

reply it, and on issue joined damages will abide the event. In *Watson v. Watson*, 10 C. B. 3, the tenant pleaded *tout temps prist*, the demandant replied a demand and refusal to assign dower before suing out the writ, the tenant *traversed the demand*, and the issue being found for the widow she was held entitled to damages from the death of her husband. The case is also authority that the demand of dower need not be made by the widow *personally*, nor in the presence of witnesses; Maule J. observing that the authorities show how a demand may properly be made, but not that a valid demand may not be made otherwise. An express refusal to assign dower is not required to entitle the widow to damages, see *Corsellis v. Corsellis*, Bull. N. P. 117. And the demandant is entitled to damages, even if the heir succeeds on the issue, from the *teste* of the original to the execution of the writ of inquiry, Bull. N. P. 117. Although damages cannot be recovered at law against the alienee of the husband, yet they may against the alienee of the heir, after the husband's death. As such an alienee cannot shew that he was in possession of the estate during the whole period from the husband's death, and therefore that he was able to assign dower during that time, he cannot avail himself of the plea *tout temps prist*, Co. Litt. 33 a.

In *Sellman v. Bowen*, 8 G. & J. 50, it was expressly decided that mesne profits as damages are given by the Statute without restriction as to time. Consequently limitations are no bar to the widow's claim at law.¹

Costs at law.—Costs are given by the Statute of Gloucester (6 E. 1, c. 1) where damages are given on a verdict in dower. In England the rule is said to be that, if no damages are given, the demandant, though recovering her dower, must pay her own costs. With us, however, costs follow the judgment, as in other cases.² In *Keefer v. Marker*, 2 H. & J. 55, n. a, where there was a demurrer to the declaration, judgment was given for damages and costs. And so are the forms in 2 Harris' Ent. 201 *et 23 seq. In *Sellman v. Bowen*, Oct. 1831, Balto. County Court, the widow recovered judgment for dower against the alienee of her husband and costs.

In equity.—But now where the widow is driven to sue for her dower she generally proceeds by bill in equity. The doctrine has been that where the right was not disputed, Chancery would assume a concurrent jurisdiction with the Courts of Law in the assignment of dower, 1 Story Eq. secs. 624, 625, 632. But if there were any doubt as to the legal right to dower, as if the husband's title to the land were denied or the like, it was necessary to make it out at law, and the practice in Maryland accordingly was to retain the bill for a reasonable time, until the widow's right at law should be established, *Wells v. Beall*, 2 G. & J. 468; *Sellman v. Bowen*, 8 G. & J. 50; *Scott v. Crawford*, 11 G. & J. 365. But now the Code, Art. 16, sec. 30,³ (Act 1840, ch. 98,) provides that the several Courts of Equity shall have full concurrent jurisdiction with the Courts of Law in all claims for dower, and shall have power to try all questions of law which may arise in such cases, and give as full relief in any case as the complainant could have

¹ *Mitchell v. Farrish*, 69 Md. 235, 241; *Williams v. Thomas*, (1909) 1 Ch. 713; note 39 to 21 Jac. 1 c. 16.

² *Grove v. Todd*, 45 Md. 252.

³ Code 1911, Art. 16, sec 42.