

ALVIN STOW *versus* EBENEZER SCRIBNER.

In trespass for killing a mare of the plaintiff, the defendant cannot be admitted to prove, under the general issue, that the blow, which caused the death of the mare, was given in self defence.

TRESPASS, for killing a mare of the plaintiff.

On the trial here, November term, 1831, upon the general issue, the defence was, that the blow, which caused the wound whereof the mare died, was given, by the defendant, in defending himself against an attack made upon him by the mare. On the part of the plaintiff, it was objected that this defence was not admissible, under the general issue, without a brief statement, filed according to the statute; but it was admitted, and the jury, having found for the defendant, the plaintiff moved for a new trial.

Bellows, in support of the motion. In trespass, few matters of defence can be given in evidence under the general issue. When the act at common law, *prima facie* appears to be a trespass, any matter of justification or excuse must be, in general, specially pleaded. 1 Chitty's Pl. 492; 1 Saunders, 298, note 1.

In this case the blow given to the mare was, *prima facie*, a trespass, and, if the defendant had any thing to justify the blow, he was bound to plead it.

Hinds, for the defendant.

By the Court. The motion in this case must prevail. Matters which do not directly contradict that which a plaintiff is bound to prove, in an action of trespass, under the general issue, but which show, collaterally, that the action is not maintainable, must be specially pleaded, or a brief statement of the matters must be filed under the statute.

3 Starkie's Ev. 1462; 1 Chitty's Pl. 491—493; 8 East, 394, *Welch v. Nash*.

Stow
v.
Scribner.

New trial granted.

RUTH CASS *versus* SAMUEL MARTIN.

A widow may be entitled to dower in a right in equity to redeem lands mortgaged.

But she can maintain no writ of dower against any person, who, having the right to redeem, has actually redeemed the land, until she has contributed her due portion of the mortgage debt, according to the value of her life estate.

This was a writ of dower, and was tried here, at November term, 1831, and a verdict taken, by consent, for the tenant, subject to the opinion of the court, upon the following case.

E. Webster, being owner of the premises, in which the said Ruth now claims her dower, on the 12th November, 1820, conveyed the same to B. Cass, then the husband of the demandant, in fee; and, at the same time, the said Cass reconveyed the same premises to Webster, in fee and in mortgage. Cass immediately entered and continued to reside upon the premises until April, 1823, when he died.

On the 3d June, 1823, Samuel Crosby was duly appointed administrator of the said Cass' estate, and, by deed, dated April 29, 1825, in which it was recited that the conveyance was made by virtue of a licence from the judge of probate, conveyed, to the tenant, all the right which the said Cass had, to redeem the land. The tenant then paid to Webster, the amount due upon the mortgage.

It did not appear that the demandant had ever con-