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as a Common Law Writ (article)

Supporting Documents for Making Habeas
Work

2-2-1751

Judgment Book of Superior Court, Vol. B, Sept. 1750-Mar. 1754, at 130-34, New Hampshire State Archives - John Galton

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Recommended Citation

"Judgment Book of Superior Court, Vol. B, Sept. 1750-Mar. 1754, at 130-34, New Hampshire State Archives - John Galton" (1751). *Documents from Dimension I: Habeas Corpus as a Common Law Writ (article)*. 9.

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SUPERIOR

COURT

SEPT. 1750

through

MARCH 1754

Richard Heath Plaintiff against John Belknap Defendant
Continued upon the Bro. Law the Defendant Living out of this Province

Order of Court
for making out
a pluries executi
on —

M^r George Saffrey Applying to this Court and on his oath Declaring
that he Purchas'd Pluries Execution from this Court returnable at
our August Term upon a Judgement he Recovered against Joseph Miller
at the Superior Court held in August 1745 - which Execution is not re-
turned and he knows not Where the same is and that he has never
rec^d. the Debt or Damages & Costs for which the same was Granted nor
any part thereof praying for another Execution to be Granted upon
the Judgement aforesaid — Ordered by the Court that
Nicholas Perryman Esq. Clerk of this Court in that Cause Issue
Pluries Execution upon the same Judgement ~~And Perryman~~

MS. 112. 13.

John Galton & William Lewis Merch^t Annah Galton Singlewoman John Galton
in attorney to Samuel Galton Merch^t and John Galton Adm^r. Cum Testamento
annuo of Rob^t Galton Deceased all of Bristol in the Kingdom of Great
Britain owners of the Ship call'd Duke of Devonshire Petitioners by
John Moffatt Setham Edmore Mark Tunking Wentworth & Nathaniel Heforse
all of Portsmouth in the Province of New Hampshire Esq^s their Attorneys and
give this Court here to understand & be Informed that by the Statute
of the 15th of Richard the Second among other things it is Enacted
& Ordained that the Admirals and their Deputies from thence forever
after should in no wise have Cognizance of any Suit or any matter or
thing unless the same should be done upon the High Seas as had been
duly observed & used in the time of the then Late Sovereign Lord Edward
Grandfather of the said Richard the ~~2^d~~ ^{7th}. And whereas also by another
Stat^e made in the 15th year of the said Richard the 2^d. (among other
things) it is Declared ordained & Establish'd that the Court of
admiralty should have no Cognizance Power or Jurisdiction
of any Contracts Pleas or Plaints of or Concerning any thing done

arising within the body of any County whether by Land or Water
 and also for or Concerning the Wick of the sea but that all such Contracts
 Pleas and Pleas and all other matters arising within the body of any
 County whether by Land or Water as aforesaid should be determined
 tried Disputed and Regulated by the Law of the Land and not before
 any Admiral or Admirals nor before his or their Deputy's Deputies in any
 manner howsoever. And whereas also by an act made in the Parliament
 held at Westminster in the second year of the reign of Henry the 8th Late
 King of England (amongst other things) it is Ordained and Enacted that
 the said Stat. of King Richard the second should be kept and Observed
 and that due Execution should be thereof required. which several Stat. are
 still in full force and are pleasurable here and extend to and ought to be
 kept and Observed within his Majesty's Province of New Hampshire
 touching the Premises as well as within his Majesty's Kingdom of Great
 Britain. And whereas all and all manner of Pleas and matters con-
 cerning the Validity Explanation Construction or exposition of
 any Stat. made in any Parliament of our Sovereign Lord the King
 or his progenitors Late Kings and Queens of England and all man-
 ner of pleas and Cognizance of pleas for any Trespasses Contracts
 Trespasses upon the Case for the taking detaining ~~or~~ Converting
 any goods or Chattels debts Sum and Sums of money or for any
 other Cause whatsoever whether by Land or Water happening arising
 or springing within the body of any County within the Kingdom of
 Great Britain or within any of his Majesty's Dominions & Territories
 thereto belonging and within this his said Province of New Hampshire
 or any where on Shore have and do Specially belong and appertain to
 our Sovereign Lord the King and his royal Prerogative and by the Law
 of the Land ought & always ^{from} all times hitherto have been accustomed to
 be tried Determined & Disputed in some of the Kings Temporal Courts
 of Record before the King himself or before his Temporal Justices or Judges
 and not in any manner howsoever before the Lord high Admiral of
 England

and before any person or persons holding the Office of High
Sheriff of England or his or their Deputy or Deputies, whatso ever
Whithersoever the same Whithersoever not being ignorant of or unacquainted
with the Premises but Contriving unjustly to trouble & grieve & distress
the said John Galton and others aforesaid owners of the said Ship and
Contrary to the due Course of the Law of the Land and Contrary to the
form of the aforesaid Statutes hath unjustly drawn the Cognizance of
a plea that belongeth and appertaineth to our Sovereign Lord the
King and his Royal Prerogative to a different manner of Trial
before the Honble. Ellis Huske Esq^r. Deputy Judge of the Court
of Vice Admiralty within said Province of New Hampshire by virtue
of a Certain Process Issuing out of the said Court of Admiralty against
Andrew Buck Late Master of the said Ship and also for selling
the said Ship for the payment of fifty nine pounds Sterling money of
Great Britain, or in Lieu thereof the sum of one hundred forty seven
pounds twelve Shillings and six pence New Tennor Bills of Credit of said
Province and eight pounds Seventeen Shillings Lawfull Money Costs of
Suit in Default of the payment of the said Sums by the said Andrew
arising by matters without the Jurisdiction of that Court by Craftily
and Subtily Libelling and suggesting. That on the 27th day of July 1727
at St. Hills in the West Indies the said Andrew Buck then Master of said
Ship and one Thomas Richard Surgeon on board said Ship and who
had been so for a Considerable time before settled accounts as to the sum
then due from said Ship to him the said Thomas for wages and upon
the said Settlement it was found that there was due to him the said
Thomas the sum of fifty nine pounds one Shilling Sterling for which
sum or balance the said Andrew then and there drew an order in
Writing Directed unto Mess^{rs}. John Galton & Company owners of the said
Ship Desiring them to pay the same unto him the said Thomas
Richard and afterwards. Namely on the 31st day of December 1727
the said sum then being due and unpaid the said Thomas Richard
and for value before received ordered the payment thereof unto
the

The said Thomas Whiteford which sum remains (as was said) due and unpaid the said Owners not having paid the same & the said Andrew tho' often requested refused That the said matter was Properly Cognizable in the said Court of Admiralty being for Wages Earned on the High Seas and the said Ship being Liable and Subject to the payment of the same the said Thomas prayed the advisement of the said Court on the Premises and that the said Andrew might be cited to answer the Premises at a Short Day and that the said Ellis Juske Esq^r would Decree that the said Vessel should be Subject to the payment of the said sum & Costs of Suit upon which Suit in the said Court of Admiralty the said Judge pronounced a Decree whereby the said Ship is Subjected to the payment of the said sum & Costs as aforesaid (whereof Execution yet remains to be done) That in behalf of the owners of the said Ship it was moved to the said Judge before the pronouncing of the said Decree that the said Libel & Complaint was founded on an order assigned to the said Thomas Whiteford whereas in truth the same is not assignable nor payable to the order of the said Thomas Whiteford to Enable the assignee to pursue for the same in his own name That the assignment was a new Contract made at Land & not on the High Seas that there was no evidence the said order had ever been presented to the said owners and as the Drawee had accepted the same for payment of the sum due he could not Resort to the Ship till payment had been refused by the owners that there were two or three orders of the same Tenor & Date given for the same sum either of which being paid the other to be void which made it more necessary there should be Evidence of a presentation as aforesaid otherwise there might be payment and Several Decrees against the ship for the same sum at Different places with much more to the same purpose all which was overruled & Disregarded by the said Judge to the great Grievance & Damage of the said owners & contrary to the Laws & Customs of the Land & the statutes in that case made & provided Wherefore they most Humbly pray the Aid & assistance of this Hon^{ble} Court to be Relieved in the premises and that they may have his Majesty's Writ of Prohibition to be directed to the said Judge of the said Court of Admiralty or to any other Judge proper for that purpose to Prohibit him or them from

Granting

Granting Execution of the said Sentence or taking any further Cognizance of the premises to effect the Execution of the said Sentence but that the said Court be wholly restrained therein & that the matter aforesaid may be Tried & finally Determined in his Majesty's Courts of Record proper to try the same. — Daniel Warner Esq^r Attorney to said Thomas Whiteford being notified that he might be heard upon of ~~the~~ above Suggestion, ^{as aforesaid} and appearing by his Attorney for plea says that the Decree is agreeable to law and that no prohibition ought to be granted, upon which the Parties were fully heard thereon, and it appearing to the Court, that the Court of Admiralty had not lawfull Jurisdiction of the Cause referred to in of above Suggestion, and that a motion for a prohibition was not too late. It is therefore Considered that of prohibition prayed for be and hereby is granted

Gallon 40
 Truck
 W. M. W. 175
 Wm Pearson for em
 in London,
 Job Leder
 M^r Donnell
 Hollis Tumbur
 Rich^d Smith
 Rob^t Smart
 Samuel Wilkes
 Geo^r Huggins
 W^m Little
 Presy^t Jewell
 W^m Marston

John Galton Samuel Galton & William Lewis all of Bristol in the Kingdom of Great Britain Merchants Appellants against Andrew Buck of Portsmouth in the Province of New Hampshire Mariner Appellee From the judgement of the Superior Court of Common Pleas held at Portsmouth in and for said Province of New Hampshire on the first Thursday next following the first Tuesday in December 1750. In an Action of the Case Commenced by the said John Samuel & William against the said Andrew at the Superior Court of Common Pleas held at said Portsmouth in and for said Province on the first Thursday next following the first Tuesday in June 1750 — but continued from Term to Term to the Term first mentioned and then prosecuted in