

Eng. Rep.]

JONES V. BRASSEY AND BALLARD.—REVIEWS.

it was not competent to the plaintiff to bring the second action.

KELLY, C.B.—I am clearly of opinion that this rule must be discharged. Whether we consider this case as a claim made by the plaintiff and denied on the part of the defendant, and without any pleadings at all, upon the facts stated as in a special case, or whether we consider the point as raised upon the pleadings which was reserved at the trial, whether a second action can be brought after a *nolle prosequi* has been entered, under the existing circumstances—in either case it is clear that by law, and in fact upon the merits the plaintiff is entitled to the verdict. The plaintiff brings his action for £133, which it must be taken was due to him, of that sum £65 has been paid, leaving £68 remaining unpaid, and due, and for that latter sum the verdict has been found, and to it, beyond all question, if there were no pleadings, the plaintiff is entitled. But, supposing we proceed, notwithstanding the admission of the parties, to consider the question whether a *nolle prosequi*, entered under the circumstances of this case, is a bar to that claim of £68, how stands the case? Dived of all the legal technicalities and expressions it amounts simply to this: The plaintiff brought an action and delivered particulars for £278, admitting the payment of a certain portion of that sum, and leaving a balance due of £133. I dismiss the fractional parts. He claimed, therefore, £133 for work and labour, and to that the defendant pleaded, admitting £65 to be due, and for that amount judgment was suffered by default, and the £65 was paid. With regard to the residue, the defendant denied that he owed it; and, if the parties had proceeded to trial, the plaintiff, notwithstanding the pleas of never indebted, and payment, would no doubt have recovered the £68 also, the defendant being indebted in and never having paid that amount. But, instead of that, and it is immaterial from what cause, the plaintiff took the £65, for which the defendant suffered judgment by default, and taxed and obtained his costs; and with regard to the remaining £68 he entered a *nolle prosequi*. Upon that, the defendant (whether or not he availed himself of his legal rights I do not know), was undoubtedly entitled to tax his costs of the action, so far as regarded the portion of them relating to the £68, and to have judgment for, and to obtain payment of, such costs from the plaintiff. It is quite immaterial whether he did so or not, and if he has not done so it is his own fault. But, that action being thus at an end, there being judgment by default for £65, and a *nolle prosequi* as to the remaining £68, the plaintiff now brings a second action for £68. The question, and the only question, is, whether the *nolle prosequi* supports and proves the plea of judgment recovered? I think it does not. It is not a judgment recovered. There is, in one sense, a judgment recovered upon a *nolle prosequi*, entitling the defendant to his costs upon the plea, but it is not such a judgment as precludes the plaintiff, in point of law, from bringing another action for the £68. All the authorities are to that effect without any exception or qualification. The only exception existing to that rule of law is, where the *nolle prosequi* is entered after final

judgment in the first action, and then it has no effect enabling the plaintiff to bring a second action. Where a *nolle prosequi* is entered before final judgment in the first action, there is nothing to prevent a plaintiff from bringing a further action. Here he has brought his action for this balance of £68 and the *nolle prosequi* does not preclude him from recovering it. But if it did, it is not a judgment recovered so as to support this plea; and, upon this ground, the plaintiff is clearly entitled to the verdict, and the defendant's rule must therefore be discharged.

(To be continued.)

REVIEWS.

INDEX TO PRECEDENTS IN CONVEYANCING, AND TO COMMON AND COMMERCIAL FORMS; arranged in Alphabetical Order; with Sub-Divisions of an Analytical Nature. By Walter Arthur Coppinger, Esq., of the Middle Temple, Barrister-at-Law. London: Stevens & Haynes, Law Publishers, Bell Yard, Temple Bar, 1872.

Mr. Coppinger is not unknown to the profession. Some time since, he introduced himself into the company of legal authors as the author of the law of copyright in works of literature and art. His introduction was a respectable one, and his present compilation adds to his reputation as a laborious, painstaking, and accurate worker.

On the title page of his new work we find copied Dr. Johnson's appropriate aphorism, "Knowledge is of two kinds, we know a subject ourselves or we know where we can find information upon it." It is with the latter kind of knowledge that lawyers are principally concerned. Although every man is supposed to know the law, no man can with truth be said to know all the law; and the lawyer is fortunate who knows at all times "where to find the law."

What we understand by the law is a huge collection of statutes and decided cases, year by year assuming more gigantic proportions. With its increase in dimensions the necessity increases for such works as the one now before us. The idea is by no means a novel one. We have before us at present "A General Index to the Precedents in Civil and Criminal Pleading, applicable to the present practice in every ancient and modern collection, including also the precedents in the Books of Reports, from the earliest period to Easter Term, 3 Geo. IV. By Charles Petersdorff, Esq., of the Inner Temple. London: S. Brooke, Paternoster Row, 1822." Old as it is, we have