

## **Gardner v. Wedd & Others**

Extracts from the transcript of a court case at Essex Lent Assizes, Chelmsford

**Wednesday, March 9<sup>th</sup> 1825**

**Before**

**Mr Baron Graham and A Common Jury**

*Alfred Wedd and 3 other defendants (Charles Asplin, Thomas Hickenbotham and James Phillips) were charged with the assault and imprisonment of Mr Gardner, Clerk of the Parish of Great Wakering.*

Mr Adolphus (Prosecution): May it please your Lordship, Gentlemen of the Jury. The Plaintiff in this case is a man between 60 and 70 years of age and he complains against the four persons you have heard named as the Defendants for having assaulted and ill treated him in the way stated in the pleadings. The occasion which led to this ill treatment was as follows, there had been in the parish of Great Wakering of which the Plaintiff is Post Master, Clerk of the Parish and I believe Master of the Workhouse ... some disputes between the Vicar and some of his parishioners respecting the tithes. For the collection of these tithes, the Plaintiff had been appointed agent of the Vicar, but he found the task so difficult that he resigned his situation, on which a gentleman of the name of Jackson, an auctioneer residing in that neighbourhood, was substituted in the place of Mr Gardner and it was fondly hoped the disputes respecting tithes would all subside. In the hope and expectation that that would be the case, the Vicar at his own expense called a meeting of the tithe paying population and gave a dinner at the Red Lion Inn at Wakering. The business of the day was not merely to dine, but also to pay up the arrear of tithes, upon which occasion the Plaintiff who had formerly been collector was obliged to attend. It does not appear from what took place at this meeting that any approach had been made towards peace, for on the Plaintiff's coming into the room, symptoms of violence began to exhibit themselves towards him from most of the company, but particularly from the defendants. He was assailed from the beginning with great clamour and violent abuse by the different parties, who charged him with what he was not guilty, with having received the tithes and having applied or secreted the money to his own use. Seeing himself opposed to so great a number of persons, with a prudence that did him honour, and which belongs to a person of his time of life, he abstained from saying anything to them. Emboldened I suppose by his quiet demeanour, they thought fit to turn him out of the room, while Mr Jackson was in another room. When he had been so turned out, he went and told Mr Jackson what had happened. Mr Jackson said he could not think of his leaving the room, that it was not the room of the party that had turned him out, it was a room that had been hired by the Vicar. 'I have accounts to settle, respecting which I may have occasion to apply to you for information. I therefore cannot let you go away, you must go back with me', and he went back into the room and sat down in a chair. Soon after upon a

token they began on him with more violence than ever, he was called every ill name which language could supply. He very naturally felt much offended at this and having been called every ill name that language can supply, at last when one of the party having assailed him in this way, more violently than the others, he said, "you ought not to insult me in this way for you owe me eight pence in my quality of postmaster for a letter." This was the signal, they then gave for a toast "damnation to the Vicar", and when that had been drank, they then proceeded to compliment the Plaintiff by drinking, "Damnation to the clerk". When they had worked themselves up by these things, immediately on the mention of the 8d they collared him and turned him out of the room.

Gentlemen, this is the transaction of which he comes here to complain and I know there is one way in which this case may be met. It may be said this was an alehouse quarrel which ought not to be the subject of an enquiry before a Jury at an Assizes. I own it is not the impression on my mind and I think it will not be his Lordship's when he comes to address you. It may be said too that the Plaintiff has not sustained any great injury, but I do not think that is an argument which ought to be advanced. on an occasion like the present, though it took place in an alehouse, if a man is not to be safe in a place of that kind, when he goes there to transact his public business, he is not sure of being safe in any place whatever, for the same spirit which led to an assault and abuse there, will lead to the same result in any other place.

...Here an injury was inflicted on a man's mind, which no time, no patience or medicine, can repair, this is a wound which only a Jury like you sitting in a box can make him amends for.'

*Defendants and other witnesses were cross-examined at great length (the transcript runs to 117 pages), with repeated questioning about the moment when Mr Gardner was ejected from the room; it appears from witness testimony that Alfred Wedd held the door open while the other three defendants dragged or lifted Mr Gardner in his chair at table height, carried him across the room and tipped or 'jumped' him into the corridor.*

*There was also much questioning about how much alcohol had been drunk, about 'high language and words' exchanged, and the toast allegedly proposed by one or more of the defendants, 'Damnation to the parson and his clerk'. It was also alleged that Wedd and Asplin 'charged Gardner with not having properly applied the tithes'.*

*The transcript ends:*

'The Jury deliberated for some time, and then turning to his Lordship:

The Foreman (said) My Lord we want to know in respect of damages what are the smallest which will carry ?cash [costs?]

Mr Baron Graham Gentlemen that is a question upon which we do not take it on ourselves to provide information.

The Foreman We cannot agree upon that question.

Mr Baron Graham You must decide this point yourselves.

The Foreman Verdict for the Plaintiff's damages One Farthing.

Mr Marryat I wish to know if the Jury find any damages for the imprisonment. Will your Lordship ask the Jury that question.

Mr Adolphus They find a general verdict.

Mr Marryat Suppose a man takes another from a room --

Mr Baron Graham Here is the court. And if I am wrong in point of law. Gentlemen do you mean to give a verdict for so small a sum on the whole charge?

The Foreman Certainly not.

Mr Baron Graham You don't give any damages for the imprisonment?

The Foreman Certainly not.'

*The plaintiff presumably appealed after this; a newspaper cutting reports the next stage:*

COURT OF COMMON PLEAS, WESTMINSTER, APRIL 20

This being the first day of Easter Term, the Judges did not come down till after half past one. The Court was occupied for some time in disposing of matters of course.

#### GARDNER V. WEDD AND THREE OTHERS

Mr Sergeant Wilde moved for a rule to show cause why a general verdict should not be entered in this case. The action was tried before Mr Baron Graham. It was an action for a n assault and false imprisonment, in which a verdict was found for the plaintiff, damages one farthing for the assault; but the imprisonment was not allowed. He now wished the verdict to be entered generally, on the ground that the learned Judge at the trial gave liberty to move to that effect. The action arose from a dispute respecting tithes. The parson of the parish and his parishioners had disagreed (neither the name of the rev. gentleman nor his parish were mentioned), and the parson, to smooth the business gave a general invitation to his parishioners to settle all their disputes regarding the tithes over a good dinner. The parishioners attended, and after dinner, instead of sober sentiments, they regaled themselves freely over the parson's wine by drinking most uproarious toasts against the parson and his clerk, such as "Damnation to the parson and his clerk." (Great laughter.) The clerk of the parish, as in duty bound, felt offended at the extreme liberality of the toasts, and remonstrated, on which, from words they proceeded to blows. The defendant and three others took hold of the clerk and turned him out of doors.

The LORD CHIEF JUSTICE – Was the turning him out of the room false imprisonment?  
(Laughter.)

Mr Sergeant Wilde – No, my Lord, the false imprisonment consisted in keeping the plaintiff in a chair while they carried him out of the room by main force. The chair was in a corner of the room and they held him there against his will and consent, while they took him up in their arms and carried him out of the house. He did not know what period of time constituted false imprisonment, but the clerk was detained from the free exercise of his liberty by the constraint of the defendants.

The LORD CHIEF JUSTICE – I see no imprisonment at all in this case, and the learned Judge who presided at the trial seems to have been of the same opinion. The good parishioners only kept the clerk in the chair to prevent his tumbling out, while they proceeded to give him his liberty in the fresh air. (Much laughter.) We cannot grant the motion – Motion refused.