

Hillsborough, }
Dec. 3, 1907. }

CHABOT v. DAVIS.

One who pleads self-defence to an action of trespass for assault is only required to show that his acts apparently were reasonably necessary to repel the plaintiff's attack.

TRESPASS, for assault. Defence, justification on the ground of self-defence against an attack by the plaintiff. Trial by jury and verdict for the defendant. Transferred from the May term, 1907, of the superior court by *Peaslee, J.* The plaintiff excepted to a refusal to charge the jury as follows: To sustain a plea of self-defence, the defendant must show either that he retreated to avoid the encounter, or that retreat was impossible or was attended with great danger.

Osgood & Osgood, for the plaintiff.

George A. Wagner, for the defendant.

CHASE, J. Whether, if the defendant had killed the plaintiff and this action was an indictment for the homicide, the charge requested would be proper (4 Bl. Com. 184, 185; 2 Bish. Cr. Law, s. 548, *et seq.*) need not be considered; but that the plaintiff was not entitled to the charge in the present action is elementary law. It was one of the defendant's "natural, essential, and inherent" rights to do whatever apparently was reasonably necessary to be done, to repel the plaintiff's attack. *Dole v. Erskine*, 35 N. H. 503; *Towle v. Blake*, 48 N. H. 92; *Aldrich v. Wright*, 53 N. H. 398. Whether his acts were within the requirements of reasonable necessity, under the circumstances, was a question of fact, which presumably was properly submitted to the jury for decision.

Exception overruled.

All concurred.