

Case No. 8,334.

LEWIS ET AL. V. SPALDING.

[2 Cranch, C. C. 68.]¹

Circuit Court, District of Columbia.

Dec. Term, 1812.

MALICIOUS PROSECUTION—MALICE—PROBABLE CAUSE.

In an action upon the case for maliciously conspiring to deprive the plaintiffs of their slave, it is necessary for them to prove malice in the defendant. And it is competent for the defendant to show probable cause, and the want of malice.

LEWIS et al. v. SPALDING.

This was an action upon the case charging that the defendant, “unlawfully, wickedly, and maliciously,” conspired with divers ill-disposed persons to the plaintiffs unknown, to kidnap and carry off the slave of the plaintiffs, then in their peaceable possession; and in pursuance of such conspiracy, falsely and maliciously, by false pretences, procured a warrant to have the slave apprehended and delivered to the defendant; and hired persons to seize and carry away the slave out of the peaceable possession of the plaintiffs, for the lucre and gain of the defendant and to defraud the plaintiffs; and attempted to bribe persons to seize and carry away the slave, he the defendant thereby wickedly and maliciously keeping the plaintiffs in continual alarm and danger of having their said slave taken from them by force or fraud: by means of which unlawful conspiracy the plaintiffs were put to great labor, expense, and trouble, in watching and protecting their said slave, and were deprived of his labor and hire, &c.

THE COURT (THRUSTON, Circuit Judge, contra) was of opinion that it was necessary for the plaintiffs to prove malice in the defendant; and that it was competent for the defendant to show probable cause, by showing color of title, &c., and to disprove malice.

¹ [Reported by Hon. William Cranch, Chief Judge.]