is upon nonsuit; and, as my brother Channell has just observed, the judgment must be understood to be the act of the court. Then there is another effect which no doubt a *nolle prosequi* may in some cases have, as pointed out by Tindal, C. J., in the case of *Bowden* v. *Horne*, (7 Bing. 716,) namely, where the plaintiff, having accepied a less sum than he originally sued for, and obtained judgment, afterwards enters a *nolle prosequi* as to that for which he did not obtain judgment, and then brings another action—there, as the Lord Chief Justice points out, a *nolle prosequi* as to part, entered up after judgment for the whole, is oquivalent to a *retraxit*, and a bar to any future action for the same cause. What, then, is the defendant's answer to the present action? Mr. Powell has cited the case nf *Lord Bagot* v. *Williams* (3 B. & C. 275); but, if he had read the judgment of Bayley, J. in that case, he would have found that the facts amounted there, not to a *nolle prosequi* of a part of the plaintiff's claim, but to a mode of taking the judgment of the court, or of the person to whom it was delegated by the court to ascertain what the plaintiff was entitled to, in respect of that for which his action was brought, That was done in this way. The steward who succeeded to the defendant, was called as a witness; the accounts were invectigated; and then, upon that investigation, an action was directed to be brought for 4000*l.*, and judgment having passed by default, the plaintiff verified for 400*l.* only, because the defendant had not any property in value exceeding that sum. Upon the mode of verifying, Bayley, J. says this: "It was held that the judgment in that action was no bar to his recovering is a subsequent action for goods sold. In this case Lord Bagot, at the time when the first action was commenced, had a demand on the defendant, not for one specific sum of money, but for different sums of money received by the defendant on his account, from different persons, and at different times. His agent knew that he had claims in respect of all the sums now claimed, except 46*l*, and, having that knowledge, he formed an opinion that 3400*l*, was the whole sum which Lord Bagot ought to claim; and if he acted upon that opinion, it is much the same thing as a plaintiff, in a cause at *Nisi Prius*, having a demand of 60*l.*, consisting of three sums of 20*l.*, which became due to him at different times, consented to take a verdict for 40*l.* If the jury, in such a case, at the suggestion of the plaintiff, reduced the verdict to 40*l.*, he would be bound by it, and could not afterwards bring a second action for the other 20*l.* It seems to me thot he is equally bound by his own act in this case as he would have been by the verdict of a jury in the other, and that, having chosen to abandon his claim once, he has done it for ever." Bayley, J. also says that the case of *Seddon and others* v. *Tutop* in 6 Term Rep. 607, which had been cited in argument, was distinguishable from the case of *Bagot* v. *Williams*, and he adds that "The ground of the decision in that case was, that no evidence had been given, in the first action, on the count for goods sold and delivered, but that the plaintiff recovered a verdict merely on the count for the promissory note; and it was held that the judgmeat in that action was no bar to his recovering in a subsequent action for goods sold," The case of *Lord Bagot* v. *Williams* is in fact against the present defendant. Upon the whole matter, it seems to me that the ease is plain, ood that the rule should be discharged.

Rule discharged.

UNITED STATES REPORTS.

McClure v. The Philadelphia, Wilmington, and Baltimore Railroad Co.*

Contract between Railroad Company and Passenger—Right of Conductor to put off a Passenger refusing to pay his fare—Agency.

M. on the first of May, purchased a through ticket from N. Y. to B. over the P. W. & B. R. R., and on that day took the through train. The conductor of the train took up the ticket and gave M. a "conductor's check," with the words "good for this day and train only," and with the numerals 5 and 1, showing the month and day, punched out of the "check." M. desiring to leave the train at a way station inquired of some one at the window of the company's ticket office at the station, if the "check" would take him to B. on another train and day, and was told that it "was good till taken up." On the 6th of May, M. entered another train going to B., and being called upon for his ticket, offered the "check." The conductor refused to receive the "check," and M. having refused to pay fare, the train was stopped at a point intermediate between two stations, and, by direction of the conductor, M. left the train.

Held: 1. That M. had no right to leave the train at the way-station, and afteward to enter another train and proceed to his original point of destination without procuring another ticket, or paying his fare.

2 That on the refusal of M. to pay his fare, the conductor had the right to put him off the train, using no more force than was necessary to affect his removal, and was under no obligation to put him off at a station.

3. That even if the person by whom M. was told that the "check" was good until taken up was an agent of the company, the presumption is, that a ticket agent at a way-station has no authority to change or modify contracts between the company and through passengers, and the *onus* of rebutting this presumption rested on M.

Appeal from the superior court of Baltimore city.

The facts are given in the opinion of the court.

At the trial below, the plaintiff ordered the following prayers:

1. Even should the jury find from the evidence that the conductor of the train in question had a right, under the regulations of the company and the contract made with the plaintiff, should they find such contract, to put the plaintiff off the train in question, the plaintiff is entitled to recover, if they find that in so doing, he acted in an unwarrantable manner, as to time or place or mode thereof.

2. That even should the jury find from the evidence that the plaintiff would have been confined, by the terms of his ticket, to the particular train on which he then was, still, if they further find that before leaving said train, the plaintiff as a matter of precaution, inquired of an authorized agent of the company whether he would be permitted to lie over under the check he then held, and was informed that "he would be," that said check was good until taken up, then the fact of his ticket or check having contained any such instruction would not, of itself, prevent the plaintiff from recovering.

3. Even should the jury find from the evidence that the conductor of the train in question had a

* Court of Appeals of Maryland, to appear in 34 Maryland.