

shall be against him, because it appeared to the court the plaintiff had no cause of action.(a)

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 judgment, that no judgment nor writ of enquiry of damages could be against him, against whom the judgment was by default; because, although in trespass, one may be guilty and the other not; yet in covenant, debt or other contract where it is joint, the one cannot be convicted without the other; and here by the verdict for one of the defendants, that the covenant was performed, it appeared, that the plaintiff had not any cause of action; and therefore should not have judgment; and so should it be, although the defendant against whom the judgment was by default had confessed the judgment. It was also resolved, that the defendant should have costs on the verdict against the plaintiff, for now it was a verdict against him, and that he should have neither costs nor damages against the other.(b)

In an action of trespass brought by *Biggs* against *Benger & Greenfield* for entering his close and taking away his goods and chattels, judgment was given against *Benger* by default; but *Greenfield* as to the force and arms pleaded not guilty, upon which issue was joined; and as to the entry and taking away of the goods he pleaded, that *Benger* had leased to the plaintiff the close therein mentioned for a certain rent, which being in arrear, he, the defendant *Greenfield*, took the goods as a distress, and thereupon the plaintiff requested and gave him license to sell the goods, and to pay the money arising thereby to the defendant *Benger* in satisfaction of his rent, which was done accordingly. Upon which issue was also joined; and a jury having been sworn to try the issues and assess damages against *Benger*, they found a verdict on the issues for the defendant *Greenfield*, and assessed damages against *Benger*. Upon a motion in arrest of judgment against *Benger* it was held, that this case of a license cannot be distinguished from a gift of goods, or a release which destroys the cause of action as to all the defendants; and therefore the judgment was arrested as to both.(c)

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(a) *Martin v. Ayliffe*, Cro. Jac. 134.—(b) *Porter v. Harris*, 1 Levintz, 63; *Morgan v. Edwards*, 6 Taunt. 394; *Weaver v. Prentice*, 1 Esp. N. P. C. 369.—(c) *Biggs v. Benger*, 2 Ld. Raymd. 1372; 8 Mod. 217.