

SHEEHY v. RESLER.

{1 Cranch, C. C. 42.}¹

Circuit Court, District of Columbia. Oct. Term, 1801.²

MALICIOUS PROSECUTION—GENERAL
ISSUE—PROBABLE CAUSE.

In an action on the case for a malicious prosecution, the defendant may, upon the general issue, show probable cause for the prosecution.

Case, for a malicious prosecution. To set aside an office judgment at the third term after it was rendered, the defendant pleaded a special justification which went to show probable cause for the prosecution.

The counsel for the plaintiff objected to the receiving the plea, and cited Bull. N. P. 14; Sutton v. Johnstone, 1 Term R. 493; Cox v. Werrall, Cro. Jac. 193; Downman v. Downman, 1 Wash. [Va.] 29; Farmer v. Darling, 4 Burrows, 1971.

CRANCH, Circuit Judge. As the gist of the action is malice and the want of probable cause, the plaintiff must show the want of such cause; which will admit the defendant to give in evidence on the general issue the same facts which he has pleaded specially. Consequently, it is not necessary to the merits of the case that they should be specially pleaded. And the defendant having suffered an office judgment to go against him, and this not being a plea to issue, he cannot claim it as a matter of right.

MARSHALL, Circuit Judge, of the same opinion.

KILTY, Chief Judge. Although it is necessary for the plaintiff to give evidence of a want of probable cause, yet that would perhaps only admit the defendant to give evidence as to the same facts which were disclosed by the plaintiff, and might not authorize him to give evidence of other facts within his own knowledge, and which might not be known to the

plaintiff. This is a plea tending to an issue, and I think the defendant is in time to plead it.

A bill of exceptions was taken. See this case in the supreme court of the United States (1 Cranch [5 U. S.] 110), where the judgment was affirmed.

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

² [Affirmed in 1 Cranch (5 U. S.) 110.]

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