

Court Records

A Beginner's Guide from the Heritage Research Center

C O U R T E S Y O F T H E H I G H P O I N T P U B L I C L I B R A R Y

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FOR JUSTICE AND GOVERNANCE: EARLY AMERICAN COURTS

The court system in the United States is comprised of a large, complex, and ever-changing nexus of jurisdictions, officers, precedents, rulings, and applicable statutes. Professionals spend their entire lives endeavoring to interpret and apply the law to the complicated circumstances of their fellow citizens. Is it reasonable to think that this arcane body of knowledge could be made accessible and useful to the average family historian? No doubt about it!

Court records give us the best opportunity to get to know our ancestors up close and personal. That is because legal disputes deal

with the nuts and bolts issues of life: divorce, family relations, inheritance, acts of violence, treason, slander and libel, trespass and debt, just to name a few. Courts often compel people to reveal intimate details about themselves, and, sometimes, records of their own words have survived. County courts or courts of pleas and quarter sessions also took over most of the governance of localities prior to the late 19th/early 20th century.

Court records are often the most fruitful ground of research in cases where ancestors own little property. Impoverished ancestors were likely to be detailed to

road work, to apply for divorce, to be apprenticed, or involved in debt or criminal issues. Their names might appear in insolvency lists or petitions. They may also have given evidence for others in court.

Of course, the records of courts are designed to secure the rights of the parties to cases and to provide guidance for future decisions. They were not created to inform family history. Nevertheless, with a little education about legal terminology and court and record structure, almost anyone can enrich mere names and dates with personal details.

PAPERS AND DOCKETS

Court proceedings were documented in two forms: (1) **dockets** which are bound volumes containing summary information about court proceedings and (2) **papers**, judgment rolls, or case files, which comprise more complete documentation of the different stages of a court case or issue. The kind of docket most familiar to family researchers is the **minute docket** or **court journal**, which gives a summary of all the actions taken by



the court at each term. You can use minute dockets to determine when a certain matter was heard by the court and what the court's final determination was. You can also use it as a sort of index to the papers,

which give more detail on each particular case, if they survive. However, remember that these dockets are digests and that many, many names relevant to a case are not included in them. Only the papers can give you the most complete view of a matter before the court. Minutes and dockets supplement one another. Information in the papers is often not duplicated in the minutes and vice versa. Use them together for the best results.

COURTS IN THE COLONIAL PERIOD



When the Southern colonies were first formed, the extent of territory and settlement often didn't justify multiple courts at the local level.

For this reason, the Governor and his Council or the Proprietors of a particular colony often sat as a court of final appeal for the entire territory. Particular colonial officers (usually the Chief Justice and Attorney General) might act as judges on circuit duty, traveling from district to district to hear cases in intermediate level courts where they sat with local notables. These intermediate courts heard appeals from county courts and had original jurisdiction in matters involving larger sums of money or capi-

tal penalties.

County or precinct courts comprised entirely of local men appointed by the governor took over judicial duties in cases of minor import—civil cases under a certain value and criminal cases not involving capital penalties. However, the intermediate and higher courts often duplicated some of the work of local courts as well, since people often applied to the most readily available court for pressing needs.

It is also common to find special appeals courts for particular kinds of cases: those related to government functions and officers, maritime matters, land disputes, problem estates, and equity cases. Frequently, these special courts enjoyed only a limited lifespan.

The records of colonial courts may reside today in the counties where they sat or they may be collected among state level records. Always study the history of the courts existing in your colony of interest before beginning your research.

Basic Distinction::

Civil matters

usually involve a dispute between private individuals over contracts or harms suffered by one because of the other's action or inaction. In

criminal matters,

the state prosecutes an individual for injuries to the state or to the public at large or because of a violation of statute law.

COUNTY COURTS : WORKHORSES OF ADMINISTRATION

For much of the Southeast, the County Court or Court of Pleas and Quarter Sessions, was not just a place where judicial cases were heard. It was also the place where most workaday county governance took place. The justices of the peace, who were appointed by the governor and who were required to give bond for dutiful performance of their responsibilities, met in quorum on a quarterly basis. Their duties included setting tax rates, establishing fees and charges for local taverns, inns and ferries, selection of petit and grand jurors, settlement and oversight of estates, recording of deeds, bills of sale and other instruments, establishing and delegating responsibility for the maintenance of roads and bridges. The Clerk of Court attended each session and recorded its

proceedings in the minutes and other dockets. He was responsible for issuing all the court's orders (writs) and rulings and storing and organizing the judgment rolls and court papers.

Often, individual magistrates held hearings in their own communities between sessions of county court to settle minor disputes, hear and record complaints, issue warrants of arrest, and require binding over to the county court. Sometimes, uncontested proceedings were never actually heard by the county court, although the papers created and received by the magistrate were later, (usually) filed with it. There have been many cases in which magistrates retained court papers among their personal effects and some are still out of official custody.

Of particular interest to

genealogists among the administrative proceedings of these courts are bastardy and apprentice bonds. Bastardy bonds did not exist in every jurisdiction in the South, but where they do, they offer the chance to discover the alleged fathers of illegitimate children. Apprentice bonds were issued for children whose parents were absent or unable to support them. In exchange for their labor, a master taught them a trade and gave them freedom dues. The ages of apprentices and some of their family connections are often revealed in these records. The administrative functions of county courts were assumed by county commissioners or supervisors after 1868 in N.C. and 1869 in Virginia. The county courts themselves survived until 1868 in N.C. (judicial function taken over by magistrate's and superior courts) and to 1902 in Virginia.

SUPERIOR AND APPEALS COURTS

In the post-colonial period, a system of higher courts continued to function under state rather than crown authority. These courts heard appeals from the lower courts and considered, in the first instance, complaints concerning large sums of money and criminal offenses where the life and limb of the defendant were at stake. Often, such courts met less frequently than county courts and had jurisdiction over an entire district encompassing several counties. Sometimes the justices of the court “rode circuit”—that is, they moved from one courthouse town to another to hold court at different times of the year. In other places, they sat in the same courthouse

throughout the year. As population rose, the number of district courts and circuits increased, often, to the point that every county needed its own superior court.

In every state, there is also a court of last resort, usually called a supreme court, to which cases could be appealed from the superior courts. The case files of circuit and superior courts are often kept with papers of the other courts in the counties where they met. Supreme court files are usually maintained as a separate series in the court’s own archive or in the state archives.

The decisions of higher courts are often printed in book series called “Reports.” However, many

cases are excluded from the reports; only those touching a controversial point of law and necessary for future reference are compiled. Furthermore, the reports give only the most crucial details of the case. Reference to the case file is required.

The appeals courts were empowered to hear matters involving *equity*. For this reason, they are sometimes said to be “sitting in equity” or “*chancery*.” In these cases, the court tried to strike a balance of fairness between the parties, even to the point of disregarding the letter of the law.

The higher court records are very useful to those researching ancestors involved in criminal matters or having significant financial interests. They are also very helpful in tracking families from counties where local records have been lost.

RISING TO THE CHALLENGE

Court minutes and papers are not the easiest records to access and use, except in those rare cases when some helpful individual has abstracted and published their contents in book form. A good deal of this has been done, particularly with regard to court minutes.

Papers are a different story. They are, in a best case scenario, filed by individual case. But more often, papers are filed by their dates and mingled with those of other cases. Since individual cases may have been heard over several terms of court or several years, even when a researcher knows from the dockets when the case was heard, he must frequently canvass several years of material to find every shred of documentation. He must also sometimes follow the trail of appeals to higher courts or removal of

jurisdiction to other courts at the same level in neighboring counties.

This strategy is possible only when you know in advance that the case exists. All too often, the researcher has no idea what he or she is looking for, or whether any case relevant to his or her ancestors will be found. Nevertheless, it is often worthwhile to make a complete search of all the minutes and papers extant from the period of time when your ancestors were active in a particular county. You might think to cover the appearance and trial docket or civil or criminal docket and isolate the cases involving your surname (s) of interest as plaintiff or defendant, then search the pertinent years of papers. But, in that case, you will undoubtedly miss much of interest. All parties to a case are not always listed by name in the

dockets. Even ancestors who were not parties could have been called as witnesses, or used as sureties on prosecution or appearance bonds. Frequently, you’ll notice patterns of association through repeat indicators like this and recognize potential relatives.

Another significant challenge is recognition of legal terms, but a good legal dictionary like Black’s can supply this deficit. You don’t need to be a legal expert or have every possible Latin legal phrase at your command to understand basic court proceedings.

Finally, you’ll need to give yourself time to adjust to reading the handwriting of justices, attorneys and clerks. Seventeenth century chancery scripts can be particularly challenging and may require an alphabetic key.

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Types of Court Papers

Here is a quick run-down of some of the more common documents to be found among any court's papers and their genealogical importance.



- (1) **Bonds**, usually *recognizance* bonds (guaranteeing that a defendant or witness will appear in court at a certain term), *prosecution* bonds (guaranteeing that the plaintiff will pay the costs of litigation if he loses) or *appeal* bonds (guaranteeing that the appealing party will follow through on the appeal). If the condition of the bond is not met, the principal and his securities are bound to pay the sum of the bond. Bonds include signatures of ancestors and the sureties or securities are sometimes relatives of the party making the bond.
- (2) **Capias writs** or **summons** are orders of the court to bring in defendants or witnesses and bind them to appear faithfully in court and answer the charges or complaints against them. Usually issued by an individual justice of the peace due to a complaint brought to him by an injured party or in response to a grand jury *presentment* (see below).
- (3) **Petitions** and **bills of complaint** are requests made to the court to redress a wrong or take action against a wrongdoer. They often lay out a basic allegation of events from the point of view of the wronged party or plaintiff. Some of the initial witnesses' names are laid out at the foot of a bill of complaint and a *capias writ* for the defendant may be included.
- (4) **Answers**, **demurrers** and **exceptions** are the defending parties' chance to lay out a reply in writing to the case of the plaintiffs. The defendant may differ as to the facts of the case, or he may petition to have the case dropped because the law does not support an action against him—as, for example, if the statute of limitations has run out on the matter.
- (5) **Witness tickets** are claims by witnesses made to defray their expenses. They usually give the number of days they were called and the total travel time or distance. This gives you a sense of how far the witness lived from the courthouse.
- (6) **Affidavits** and **depositions** are recorded testimony from witnesses. Sometimes these are made because the witness lives far from the site of the trial. Sometimes they are made because the witness is incapable of traveling to court. Sometimes they were created to capture recollection as soon after an event as possible for future use as evidence. Persons investigating pre-20th century court records should not expect any of the testimony given orally in court to be recorded, since Dictaphones were not in use. Summaries of oral testimony might be prepared to support appeals, but these are not verbatim transcripts. Nevertheless, these documents give us a sense of the “voices” of our ancestors and may provide details about their families, lifestyles, attitudes and migration routes (among other things).
- (7) **Presentments** and **indictments**. A presentment is an allegation of wrongdoing made by a grand jury based on evidence presented to it. An indictment is a formal charge against an individual made by a grand jury on a determination that there is sufficient evidence to justify a trial. The language is formalized and shouldn't be taken literally.
- (8) **Writs of fieri facias**. Court orders to realize sums of money from the property of individuals on the losing end of a trial, usually to pay costs and fines. May have been levied against personal or real property. Sometimes include names of all witnesses summoned and their costs.