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as a Common Law Writ (article)

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8-2-1748

### Provincial Case File No. 22344, New Hampshire State Archives - Peter Johnson - Case Summary

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B. Correlatively, sometimes petition is called habeas, but judges treat differently. Notably, in slave freedom suits want to give jury trial, so, therefore, in slave case in NH article, and in case of Peter Johnson, case file no. 22344, is, commenced by a petition for a writ of habeas corpus cum causa received on Aug. 2, 1748 after he had been committed by a local JP on July 10, 1748. This was triggered by a complaint to the JP by alleged master complaining that Johnson “refuseth to labour and is stubborn and rebellious.” JP accordingly ordered that sheriff should confine him “until he the said Peter shall behave himself so that his said master shall take him away or be otherwise released by due order of Law.” But parties are called in (service of writ ordered on alleged master, who puts in a plea)(as also recorded in the superior court minutes for Sept. 12, 1748, new case #33), given a jury trial (treating presumably as action on the case), and when verdict is for him, ordered to be enlarged, as recorded in the superior court minutes for Sept. 12, 1748, new case #33. Same substance appears in fair copy in Docket Book, Superior Court vol. 1744-48, at 341 (called Johnson v. Massey).



(22244)

Province of } To the Hon<sup>ble</sup> the Justices of the Sup<sup>re</sup> Court  
New Hampshire } of Judicature at Portland August 22<sup>d</sup> 1748

Humbly Sheweth Peter Johnson<sup>late</sup> resident in Portland  
in sd Province Baker - That he is now imprisoned  
for refusing to serve <sup>as a slave</sup> to George Mapey of Portsm<sup>o</sup>: afores<sup>d</sup>. without  
having liberty to dispute w<sup>th</sup> right of sd Mapey to the  
service of your Petitioner <sup>who is free man</sup> but unjustly condemned to suffer  
imprisonment <sup>by the Mistim<sup>y</sup> granted by some of the Justices held July 10: 1748</sup> without liberty to answer for himself  
as by the Mistim<sup>y</sup> in w<sup>ch</sup> hands of sd Prison keeper may  
appear - wherefore as this is a case of Generall Goal  
delivery your Petitioner pray that he may be brought  
before this Hon<sup>ble</sup> Court & be heard with respect to &  
cause of his commitment & that he may be ~~being~~  
discharged - and your Pet<sup>r</sup> shall pray for

A Remedy for sd Pet<sup>r</sup>

Sup<sup>re</sup> Court Portland August 22<sup>d</sup> 1748 Ordered that w<sup>ch</sup> Petitioner  
Peter Johnson be brought before this Court at the Adjournment  
& that Geo: Mapey be notified to appear & shew what right  
he hath to sd Service of sd Petitioner

Geo: Jeffreys CC



Prov. of — } Aug. 29<sup>th</sup> 1748 Pursuant to the within  
 New Hamp. } Docket to me directed I have here in Court  
 the body of the within named Peter Johnson  
 and the day and cause of his taking and  
 Detaining it in the words following viz —

Prov. of — }  
 New Hamp. } To the Keeper of His Majesties Goal at  
 (Seal) } Dartmouth in the Prov. of New Hamp. Greeting  
 Whereas Complaint is made to me the Subscriber  
 by Geo: Maffey of Dartmouth in said Province  
 that he hath a negro man named Peter  
 Johnson which refuseth to Labour and is  
 Stubborne and rebellious

These are therefore in His  
 majes. Name to require you to take the body  
 of the said Peter Johnson into the said Goal and  
 him keep safely until he the said Peter shall  
 behave himself so that his said master shall  
 take him out or be otherwise released by due  
 order of Law Dated at Dartmouth the 10<sup>th</sup> day of  
 July in the 22<sup>d</sup> year of His majes. reign annoque  
 Domini 1748

Sam. Hart Sur. Peace

att. Tho: Packer Esq. and Keeper of His  
 majes. Goal in Dartmouth

I have also notified the within named Geo: Maffey  
 to appear at the time and place within mentioned  
 to shew Cause if any he hath why the within named  
 Peter should not be enlarged Tho: Packer Esq.

Upon which Petition a writ issued to the Sheriff haper of  
his Majesty's Court to have under safe Conduct before this Court  
on the twenty sixth day of August Inst -  
with a Cause of his taking and detaining, to Do and Receive  
all those things which said Court shall then and there Consider  
and also to notify George Massey of Portsmouth a fore said Carter  
that he may then and there shew Cause if any he have why  
the said Peter may not be enlarged - The said George Ap-  
pearing in Court & Says that the said Peter Johnson is  
his Slave or Servant for life lawfully purchased of Joseph  
Hicks of Dover in N Province Gentleman by Deed of Sale  
bearing Date the fourth day of July 1740 ready in Court to be  
produced that he was lawfully committed to Prison by sentence  
and Mittimus of one of his Majesty's Justices of the peace  
for said Province for refusing to labour & for being Stub-  
born & Rebellious wherefore the said George prays that  
the said Peter may be detained in Prison untill he shall  
become Submissive & dutifull or untill he the said George  
shall see cause to enlarge him & W<sup>m</sup> Parker his Attorney  
and the said Peter in Court Says <sup>by Mr Emory his attorney</sup> that ~~he~~ never  
was the Slave or Servant for life of the said Joseph Hicks  
nor under any obligation to serve him as such but is &  
always was a free born Subject of the King of Great  
Britain and under no Obligation to serve the said George  
Massey as his Slave & this he prays may be enquired  
of by the Country & that he may be enlarged -

upon which Issue the Parties were fully heard by their  
Counsell learned in the law the Case was committed  
to the Jury sworn according to law to try the Issue who  
upon Oath say the Jury find Peter Johnson a free man -

It is therefore Considered that the said Peter Johnson is  
a free man and that he be enlarged and that the Sheriff  
set him at Liberty and that the said George Massey pay  
Costs taxed at the sum of three pounds eight Shillings lawfull money -

SUPERIOR  
COURT



AUG. 1744  
*through*  
AUG. 1748



Robert Mellin of Portsmouth in the Province of New Hampshire  
 the Baker Complainant against Samuel Bathrick of said Ports-  
 mouth Bricklayer Defendant— The complaint shewing that  
 the Inferiour Court of Common Pleas held at Portsmouth in  
 said Province the said Robert recovered Judgement against  
 said Samuel for the sum of three pounds seven Shillings & Six  
 pence lawfull money Damage & Cost taxed twenty Shillings and Six  
 pence like Money from which Judgement the said Samuel Ap-  
 pealed to our then next Superiour Court of Judicature and he  
 refused to prosecute the same but failing so to do the said Ro-  
 bert prays that the former Judgement may be affirmed. It is  
 therefore Considered that the former Judgement be and hereby  
 is affirmed and that the said Robert recover against the said  
 Samuel the sum of three pounds seven Shillings & Six pence  
 lawfull money Damage & Costs taxed at the sum of five pounds  
 three Shillings lawfull money

Mellin Bathrick  
 J. S. C. H. N. H. M. W.  
 Execution issued  
 Sept. 17. 1748

For if a new venire should be found for a sufficient number of persons to appear at the adjournment of ~~the~~ <sup>that</sup> Court by the Court that a venire <sup>shall</sup> issue immediately to the Sheriff to summon Empanella & Metach thirty men qualified by law to serve as jurors at the adjournment of this Court on Monday <sup>the 11th</sup> day of this Instant August —

[illegible]

Portm: Aug. 24. 11 o'clock before noon Court meet accord-  
ing to adjournment — Delin

ing to Government — present  
The Hon. & Lady John Russell wrote to tell the High Court  
they clerked for her, their ill known order

Geo. Shivers  
 Geo. Muller  
 Geo. Knight  
 Geo. Smith  
 Geo. Miller  
 Geo. Whitehead  
 Geo. Shivers  
 Geo. Muller  
 Geo. Knight  
 Geo. Smith  
 Geo. Miller  
 Geo. Whitehead

1867. Bennett Ham  
 1868. 2. 1/2 lb. 1/2 lb.  
 1869. 1/2 lb. 1/2 lb.  
 1870. 1/2 lb. 1/2 lb.  
 1871. 1/2 lb. 1/2 lb.  
 1872. 1/2 lb. 1/2 lb.  
 1873. 1/2 lb. 1/2 lb.  
 1874. 1/2 lb. 1/2 lb.  
 1875. 1/2 lb. 1/2 lb.  
 1876. 1/2 lb. 1/2 lb.  
 1877. 1/2 lb. 1/2 lb.  
 1878. 1/2 lb. 1/2 lb.  
 1879. 1/2 lb. 1/2 lb.  
 1880. 1/2 lb. 1/2 lb.  
 1881. 1/2 lb. 1/2 lb.  
 1882. 1/2 lb. 1/2 lb.  
 1883. 1/2 lb. 1/2 lb.  
 1884. 1/2 lb. 1/2 lb.  
 1885. 1/2 lb. 1/2 lb.  
 1886. 1/2 lb. 1/2 lb.  
 1887. 1/2 lb. 1/2 lb.  
 1888. 1/2 lb. 1/2 lb.  
 1889. 1/2 lb. 1/2 lb.  
 1890. 1/2 lb. 1/2 lb.  
 1891. 1/2 lb. 1/2 lb.  
 1892. 1/2 lb. 1/2 lb.  
 1893. 1/2 lb. 1/2 lb.  
 1894. 1/2 lb. 1/2 lb.  
 1895. 1/2 lb. 1/2 lb.  
 1896. 1/2 lb. 1/2 lb.  
 1897. 1/2 lb. 1/2 lb.  
 1898. 1/2 lb. 1/2 lb.  
 1899. 1/2 lb. 1/2 lb.  
 1900. 1/2 lb. 1/2 lb.

my Joseph took  
place at the Joseph Street  
in the village of  
near Don. Friedrich August and his brother left  
Königsberg in 1763 and went to Joseph in Hildesheim.  
He died in 1768 and was buried in the church of St. Mary.

Aug 29<sup>th</sup> The adjourned to Monday, 10 o'clock A.M. Court meet according to adjournment Sept 3<sup>rd</sup> of Court adjourned to Monday of 12 o'clock put at 10 o'clock

3804, Simon Gilman App<sup>t</sup> to Eschell Gilman App<sup>t</sup>  
The Parties appear and agree to refer this case  
and all controversies between them to be heard by  
adjudg<sup>d</sup> and determined by Matthew Livermore &  
William Parker of Portm<sup>o</sup>. in y<sup>e</sup> Province of New-  
Hampshire Esq<sup>r</sup> and Noah Emery of Kittery in y<sup>e</sup>  
County of York & Province of y<sup>e</sup> Mass<sup>ts</sup>. Bay Esq<sup>r</sup> as  
adjs<sup>r</sup> chosen by the said Parties and the Report of the  
or of any two of them under their hands unto this  
upon y<sup>e</sup> premises being made, shall be final &  
conclusive between y<sup>e</sup> said Parties and ~~parties~~  
men<sup>t</sup> shall be entered thereon accordingly  
and Matthew Livermore Esq<sup>r</sup> to appoint time  
& place for hearing

Continued for differences to make them

~~13~~ 38. ~~Johnston~~ Johnston's letter for advice of Charles Evans telling Mr. A. [unclear] in vain John on file at [unclear] to be heard next day if called.

in said Edition on file at said to be near  
~~Deacons~~ <sup>in part</sup> and ~~Members~~ <sup>in part</sup> George McKay coming into contact  
 claiming the property of said John B. May as well the case was committed  
 to your taking oath of a free man At 1861

My, therefore consider  
 that the Court that the said  
 cost paid of Geo. Wright

But I must be changed  
and that the Christ will himself do.

James C. Hartman  
Pro Griffith  
Friedrichsen  
Henry Miller  
Hild Cemetery  
Henry H. North  
Bella Smith  
Sathel Clark  
Roughly  
Edwin Hill  
Johnston