permitted, by way of plea, to aver, that he ought not to be compelled to answer, as called upon in relation to any particular matter, and at the same time to put his defence, as to the same matter, into the form of such an answer as the bill calls for. Hence if a defendant answers to any thing as to which he has pleaded, he thereby overrules his plea; for his plea is only why he should not answer, so that if he answers he waives his plea to the same matter. The same principle is equally applicable to demurring and answering, and to demurring and pleading to the same part. *Gilb. For. Rom.* 58; *Mitf. Tr.* 320; *Beams' Pl. Equ.* 39. The plea of these defendants must, therefore, be totally rejected; as being overruled by the subsequent answer, covering exactly the same matter; and I have the less hesitation in thus striking it out, because it is evident, from the answer, that nothing at all necessary to the sound merits of the defence will be lost.

But in the answer itself, of these defendants, there are matters which may be safely banished from it without in the least enfeebling the force of the defence. That which is related of the matter of the bill, filed on the 17th of February, 1813, by this plaintiff and John P. Paca; what is said about the letter, and the conveyances from John E. Howard to the late Samuel Chase; what is related of the late Samuel Chase's intentions to make advancements of property to his children, and the allegations respecting the rough draft of his will, with some other particulars of less note, cannot certainly be at all material to the defence. I shall, therefore, lay them aside, as in no way necessary to the present matter in controversy.

* The defence rests on the following grounds:—first, that the plaintiff has heretofore sued for dower in this property, **218** and by the final termination of those suits her claim, if she ever had any, has been fully released or barred; secondly, that if she has not been thus solemnly barred, she is not in law dowable of this property, because her late husband never had a fee simple estate therein, but held only a mere equitable interest, as a mortgagee to secure the payment of money lent by him; thirdly, supposing these objections removed, that still her claim can be carried no further back than to the 26th of February, 1821, when the lease to Bryden and her relinquishment of dower up to that period expired; and lastly, supposing her claim to be valid, that yet the two-thirds of this property, belonging to these defendants, can neither be sold nor sequestered as a means of satisfying the amount of the rents and profits, which may be decreed to her. These are the great points of defence. The nature and validity of each of which must now be carefully considered and determined.

With regard to the first point. The defendants Samuel, Matilda, and Ann claim this property, called the Fountain Inn, and allege, that the plaintiff has released, or is barred of dower therein, by