

**REPORT OF THE LATE IMPORTANT TRIAL IN THE
COURT OF KING'S BENCH, IN WHICH SIR
CHARLES MERRIK BURRELL, BRAT. WAS
PLAINTIFF, AND HENRY JOHN NICHOLSON,
THE DEFENDANT; RESPECTING THE PAROCHIAL
RATES CLAIMED BY THE PARISH OF ST.
MARGARET, WESTMINSTER**

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Report of the Late Important Trial in the Court of King's Bench, in Which Sir Charles Merrik Burrell, Brat. Was Plaintiff, and Henry John Nicholson, the Defendant; Respecting the Parochial Rates Claimed by the Parish of St. Margaret, Westminster by The Court of King's Bench

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THE COURT OF KING'S BENCH

**REPORT OF THE LATE IMPORTANT TRIAL IN THE
COURT OF KING'S BENCH, IN WHICH SIR
CHARLES MERRIK BURRELL, BRAT. WAS
PLAINTIFF, AND HENRY JOHN NICHOLSON,
THE DEFENDANT; RESPECTING THE PAROCHIAL
RATES CLAIMED BY THE PARISH OF ST.
MARGARET, WESTMINSTER**

REPORT
OF THE LATE
IMPORTANT TRIAL
IN
THE COURT OF KING'S BENCH,
IN WHICH
SIR CHARLES MERRIK BURRELL, BART.
WAS PLAINTIFF,
AND
HENRY JOHN NICHOLSON,
THE DEFENDANT;
RESPECTING
THE PAROCHIAL RATES
CLAIMED BY THE
PARISH OF ST. MARGARET, WESTMINSTER,
FROM THE
INHABITANTS OF RICHMOND TERRACE.

Tried before the Right Hon. Sir Thomas Denman, Knt., C. J., and a Special Jury at Westminster Hall, on Monday, the 9th of December, 1833.

TAKEN IN SHORT HAND BY MR. FRANCIS N. WALSH.

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1834.

CORRIGENDA.

P. 44, last line but three—instead of "*answer of the record,*" read "*uses of the recovery.*"



In the Court of King's Bench.

BURRELL, BART. v. NICHOLSON.

Counsel for Plaintiff.

SIR JAMES SCARLETT, Knt.
Mr. FOLLETT.
Mr. W. H. WATSON.

Counsel for Defendant.

Sir J. CAMPBELL, Knt. S. G.
Mr. JOHN WILLIAMS.
Mr. JOHN JERVIS.
Mr. TIDD PRATT.

Attornies for Plaintiff.

Messrs. BRAY and WARREN,
Great Russell-st. Blooms-
bury.

Attorney for Defendant.

Mr. JOHN WARRINGTON-
ROGERS, Manchester
Buildings, Westminster.

The following Gentlemen were sworn on the Jury.

LIFE DACRE, Esq. Harley-street, Mary-le-bone.
GEORGE MILLER, Esq. Cumberland-st. Mary-le-bone.
WILLIAM HARVEY, Esq. Guildford-street, St. Pancras.
ROBERT SMALL, Esq. York Terrace, Mary-le-bone.
ANDREW GEORGE BACKOFFNER, Esq. Monmouth-street.
RICHARD HANCOCK, Esq. Lower Clapton.
FRANCIS JAMES NUGEE, Esq. Bruton-street.
WILLIAM ELMSLIE, Esq. York-street, Mary-le-bone.

Talesmen (pursuant to the Statute).

JAMES SMITH, Gerrard-street, Grocer.
JAS. WARNER STOPFORTH, Little Newport-st. Stationer.
MELDREW SHEPHERD, Oxford-street, Baker.
JOHN WILDEY, Oxford-street, Hatter.

The Pleadings were opened by Mr. WATSON.

The Solicitor General.—I understand from my friend, Sir James Scarlett, that a question is to be submitted to your Lordship, as to who has a right to begin. I was not prepared for such a controversy, as it appeared to me not to admit of any doubt. My Lord, it is an action of trespass. There is no plea of Not Guilty; there is only one plea, which alleges that the dwelling-house in which, &c. before and at the time of making the rate and assessment, was within and parcel of the parish of St. Margaret, in the city of Westminster, in the county of Middlesex, and then alleges that a rate was made for the relief of the poor, &c. of the parish, going through all the various requisites for obtaining a distress-warrant, and that a distress-warrant was obtained, upon which the goods were seized in the plaintiff's house. The replication admits every allegation, except one. That is a positive allegation, and that positive allegation is denied. The plaintiff, by his replication, says that "the said dwelling-house in which, &c. at the said time when, &c. was not within and parcel of the said parish of St. Margaret," and this is the only issue upon the record. Now, upon whom does the affirmative of that issue lie? I say it lies upon the defendant. If I were to withdraw, and give no evidence, my friend would be entitled to a verdict, for I have undertaken to shew this house is within and parcel of the parish. I affirmatively say it is. My friend negatively says it is not. The question is, who is to prove it?

The Lord Chief Justice.—Do you admit the amount of damage?

The Solicitor General.—There will be no question about the damages, my Lord. Your Lordship is aware that the Judges have laid down a recent rule, that in actions brought for damages, the plaintiff is to begin, but your Lordship will exercise a reasonable judgment on the subject, and see what is the object of the action.

The Lord Chief Justice.—That rule was restricted to personal actions—actions for words and libels, and so on.

The Solicitor General.—The old doctrine is, that the person on whom the affirmative lies, is to begin. This is not a question of damages, it is a question of right. Now, being a question of right, on whom does the affirmative

lie? It is clear the affirmative lies upon me, for I undertake to prove this house is parcel of the parish of St. Margaret. Is there any rule of practice more anciently established and more invariably acted on, than that the party on whom the affirmative lies is to begin? The recent decision of the judges applies only to personal actions. In the case of an action for damages, it may be hard upon the plaintiff, that the defendant should begin where there is a mere justification, but here the question to be tried is, whether this house is or is not within and parcel of the parish of St. Margaret? We say it is; they say it is not. Therefore, my Lord, it seems to me, with great submission, it does not admit of any reasonable doubt.

Sir James Scarlett.—We had a discussion of this sort, my Lord, before Lord Tenterden, in the Gray's Inn case. My friend was then for the plaintiff, and I for the defendant, and Lord Tenterden would not allow me to begin.

The Solicitor General.—That was replevin with a plea of *non cepit*.—

Sir James Scarlett.—Which I proposed to withdraw, and to admit immediately that the goods were taken. My Lord, I apprehend the rule which has been made by the judges does apply to this case. This is an action for damages, and your Lordship cannot, by looking at the record, judge what evidence the plaintiff will give to support his claim to damages. I cannot take any admission from my friend, that the damages shall be settled, any more than he did from me on the *non cepit*, though no evidence was given on that subject. If your Lordship looks to the record, you will see how it stands. My friend says this is not a personal action—is not an action for taking goods a personal action? This is not an action for a trespass on the land; it is an action for taking away the goods of the plaintiff, and for that taking he is entitled to recover damages. That rule which has been laid down by the judges, was meant to apply to actions of every description where the plaintiff was to recover damages, but in this particular case the defendant cannot prevent the plaintiff from having the affirmative proof cast upon him, for I apprehend your Lordship is to look at the record to ascertain which party is to begin. You are to look to the record to see whether it be an action to recover damages, and having ascertained it is an action to recover damages, the plaintiff is entitled to begin. That is one of the

grounds I take to support my right according to the rule recently made by your Lordships. I refer, for my second ground, to the statute of the 24th George the Second, cap. 44, which in precise terms obliges the plaintiff to give some affirmative proof. The 6th section enacts "That from and after the 24th June, 1751, no action shall be brought against any constable, headborough, or other officer, or against any person or persons acting by his order, and in his aid, for anything done in obedience to any warrant under the hand and seal of any Justice of the Peace, until demand hath been made or left at the usual place of his abode, by the party or parties intending to bring such action, or by his or their attorney or agent, in writing, signed by the party demanding the same, of the perusal and copy of such warrant, and the same hath been refused or neglected for the space of six days after such demand; and in case after such demand and compliance therewith, by showing the said warrant to and permitting a copy to be taken thereof by the party demanding the same, any action shall be brought against such constable, headborough, or other officer, or any such person or persons acting in his aid, for any such cause as aforesaid, without making the justice or justices, who signed or sealed the said warrant, defendant or defendants, that on producing and proving such warrant at the trial of such action, the jury shall give their verdict for the defendant or defendants, notwithstanding any defect of jurisdiction in such justice or justices." Now, my Lord, whatever the form of pleading may be, my friend has a right to insist on my proving a demand of the warrant, that is an affirmative proof cast upon me. Upon both these grounds, I submit I am entitled to begin. In every contest of this sort, whatever the form of the action has been, it has fallen to the lot of the plaintiff to begin.

The Solicitor General.—My Lord, if it is necessary—

The Lord Chief Justice.—That section is introduced for the benefit of the defendant.

The Solicitor General.—It can only apply where there is a plea of the general issue, and not where there is a specific issue joined upon the record.

The Lord Chief Justice.—Are you prepared to admit the amount of the damages?

Sir James Scarlett.—I shall not accede to any such admission, my Lord.

The Lord Chief Justice.—I must decide in favour of the defendant, for I cannot but see that substantially this is a question of fact, whether this place is within the parish or not. I think persons affirming it to be so on the record, ought to prove it.

Sir James Scarlett.—My friend does not admit the amount of damages.

The Lord Chief Justice.—I know that.

DEFENDANT'S CASE.

The Solicitor General.—May it please your Lordship—Gentlemen of the Jury. It having been decided by my Lord Chief Justice, that I am entitled, on behalf of the defendant, to begin—it will be my duty to state to you, as succinctly and as perspicuously as I can, the question you have to determine.

Gentlemen, those whom I have the honour to represent here, are the rated inhabitants of the parish of St. Margaret Westminster. My friend Sir James Scarlett represents a very illustrious, honourable, and opulent body of men, who occupy the houses on Richmond Terrace, and it may be supposed also, that the inhabitants of Whitehall Gardens and Whitehall, have an interest in the same question. Gentlemen, these distinguished persons, on whom I wish to throw no sort of reflection, say they are not compellable to contribute to the relief of the poor of the parish of St. Margaret, and if they are not, it would be unjust to blame them for defending themselves against the demand; but I also hope that no imputation will be cast upon the rated inhabitants who now bear the burthen, if they try to make all those whom they consider inhabitants of the parish equally contribute to support the poor.

Gentlemen, the plaintiff, Sir Charles Burrell, occupies a house on Richmond Terrace. These houses, which are splendid mansions, or indeed palaces you may almost call them, have been recently erected. They were begun, I think, in the year 1824, and there is a range of buildings occupied by persons of very great eminence, distinction, title, wealth, honour, and respectability, fronting the river, called Whitehall Gardens, and there are also a number of other houses scattered over what is called Whitehall, and they all say they are not liable to contribute to the relief