself of the arrangement." See also *Merchants' Bank* v. *Curtis*, 37 Barb. 320.

We have thus traced the principle, familiar as it is, that determines this case to its source, and followed down the course of decisions to the present time, not that there was any novelty in the rule, but that we might satisfactorily determine what in reality was a legal bar to this action, and although the examination of the numerous cases, both ancient and modern, has convinced us that the old mazim "*Melius est petere fontes, quam sectari rivulos*," has not always been regarded by the courts, we find no difficulty in arriving at the result we have reached. Not only upon the law as we hold it to be, but on the facts proved, we are all of opinion that the motion for a new trial should be overruled, and judgment entered on the verdict.—*Am. Law Register.*

GENERAL CORRESPONDENCE.

Mortgages by Married Women—Power of Sale.

To the Editors of the Law Journal.

Gentlemen,—Suppose a married woman owns real estate, and with her husband duly mortgages the same; suppose further, that among the covenants and clauses in said mortgage there is the usual power of sale clause. In the event of default being made in payment, can such mortgaged premises be sold under such power of sale?

Does not cap. 85, Con. Stat. U. C., merely enable a married woman, upon certain formalities being observed to convey her lands? But does the act also enable her to give to her mortgagee, the power, upon nonpayment of the mortgage, to convey her lands for the purpose of paying his claims &c., on such real estate? See *Graham* v. *Jackson*, 6 Q.B., 811 and 2nd edition of Darts Vend. & Pur., 297 & 298.

I have lately noticed in investigating titles, that several sales under the sanction and advice