

ral, well * established elementary principles by which all Courts of justice, as well those of common law as of equity, are governed. They are merely modifications of the one great fundamental rule, which declares, that in so far, and no farther than there is a cause of complaint can there be any foundation for relief. **258**

This matter is thus explained and exemplified by Lord Coke: "In a plea personal against divers defendants, says he, the one defendant pleads in bar to parcel, or which extendeth only to him that pleadeth it, and the other pleads a plea which goeth to the whole, the plea that goeth to the whole, that is, to both defendants, shall be first tried; and of this opinion was Littleton in our books, for the trial of that goeth to the whole; and the other defendant shall have advantage thereof, for in personal action the discharge of one is the discharge of both. As for example, if one of the defendants in trespass plead a release to himself, which in law extends to both, and the other pleads not guilty, which extends but to himself; or if one plead a plea which excuses himself only, and the other pleads another plea which goeth to the whole, the plea which goeth to the whole shall be first tried; for, if that be found, it maketh an end of all, and the other defendant shall take advantage hereof, because the discharge of one is the discharge of both. But in a plea real it is otherwise; for every tenant may lose his part of the lands. As if a *præcipe* be brought as heir to his father against two, and one plead a plea which extendeth but to himself and the other pleads a plea which extends to both, as bastardy in the demandant, and it is found for him, yet the other issue shall be tried, for he shall not take advantage of the plea of the other, because one joint tenant may lose his part by his misplea." *Co. Litt.* 125.

In an action of trespass for taking certain goods and chattels, against two defendants, the one pleaded a special justification, and the other not guilty; upon both of which pleas issue being joined, a jury was sworn, who found a verdict for the defendant on the special plea, and found the other defendant guilty, and assessed damages and costs. Upon a motion in arrest of judgment it was held, that if the one defendant justifies by the gift of the goods so as to destroy the plaintiff's title, and shews, that he could not have cause of action, which is found accordingly for that defendant, although the other defendant be found guilty, yet no judgment * shall be against him, because it appeared to the Court the plaintiff had no cause of action. *Martin v. Aycliffe*, *Cro. Jac.* 134. **259**

An action of covenant was brought against two for not building a house for the plaintiff according to their covenant; judgment was against one by default; the other pleaded performance, and it was found for him. Whereupon it was moved in arrest of