

be competent, is to show an extinguishment of the plaintiff's right of action; and we infer that was the only purpose for which it was offered. For that purpose, it was not admissible on the pleadings on which the case was tried. Matter of defence arising after the commencement of an action cannot be proved in bar of the action on the general issue, but must be pleaded specially. *Bailey v. March*, 2 N. H. 522, 524; *P. Bank v. Brackett*, 4 N. H. 557; *Parke v. Ingram*, 22 N. H. 283, 296; *Williams v. Tappan*, 23 N. H. 385, 394, 395; *Dana v. Sessions*, 46 N. H. 509; 1 Ch. Pl. 657.

*Judgment on the verdict.*

STANLEY, J., did not sit.

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STATE v. FROST.

The mere fact that witnesses come from Massachusetts upon a party's request, and are summoned after their arrival without any understanding that they are to have the double fees without the payment of which they cannot be required to come, does not make such fees taxable costs.

In criminal cases, costs are taxed as in civil cases; but such part of extraordinary expenses incurred in the course of a trial is allowed in the bill of costs as the court at the trial term deem reasonable.

INDICTMENT, for selling intoxicating liquor. The defendant having been sentenced to pay a fine and the costs of prosecution, the question was reserved whether the costs should include double fees for witnesses who came from Massachusetts at the request of the state, and were summoned after their arrival.

*The Attorney-General*, and *Burns*, solicitor, for the state.

*Sulloway*, for the defendant.

DOE, C. J. The witnesses would have been entitled to double fees if they had been summoned in Massachusetts in accordance with the statute of that state. If they waived a compliance with that statute upon a promise of double fees, the promise should be performed. But they might waive the duplication of fees as well as the form of procedure: and the mere fact that they came upon request, and were summoned after their arrival without any understanding that they were to have double fees, would not make such fees taxable costs. In criminal cases, costs are taxed as in civil cases; but such part of

extraordinary expenses incurred in the course of a trial is allowed in the bill of costs as the court at the trial term deem reasonable. Gen. St., c. 250, s. 2.

*Case discharged.*

ALLEN, J., did not sit.

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GRAY, *Adm'x*, v. SPALDING.

There is no common-law liability to support needy parents.

The statute empowering a town, that performs its duty of relieving such parents, to enforce the statutory liability of the children, does not authorize a volunteer to enforce it.

ASSUMPSIT. The court reserved the question whether the defendant could be held liable if the facts were that his mother stood in need of relief, the defendant, being of sufficient ability, neglected and refused to maintain her, the plaintiff's intestate supplied her with necessaries, and there was no actual request of the defendant to furnish them, and no understanding that they might be furnished on his credit, or that he would pay for them.

*Atherton*, for the plaintiff.

*Stevens & Parker*, for the defendant.

DOE, C. J. There is no common-law liability to support needy parents. From the natural duty of supporting them, a request to supply them with necessaries cannot be implied. *Lebanon v. Griffin*, 45 N. H. 558. Persons of sufficient ability are, by statute, liable to maintain their parents when standing in need of relief. But the statute empowering a town, that performs its duty of relieving such parents, to enforce the liability of the children, does not authorize a volunteer to enforce it. Gen. St., c. 74, ss. 1, 8, 9, 10. In the case supposed in the reserved question, the defendant would not be liable.

*Case discharged.*

STANLEY, J., did not sit.