Doogan v. Tyson, 6 G. & J. 453.[4] And imperfect verdicts are not aided by the Act, Gomersall's case, 2 Leon. 196, and see Chapman v. Dixon, 4 H. & J. 527.

Discontinuances.—A discontinuance is either of plea or process. The first is generally where several material things should be pleaded to, and some are omitted.[5] As if the defendant's plea begin with an answer to part and answers no more, this is a discontinuance, and the plaintiff may take judgment by *nil dicit* for what is not answered; but if the plaintiff plead over, the whole action is discontinued, for the reason, that if no answer is given as to one part and the plaintiff plead thereto he cannot have judgment according to his declaration. But during the same term the plaintiff may correct his mistake and take judgment. It is said in Crain v. Yates, 2 H. & G. 332, that where a plea is intended only for a part of the declaration it must not cover the whole, but must ascertain the part to which it is applied, or *the plaintiff may demur*. The rule is laid down in Weeks v. Peach, 1 Salk. 179: if a plea begin with an answer to the whole, and the matter pleaded is, in fact, only an answer to part, the whole plea is naught and the plaintiff may demur; but if the plea begin only as an answer to a part, and in truth is but an answer to part, it is a discontinuance and the plaintiff must take judgment for the part not answered, for if he demur or plead over the whole action is discontinued, and see Mitchell v. Sellman, 5 Md. 376. Art. 75 of the Code gives the form of commencement of pleas, and probably sec 22 [6] of that Article, which provides that it shall not be irregular or erroneous to depart from the forms of pleading there given so as substance is maintained, does not apply to the commencement of a plea. Section 4 [6a] only abolishes formal commencements or conclusions to pleadings as in the old practice. And it should seem that, under these forms, every plea is, unless otherwise expressed, to be assumed as intended to answer the whole declaration, and consequently if it answer only a part, this is no discontinuance, but the plaintiff must demur. In Hughes v. Sellers, 5 H. & J. 432, it was held that a plea, which did not profess to be an answer exclusively to either count, was to be construed most strongly against the defendant, and consequently as a plea to the whole declaration. The plaintiff therefore could not take judgment by *nil dicit* as to a part unanswered, and his demurrer was not a discontinuance. And the general rule is that the defendant shall not take advantage of his own mispleading to defeat the plaintiff's suit, and therefore in Harvey v. Richards, 1 H. Black. 644, recognized in Berresford v. Geddes, 2 L. R. C. P. 285, when in assumpsit on a bill of exchange with the usual money counts, the defendant pleaded *nil debet* to the count on the bill, but did not plead at all to the other counts, and the verdict was for the plaintiff, it was held that the objection was cured by the verdict.

A discontinuance of process is in some respects like a nonsuit, and takes place where the plaintiff either does nothing himself in the suit, or leaves

---

[4] Phillips Co. v. Seymour, 91 U. S. 646.

[5] See Poe's Pleading, sec. 666; Gott v. State, 44 Md. 337; Berresford v. Geddes, L. R. 2 C. P. 285.

[6] Code 1911, Art. 75, sec. 24.

[6a] Code 1911, Art. 75, sec. 4.