

1810.

Morwood  
 vs  
 Nurwood

*nonsuit* was rendered against *Carroll* and others' lessee, and that of the said sum the defendant in this action received £19 1 0, alleging that he had paid to that amount, and claiming no more, and that the present plaintiff received the balance, being £112 1 3. That on the ejectment instituted for *The Enlargement and Brown's Adventure*, the defendants in that action were entitled to £39 12 0, as costs, from *Carroll* and others' lessee, which were discounted in payment of so much of the sum of £58 6 4, herein before mentioned, as costs recovered in the court of appeals by *Carroll* and others' lessee, against the present plaintiff and defendant, and is a part of the £58 6 4, stated to be paid to the agent of *Carroll* and others' lessee, by the present plaintiff, in the receipt exhibited, and that the balance of the £58 6 4, viz. £18 14 4, was paid exclusively by the present plaintiff; and that the £58 6 4, was discharged as just above stated, and not by a payment of money by the plaintiff, as the receipt purports. The defendant then moved the court to direct the jury, that if they should believe that any part of the aforesaid costs were incurred by the plaintiff unnecessarily, and contrary to the wish and consent of the defendant, and contrary to the agreements herein before mentioned between *Hammond* and the defendant, that the plaintiff was not entitled to recover in this action one half thereof from the defendant. But the court, (*Nicholson* Ch. J.) refused to give the direction to the jury; and directed the jury, that the plaintiff was entitled to recover the same, inasmuch as the sum of money, for which the present suit was instituted, was the legal costs of suit which had been expended by *Charles Carroll* and others' lessee, in prosecuting an ejectment against the present plaintiff and defendant; that for these costs a judgment had been rendered in the general court against the present plaintiff and defendant; that each was bound for the whole to the plaintiff in ejectment, by the judgment which had been rendered against them, and that if the whole amount had been paid by either, he had a right to recover a moiety from the other. That the defendants in ejectment might have severed in their defence, and ought to have done so, if either had no confidence in the other; that by agreeing to defend the suit jointly, each had a right to direct such locations, as he thought would contribute to their mutual defence. That this suit, however,