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as a Common Law Writ (article)

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Work

2-5-1771

Provincial Case File No. 16916, New Hampshire State Archives - Summary of Pearse v. March

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(1)

Per Superior Court Docket Book Feb. 1771 - Sept. 1773, Feb. Term 1771 at 3-7
Pearse brings action of trespass against March for malicious prosecution in prosecuting the contempt and in showing up to testify in support of it (4), testifying falsely that he had sat on the case (5)(so that Pearse's subsequent criticism was of his expression of sentiments from the bench), "and was committed to the common prison in said Portsmouth and there for a long time vis. For the Space of eight Hours was detained and until [?] he was admitted to Bail by order of Theodore Atkinson Esq. Chief Justice of our Superior Court of Judicature for the said Province of New Hampshire and recognised for his appearance at said Superior Court and a Writ of certiorari was issued by order of the said chief Justice of the said superior Court (the Superior Court being not then sitting*) to certify the tenor of the record proceedings and judgment of the said inferior Court" (5), and when he appeared he was discharged "and the whole proceeding against Pearse in said inferior court (which arose upon the aforesaid false and malicious representation of the said Clement March) was ordered to be and by the Justices of said Superior Court was quashed. Now the said Pearse in fact says that by reason of the said unjust and malicious representation of the said March made as aforesaid he the said Pearse was not only deprived of his liberty during all the time aforesaid but also was forced and compelled to undergo and be at great charges and expences for the obtaining a discharge from the imprisonment aforesaid and all of which is to the damage of the said Peter Pearse as he saith the sum of two hundred pounds."(6)

At which inferior court "the parties appeared and the said Clement March came and defended etc. and prayed judgment of the Plaintiffs Writ aforesaid and that the same might be abated, First 'because the Plaintiff in his declaration has not directly alledged that he was innocent of the offence charged against him by the said Clement as set forth in the declaration' Secondly 'because it appears by the said declaration that the said Clement brought his aforesaid accusation information and complaint against the said Peter before a Court of Record proper to try the same and the same being duly heard and considered by the same Court was adjudged and determined against the said Peter"(6), wherefore he prays judgment (7). Judgment below that the writ should be abated (7).

Pearse appeals and "it is considered that the former judgment be and hereby is reversed that the said Pleas in abatement being adjudged insufficient be and hereby are overruled that the Cause be sent down to the inferior Court for trial"

*Certiorari works in vacation

(2)

In Sept. Term 1771, per id at 128-32

After remand, in March 1771, jury verdict was for defendant (132). On appeal by Pearse this is reversed and he is awarded seven pounds damages (id).

(3) The case file on this set of proceedings is #16916.