

# Hear Ye, Hear Ye!

## Making the Courthouse Testify for you

By Jack Butler

These days, most people can go their entire lives with little or no contact with their local courthouse. That was certainly not true for most of our ancestors. The local courthouse played a significant role in the lives of our ancestors. It was where they went to protect all types of contracts, including marriages and land deeds, by recording them, where they sought redress when they were wronged, where their wills were recorded and probated, and where criminals – from murderers to gossips and scolds were dealt with.

And the earlier in our history we go, the more the local courts were called on to do. As Bruce C. Daniels said it in "Town and County: Essays on the Structure of Local Government in the American Colonies":

*“Local courts were often units of government as well as judicial bodies. They issued licenses to lawyers, physicians, merchants, peddlers, ordinaries (public inns), midwives, ferry operators, and clergy; regulated apprenticeships; established weights and measures; provided for inspection of goods and services; ordered the destruction of harmful pests and beasts; paid bounties for heads, tails, and skins; oversaw education for orphans and the poor; built housing for paupers and the maimed, sometimes in conjunction with a local church; built roads and bridges and oversaw their maintenance; called local militia units to muster; assessed taxes and collected them.”*

This lecture identifies those court-generated or court-recorded documents that are most valuable to the genealogist. Included will be identification of the records generated by the courts, their availability, where to find them, and how to access them. Preparation and research planning tips that can help guide you through a successful courthouse research trip will also be addressed.

### Types of Courts

**Federal Courts** – The United States does have an extensive federal court system and some of the records generated by these courts would be of genealogical interest. This seminar, however, addresses only the records found at local courthouses. While Federal Courts and their records are certainly also worthy of study, the time allotted does not allow us to venture into them - they are a topic worthy of their own lectures.

**State Courts** – These are the courts found in what we tend to think of as the county courthouses. No two state court systems are exactly alike. Nevertheless, nearly all state court systems have at their base, courts of limited jurisdiction and courts of general jurisdiction.

**Courts of Limited Jurisdiction** – these are the specialized courts. Except for Probate Court, many of them are products of the 20<sup>th</sup> century. Earlier courts were more generalized and handled a wider range of cases:

- **Probate Courts** - (also called Surrogate’s Court, Courts of Ordinary, Orphan’s Courts)  
This court handles matters concerning administering the estate of a person who has died

(decedent). It sees that the provisions of a will are carried out or sees that a decedent's property is distributed according to state law if he/she died intestate (without a will).

- **Family Courts** - These courts handle matters concerning adoption, annulments, divorce, alimony, custody, child support, etc.
- **Other courts of limited jurisdiction** – Traffic Courts, Juvenile Courts, Municipal Courts are either of recent creation or are too limited in access to be of interest for this seminar.

**Courts of General Jurisdiction** – Courts of general jurisdiction are the main trial courts in the state systems. They hear cases outside the jurisdiction of the trial courts of limited jurisdiction. These involve both civil and criminal cases. The names vary from state to state, but these courts are typically called: circuit courts, superior courts, courts of common pleas, and even, in New York, supreme courts.

**Highest State Courts** – The final appeal level of the state, they are called Supreme Courts in most, but not all states. Again, of some, but limited interest and not addressed in this lecture. Because they create precedent that may affect the application of law in other cases, extracts outlining the principal elements of the case (including names of parties and basic facts of the case) are often published and may be found in law libraries and other repositories.

## **Court Cases that Generate Records of Interest:**

Family history records found at the county courthouse can be roughly divided into two categories: records of court actions requiring a judge and possibly a jury, and records simply recorded and retained at the courthouse.

### **Court Cases – Cases presided over or decided by a judge and/or jury.**

The following legal actions are typically found among the records at the County Courthouse.

1. **Criminal Cases** – Criminal actions - the people vs a defendant - involve the State's efforts to protect society. These cases can never be settled out of court, although modern plea-bargaining can reduce or eliminate punishment. Criminal offenses include felonies (murder, robbery, burglary, rape), misdemeanors (petty theft, vagrancy, drunkenness, prostitution, breaking the Sabbath), and in more recent years, less serious matters classified as offenses or violations (overtime parking, unlicensed dogs).

Indexes to these cases will be in the name of the defendant, since the claimant will always be the government body involved. Whether the ancestor was the defendant or the victim, these records rarely provide the vital statistics sought after most genealogists. They can, however, explain sudden disappearances, changes in locations, and provide interesting background about the family.

2. **Civil Lawsuits** – We tend to think of our own times as being highly litigious, with lawsuits popping up willy-nilly over every sort of disagreement. The truth is that our ancestors were, if anything, even more likely to use the courts to settle disagreements with their neighbors or their relatives. Civil actions are taken by one private (non-governmental) party against another private party over real or perceived injury done by one individual to another individual. Suit is brought to enforce private rights or to seek compensation for injuries. Depending upon the reason for or the source of the lawsuits, these records generated by civil actions can provide all manner of information about the

ancestor and his or her relations. Indexes typically include both plaintiffs and defendants. However, if there are multiple plaintiffs and/or defendants, often only the first of each is named in the index.

3. **Equitable Actions** – Sometimes, courts decide that a fairer, or more equitable, solution to a problem can be decided outside of the letter of the law. One of the best short summaries that I have seen about these actions was found in *The Source: A Guidebook to American Genealogy*, by Sandra Hargreaves Luebking, FUGA, Loretto Dennis Szucs, FUGA, and Arlene H. Eakle, Ph.D.: *“Equitable actions usually involve property rights and serve as a substitute for legal actions, in which the remedy is limited to monetary damages, and may be inadequate to remedy the harm. The remedy of the court sitting in equity can be an order of specific performance-to deliver goods promised, to restore animals to their proper owners, to replace equipment damaged, to execute and deliver a deed, or to rewrite a document or report. It could be a mandatory injunction to prevent a certain action. It could also be a bill of account for monies spent in a guardianship.”*

This seminar will look at three types of Equitable Actions:

- **Probate** - Unless a person was very poor or died without owning real estate so that the family was comfortable settling the estate informally among themselves, a death usually resulted in creation of probate records. Probate is simply the legal process by which a deceased person's property passes to another person or persons. It usually took one of two forms:
  - **Testate** – The deceased left a will, a document that directed how his estate should be divided at his death. Wills often name wives and children and frequently provide other information about the family such as family relationships and the new surnames of married daughters and family relationships.
  - **Intestate** – It was far more common for people to die intestate. The laws of the probate courts then took over and determined how the deceased person's personal property and land would be divided among his heirs.Both processes created probate or administration files that could contain a wide variety of useful records such as letters of administration, administrator or guardian bonds, estate inventories, sale of estate property, distribution of the estate, and many others. Information from these records can include date of death, location of heirs, and clues about the deceased's occupation and lifestyle.
- **Divorces and/or Separate Maintenance** – While not nearly as common as they are today, they were not unusual among our ancestors. Divorce records typically include the date and location of the marriage. Minor children are often named, as are previous residences. Sometimes a separation occurred rather than a full-out divorce. In those cases, it was common for agreements for support.
- **Partitions** – Any division of real property or Personal Property between co-owners, resulting in individual ownership of the interests of each. Most cases of partition

involve real property. Persons can own property as tenants in common or joint tenants. As common owners of the property, they have equal rights in the use and enjoyment of the property. Partition statutes allow those who own property in common to sever their interests and take their individual share of the property.

Partition may be either voluntary or compulsory. Voluntary partition is when the cotenants (owners) divide the property themselves, usually by exchanging individual deeds. Each co-owner owns a part of the property and ceases to have an undivided interest in the whole. The parties can also provide for the sale of the property and divide the proceeds among themselves.

Partitions often involve heirs who have inherited real estate in common – “I leave all of my plantation to be divided equally among my children.” In such cases, all parties to the partition are named and other details are also included.

## The Types of Records Typically Created by Court Cases

- **Case Files:** A case file is full of all kinds of papers: evidence, testimony, correspondence, depositions, etc., that are relevant to the case. Finding a case file normally requires obtaining a case file number from the index, docket, or minutes of the case. Case files have often been left out of microfilming projects
- **Dockets:** The docket serves something like a chronological index of the Courts, cases. After a case is accepted by the court, it is placed on the court docket until the time of the trial. The docket entry usually includes the names of the plaintiff and defendant, the date of the case's hearing, the case's file number, and the titles of all documents relevant to the case. Dockets are established by category, such as criminal, civil, or equity.
- **Minutes:** The minutes, compiled by the clerk of the court, briefly record all actions of the court on a single day. Particularly useful when indexes and dockets cannot be located, they usually list the plaintiff and defendant in the case and state the action taken. They are normally organized chronologically but are rarely indexed.
- **Orders:** The recorded orders of the court can be found in almost every jurisdiction. They generally present a concise summary of the case and state the judgment to be carried out. It is worth noting that appointments of guardians, memorials, naturalizations, and re-recordings of deeds, especially before this century, are often recorded in the order books. In addition, a variety of other administrative data from the locality was also recorded frequently.

## Other Records found at the Courthouse

The documents included in these records are not generated by legal actions that come before the courts, but they are recorded by the courts and can be found among the records available at the court house.

1. **Marriage Records.** Marriage records vary with locations and times, but always provide the names of the bride and groom and the date and location of the marriage.
  - **Marriage Bonds** – In early America, state and county governments often required that a bond be posted to assure the government that they would not suffer financially

for allowing an illegal marriage. They contain the bride and groom's names as well as the names of the men acting as security for the bond – who are usually related to the bride and/or groom.

- **Marriage Registers** - usually contain little more than the bride and groom's names and the date of the marriage.
- **Marriage License/Applications** – again vary greatly from place to place and time to time. May vary from a simple statement of the bride and groom's name and the date of marriage to document that also names parents, witnesses, minister, etc.
- **Marriage Returns** – Most jurisdictions required the minister, Judge, or Justice of the Peace performing the marriage to return a signed copy of the marriage license with the date and location that the marriage occurred to the court that issued the license.
- **Permissions** – When a bride or groom was under age 21, parental permission was usually required.

Marriage records are usually indexed and are frequently published. FamilySearch.org currently lists marriage records from some 40 U.S. States – some include digitized images of the actual record (see Appendix A for a list).

2. **Land Records.** As with marriage records, you may find a variety in property record types. All will provide the names of the buyer and seller of a property, along with the names of witnesses, a description of the property, and the monetary value of the transaction.
  - **Patent** – a legal document that transfers title in real estate from the sovereign power – the king in colonial days, the federal or state governments after formation of the United States. Patents are only issued on this first sale to a private individual. These records are more often found in NARA or the various State Archives and other historical repositories, but sometimes do appear in court records.
  - **Deed** - a legal document that transfers title in real property from one person to another.
  - **Dower Rights** - Most states had laws that guaranteed the widow use of a portion (often 1/3) of the lands owned by her husband to provide her support for her lifetime.

Land records are usually indexed and are often indexed by the names of both the buyer (Grantee) and the seller (Grantor). They are occasionally published, usually in abstract form. As with marriage records, land records can usually be found in LDS Family History Library catalog.

They are an important, if often overlooked, source of genealogical information because they cover more people than any other record. In America, it is estimated that by the mid-1800s, about 90% of all adult white males owned land. It is also noteworthy that there have been fewer losses of land records than any other record of genealogical interest.

4. **Tax Records** – help identify residency and frequently include the names of heads of households, ages, relationships, occupations, slaves, wealth, personal property, livestock, assessed valuations, acreage, and property locations.

Since tax records list the heads of households in particular areas at specific times, they often serve as substitutes for lost census records. Tax records are usually very complete resources because they include eligible voters and every owner, male and female, of real estate and taxable personal property

## Accessing Court Records

For most Court jurisdictions, there are three possible ways for accessing court records.

1. **Go There.** Unfortunately, the offices of the Clerk of Court in most courthouses are notoriously busy and are not likely to have the time or interest to look up records for you. Therefore, if the records that you wish to see are found only at the local courthouse in the jurisdiction of interest, this will entail a visit to that county courthouse.
2. **Microfilm.** The Genealogical Society of Utah has filmed court records for many jurisdictions. These microfilms may be rented at a relatively nominal fee from the LDS Family History Library for delivery to a Family History Center in your area. You may then go to that Family History Center to view the film on their microfilm readers. .

Unfortunately, not all records in all courthouses were microfilmed. Even in the courthouses where records were microfilmed, it was common to leave some records out of the filming project. For example, Minutes Books and Order Books were often microfilmed while the much more voluminous Case Files were frequently skipped. You can visit *FamilySearch.org* and check their microfilm catalog to see what is available for the county of interest. Remember, though, that not finding a desired record in their catalog does not mean that the records do not exist at the courthouse of interest.

3. **Published records.** Some court records have been transcribed and published – most are very early courts, and publications of post-1850 records are rare. Once again, you can check the Family History Library Catalog or you can search other library catalogs or just online generally for references to published court records. You should consider are that most published court records are abstracts or extractions – few are the full word-for-word transcriptions. Note that post-1850 court records are largely unpublished, and also be aware that some published records are abstracts or extractions, not complete verbatim transcriptions.

### If You Go - Preparation for Your Courthouse Visit:

Before diving into the courthouse records, take some time and make sure that you are ready for your visit. Examine information you have gathered about your ancestors to get an idea of what additional information you might expect to find in county records. Visits to any repository are always fishing trips to a point – we go to see what we can find. But success is more likely if we can at least define what it is that we hope to learn at the courthouse. Here are some other preparation tips.

- Determine what records are maintained by the courthouse and for what years, etc. – Handybook, Red Book, Rootsweb, and the local genealogy society are all possible sources of this information. Nothing is more frustrating than travelling to a repository only to learn that the records that you are seeking were destroyed in a fire a hundred years ago.

- Also, find out if the desired records are still physically located at the courthouse. It is not uncommon for older records to be placed in separate storage or transferred to the State Archives or a local historical society. If they are in separate storage, ask about availability.
- Determine if microfilms of needed records are available. If yes, move records where microfilms are available to the bottom of your research list. Microfilms can often be found at State archives, or rented from the Family History Library in Salt Lake City through local Family History Centers. If you run out of time at the courthouse, you can always fall back on the microfilms for these records. And it has been known to happen that microfilms of court records included records that had been lost or misplaced by Court personnel since the original microfilming.
- Always contact the courthouse to ask about operating hours and any holiday or other scheduled closures that might coincide with your planned visit. These days, websites often supply this kind of information – don't trust them, verify! Ask about whether there are limits on the number of researchers at any given time; likewise as to whether research tools such as computers or microfilm readers must – or can be – reserved in advance. Ask also, if there are certain days or times which are better for research – in most courthouses, title researchers and other legal practice researchers tend to group on one or two days a week. Avoiding those days, if possible, would be a good thing..
- Ask about cost of copies, who does the copying, whether exact change is required, etc.
- Ask what equipment you can bring – computers, scanners, digital cameras, etc.
- Dress appropriately. Like it or not, people do judge others by appearance and it might be reflected in how they react to your requests for assistance.

### **Organize Your Research Tasks Before Going**

- Review your research and make notes about what records you need to see. Note any records or books that you have already checked.
- Include details that allow you to find what you will need (names, dates, etc.). Organize searches into like groups (marriages, deeds, etc.). Your research time in the courthouse is too valuable to spend it digging through piles of notes looking for this data.
- Prioritize your research goals, by group (marriages, wills, etc) and by individual records within each group. If you find that the marriage record for your great grandparent is more important to you than finding that of great aunt Nessie, put the grandparents higher up the priority list.
- Don't forget to pack your research notes!

### **At the Courthouse**

- Inquire as to where the records that you need are located. Make notes on the top sheet of each of your groups of categories indicating where each is located.
- Ask about any special rules or regulations, confirm how copies are handled.

- Do a quick check of the records room to see if there are records available that you did not know about. Consider adding any new finds to your lists.
- Follow your prioritized lists and search for records! It is all too easy to get side-tracked by other “possibles” and then find yourself out of time with much of your research goal still unmet.
- Be courteous. Keep in mind that not only your own success, but the success of researchers that come after you may be affected by the impression that you leave with the personnel that encounter. Respect the staff's time, and do not hold them hostage with tales about your ancestors. They almost certainly will not care. As I once heard a clerk say, “Oh, I love genealogy – just not yours.” Also, do not wait until closing time before asking clerks to make copies. (Some offices will not make any copies 30 to 45 minutes before closing time.)

**Good Hunting!**