

the charge was defective in point of law on several grounds, and in discussing this question in his opinion he says :

" The court, several times in its charge, raised or suggested the inquiry whether Beard was in the lawful pursuit of his business, that is, doing what he had a right to do, when, after returning home in the afternoon, he went from his dwelling house to a part of his premises near the orchard fence, just outside of which his wife and the Jones brothers were engaged in a dispute—the former endeavouring to prevent the cow from being taken away, the latter trying to drive it off the premises. Was he not doing what he had the legal right to do, when, keeping within his own premises and near his dwelling, he joined his wife, who was in dispute with others, one of whom, as he had been informed, had already threatened to take the cow away or kill him ? We have no hesitation in answering this question in the affirmative,

. . . In our opinion, the court below erred in holding that the accused, while on his premises, outside of his dwelling house, was under a legal duty to get out of the way, if he could, of his assailant, who, according to one view of the evidence, had threatened to kill the defendant, in execution of that purpose had armed himself with a deadly weapon, with that weapon concealed upon his person went to the defendant's premises, despite the warning of the latter to keep away, and by word and act indicated his purpose to attack the accused.

" The defendant was where he had the right to be when the deceased advanced upon him in a threatening manner and with a deadly weapon ; and if the accused did not provoke the assault, and had at the time reasonable grounds to believe, and in good faith believed, that the deceased intended to take his life or to do him great bodily harm, he was not obliged to retreat, nor to consider whether he could safely retreat, but was entitled to stand his ground and meet any attack made upon him with a deadly weapon, in such way and with such force as, under all the circumstances, he at the moment honestly believed, and had reasonable grounds to believe, was necessary to save his own life or to protect himself from great bodily injury.

" As the proceedings below were not conducted in accordance with these principles, the judgment must be reversed and the cause remanded, with directions to grant a new trial."—*Albany Law Journal.*