

Case No. 3,112.

CONNER v. COCKERILL ET AL.

[4 Cranch, C. C. 3.]¹

JUDGMENT AGAINST ONE JOINT DEFENDANT—DAMAGES FOR TORT.

If several damages, be assessed upon a writ of inquiry on a judgment by default, in an action of assault and battery, against two, the plaintiff may enter a nolle prosequi against one and take final judgment against the other.

This was a joint action of assault and battery against the master and mate of a vessel. There was judgment by default, and a writ of inquiry, and several damages assessed, namely, one cent against Cockerill, and—dollars against Gault.

Mr. Neale, for plaintiff, moved for leave to enter a nolle prosequi against Cockerill, and take judgment against Gault.

Mr. Hewitt, for defendants, opposed the motion, and cited *Hill v. Goodchild*, 5 Burrows, 2790.

Mr. Neale cited *Ammonett v. Harris*, 1 Hen. & M. 488; *Mitchell v. Milbank*, 6 Term R. 199; *Miner v. Mechanics' Bank*, 1 Pet. [26 U. S.] 73; 1 *Wheaton's Selwyn*.

THE COURT (nem. con.) was of opinion that the plaintiff had a right to enter a nolle prosequi as to Cockerill, and take judgment against Gault.

¹ [Reported by Hon. William Cranch, Chief Judge.]