disposed of the cause and of the matters in difference separately. The 34l. might have been overpaid upon a general balance of other matters in difference, and the Plaintiff might have been unpaid as to the matter contested in this action, and entitled to the verdict and costs, which he might levy separately: *Highgate Archway Company* v. *Nash* (2 B. & A. 537). If the 34l. was to be taken as overpaid in the action, then there was no adjudication upon the other matters in difference. In *Randall* v. *Randall* (7 East, 81), where various matters were referred to an arbitrator, it was held he must adjudicate upon all.

Andrews Serjt., for the Plaintiff, contended that the award was sufficient, it not appearing that any matters save those in the cause had come before the arbitrator. The award amounted in effect to a finding that the Plaintiff had no cause of action.

[14] The Court took time to consider, and now thought there was sufficient doubt on the face of the award to justify the refusal of an attachment, and to leave the Plaintiff to his remedy by action.

Rule discharged.

PLANCHE *v.* COLBURN AND ANOTHER. Nov. 5, 1831.

[S. C. 1 Moo. & S. 51; 1 L. J. C. P. 7: at Nisi Prius, 5 Car. & P. 58. Discussed, *Prickett* v. *Badger*, 1856, 1 C. B. (N. S.) 304. Adopted, *Inchbald* v. *Western Neilgherry Coffee Company*, 1864, 17 C. B. (N. S.) 740; *Panama and South Pacific Telegraph Company* v. *India-rubber, Gutta-percha and Telegraph Works Company*, 1875, L. R. 10 Ch. 532.]

Defendants engaged Plaintiff to write a treatise for a periodical publication. Plaintiff commenced the treatise, but before he had completed it, the Defendants abandoned the periodical publication: Held, that Plaintiff might sue for compensation, without tendering or delivering the treatise.

The Defendants had commenced a periodical publication, under the name of "The Juvenile Library," and had engaged the Plaintiff to write for it a volume upon Costume and Ancient Armour. The declaration stated, that the Defendant had engaged the Plaintiff for 100l. to write this work for publication in "The Juvenile Library;" and alleged for breach, that though the author wrote a part, and was ready and willing to complete and deliver the whole for insertion in that publication, yet that the Defendants would not publish it there, and refused to pay the Plaintiff the sum of 100l., which they had previously agreed he should receive. There were then the common counts for work and labour.

At the trial before Tindal C. J., Middlesex sittings after last term, it appeared that the Plaintiff, after entering into the engagement stated in the declaration, commenced and completed a considerable portion of the work; performed a journey to inspect a collection of ancient armour, and made drawings therefrom; but never tendered or delivered his performance to the Defendants, they having finally abandoned the publication of "The Juvenile Library," upon the ill success of the early numbers of the work. An attempt was made **[15]** to shew that the Plaintiff had entered into a new contract.

The Chief Justice left it to the jury to say, whether the work had been abandoned by the Defendants, and whether the Plaintiff had entered into any new contract; and a verdict having been found for him, with 50l. damages,

Spankie Serjt. moved to set it aside, on the ground that the Plaintiff could not recover on the special contract, for want of having tendered or delivered the work pursuant to the contract; and he could not resort to the common counts for work and labour, when he was bound by the special contract to deliver the work. If the Plaintiff had delivered the work, or so much of it as he had completed at the time "The Juvenile Library" was abandoned, the Defendants might have turned it to account in some other way.

TINDAL C. J. In this case a contract had been entered into for the publication of a work on Costume and Ancient Armour in "The Juvenile Library." The considerations by which an author is generally actuated in undertaking to write a work are pecuniary profit and literary reputation. Now, it is clear that the latter may be

sacrificed, if an author, who has engaged to write a volume of a popular nature, to be published in a work intended for a juvenile class of readers, should be subject to have his writings published as a separate and distinct work, and therefore liable to be judged of by more severe rules than would be applied to a familiar work intended merely for children. The fact was, that the Defendants not only suspended, but actually put an end to, "The Juvenile Library;" they had broken their contract with the Plaintiff; and an attempt was made, but quite unsuccessfully, to shew that the Plaintiff **[16]** had afterwards entered into a new contract to allow them to publish his book as a separate work.

I agree that, when a special contract is in existence and open, the Plaintiff cannot sue on a quantum meruit: part of the question here, therefore, was, whether the contract did exist or not. It distinctly appeared that the work was finally abandoned; and the jury found that no new contract had been entered into. Under these circumstances the Plaintiff ought not to lose the fruit of his labour; and there is no ground for the application which has been made.

GASELEE J. concurred.

BOSANQUET J. The Plaintiff is entitled to retain his verdict. The jury have found that the contract was abandoned; but it is said that the Plaintiff ought to have tendered or delivered the work. It was part of the contract, however, that the work should be published in a particular shape; and if it had been delivered after the abandonment of the original design, it might have been published in a way not consistent with the Plaintiff's reputation, or not at all.

ALDERSON J. concurred, and the learned Serjeant

Took nothing.

[17] COBBETT AND OTHERS, Assignees of Baker, a Bankrupt, *v.* COCHRANE. Nov. 10, 1831.

Plaintiffs declared as assignees, but assigned a breach in nonpayment to them, assignees as aforesaid, instead of as assignees as aforesaid: Held, sufficient on special demurrer.

The Plaintiffs declared, as assignees of the bankrupt Baker, for the amount of goods sold by him to Defendant; and alleged as a breach, that the Defendant had not paid Baker or the Plaintiffs, "assignees as aforesaid."

Demurrer, that the damage was not alleged to have accrued to the Plaintiffs, as assignees as aforesaid, and that the Plaintiffs had shewn no cause of action in any other character.

Merewether Serjt. in support of the demurrer, referred to *Bridgen* v. *Parkes* (2 B. & P. 424), and *Henshall* v. *Roberts* (5 East, R. 150). But

The Court thought there was nothing in the objection, for the words "assignees as aforesaid" might be rejected as surplusage.

Judgment for Plaintiffs.

[18] BOOTY, *Demandant;* CAMERON, Tenant; NORTH, AND THREE OTHERS, Vouchees. Nov. 11, 1831.

In this recovery there were four vouchees, three of whom appeared in court; the fourth, who resided in Jamaica, had executed a warrant, in which he was the only vouchee named.

The officer of the Court, thinking that all four ought to have been named in that warrant, otherwise it did not appear to be the same recovery,

Taddy Serjt. moved that the recovery might pass, contending that the warrant was sufficient, as not being incompatible with a recovery in which four were vouched, and referred to *Simons and Three Others, Vouchees* (11 B. Moore, 485), as an authority in point.

The Court thought the warrant was not in the regular form, but on the authority of the case referred to, acceded to the application.

Fiat.