Second Edition

"Duely & Constantly Kept"

A HISTORY OF THE NEW YORK SUPREME COURT, *and*
AN INVENTORY OF ITS RECORDS *(New York, Albany, Utica, and Geneva Offices)*

1691–1847

New York State Archives

This second edition of "*Duely and Constantly Kept*" is dedicated to the many people who have supported the efforts to preserve and make available the essential records of New York's courts. Without their tireless dedication and unwavering advocacy, this critical resource would not be available today. Two individuals deserve special recognition. The first is the late Judge Judith Kaye, whose commitment to protecting and interpreting the history of New York's courts is unparalleled. The second is Dr. James D. Folts, author of both this and the first edition. Dr. Folts's deep knowledge, boundless energy and keen insights have brought forth the richness that New York's historical court records contain. Without his efforts, this book would not be possible.

The University of the State of New York
THE STATE EDUCATION DEPARTMENT

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NEW YORK STATE ARCHIVES

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Albany, N.Y. 12230

COVER ILLUSTRATION:
Justice's Court in the Backwoods by Tompkins Harrison Matteson, 1850, oil on canvas. Courtesy of the Fenimore Art Museum, Cooperstown, New York, Gift of Stephen C. Clark. No 411.1955. Photograph by Richard Walker.

TITLE PAGE ILLUSTRATION:
"Jurors Listening to Counsel, Supreme Court, New City Hall, New York"

Harper's Weekly, Feb. 20, 1869 (wood engraving). The "new city hall" was the recently constructed New York County courthouse, located at 52 Chambers Street. (The building was nicknamed the "Tweed Courthouse" for Democratic Party boss William M. Tweed, who oversaw its construction.) The courthouse post-dates the New York Supreme Court records in the State Archives, but the scene vividly depicts a jury trial of the mid-nineteenth century. (Image courtesy of New York State Library—Manuscripts & Special Collections.)

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Second Edition made possible with a grant from **THE WILLIAM NELSON CROMWELL FOUNDATION**

New York State Archives

HISTORICAL SOCIETY *of the* NEW YORK COURTS

Archives Partnership Trust

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and The New York State Archives
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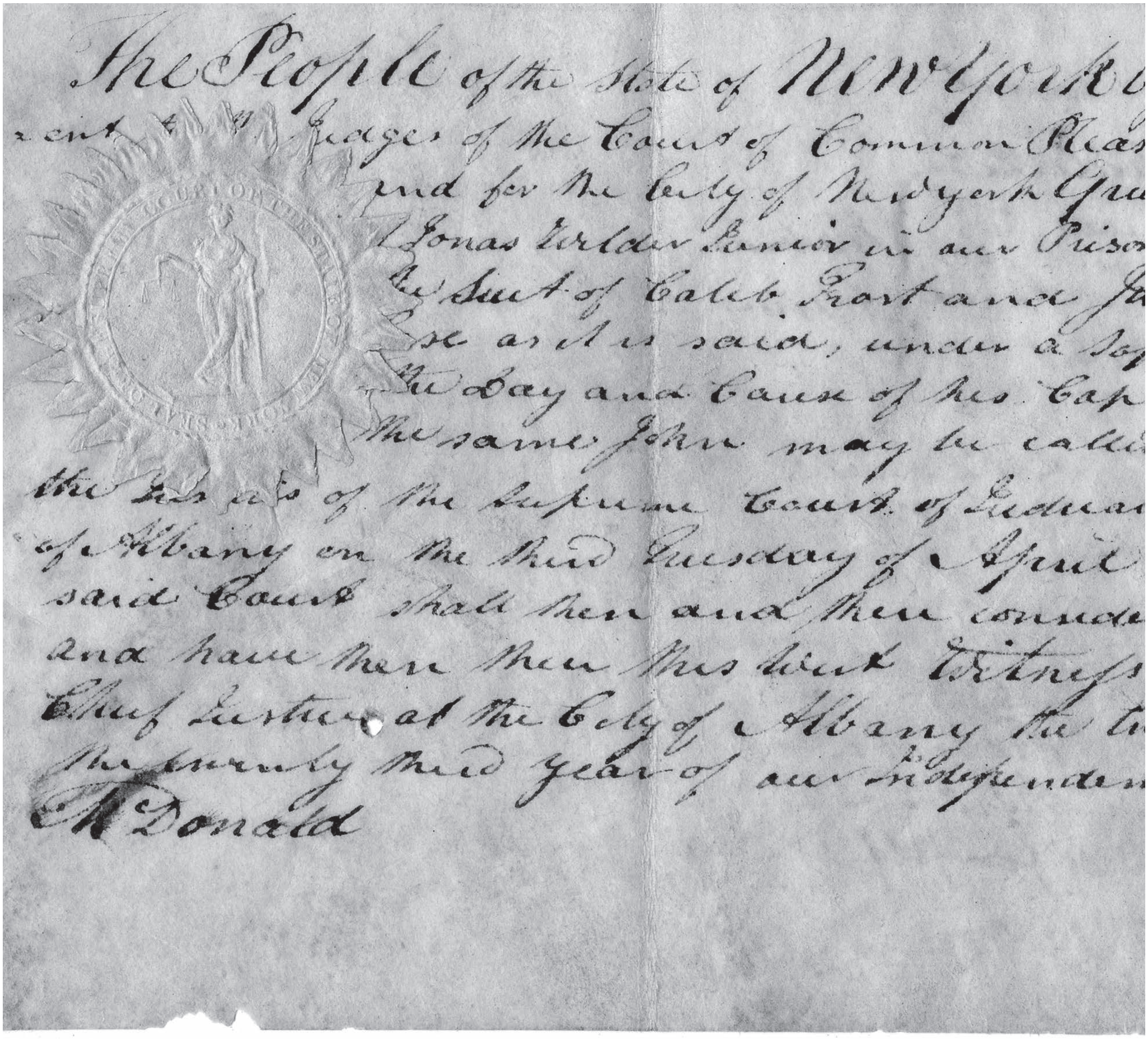
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SEAL OF THE SUPREME COURT OF THE STATE OF NEW YORK

Writ of *habeas corpus,* 1799. Detail shows a clear impression of the seal of the Supreme Court of Judicature. The writ ordered the New York City Mayor's Court to produce a defendant in the Supreme Court's April Term in Albany.

(Series JN550, Writs of Habeas Corpus *[New York].)*

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Foreword

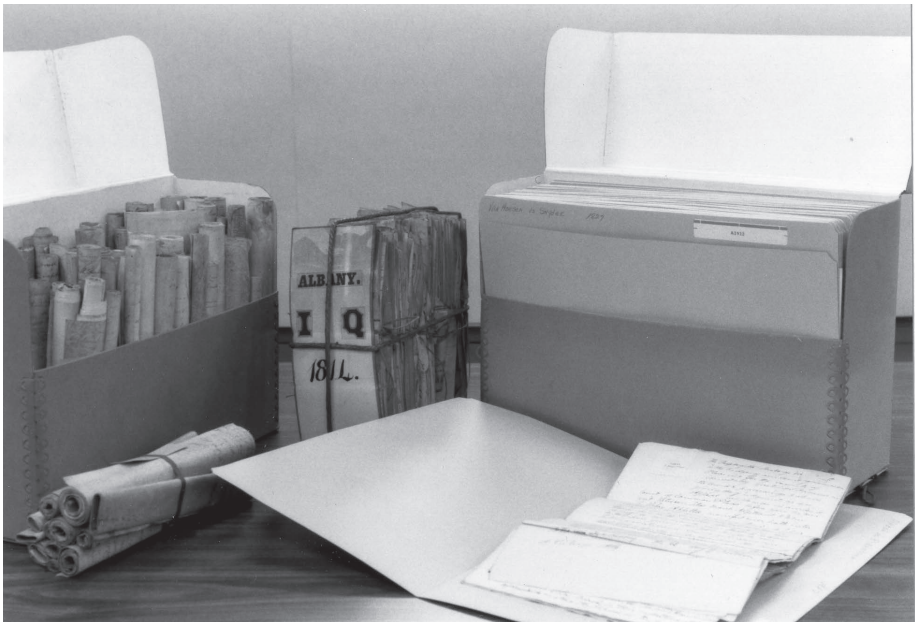
In 1691 the Assembly of New York Colony passed an act establishing a Supreme Court of Judicature and provided that the court should be "Duely & Constantly kept" at times to be provided. Nearly three hundred and fifty years later, after a political revolution and independence from Great Britain, four State constitutions, and four major reorganizations of the judiciary, the Supreme Court continues as the State's court of "general, original jurisdiction." The Supreme Court today is still "duly and constantly kept." The court holds trial terms in each county and hears appeals in its Appellate Division. Extending the meaning of the phrase, the Supreme Court's archival records have likewise been "duly and constantly kept" for the past three centuries.

Upon its establishment in 1847, the Court of Appeals assumed custody of the pre-1847 Supreme Court records from the upstate clerk's offices, which were located in Albany, Utica, and Geneva. The records of the clerk in New York City were maintained by the New York County Clerk. In 1982 the Court of Appeals transferred to the State Archives in Albany several million Supreme Court documents, dating from 1797 to 1847, from the three upstate clerk's offices. In 2017 the pre-1848 Supreme Court records held in New York City were transferred to the State Archives. These transfers united in one repository, for the first time, the complete pre-1847 records of New York's statewide courts. This major collection of historical court records also includes the records of the Court of Chancery (1684-1847), Court for the Trial of Impeachments and Correction of Errors (1777-1847), and Court of Probates and its colonial predecessor (1664-1823).

The records of the Supreme Court of Judicature contain a vast amount of information on legal, economic, and social relations among New York's peoples, and on efforts to protect or obtain individual rights and liberties. Court records are often the sole surviving evidence of individuals or institutions that lived or operated in the Empire State in the past. However, researchers have lacked access to these records, because the bundled papers and bound volumes were not arranged and described according to modern archival principles.

This updated history of the Supreme Court and the inventory of its records in the State Archives reflects the hard work, knowledge, and dedication of Dr. James D. Folts, who is recognized widely as an authority on the records of New York's courts, and without whose commitment this book would not be possible. It is our hope that this updated work will help make this incredibly rich documentary resource more accessible to the legal community, academic scholars, educators, and interested citizens.

The preservation and survival of records are usually the result of actions of interested individuals, and the records of New York's statewide courts are no exception. John H. Gary, Motion Clerk for the Court of Appeals, was a longtime advocate for adequate care for the pre-l847 court records, and he watched over their administration. Dr. Leo Hershkowitz, Professor of History, and Professor Matthew J. Simon, Chief Librarian,

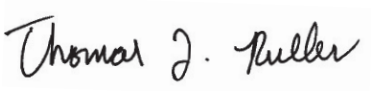


SUPREME COURT WRITS AND JUDGMENT ROLLS.

Examples of parchment judgment rolls and writs filed with the clerk of the Supreme Court of Judicature at Albany.

Rosenthal Library, both of Queens College of the City University of New York, arranged for a temporary home for the records at the College during the 1970s when, for much of the period, there was no State Archives to administer them. Joseph Bellacosa, Clerk of the Court of Appeals and later an Associate Judge, and Donald Sheraw, Deputy Clerk and later Clerk of the Court of Appeals, provided strong support for the transfer of the records to the State Archives in 1982. Over thirty years later, former Court of Appeals Judge Albert Rosenblatt and the members of the Historical Society of the New York Courts were strong advocates for the transfer of the records from the New York County Clerk's Office to the State Archives in 2017. That task that could not have been accomplished without the good work of Geof Huth, the Chief Law Librarian and Records Officer for the Office of Court Administration, Unified Court System.

At the State Archives we preserve records for use by current researchers and researchers in the future. The records described in this book are preserved and available thanks to the hard work and dedication of those I have listed above, as well as many other archivists, scholars and public officials who recognize the value and importance of protecting our documentary heritage.



Thomas J. Ruller
New York State Archivist

Introduction

The New York State Archives holds all the surviving books and papers kept or filed by the clerks of the Supreme Court of Judicature at New York City, Albany, Utica and Geneva.

This history and inventory will assist researchers in understanding all pre-1847 common-law court records in New York.

The New York State Archives acquires, preserves, and makes available for research the archival records of the three branches of State government, including the judiciary. This publication will help researchers understand and use the largest, most complex group of judicial records in the Archives, those of the Supreme Court of Judicature, 1691-1847. The State Archives acquired those records in two stages. In 1982 the Court of Appeals transferred to the Archives its own records and records of its predecessor, the Court for the Correction of Errors. Also transferred were records of the Supreme Court of Judicature, Court of Chancery, and Court of Probates, courts that had colony and statewide jurisdiction before the reorganization of the judiciary in 1847 under the Constitution of 1846. Those records came from the former Supreme Court clerks' offices at Albany, Utica, and Geneva; the former Albany office of the Court of Chancery, an equity court abolished in 1847; and the Court of Probates, abolished in 1823. An 1847 law required that those records be maintained by the clerk of the Court of Appeals. From 1973 to 1982, before their transfer to the State Archives, the records were deposited in the Historical Documents Collection at Queens College of the City University of New York. Records of the former clerks' offices of the Supreme Court of Judicature and Court of Chancery in New York City were transferred to the New York County Clerk's Office in 1847 and remained there until 2017, when the Office of Court Administration of the New York State Unified Court System transferred them to the State Archives. With that transfer, all the records of New York's Supreme Court of Judicature and Court of Chancery became available for research at the State Archives, whose research facility is in the Cultural Education Center in downtown Albany.

The following administrative history discusses the organization, jurisdiction, and procedure of the New York Supreme Court of Judicature. The court was established in 1691, continued little changed by the first State Constitution of 1777, and reorganized by the second Constitution of 1821, effective in 1823. The court was succeeded by the present Supreme Court, with original and appellate jurisdiction, in 1847. The Supreme Court of Judicature possessed jurisdiction derived from two English common-law courts. The court's civil jurisdiction included actions to recover debts or damages above a certain amount of money, or personal property or its value; and actions concerning real property. (County courts of common pleas and local justices of the peace and city magistrates adjudicated cases involving lesser claims.) The court's criminal jurisdiction embraced all felonies and misdemeanors, though after about 1800 those criminal offenses were prosecuted in the county courts of general sessions. The Supreme Court also possessed appellate and transfer jurisdiction over cases originating in the county, city, and town courts.

The court's common-law jurisdiction was modified by statutes starting in the 1780s and largely but not entirely codified in the *Revised Statutes* of 1829. The Supreme Court in the colonial and early national periods was organized as a unitary court with a single clerk, whose office was in New York City. Civil and criminal trials occurred either before all the Supreme Court justices, or more often in circuit courts held in county courthouses by individual justices; all pleadings and judgment rolls were filed with the

Supreme Court clerk. The Supreme Court was decentralized in stages. In 1797 a second clerk's office was established in Albany, with additional offices opened in Utica in 1807 and Canandaigua in 1829, removed to Geneva in 1830. After about 1800 the Supreme Court practically never held trials, which now occurred only in the circuit courts. Supreme Court terms to decide legal issues were held in New York City and Albany, and later also in Utica and Rochester. The court's reorganization in 1823 was intended to manage better its burgeoning caseload. Eight judicial circuits were established, each with its own judge, who presided over circuit court trials and handled much business that previously went to the full Supreme Court.

The history of the court is followed by a summary of the court's procedure, describing how cases proceeded from initial pleadings by the parties through final judgment awards. Also discussed is procedure for determining legal issues, those that arose in the Supreme Court during pleading, or trial in a circuit court, and those brought to the court by appeal of allegedly erroneous proceedings or final judgments of lower courts. The Supreme Court's procedure remained very conservative, adhering to English common-law forms, until the Code of Procedure of 1848 abolished common-law writs and pleadings and replaced them with a simplified statutory procedure.

The records inventory provides information on dates, quantity, content, arrangement, and indexing of each Supreme Court record series. Described first are series relating to arrest or summons of a civil defendant, bail (when required), pleading, trial, judgment, and execution and satisfaction of a money judgment. Described next are series of motion papers, court rule books and minute books, records of appealed or transferred cases, and files relating to statutory proceedings (such as insolvent assignments). Last, the inventory describes the court's financial records and records relating to attorneys. Both the history and the inventory will assist researchers in understanding other pre-1847 common-law court records in New York, those of the county-level courts of common pleas. The surviving records of those courts (predecessors to the present county courts, established in 1847) are held by the county clerks. The Court of Common Pleas for the City and County of New York (known as the "Mayor's Court" prior to 1821) operated until 1896, and its voluminous records are held by the New York County Clerk's Office, Division of Old Records.

Basic information on the substance of a case is found in the judgment roll.

Writs of arrest and execution provide measures of the effectiveness of the civil justice system.

Case documents throw light on the financial careers of individuals and businesses.

The Supreme Court records are an important source of information for legal history. Historians often use the published New York court reports, which commence in 1794 and document the ever-growing number of cases in which significant points of law are decided. Additional information about pre-1848 reported Supreme Court cases will be found in the judgment rolls, common rule books, minute books, and other record series. Summaries of trial testimony may be found in the records of cases reviewed by the Supreme Court by writ of error or writ of *certiorari.* Writs of arrest and execution provide measures of the effectiveness of the civil justice system. How many civil defendants did the sheriffs locate and arrest or summon for appearance in court? How many cases proceeded to judgment without trial, or were discontinued prior to judgment? How many judgments were actually satisfied?

The records of the New York Supreme Court are an important source of information for economic history. Most of the court's cases involved contracts, and the records shed light on the financial careers of individuals and businesses. Who was suing whom? How often did plaintiffs obtain judgment awards, and for how much? Answers to such questions can be found in the Supreme Court judgment rolls and docket books. A money judgment filed and docketed by the court clerk informed the public of a judgment lien against the judgment debtor's property, and implicitly identified credit risks. Other research possibilities are less obvious. For example, historians of crime should not overlook civil court records, since victims could bring civil actions seeking money damages for assault and battery or theft. Land title searchers will find numerous land partition and ejectment proceedings. In sum, the documents relating to hundreds of thousands of Supreme Court cases between 1691 and 1847 are an important resource for the history of early New York. In the past, the inaccessibility and complexity of the Supreme Court records meant they were seldom consulted. The transfer of the records to the State Archives makes them readily available for research. This administrative history and record series inventory are intended to make the records more intelligible and usable. The author acknowledges the work of the many people at the Court of Appeals, the New York County Clerk's Office, and the Office of Court Administration, in the far or recent past, who have preserved and inventoried the records, and indexed many of them. State Archives staff have accessioned and cataloged the records according to national archival standards. They continue the work of past custodians, indexing and reproducing the records, with the results now becoming available on the State Archives' website: www.archives.nysed.gov.

James D. Folts
Head, Researcher Services, New York State Archives

OLD CAPITOL, ALBANY, CA. 1880

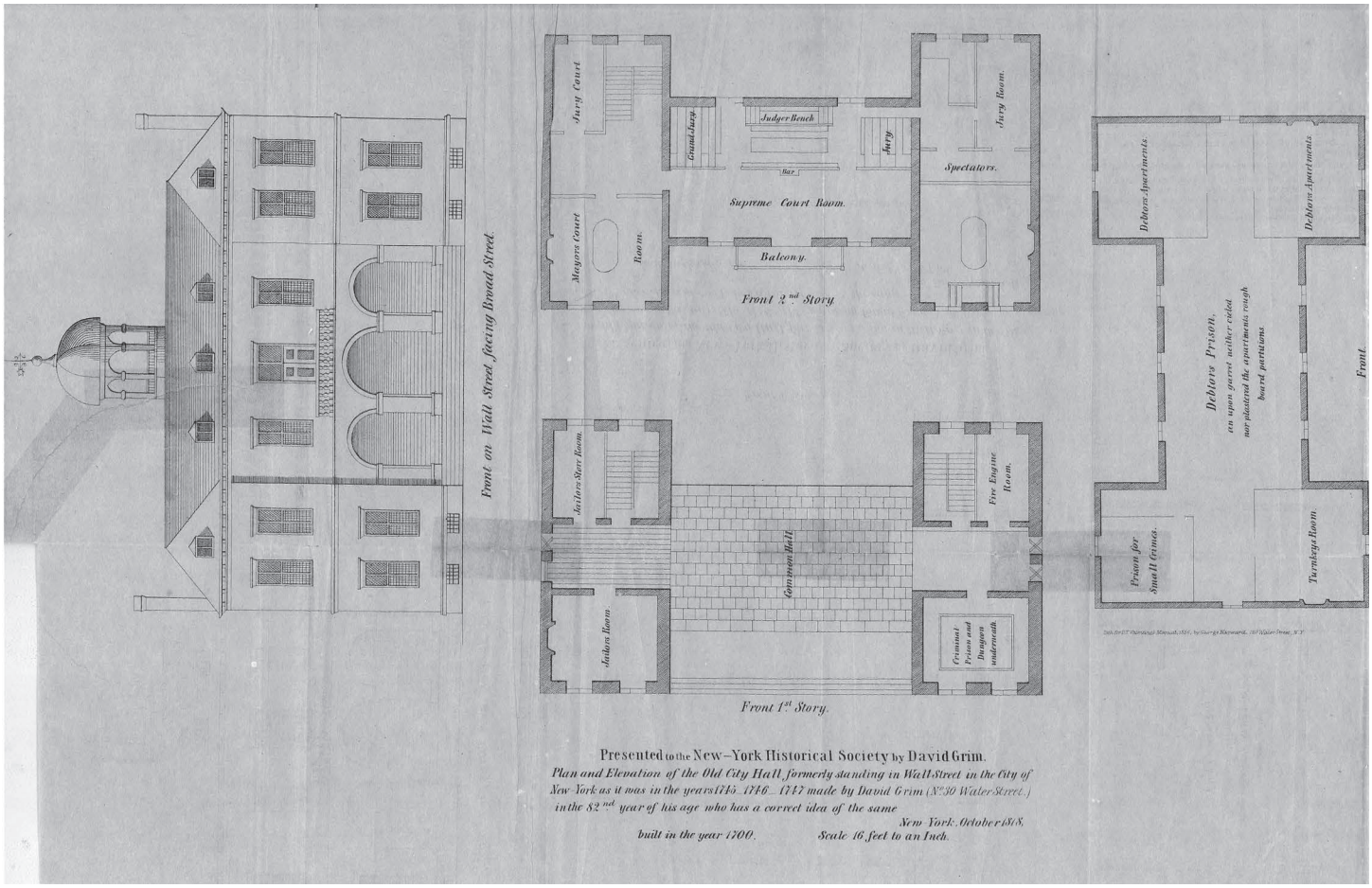
Built in 1806-08, the Capitol was the seat of the Albany terms of the Supreme Court of Judicature until the court was abolished in 1847. This building was demolished to allow for the construction of the current State Capitol.

New York State Archives. New York (State). Education Dept. Division of Visual Instruction. Instructional lantern slides, ca. 1856-1939. Series A3045-78.

History *of* the Supreme Court of Judicature, 1691-1847

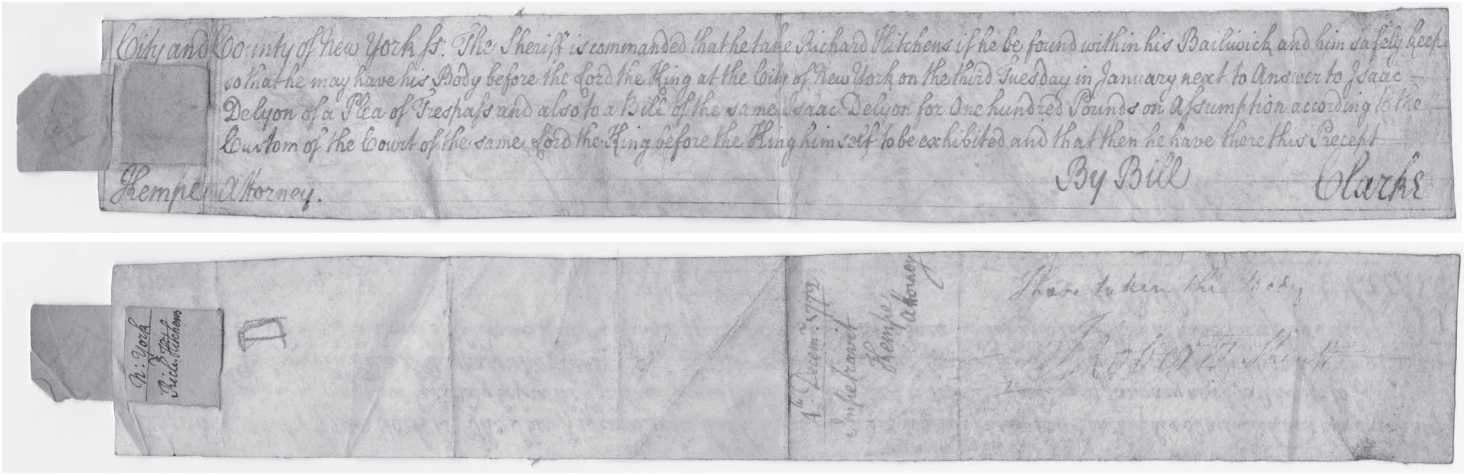
Supreme Court under the Royal Government

On April 27, 1691, the New York Assembly passed an act establishing a Supreme Court of Judicature and reorganizing the other courts of the colony. The royal governor and his council approved the act, and it was publicly proclaimed as law on May 6.[1] The Supreme Court of Judicature was the colony's highest common-law court, vested with original, transfer, and appellate jurisdiction. The court's original jurisdiction included criminal cases; personal actions in which the amount demanded was more than £20; and actions concerning title to real property.[2] The Supreme Court did not, however, have exclusive jurisdiction over these types of cases; almost all could also be brought in the county courts of common pleas (civil cases in which the plaintiff's demand was less than £20) and courts of sessions (lesser criminal offenses). (New York had been divided into counties by an Assembly act of 1683.) The judicature act of 1691 gave local justices of the peace and city magistrates jurisdiction over small suits, in which the plaintiff's demand was less than forty shillings. That jurisdiction was confirmed by an act of 1737, and the money limit was increased to £5 in 1754.[3] The Supreme Court's appellate and transfer jurisdiction embraced all the lower courts. The Supreme Court could review civil and criminal judgments of county courts brought to it by writs of error. A proceeding in a county court of common pleas prior to final judgment could be transferred to the Supreme Court by a writ of *certiorari* or *habeas corpus,* if the plaintiff's demand exceeded £20 or involved title to freehold property.[4] Appeals from judgments of the Supreme Court were allowed in civil cases in which the plaintiff's award was more than £100 sterling (after 1753 the amount was £300). These appeals were made by writ of error to the royal governor and his council sitting as the



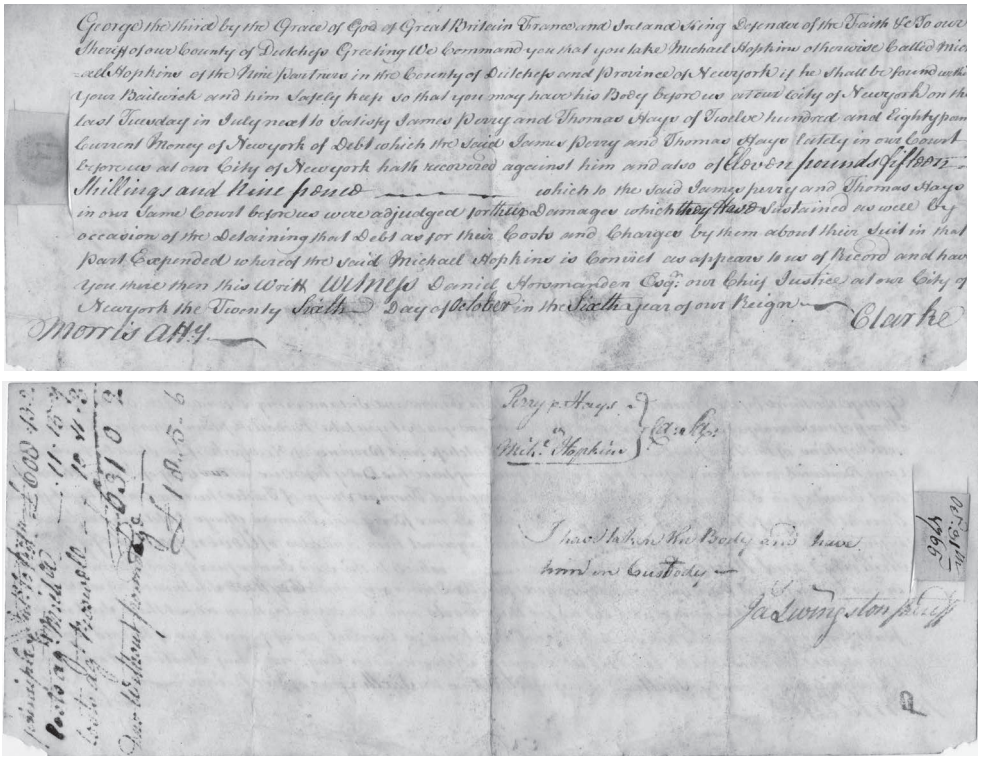
DAVID GRIM, NEW YORK CITY HALL AS IT WAS CA. 1745-47 (ELEVATION AND FLOOR PLANS).

The city hall, which served as the courthouse and jail, was built on Wall Street in 1700. The plan of the second floor shows the Supreme Court room (about 48 by 26 feet) with judges' bench, attorneys' bar, and jury boxes. Also shown are the Mayor's Court and jury rooms. Most of the first floor was a "common hall." The "debtor's prison" was in the attic, and the "criminal prison and dungeon" was in the cellar. The building was renamed "Federal Hall" when it became the first capitol of the United States in 1789. Grim prepared this rendering in 1818 as he recalled the building in his youth. The original is in the New-York Historical Society. Grim's plans were published in *Manual of the Corporation of the City of New York* (1855) (lithograph), between pp. 584-85. (Courtesy New York State Library—Manuscripts & Special Collections.)



PRECEPT, 1772

Front and back. See p. 97.



WRIT OF *CAPIAS AD SATISFACIENDUM*, 1766.

This writ orders the Dutchess County sheriff to arrest a judgment debtor and keep him in custody until the judgment was satisfied. The writ was prepared by the attorney for the plaintiff and issued in the name of the court clerk, George Clarke, Jr. The reverse of the writ itemizes the amount of the judgment debt and the "poundage" due to the sheriff for serving the writ.

(Series JN543, Writs of Capias ad Respondendum *and Other Sheriff's Writs.)*

court for the correction of errors and appeals.[5] The court of last resort was the Privy Council in London, which reviewed only cases involving more than £300 sterling (after 1753, £500). All such further appeals were rare.[6]

The bench of the Supreme Court consisted of a chief justice and usually two (after 1758, three) associate or *puisne* justices who were appointed by the royal governor and council. After 1704 the full Supreme Court held four terms a year in New York City. Numerous civil and criminal cases arising in New York City were tried by the Supreme Court during its terms. Other civil cases commenced in the Supreme Court were tried in the counties. An act of 1692 and royal governor's ordinances of 1699 and 1715 authorized one justice to hold a circuit court at least once a year in each county for trials of civil and criminal cases, outside New York City and County. (Occasionally circuit courts were not held, because of lack of business or reluctance of justices to travel.)[7] While a circuit court was vested with both civil and criminal jurisdiction, the Supreme Court justices were also commissioned on occasion to hold a special court of oyer and terminer (from French, "hear and determine"), a criminal court with jurisdiction over felonies (including those carrying the death penalty) and lesser offenses. All judgments in civil cases, including the relatively few cases that resulted in a jury trial, either in a circuit court or a Supreme Court term, were filed by the clerk of the Supreme Court in New York City. In most civil cases there was no trial because judgment was awarded to the plaintiff after the defendant confessed the debt or damages, or defaulted by failure to plead. The Supreme Court clerk also filed indictments and other documents in criminal cases tried in the Supreme Court or in circuit courts and special courts of oyer and terminer.[8] The clerk recorded the minutes and maintained the records of the court. Another individual served as clerk of the circuit courts and courts of oyer and terminer throughout the colony. The county clerk was clerk of the county courts of common pleas and general sessions. (See Appendix E for list of Supreme Court clerks.)[9]

The English common law became part of new York's legal system....In fact, no colony followed common-law procedure more closely.

The 1691 judicature act vested the Supreme Court with jurisdiction over "all pleas, civil, criminal, and mixed, as fully and amply to all intents and purposes whatsoever, as the Courts of King's Bench, Common Pleas and Exchequer."[10] The New York Supreme Court sensibly combined the jurisdictions of three English courts, which competed for business, compounding the complexity of the judicial system. The Supreme Court took its authority to try or review criminal cases from the Court of King's Bench, which had jurisdiction over "pleas of the crown." Exercising that jurisdiction, in each Supreme Court term a grand jury returned indictments, entries of which were entered in the minute books along with the minutes of resulting trials and sentences. Most jury trials were held on the circuit, in the counties where the offenses occurred. The Supreme Court adjudicated serious criminal cases arising anywhere in the colony, especially if they involved "crown rights, offenses committed by public officers, matters of general welfare, unusual or difficult cases and serious riots and disturbances."[11] The attorney general was officially the prosecutor in all the superior criminal courts, though outside of New York City a deputy or the court clerk often performed prosecutorial duties.[12] Misdemeanor and some lesser felony cases were adjudicated in the courts of sessions held in each county, including New York City and County (considered a single jurisdiction for judicial purposes). Starting in 1732 minor offenders were tried before local justices of the peace and city magistrates when a defendant could not obtain bail, with a jury trial optional.

The Court of King's Bench also adjudicated civil actions to recover debts and/or damages and personal property or its value. These actions were, in earlier times, brought exclusively in the Court of Common Pleas. During the sixteenth century King's Bench acquired civil jurisdiction through use of a writ ordering the arrest of a civil defendant on a fictitious criminal charge (a "trespass"). The Supreme Court derived its jurisdiction over the quasi-criminal actions of trespass and its various offshoots from this source. (Trespass and other "forms of action" are discussed in Appendix A.) Like the Court of King's Bench, the New York Supreme Court issued writs of error, by which judgments in county courts were brought up for review because of alleged error in the judgment record. Most writs of error concerned civil cases in the county courts of common pleas. By the late colonial period the writ of *certiorari* was frequently employed to review judgments of justices of the peace, which unlike the courts of common pleas were not courts of record (having a clerk and a seal) and like them were prone to irregularity in their proceedings.[13] The Supreme Court also employed the writ of *certiorari* or an attorney general's information to transfer pending criminal cases from a county-level court to its jurisdiction. The writ of error was available for the Supreme Court to review errors on the record of a criminal conviction in a county court of sessions. Such appeals were rarely permitted under the common law of England or in colonial New York.

The Supreme Court of Judicature, or Supreme Court, was the colony's highest court of common law.

The New York Supreme Court was also vested with the powers of the English Court of Common Pleas, a court of civil jurisdiction. This jurisdiction included the "real" actions, concerning title to or possession of real property; "mixed" actions to determine the title to or recover possession of real property, or to recover money damages for certain types of injury to real property; and "personal" actions to obtain payment of a debt, or money damages because of injury to one's legal rights, property, or person. (See Appendix A on the forms of action.)[14] From the English Court of Exchequer the Supreme Court took its jurisdiction in law or equity in cases involving debts to and revenues of the Crown. The colonial Supreme Court occasionally exerted its Exchequer jurisdiction, as when the attorney general sued to recover fines or fees owed to the provincial government. But a separate Court of Exchequer never operated continuously during New York's colonial era.[15]

The Supreme Court had jurisdiction over "all pleas, civil, criminal, and mixed."

The source of the Supreme Court's authority was disputed. Some New Yorkers believed that acts of their Assembly and the common and statute law of England should establish and define the jurisdiction and procedure of the court. The judicature act of 1691 was renewed by the Assembly for a year or two at a time through 1698. Thereafter the royal governors denied that the Assembly had any authority to define the jurisdiction of the Supreme Court. Instead, the royal governor and council promulgated ordinances, the first in 1699, to continue the court.[16] Later acts of the Assembly regulated trials in circuit courts, juror eligibility and selection, proceedings before local justices of the peace and city magistrates, and relief for insolvent debtors and their creditors. Common-law procedure and document forms, modified and simplified to fit local needs, came into general use in New York by the early eighteenth century, replacing the less formal, more variable judicial procedure that prevailed during the early decades of English rule. The Supreme Court of Judicature, its justices and attorneys, were instrumental in establishing common-law procedure in New York courts. The provincial bench and bar cited English statutes and cases considering them as part of New York's law. In fact, no colony followed

common-law procedure more closely. This judicial conservatism profoundly influenced New York's courts—and court records—until the middle of the nineteenth century.[17] The complexity of common-law court cases in colonial New York resulted in "enormous expence" for litigants, evidenced in bills of costs, as the lieutenant-governor complained in 1764—emphasizing that he was not a lawyer.[18]

Supreme Court under the Constitutions of 1777 and 1821

Article 35 of New York's first Constitution, adopted at a convention in Kingston in April 1777, declared that "such parts of the common-law of England and of the statute law of England and Great Britain, and of the acts of the legislature of the colony of New York, as together did form the law of the said colony ... shall be and continue the law of this State subject to such alterations and provisions, as the Legislature of this State, shall from time to time, make concerning the same."

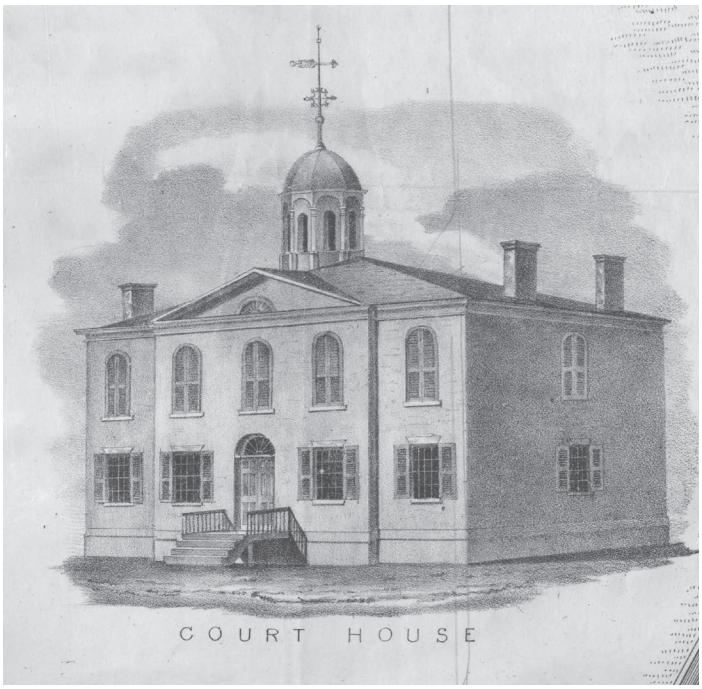
The New York State constitution of 1777 continued the colonial court system largely unchanged.

This article in effect continued the colonial legal and judicial system largely unchanged.[19] The Supreme Court of Judicature was the state's highest court of law. It continued to exercise the original, transfer, and appellate jurisdiction conferred upon it by the judicature act of 1691 and by later gubernatorial ordinances. For the first time a Court of Exchequer was established and functioned as a branch of the Supreme Court.[20] The Supreme Court's jurisdiction and procedure were increasingly defined and modified by statutes, starting in the 1780s and culminating in the *Revised Statutes* of 1829 with later amendments. The Constitution of 1821, effective in 1823, effected major changes in the court's organization, particularly by establishing eight judicial circuits, each with a circuit judge to preside over jury trials and perform other judicial duties.[21]

Other articles in the Constitution of 1777 and subsequent legislative acts instituted certain judicial changes made necessary by independence from Great Britain. Article 31 required that "all writs and other proceedings shall run in the name of the people of the State of New York, and be tested in the name of the Chancellor or Chief Judge of the court from whence they shall issue." The name of King George III disappeared from court writs, replaced by "The People," the new sovereign authority. Article 41 guaranteed right to trial by jury and forbade the Legislature from establishing any new court that did not "proceed according to the course of the common-law," that is, employ juries to determine issues of fact. Many American revolutionaries believed that juries and the common law helped protect liberty, which explains their prominence in the new constitution. Articles 25 and 27 continued the Court of Chancery with its equity jurisdiction, separate from the courts of common law. The royal governor had served as chancellor, but that judicial officer was now separate from the executive and was appointed. Article 32 established a Court for the Trial of Impeachments and Correction of Errors, or Court of Errors, composed of the president of the Senate (the lieutenant governor), all the senators, the chancellor, and the justices of the Supreme Court. This large, unwieldy, and often politicized court reviewed final determinations brought up by writ of error from the Supreme Court and by appeal from the Court of Chancery. The Court of Errors handled appellate business that in New York colony would have gone to the royal governor and council, and in rare instances from there to the Privy Council. This new court of last resort was also empowered to try state officials who had been impeached by the Assembly.[22]

The Supreme Court of Judicature of the State of New York, like its colonial predecessor, possessed general jurisdiction at common law, and as mentioned above, its authority would be increasingly confirmed, defined, and expanded by statutes.[23] The court's criminal jurisdiction was aggressively exercised during the Revolutionary War. Much of the court's business then involved Loyalists. Several hundred of them were convicted (usually *in absentia*, without trial) in the Supreme Court. Those proceedings were authorized by the "Forfeiture Act" of 1779, which empowered the Supreme Court to prosecute "enemies of this state." Responding to a crime wave during and after the war, the Supreme Court also supervised regular and special courts of oyer and terminer to try accused criminals and their accessories.[24]

During the early decades of statehood, the organization of the Supreme Court remained essentially the same as it had been during the colonial period. The bench was enlarged from three to four justices in 1792, to five in 1794, including the chief justice. The justices and also the chancellor were appointed by the Council of Appointment, a board consisting of the governor and one senator from each of the initially four multi-county senatorial districts. The Supreme Court justices continued to preside over jury trials, during court terms in New York City and Albany, and in circuit courts and additional "sittings" and in courts of oyer and terminer held in the county courthouses. As in New York colony, civil cases initiated in the Supreme Court were usually sent to the circuit courts if a jury trial was required. Some criminal cases, including all for which the penalty was death, were tried in the courts of oyer and terminer, held at least once a year in each county, at which a Supreme Court justice presided.[25] Most non-capital criminal cases were now prosecuted in the county courts of general sessions, which in the colonial era had adjudicated only offenses under the degree of grand larceny. Minor civil cases and criminal offenses fell within the jurisdiction of justices of the peace and city magistrates.



ONEIDA COUNTY COURTHOUSE AND ACADEMY, UTICA.

Constructed in 1807, this building was the seat of one of the Supreme Court's general terms between 1820 and 1847.

Detail from J. Amsden, *Map of the City of Utica,* 1835, photograph in Carl K. Frey Collection, Oneida Historical Society.

In addition to presiding over trials on circuit, the Supreme Court justices sat together in regular terms each year. The court held its first terms in Kingston in October 1777 and Albany in September 1778. Thereafter four terms were held in Albany each year through 1784, by governor's proclamations as authorized by legislative acts. In early 1785 Governor George Clinton again ordered that Supreme Court terms be held in Albany, which many members of the Legislature and the New York City bar opposed. A law passed in April 1785 directed that four terms of the court be held, two in New York City and two in Albany, "for the more equal distribution of justice to the citizens of this State." One of the New York terms was moved to Utica in 1820, and one of the Albany terms was moved to Rochester in 1841. (See the list of court terms in Appendix H.)[26]

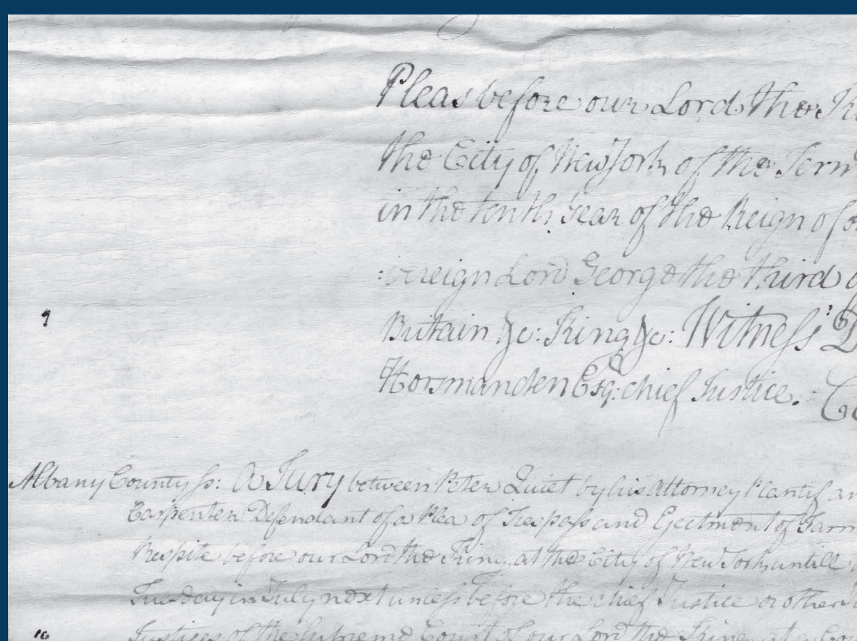
Business in the Supreme Court terms is recorded in the minute books, which contain entries of procedural and substantive rules, decisions on legal issues argued before the court, determinations in cases transferred and judgments appealed from lower

Litigation concerning New York land titles in present-day Vermont, 1771.

Captain John Small of His Majesty's Second Regiment of Foot was discharged ("reduced") at the end of the Seven Years War. A royal proclamation of October 1763 authorized land grants in America to such officers. On October 22, 1765, Small obtained a New York land patent for 3000 acres of land then in Albany County, now in Bennington County, Vermont. Small knew there was a legal complication, because his patent stated that his land grant lay within Shaftsbury, a township already granted by the governor of New Hampshire. Most settlers of Shaftsbury agreed to have their farms surveyed and pay a quitrent to New York, but Isaiah Carpenter refused. Small brought an action of ejectment against Carpenter to confirm his New York title. The case went to a jury trial at Albany in June 1770. Representing Small was John Tabor Kempe, acting as a private attorney though he was also the attorney general. Kempe argued, presenting many documents, that Small's title was perfect. Carpenter's case collapsed because his attorney offered as evidence legally insufficient copies of New Hampshire documents obtained by Ethan Allen, a future leader of the breakaway state of Vermont. The judgment roll in an ejectment action like this one referred to a fictitious lease by the landowner (Small) to a fictitious tenant ("Peter Quiet"). A fictitious entry onto the lands and ouster of the "tenant" by the defendant (Carpenter) were grounds for the action of ejectment by the tenant ("Peter Quiet"). Despite its complexity, the action of ejectment was the usual way of determining title to real property until the mid-nineteenth century.

Peter Quiet ex dem. John Small vs. Isaiah Carpenter, judgment roll, 1771.

(Series JN519, Judgment Rolls and Other Civil and Criminal Documents on Parchment, file P-124-D-5.)


Pleas before our Lord the
the City of New York of the Term
in the tenth Year of the Reign of
reign Lord George the third of
Britain &c: King &c: Witness
Horsmanden Esq: chief Justice.
Albany County ss: A Jury between Peter Quiet by his Attorney Plaintiff an
Carpenter Defendant of a Plea of Trespass and Ejectment of Farm
Respite before our Lord the King at the City of New York until
Tuesday in July next unless before the chief Justice or other
Justices of the Supreme Court of our Lord the King at a Cou

Parchment judgment roll (detail, start of pleadings), Peter Quiet ex dem. John Small vs. Isaiah Carpenter.

trial courts, and minutes of civil and criminal trials. During the 1780s and 1790s the Legislature enacted several laws that were obviously intended to divert trial business from the Supreme Court terms to the circuit courts and courts of oyer and terminer, and to the county courts of common pleas and courts of general sessions. To accommodate the increasing number of circuit court trials, an act of 1784 authorized the Supreme Court to hold special courts, in addition to circuit courts, to try issues of fact in any county. These extra "sittings" were soon limited to New York City and Albany, through 1801, and were held only in New York City after that.[27] The court costs awarded to a plaintiff if he obtained a judgment were restructured to divert cases involving lesser amounts of money from the Supreme Court to the courts of common pleas. A law of 1785 required that Supreme Court judgment awards of less than £100 include only the court costs of a proceeding in a court of common pleas, which were lower. A law of 1787 penalized a plaintiff in the Supreme Court who was awarded less than £50 by requiring him to pay the defendant's costs. In 1801 those amounts were changed to $250 and $50, respectively.[28] The money thresholds for full court costs were continued by the *Revised Laws* of 1813 and the *Revised Statutes* of 1829.[29] Other laws furthered the policy of limiting the trial business of the Supreme Court. An act of 1786 required that all issues of fact be tried before a jury in a circuit court in the county where the cause of action arose, except in "cases of great difficulty, or which require great examination." A law of 1787 confirmed the jurisdiction of the county courts of common pleas and mayor's courts to hear and determine "transitory" cases in which the cause of action arose in another county. On the criminal side, an act of 1788 empowered the Supreme Court to "send down" felony indictments returned by grand juries in that court, to a court of oyer and terminer or a court of general sessions for trial.[30] In 1789 the Legislature partly superseded the 1786 law, directing that in New York City and County and Albany City and County a civil case could be tried either in a circuit court in those counties or "at the bar" of the Supreme Court during a regular term in those cities. But a law of 1801 ended civil trials in the Supreme Court without the court's permission, which was practically never granted.[31] The office of a single clerk for all the circuit courts and courts of oyer and terminer statewide was abolished in 1796. Thereafter the county clerk *ex officio* was clerk of the circuit courts and courts of oyer and terminer held in his county, except in New York City and County, in addition to being the clerk of the county courts.[32] (See Appendix F, "Clerks of the Circuit Courts, 'Sittings', and Courts of Oyer and Terminer.")

The Constitution of 1822 changed the organization of the Supreme Court to accommodate a major growth in its caseload.

Criminal trials were devolved to county and city courts by ca.1800.

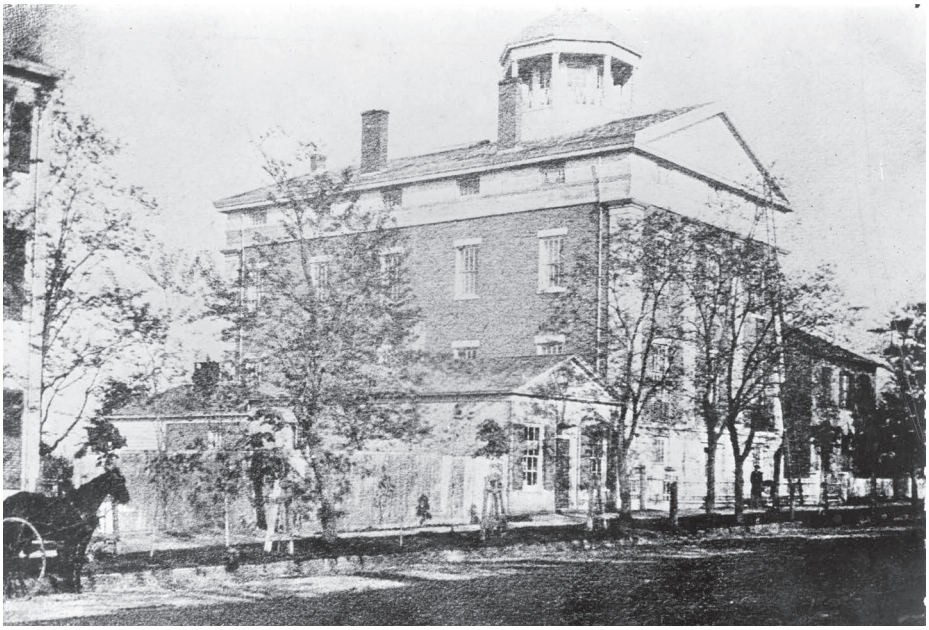
Until 1796 the attorney general or a designee was the prosecutor of all criminal cases tried in the Supreme Court, a court of oyer and terminer, or a county court of general sessions of the peace. A law of 1796 authorized appointment of assistant attorneys general in multi-county districts. They assumed the attorney general's prosecutorial responsibility, except in New York City and County. There the attorney general continued to be the prosecutor in courts of superior criminal jurisdiction until 1802. The assistant attorneys general were renamed district attorneys by an 1801 law, and New York City and County were now included in the system. The multi-county districts were replaced by a district attorney in each county in 1818.[33] The Supreme Court terms in New York City included occasional criminal trials through 1801, and grand jury proceedings as late as 1804. The Albany terms included grand jury returns and criminal trials through 1801. Thereafter all felony cases were prosecuted in the courts of oyer and terminer and the courts of general sessions. Misdemeanor cases

continued to be adjudicated by justices of the peace and city magistrates. Until criminal prosecutions were decentralized, the clerks of the Supreme Court preserved records of criminal indictments and trials throughout the colony and state.

After ca. 1800 the Supreme Court was essentially an appellate court, though it retained its general jurisdiction as established by the common law and by statute.

With trials devolved to other courts, business during the Supreme Court's terms mostly concerned legal issues requiring special judicial expertise. The Supreme Court heard arguments on and decided questions of law raised during pleading or trial proceedings. Examples were demurrers (legal objections) to pleadings or evidence; "cases" reserved at trial or submitted by the parties without a trial; and motions to set aside a jury verdict and hold a new trial on the merits. The court also reviewed judgments removed from the county-level civil and criminal courts by writs of error, and (until 1824) from courts of justices of the peace by writs of *certiorari*. The court rendered judgment in cases transferred to it prior to judgment by writ of *habeas corpus* and *certiorari.* Most of these cases were entered on the court calendar and were termed "enumerated business" because each case was numbered. Enumerated motions were first defined by a court rule adopted in January term 1799. "Non-enumerated" business, not placed on the calendar, consisted mostly of motions seeking other rulings, for example, for change of venue, for judgment "as in the case of nonsuit" (default by the plaintiff), and for commissions to obtain written testimony from witnesses unavailable to be present at a trial. Non-enumerated business also included reviewing administrative decisions brought to the Supreme Court by writs of *mandamus* and *certiorari*. In 1830, new "special terms" for most non-enumerated motions were authorized to be held monthly at Albany, except in the months when there was a regular term. In 1841 the judge of the first circuit was authorized to hold special terms for non-enumerated business arising in New York City and County. The special terms removed the bulk of non-enumerated business from the regular terms, which had become overcrowded. After 1830, the phrase "general term" was used to distinguish the court term when enumerated business was conducted, from the "special term."[34]

The Constitution of 1821, which went into effect in 1823, changed the organization of the Supreme Court to accommodate the steady growth in its trial caseload. The number of justices was reduced from five to three. Implementing legislation of 1823 divided the state into eight multi-county judicial circuits, each with a circuit judge. The governor now appointed the Supreme Court justices and circuit judges, with Senate approval, since the Council of Appointment had been abolished.[35] The circuit judges presided over civil trials in the circuit courts and criminal trials in the courts of oyer and terminer in the counties within their circuits. They held the same powers as a Supreme Court justice to hear and rule on non-enumerated motions. The regular terms of the circuit court and court of oyer and terminer in each county were increased from one to two each year, and four in New York City and County. The additional "sittings" in New York City continued.[36] After a jury verdict in a circuit court or in a "sittings," the pleadings sent to the trial court, a copy of the trial minutes, and the signed judgment roll (or "record") were returned to a Supreme Court clerk's office, where the judgment was docketed and filed.[37]



SUPREME COURT CLERK'S OFFICE, GENEVA.

The Supreme Court clerk's office at Geneva was located in the low brick building at the center of this old photograph. The large building with dome is the Geneva Medical College.

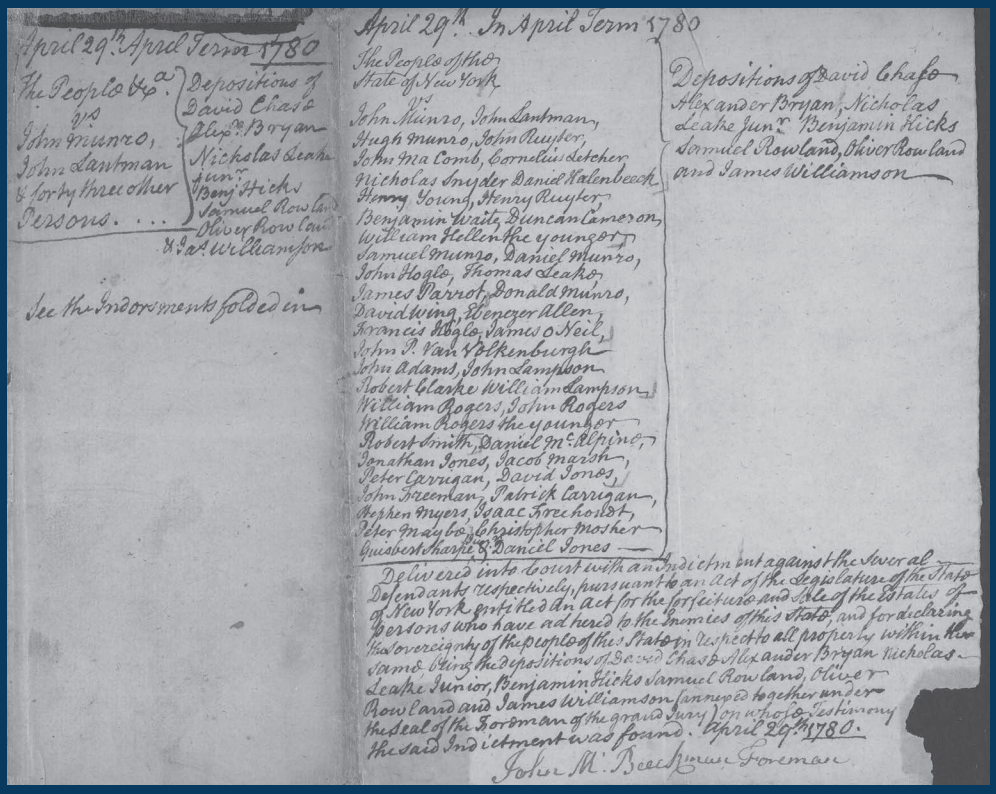
(Photograph courtesy Geneva Historical Society.)

While routine trials in the new circuit courts proceeded with few delays, the Supreme Court terms were still overloaded with business. Court terms had been lengthened from two weeks to three in 1813, and to four weeks in 1823. In 1826 the justices and the chancellor stated in a report to the Senate that cases noticed for argument in the Supreme Court terms had doubled within the past few years, and non-enumerated motions had increased even more. In response, the Legislature in 1827 extended the Supreme Court terms from four weeks to five.[38] In 1831 a separate vice-chancellor was appointed in the first circuit (including New York City), reducing the caseload of the circuit judge. An 1832 law empowered the circuit judges to hear and rule on certain enumerated motions (bills of exceptions, demurrers to evidence, special cases, and motions for new trials), which had previously been brought to the Supreme Court in its regular or special terms.[39] After the separate circuit court system was established and the powers of circuit judges enlarged, the Supreme Court terms were mostly devoted to hearing and deciding enumerated motions, including appeals from circuit judge rulings, and reviewing cases brought up from lower courts by writs of error and *certiorari*. The Supreme Court justices were authorized to preside over a circuit court or a court of oyer and terminer if required to do so by the press of business.[40] The routine responsibilities of Supreme Court justices had also been reduced by appointment of Supreme Court commissioners in most counties. The commissioners originally took affidavits of witnesses outside New York City, but they were eventually given most of the same powers as justices out of term ("in vacation"), such as granting writs of *certiorari* and *habeas corpus* and procedural orders, signing judgments, and assessing ("taxing") court fees. An act of 1811 authorized appointment of Supreme Court commissioners in any county of the state, and they were soon numerous. In 1818 common pleas judges who were Supreme Court counselors (attorneys with several years' experience) were empowered to act as Supreme Court commissioners.[41]

Records of Supreme Court business were maintained by the clerks, who were appointed by the court. Until 1797 there was one clerk of the Supreme Court, whose office was in New York City (except during the Revolutionary War, while the city was occupied and governed by the British army). In 1785 a deputy clerk was appointed with an office in Albany, as part of the legislative compromise establishing Supreme Court terms in both New York City and Albany.[42] In 1797 a second clerk's office was opened in Albany. In 1807 a third office was established at Utica. A fourth office was located at Canandaigua in 1829 and moved to Geneva in 1830. (See Appendix E for list of Supreme Court clerks.) Each of the Supreme Court clerks had a duplicate seal by which writs issued out

Prosecution of Loyalists during the Revolutionary War, 1780.

In April Term 1780 a Supreme Court grand jury found an indictment (a "true bill") against John Munro and 44 others as "enemies of this state" under the "Forfeiture Act" of 1779. The accompanying depositions of David Chase and other witnesses stated that Munro and his co-defendants served in the British forces or were present in the British army's camp in summer 1777, during Gen. John Burgoyne's invasion of northern New York. The defendants were residents of Cambridge, Hoosick, Saratoga, Schaghticoke, and Rensselaerswyck, in Albany County. All but three of the defendants failed to appear in court to plead to the charge against them. The Supreme Court minutes contain an entry of their conviction *in absentia,* without trial, on Oct. 28, 1780. The Forfeiture Act provided an expedited method of prosecuting and punishing enemies of New York's revolutionary government. The act afforded defendants fewer rights than the English Treason Act of 1695, still technically in force in New York. The English statute required a jury trial for persons indicted for treason, with evidence from at least two persons. The Forfeiture Act permitted convictions without trial, on evidence provided by just one witness. After conviction under the Forfeiture Act, John Munro and the others forfeited their property to the state. Their lands were sold after the war by the Commissioners of Forfeitures.



Indictment ("true bill") (detail, endorsement), People vs. John Munro and others.

People vs. John Munro and others, indictment, 1780.

(Series JN522, Pleadings and Other Civil and Criminal Court Documents, file P-1746.5.)

of his office were authenticated. Clerks were responsible for filing papers, entering minutes and rules, collecting court fees and fines, searching records, certifying copies, filing and docketing judgments, and forwarding transcripts of the judgment dockets to the other clerks. A judgment record ("judgment roll") could be filed and docketed in any Supreme Court clerk's office. The same was true of pleadings and motions, which an attorney could file in a clerk's office that was convenient because of the schedule of court terms. Moreover, the *Revised Laws* of 1813 and the *Revised Statutes* of 1829 authorized the Supreme Court justices to order transfer of records from the clerk's offices in Utica and New York City to the Albany office, perhaps because more storage space was available at the latter location. All this confirms that the clerks had equal status in a court of statewide jurisdiction, and it complicates searches for judgment rolls and case papers.[43]

The system of court clerks in New York City and County was reorganized several times. Between 1796 and 1800 the clerk of New York City and County served as clerk of the circuit courts and courts of oyer and terminer. From 1800 until 1813 another individual, appointed by the governor, served as the clerk of the circuit courts, the additional "sittings," and (until 1808) the courts of oyer and terminer. Under the Constitution of 1821, a legislative act of 1823 designated the Supreme Court clerk in New York City as clerk of the circuit courts and the "sittings" in New York City and County.[44] (See Appendix F, "Clerks of the Circuit Courts, 'Sittings', and Courts of Oyer and Terminer.") The records of the clerk of the Supreme Court of Judicature in New York City include minutes and other records of the circuit courts and "sittings" in New York City and County. They do not include minutes of the circuit courts in other

CITY HALL, NEW YORK.

Completed in 1811, the New York City Hall prior to 1847 housed the office and records of one of the clerks of the Supreme Court of Judicature. The court's New York City terms were held here.

New York State Archives. New York (State). Education Dept. Division of Visual Instruction. Instructional lantern slides, ca. 1856-1939. Series A3045-78.

counties after the 1790s, though minutes of individual trials were included with the records of pleadings (*nisi prius* record or circuit roll) returned to the Supreme Court clerk for filing.[45]

The Supreme Court clerks were usually prominent attorneys, and several were former or future Supreme Court justices. It is likely that the deputy clerks and assistants were responsible for the day-to-day work of entering rules and filing papers.[46] The clerks had a great mass of papers to deal with, and there are contemporary complaints about the difficulty in finding documents. One critic of the court, New York City attorney Henry D. Sedgwick, noted in 1823 that "the records of the court have never been kept in a proper state for easy recurrence, preservation, and prompt and safe removal in case of necessity." He pointed out that all documents were filed as received, when they ought to have been recorded into books as was done with deeds and mortgages.[47]

The movement for reform of common-law practice and pleading began in the 1780s and gained momentum by the 1820s.

Criticism of court operations was not confined to record keeping. From the time of independence until the 1847 constitutional reorganization of the state judiciary, there were occasional efforts to reform New York's modified English legal and judicial system. The first cautious reforms of the jurisdiction and procedure of the Supreme Court and other civil courts occurred in the 1780s. Statutes abolished or regulated some of the more complex or antiquated common-law actions and regulated the use of writs of *certiorari*, *habeas corpus,* and *mandamus*. Procedures for jury trials in cases initiated in the Supreme Court were specified by an act of 1786, and the duties and powers of sheriffs, in 1787. The Legislature also attempted to prevent attorneys from delaying suits by dilatory pleadings or from overturning judgments on mere technicalities such as cross-outs, additions, or slightly irregular wording in writs and pleadings. The first New York statute of limitations of civil actions and criminal prosecutions was enacted in 1788.[48] Several of these legislative acts of the mid-1780s essentially reenacted English statutes that had been operative in New York (for example, the Elizabethan statute of limitations). That was preparatory to the act of 1788 which declared that "none of the statutes of England or Great Britain shall be considered laws of this state."[49] For a generation after passage of these acts little more was done to reform or codify civil procedure.[50]

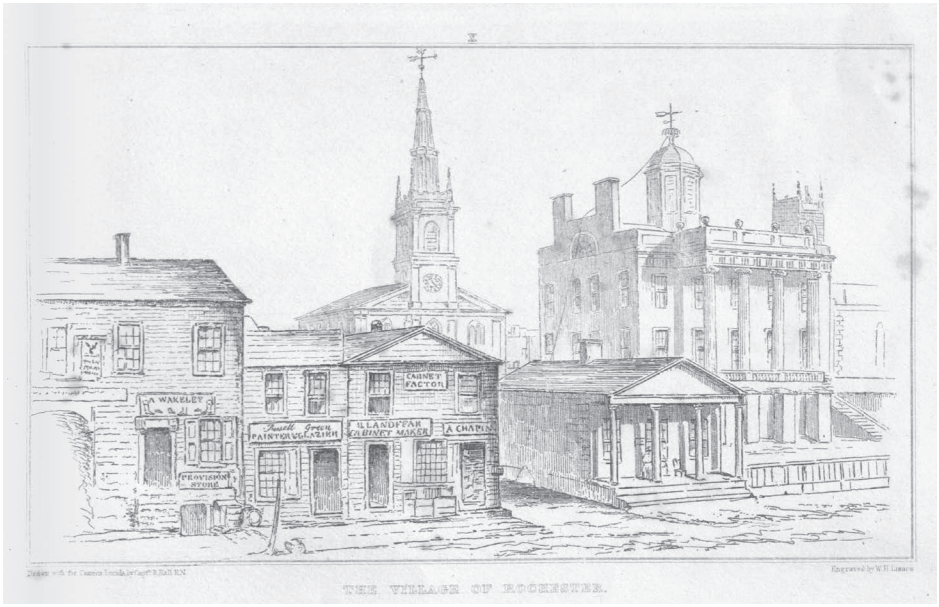
The failure of the 1821 constitutional convention to reform the complicated structure of common-law practice and pleading prompted Henry D. Sedgwick to publish his critique of the Supreme Court of Judicature. Sedgwick argued that:

"nothing shows the superstitious veneration of men for established forms, more than the practice of the English common-law, for the forms have been carefully preserved, long after the spirit and design which they were originally intended to subserve have passed away. The life has departed, and the soul has gone; but the body is embalmed, and kept to future ages in a useless state, between preservation and decay."

Sedgwick went on to denounce the excessive verbiage, redundant forms, archaic terminology, pointless legal fictions, high costs, and long delays that characterized common-law court proceedings. He also offered examples of simpler forms that would embody an American, not English, practice.[51] Despite the cumbersome procedure of the Supreme Court, its caseload increased dramatically during the 1820s and 1830s.

This increase occurred because of population and commercial growth, because litigants found the judges of the county courts of common pleas much less competent than the Supreme Court justices, and because attorneys preferred the higher court costs awarded by the Supreme Court. Outside of New York City and County, the trial business of the circuit courts was roughly three times that of the county courts of common pleas, according to data collected in 1837. However, the Superior Court and the Court of Common Pleas of New York City and County together conducted nearly twice as many trials as the circuit courts in New York County.[52]

Between 1827 and 1829, the New York State Legislature approved a major codification of the state's laws, the first systematic classification of statute law in the United States. The *Revised Statutes* of 1829 confirmed and described the jurisdiction and organization of the courts at all levels. The *Revised Statutes* contained many new and detailed provisions concerning court procedure, particularly arrest, bail, and pleading, all of which had previously resembled proceedings in the English common-law courts. *The Revised Statutes* described proceedings through trial and final judgment and execution in great detail. Proceedings by the "special writs" of *certiorari,* error, *habeas corpus, mandamus*, *scire facias*, etc. were carefully outlined. The actions concerning contracts and torts were described only in general terms, while the actions concerning real and personal property were listed and analyzed.[53] Most of the common-law "real" actions, which were "proverbial for their tardiness, intricacy and expense," were abolished.[54] Litigants in the common-law courts could obtain a judge's order for pre-trial document discovery, previously available only from an equity court.[55]



MONROE COUNTY COURTHOUSE, ROCHESTER.

This courthouse (building with cupola at right) was the seat of one of the Supreme Court's general terms starting in 1841.

Basil Hall, *Forty Etchings, from Sketches made with a Camera Lucida in North America in 1827 and 1828* [London: 1830], *courtesy Manuscripts & Special Collections, New York State Library.*

The commissioners appointed by the Legislature to revise the statutes recognized the need for further judicial reform, particularly in civil procedure. The *Revised Statutes* required the Supreme Court justices to revise the court's rules within two years and every seven years thereafter in order to abolish "fictitious and unnecessary process and proceedings," simplify pleadings, reduce court costs, and reform "abuses and imperfections" in civil actions. Although the Supreme Court published new editions of its rules in 1830 and 1837, most of the old common-law forms of action and court procedure, now largely embodied in statute, remained intact.[56] Commissioners appointed in 1837 to "digest and report a Judicial and Equity System" proposed constitutional and statutory changes that would have placed the circuit judges and the judges of the courts of common pleas on an equal standing, and increased the number of judges overall, especially for the overburdened Court of Chancery. However, the

commissioners avoided the issue of procedural reform, noting that the Supreme Court and the Court of Chancery already possessed the authority "to make rules regulating the practice and proceedings of the said courts."[57]

The Constitution of 1846 substantially reorganized the state's civil and criminal court system. Effective July 5, 1847, the Supreme Court of Judicature was replaced by a new Supreme Court. The three justices of the old court continued to hear and determine pending cases until July 1, 1848. Any cases remaining undecided on that date were transferred to the new Supreme Court. The Court of Chancery was abolished and its equity jurisdiction was assumed by the new Supreme Court, which thus became the state's highest court of original, unlimited jurisdiction in both law and equity, and by the new county courts. The separate circuit courts and circuit judges were abolished, and elective Supreme Court justices in eight judicial districts now held the circuit courts in each county. The county clerks became clerks of the trial and special terms of the new Supreme Court, and the Supreme Court of Judicature clerk's offices in New York City, Utica, and Geneva were closed. The clerk's office in Albany continued to function until July 1, 1848.[58] Appeals from the trial and special (equity) terms of the Supreme Court and from other courts of record were now decided in general terms of the Supreme Court held in each judicial district. (The general terms were the predecessor of the Appellate Division of the Supreme Court, established in 1896.) The criminal courts of oyer and terminer continued to operate as branches of the Supreme Court until 1896. The county courts of common pleas and courts of general sessions were replaced with county courts having jurisdiction over lesser civil and all felony cases except capital cases. (In New York City and County the Court of Common Pleas and the Superior Court functioned until 1896, when they were abolished and their jurisdiction transferred to the Supreme Court. The New York County Court of General Sessions continued until 1962, when the Supreme Court assumed its criminal jurisdiction.) Under the Constitution of 1846 there were few changes in the organization and jurisdiction of city courts and local courts of justices of the peace. At the top of the judicial hierarchy the Court for the Correction of Errors was replaced by the Court of Appeals, which continues today as the state's highest court.[59]

The Constitution of 1846 required the Legislature to appoint three commissioners "to reduce into a written and systematic code the whole body of the law of this state." The Legislature appointed the commissioners in 1847. The comprehensive code was never drafted and adopted, but a new code of procedure became law in 1848, with significant amendments in 1849. It radically simplified civil procedure, abolishing the common-law forms of action (and the associated writs and pleadings) and replacing them with a single "civil action." Petitions for equitable relief were termed a "special proceeding." This code was a landmark in the movement to simplify and codify civil procedure in the United States, and it was widely imitated in other states. (See Appendix N on the 1848 Code of Procedure.)[60]

Preservation of Supreme Court of Judicature Records

The records of the Supreme Court of Judicature are now preserved in the New York State Archives. After 1847 the court's records were managed by several custodians and stored in various locations before they were transferred to the State Archives in 1982

and 2017-19. Many of the court's records do not survive, particularly many of those created or filed by the court clerk in New York City. Prior to 1847 and afterward, certain categories of records of the Supreme Court of Judicature were destroyed by their custodians because they did not have continuing legal value. A 1799 law empowered the clerk of the court in New York City "with all convenient speed [to] destroy all process other than executions and proceedings in cases of fines and recoveries, all declarations, and other pleadings, inquisitions, dockets of attorneys, affidavits, bail-pieces, oyers and suggestions, and also all indictments, recognizances and papers relative to criminal prosecutions," filed prior to July 9, 1776.[61] This law must account for the disappearance of the great bulk of the civil and criminal case documents of the colonial Supreme Court. Only some of the parchment judgment rolls and writs, other civil and criminal papers, and minute books survive. After 1800 several statutes and court orders authorized the destruction of specific types of papers maintained by the Supreme Court clerks. These instructions were not completely carried out, and there are many extant Supreme Court records that had once been scheduled to be periodically destroyed.[62]

The records of the upstate offices of the Supreme Court of Judicature survived several moves. In Albany the Supreme Court clerk was assigned "apartments" in the new "State Hall" on Eagle Street as it neared completion in 1840. The Supreme Court's courtroom moved to that building from the capitol. The law implementing the Court of Appeals in 1847 gave the clerk of that court custody of the records of the Albany, Utica, and Geneva offices of the old Supreme Court. In 1858 the Legislature appropriated $300 for "arranging the papers of the late Court of Chancery and Supreme Court." The indexes to filed parchments and papers of those courts maintained by the Court of Appeals probably began to be compiled at that time. The Court of Appeals was first located in the old state capitol and in 1884 moved to the new capitol. In 1916 the court's wood-paneled courtroom was removed to the renovated "State Hall" on Eagle Street, where it continues in use today.[63] The records of the pre-1847 courts were stored in metal cases in the basement. The records of the Supreme Court of Judicature, Court of Chancery, Court of Probates, and Court of Errors were inventoried by the Works Progress Administration Historical Records Survey in 1936.[64] In 1973 the Court of Appeals ordered that the records be deposited in the library of Queens College of the City University of New York. They became part of the Queens College "Historical Documents Collection," which lacked the capacity to preserve and manage

OLD STATE HOUSE, ALBANY, BUILT 1835-1842, AND NOW OCCUPIED BY THE COURT OF APPEALS.

Originally known as the "New State Hall," this building was completed in 1842. The Albany clerk of the Supreme Court of Judicature had his office here from 1842 to 1848. The State Hall became the home of the Court of Appeals in 1916. Records of the pre-1847 superior civil courts (including the Supreme Court) were stored in the basement until 1973.

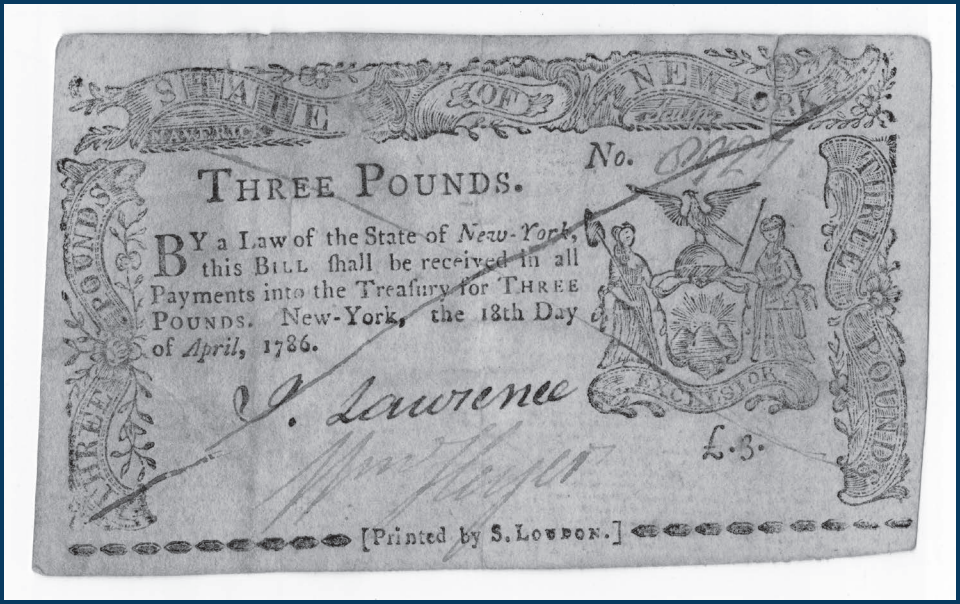
New York State Archives. New York (State). Education Dept. Division of Visual Instruction. Instructional lantern slides, ca. 1856-1939. Series A3045-78.

Prosecuting a counterfeiter, 1789.

Platt Newman of Greenwich, Connecticut, was indicted in the Westchester County Court of General Sessions in January 1789 for passing New York counterfeit money in the town of North Castle. The indictment employs the formulaic language of English common law: Newman, "not having the fear of God before his Eyes but being moved and seduced by the instigation of the Devil," passed a counterfeit three-pound bill to Jonathan Platt, Jr., intending "craftily falsely and feloniously to defraud and deceive him." The evidence—a counterfeit three-pound bill—was attached to the indictment. (The 'X' on the bill indicated it was identified as counterfeit.) The outcome of the case is unknown because the Supreme Court minutes for 1789 are lost. The state issued paper money during the economic depression after the Revolutionary War to increase the money supply and promote commerce. "Bills of credit" issued under a law of 1786 circulated as currency because they were secured by mortgages to the state and accepted as payments to the State Treasurer. Newman violated a 1788 New York law for preventing and punishing counterfeiting. Counterfeiting was rampant, and the Supreme Court had many counterfeiting cases. Until criminal prosecutions were decentralized at the end of the century, the Supreme Court clerk recorded all felony indictments and judgments in New York.

People vs. Platt Newman, indictment, 1789.

(Series JN522, Pleadings and Other Civil and Criminal Papers, file P-1071.)



Indictment (attached three pound bill), People vs. Platt Newman

historical court records according to archival standards. In 1982 the Court of Appeals ordered that the records be transferred to the New York State Archives. Those records were arranged, described, and cataloged, and they are available for research. The W.P.A. inventory forms were the basis for identifying and numbering the record series of the pre-1847 courts, including the Supreme Court of Judicature. Promoting understanding of that court and its records is a book titled *"Duely & Constantly Kept": A History of the New York Supreme Court, 1691-1847, and an Inventory of Its Records (Albany, Utica, and Geneva Offices), 1797-1847*. That work was published jointly by the New York State Court of Appeals and the New York State Archives and Records Administration in 1991, in observance of the three hundredth anniversary of the Supreme Court of the State of New York. (The present work is a revised and expanded version of the 1991 publication.)

In 1847 the records of the clerk of the Supreme Court of Judicature in New York City were transferred to the custody of the New York County Clerk.[65] The records, like those of the upstate clerk's offices, have been maintained in several locations. After the Supreme Court of Judicature was established in 1691, court sessions were generally held in the city hall, including the current structure which was completed in 1811. It is likely that the court's records were stored in those buildings. The first New York County courthouse, located at 52 Chambers Street, was completed in 1881, and the records of the Supreme Court and Court of Chancery were moved there. (The building now houses offices of the New York City Department of Education.) The records remained there for about thirty years, "largely in disorderly masses and subject to dirt, decay or destruction." In 1888 the Legislature authorized construction of a building to house the offices and records of the New York City Register, New York County Clerk, and the New York County Surrogate's Court. After delay and inaction, an 1897 law reactivated the project. The new "Hall of Records," located at 31 Chambers Street across the street from the New York County Courthouse, was completed in 1907. The ancient court records were transferred to the new building in 1910-11. They were stored in massive ranks of metal file cabinets and cases, reputed to be fireproof. The Hall of Records today houses the New York County Surrogate's Court, the New York City Department of Records and Information Services, and the New York County Clerk's Office, Division of Old Records.[66]

The New York County Clerk maintained the records of the old Supreme Court and the Court of Chancery, but the records were long administered by the Commissioners of Records of the City and County of New York, established by law in 1855 and succeeded in 1906 by the Commissioner of Records of the County of New York. That office was abolished about 1942. The New York County Clerk's Office, Division of Old Records, then assumed responsibility for the records of the extinct state and city courts. They included the Supreme Court of Judicature, the Court of Chancery, and two city courts abolished in 1895, the Court of Common Pleas for the City and County of New York, and the New York City Superior Court. The Division also holds the older civil records of the Supreme Court in New York County, whose clerk is the county clerk. In the 1850s the Commissioners of Records published multi-volume indexes to recent "law judgments" docketed in New York City (State Archives series JN111), and to notices of suits in equity (*lis pendens*) in the Court of Chancery and the Supreme Court (series JN112). In the 1880s the Commissioners initiated a decades-long project to transcribe into books a large portion of the enrolled decrees of the Court of Chancery that were filed in New York City. In the early decades of the twentieth century selected documents of the Supreme Court

of Judicature, Court of Chancery, and the higher civil courts in New York County were consolidated and rearranged into new record series, assigned alphanumeric file codes, and indexed on cards numbering in the hundreds of thousands. The indexing was highly competent, with hardly any errors, but it ended by the 1950s. While the card indexes are invaluable, the prior arrangement of the filed documents, other than judgment rolls and pleadings, was obscured or obliterated. Starting in the 1950s the New York County Clerk's Office used microfilm to preserve bound volumes, sometimes discarding original record books after filming. The card indexes became the source documents for electronic indexes to filed documents in the Division of Old Records. Those new indexes were produced in the 1990s with grants from the State Archives' Local Government Records Management Improvement Fund.[67]

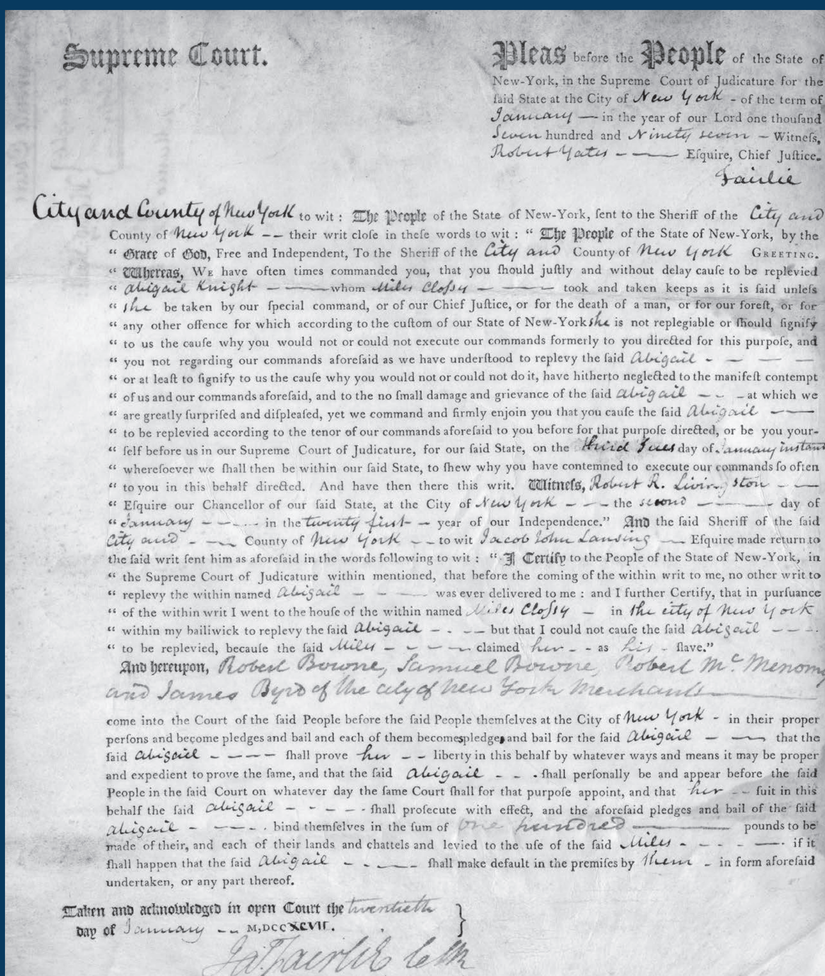
The overall volume of the surviving records of the Supreme Court of Judicature in the New York County Clerk's Office rivals that of the records of the upstate clerk's offices that were preserved by the Court of Appeals. However, the records of the clerk of the Supreme Court of Judicature in New York City are much less complete than those of the clerks at Albany, Utica, and Geneva. Many Supreme Court records were destroyed by court clerks as authorized by statutes and court rules (see discussion above). However, the disposition of records was more extensive in New York City.[8] In particular, very large series of writs were destroyed, probably when the old Supreme Court records were moved into the Hall of Records. Of the major classes of writs—writs of arrest, writs of execution, and writs transferring cases or appealing judgments from lower courts—only small numbers survive. Those writs are much more extensive for the upstate offices. They provide research opportunities that are lacking in the surviving records of the Supreme Court of Judicature in New York City. The files of motion papers from the Albany and Utica clerk's offices are voluminous, while few survive from the clerk's office in New York City. While mostly procedural, the motion papers include briefs and other documents that reveal legal arguments of attorneys appearing before the Supreme Court. Though few Supreme Court judgment rolls survive prior to the 1760s, those filed after the late 1790s up to July 1, 1847, are essentially complete for all four clerk's offices. The judgments are the best indicators of the Supreme Court's predominant role in civil litigation in New York during the great commercial expansion of the city and state in the first half of the nineteenth century.

The historical value of the pre-1847 records of the Supreme Court of Judicature in New York City began to be recognized in the early twentieth century. I. N. Phelps Stokes was responsible for a detailed inventory of the records of the Supreme Court and Court of Chancery and other historical records in New York City, which was published in 1928. Many of the records of the pre-1847 Supreme Court listed by Stokes could not be located during the next comprehensive inventory, conducted by staff of the New York State Unified Court System, Office of Court Administration, and completed in 2016. The records of the Supreme Court of Judicature and Court of Chancery listed and described in that inventory were transferred to the State Archives in 2017-19.[69]

The surviving records of the Supreme Court of Judicature contain voluminous evidence of adjudication in a trial and appellate court exercising jurisdiction throughout New York Colony and State for over 150 years. Since 2017 those records have been reunited in one repository, the New York State Archives, for the first time since regional clerk's offices of the Supreme Court began to be established in 1797.

Anti-slavery litigation, 1797.

Abigail Knight was enslaved by Miles F. Clossy, the proprietor of a dry goods store in New York City. Clossy, of Irish descent and a Catholic, had recently moved up from Philadelphia. Knight's attorney was Peter Jay Munro (nephew of John Jay), who obtained a writ of *de homine replegiando* (Latin, "on replevining a man") to secure her freedom by a jury trial. Assisting her were Robert Bowne and others, who filed a bond for her appearance in court. Bowne was a Quaker and a member of the New York Manumission Society, formed in 1785 to advocate for abolition of slavery and the slave trade in New York. At a trial in New York City in April 1797, Clossy did not appear, and a jury inquest awarded Knight nominal money damages and court costs. After a second trial in August, the jury found that Knight was a slave and awarded her $18 in damages. The court, Chief Justice Robert Yates presiding, increased the award to $118. Under the New York statute of 1788 prohibiting the importation of slaves into the state for sale, Abigail Knight now became free.



Supreme Court.

Pleas before the People of the State of New-York, in the Supreme Court of Judicature for the ſaid State at the City of New York - of the term of January — in the year of our Lord one thouſand Seven hundred and Ninety seven — Witneſs, Robert Yates — Eſquire, Chief Juſtice.

Fairlie

City and County of New York to wit : The People of the State of New-York, ſent to the Sheriff of the City and County of New York — their writ cloſe in theſe words to wit : " The People of the State of New-York, by the " Grace of God, Free and Independent, To the Sheriff of the City and County of New York Greeting. " Whereas, We have often times commanded you, that you ſhould juſtly and without delay cauſe to be replevied " Abigail Knight — whom Miles Clossy — took and taken keeps as it is ſaid unleſs " she be taken by our ſpecial command, or of our Chief Juſtice, or for the death of a man, or for our foreſt, or for " any other offence for which according to the cuſtom of our State of New-York she is not replegiable or ſhould ſignify " to us the cauſe why you would not or could not execute our commands formerly to you directed for this purpoſe, and " you not regarding our commands aforeſaid as we have underſtood to replevy the ſaid Abigail — " or at leaſt to ſignify to us the cauſe why you would not or could not do it, have hitherto neglected to the manifeſt contempt " of us and our commands aforeſaid, and to the no ſmall damage and grievance of the ſaid Abigail — at which we " are greatly ſurpriſed and diſpleaſed, yet we command and firmly enjoin you that you cauſe the ſaid Abigail — " to be replevied according to the tenor of our commands aforeſaid to you before for that purpoſe directed, or be you your- " ſelf before us in our Supreme Court of Judicature, for our ſaid State, on the third Tues day of January instant " whereſoever we ſhall then be within our ſaid State, to ſhew why you have contemned to execute our commands ſo often " to you in this behalf directed. And have then there this writ. Witneſs, Robert R. Livingston — " Eſquire our Chancellor of our ſaid State, at the City of New York — the second — day of " January — in the twenty first — year of our Independence." And the ſaid Sheriff of the ſaid City and — County of New York — to wit Jacob John Lansing — Eſquire made return to the ſaid writ ſent him as aforeſaid in the words following to wit : " I Certify to the People of the State of New-York, in " the Supreme Court of Judicature within mentioned, that before the coming of the within writ to me, no other writ to " replevy the within named Abigail — was ever delivered to me : and I further Certify, that in purſuance " of the within writ I went to the houſe of the within named Miles Clossy — in the city of New York " within my bailiwick to replevy the ſaid Abigail — but that I could not cauſe the ſaid Abigail — " to be replevied, becauſe the ſaid Miles — claimed her — as his — ſlave."

And hereupon, Robert Bowne, Samuel Bowne, Robert McMenomy and James Byrd of the city of New York Merchants — come into the Court of the ſaid People before the ſaid People themſelves at the City of New York - in their proper perſons and become pledges and bail and each of them becomes pledge and bail for the ſaid Abigail — that the ſaid Abigail — ſhall prove her — liberty in this behalf by whatever ways and means it may be proper and expedient to prove the ſame, and that the ſaid Abigail — ſhall perſonally be and appear before the ſaid People in the ſaid Court on whatever day the ſame Court ſhall for that purpoſe appoint, and that her — ſuit in this behalf the ſaid Abigail — ſhall proſecute with effect, and the aforeſaid pledges and bail of the ſaid Abigail — bind themſelves in the ſum of One hundred — pounds to be made of their, and each of their lands and chattels and levied to the uſe of the ſaid Miles — if it ſhall happen that the ſaid Abigail — ſhall make default in the premiſes by them — in form aforeſaid undertaken, or any part thereof.

Taken and acknowledged in open Court the twentieth day of January — M,DCCXCVII.

Parchment pleading by plaintiff (recites text of writ of de homine replegiando), *Abigail Knight vs. Miles Clossy.*

Abigail Knight vs. Miles Clossy, plaintiff's plea, 1797.

(Series JN519, Judgment Rolls and Other Documents on Parchment, file P-122-D-5.)

Supreme Court Jurisdiction and Procedure

The small number of attorneys practicing before the New York Supreme Court during the eighteenth century had access to published English legal works in private libraries. Those authorities included the published statutes of the realm, court decisions, treatises, practice manuals, and books of sample pleadings and forms.[70] Legal materials produced in the province included Assembly acts, gubernatorial ordinances, and manuscript practice manuals. In the early nineteenth century New York judges and the rapidly increasing number of attorneys relied on treatises and practice books published in both England and New York as guides through the intricacies of common-law and statutory procedure.[71] Legally significant decisions in the Supreme Court dating back to 1794 were published unofficially in 1801. Starting in 1804 an official court reporter published leading decisions and opinions by the justices. Publication of unofficial case reports and digests soon followed. (See Bibliography for case reports and treatises published prior to 1847.)[72] The following discussion of civil and appellate procedure in the Supreme Court of Judicature relies heavily on the contemporary treatises and selected court decisions. The discussion is also based on research in statutes and court rules, and on a familiarity with the court's records. The emphasis is necessarily on the period after the 1790s, when the Supreme Court's procedure reached its mature stage and both the court's records and published legal materials are abundant.

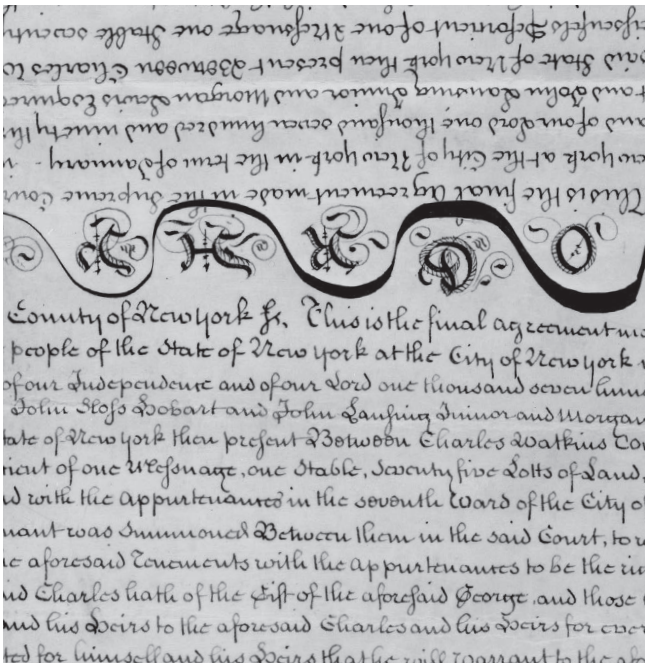
Original Jurisdiction: Forms of Action

Most of the Supreme Court's business arose from its original jurisdiction over common-law actions, which developed in England's central royal courts between the twelfth and seventeenth centuries. Some of these actions were regulated and modified by New York statute law soon after the American Revolution, and a few were abolished then or by the *Revised Statutes* of 1829. Most of the common-law forms of action, with their associated writs and pleadings, continued in use until a radical simplification of civil procedure was enacted by the Legislature in 1848.

A plaintiff seeking legal remedy in the Supreme Court of Judicature (or in any of the lower civil courts) had a "cause of action" if his legal rights were breached or injured by an act either committed or omitted by the defendant. The plaintiff had to fit a complaint and demand to one of the existing "forms of action," which defined (and limited) the remedies available in a court of law.

Forms of actions have been grouped in three categories: "real," "personal," and "mixed." Real actions, the oldest forms of action, were brought to determine rights to real property. They included right, entry, *novel disseisin*, fine and recovery, dower, and partition. Most of them were seldom employed, because of their complexity and their infrequent applicability to New York's simplified real property law. Exceptions were the partition of real property and the action of dower to secure a widow's life interest in one-third of her husband's real property. Mixed actions likewise concerned real property. The action of ejectment was a variety of trespass (see below) that originated in the fifteenth century and was radically unencumbered (by insertion of legal fictions) in the seventeenth.[73] Ejectment was generally employed in New York, as in England, to determine title to real property. Other mixed actions, seldom employed, were waste and

nuisance, in which a property owner obtained compensation for damage to real property. Personal actions were brought to compel payment of a debt and/or to obtain money damages for nonperformance of a contract, or for injury (tort) to a person or to personal property. The personal actions employed in early New York law courts were numerous. Those concerning contracts of various kinds were account, covenant, debt, and *assumpsit*, the last two being by far the most common. Those actions seeking compensation ("damages"), or in some cases recovery of personal property, for torts (civil wrongs) of various kinds were replevin, trover, trespass (several categories), and trespass on the case. The last-named action could seek damages for breach of contract also resulting in an injury. (The forms of action are discussed in detail in Appendix A.)[74]

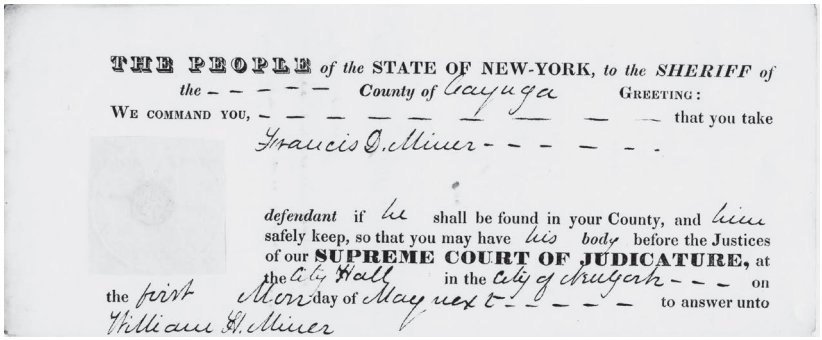


CHIROGRAPH, 1793.

Detail. See page 131.

Arrest and Bail

A plaintiff commenced an action in the Supreme Court of Judicature by having the defendant brought into the jurisdiction of the court either by arrest or summons. In earlier centuries in England every form of action had its own original writ, issued under seal of the Court of Chancery. This writ ordered a sheriff or other officer to command a defendant to do justice to the plaintiff or be arrested to appear in court to answer the complaint. By the seventeenth century the original writ was used only to summon corporations (which, being fictitious persons, could not be physically arrested) or defendants in certain actions concerning real property. Instead the first writ was an intermediate *(mesne)* writ issued under seal of the Court of Common Pleas or King's Bench. In New York the original writ continued to be employed in corporation cases until 1848.



THE PEOPLE *of the* STATE OF NEW-YORK, *to the* SHERIFF *of the* County of Cayuga GREETING:

WE COMMAND YOU, that you take Francis D. Miner

defendant if he shall be found in your County, and him safely keep, so that you may have his *body* before the Justices of our SUPREME COURT OF JUDICATURE, at the City Hall in the City of Aurigah on the first Monday of May next to answer unto William D. Miner

WRIT OF *CAPIAS AD RESPONDENDUM*, 1840.

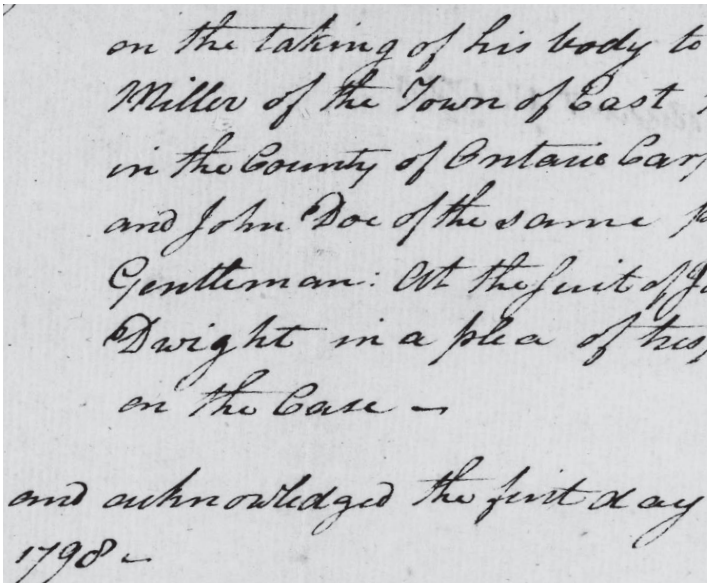
Detail. See page 99.

In most New York Supreme Court cases the initial writ issued in a personal action was the *capias ad respondendum* (Latin, "you take for responding," abbreviated as *capias*). As a *mesne* or intermediate writ, it was issued not by Chancery but by the court to which it was to be returned—the Supreme Court. The writ was issued in the name of the chief justice and sealed by the court clerk. Until the late eighteenth century the "bill of New York" was the corresponding process against defendants within the City and County of New York.[75] Until 1815 writs were by custom written or printed upon parchment. In that year a statute allowed use of paper and stamping of the seal, instead of affixing a sealed wafer. The attorney had the completed writ sealed in the court clerk's office and then took or sent it the sheriff of the county where the venue was laid.[76]

The writ of *capias* commanded the sheriff or other officer to arrest the defendant thus bringing him into the court's jurisdiction. In personal actions and the action of

ejectment, the writ alleged a "trespass" and then stated the plaintiff's true cause of action.[77] The arrest was accomplished if the arresting officer merely touched the defendant. The arrest could be made any day except Sunday, anywhere in the county in which the sheriff had jurisdiction. The writ required the sheriff to return the writ to the court during the current or the next court term. A statute of 1787 required the sheriff to sign each writ he returned. The writ of *capias* was endorsed by the sheriff, stating either that the defendant was taken into custody (*cepi corpus,* Latin, "I took the body"), or that the defendant was not located (*non est inventus*, Latin, "he was not found").[78] Starting in 1820 sheriffs of particular counties were required to return writs of *capias* (and other writs) to a designated clerk's office.[79] After the writ of *capias* was served, the defendant in most types of actions was required to give the sheriff a bail bond, including the names of two sureties. The bail bond was a promise by the sureties to pay to the sheriff double the amount demanded by the plaintiff on the writ, to be void if the defendant obtained "special bail" within twenty days.[80]

Before 1832, most defendants in civil actions were required to obtain special bail, one or (rarely) two individuals who were bound to pay the judgment award to the plaintiff if the defendant failed to do so. Bail was required in most contract actions, those arising from failure to pay a debt or from other breach of contract; in most actions to recover personal property or its value; and, with a judge's order, in tort cases, such as actions of trespass "on the case" and trespass for injuries to persons. Starting in 1832, special bail was generally not required in cases involving contracts. Bail was still required in cases concerning damage to or loss of personal property and by a judge's order in certain actions of trespass.


on the taking of his body to
Miller of the Town of East
in the County of Ontario Gar
and John Doe of the same
Gentleman: At the Suit of
Dwight in a plea of tres
on the Case —
and acknowledged the first day
1798 —

SPECIAL BAIL PIECE, 1798.

Detail. See page 101.

The bail acknowledged their obligation before a judge or other officer. Filing of a "special bail piece" by the defendant's attorney in the Supreme Court clerk's office constituted the defendant's appearance in court, though he did not actually appear before the justices. The bail piece was a formal memorandum of the "delivery" of the defendant to his "bail" (surety). The surety named in the bail piece was responsible for paying a money judgment against the defendant if he failed to satisfy it. The amount of special bail was usually double the amount of debt or damages sought from the defendant; therefore, the surety was required to own real or personal property worth at least that amount. A "common bail piece" was included in the judgment roll if special bail was not required. In a common bail piece, both of the names of the bail were fictitious (i.e., "John Doe" and "Richard Roe"). If the defendant did not file his special bail piece, the plaintiff had the option of filing a common bail piece for him, thus eliminating the possibility of suing the bail for satisfaction of a judgment if the defendant failed to pay. If the defendant did find special bail and had judgment rendered against him, the surety could resign his responsibility for paying the money owed to the plaintiff. He then surrendered the judgment debtor into the sheriff's custody and obtained a court order (*exoneretur*) exonerating him of his liability.[81]

Pleading

The opposing parties in a common-law action stated their respective legal claim and defense in pleadings.[82] The initial pleading was the plaintiff's "declaration" (Latin *narratio*, abbreviated narr.). The plaintiff could file a declaration after the sheriff returned the writ of *capias* to the court clerk and either before or after the defendant's filing of the special bail piece, if required. If before, the declaration was made provisionally (the Latin term was *de bene esse*). If the defendant failed to appear, the plaintiff had to withdraw his declaration *de bene esse*. If the plaintiff failed to make his declaration, the case ended and the defendant could make a motion for court costs.[83]

The declaration was the formal statement of the plaintiff's cause of action and demand for recovery of debt or damages or of a thing itself, i.e., real or personal property. The declaration consisted of several parts. Particularly important were the venue and the statement of the cause of action. The venue was the county in which the jury was to be summoned if the case went to trial. The venue had to be laid with care, because civil actions were classed as either "local" or "transitory." In local actions the venue was the county where the cause of action arose; in transitory actions the venue might be laid anywhere in the state. All real actions concerning real property were local and were tried in the county where the property was located. Certain actions of trespass were also local. Generally the personal actions, including contract cases and most tort cases, were transitory. They could be tried in any county chosen by the plaintiff. The venue of a local or a transitory action could be changed by court rule on motion of a defendant.[84]

The declaration included a statement of the cause of action, which was the recital of the grounds for the plaintiff's demand for money or property to be recovered. The declaration did not describe the circumstances in which a debt was unpaid, a contract was breached, or injuries were incurred. It simply stated the plaintiff's legal right to payment of the debt, recovery of damages, or restitution of property or its value. Each common-law action had a standard form of declaration which the plaintiff's attorney copied verbatim from books of pleadings.[85] The declaration never cited statutes or common-law doctrines because these were assumed to be known by the court. The declaration might include several "counts," each reciting distinct claims to separate (but similar) things demanded by the plaintiff (such as payment of several promissory notes given by the defendant). The declaration further alleged the exact time and place the defendant contracted with the plaintiff or inflicted injury to the plaintiff or his property. Finally, the declaration stated the plaintiff's demand for judgment and specified a money amount or other relief. The *Revised Statutes* of 1829, effective 1830, permitted a plaintiff to initiate an action simply by filing a declaration, instead of the writ of *capias ad respondendum*, if the action was not bailable. If bail was required the plaintiff would still employ the writ of *capias*.[86]

After a plaintiff filed the initial plea (the declaration), a common rule entered by the clerk ordered the defendant to plead (respond) within twenty days after receiving a copy of the declaration. (After 1837 the rule to plead was not required except when a suit was commenced by declaration.) If the defendant did not plead within twenty days, judgment was awarded to the plaintiff on default of the defendant. If the defendant chose to plead, the way was now open to displays of the intricate and arcane science of pleading. In rare cases the defendant pleaded "in abatement." In such a plea the

defendant objected that the court lacked jurisdiction; or that one of the parties was not legally competent to sue or be sued (being, for instance, a minor or a married woman); or that the writ or the declaration was materially defective. In most cases the pleas were "in bar." The defendant's plea, in bar, and subsequent pleadings by either party were not narrative arguments but rather denials of the validity of the opposing plea.

If the defendant did not default, his attorney usually filed a plea either confessing or denying the allegation made in the plaintiff's declaration. A plea of confession was rare because the easier, cheaper ways of conceding liability for debt or damages were simply failing to plead (defaulting) or entering a *cognovit*. If the latter option were chosen, the defendant would give to the plaintiff, either before or after service and filing of the declaration, a *cognovit* (Latin, "he confesses"). That document technically was not a plea, but it "confessed the action" and the amount due to the plaintiff, and authorized filing of a judgment against the defendant. Or the defendant could enter a plea denying all or part of the plaintiff's declaration. The defendant's denial took one of two forms: either pleading the general issue or "special pleading." In pleading the ultimate object was joinder of issue, where one party affirmed and the other denied a material point of fact that could be decided by a jury. Each form of action had its own formula for a general plea by which the issue was joined so that the case could proceed to trial. In special pleading, a party admitted the facts stated in the previous pleading but alleged, in defense, new facts countering those set forth by the other party. A special pleading by the defendant usually elicited another pleading by the plaintiff, which might be the first of several additional pleadings made alternately by the two parties. The plaintiff's first reply was called a "replication;" the defendant's reply to that was a "rejoinder." A reply to the rejoinder was called the "surrejoinder," followed in turn by the "rebutter," and the "surrebutter." In theory there could be further pleadings, but the law had no names for them. All of the filed pleadings were summarized on the record of proceedings sent to the court which tried the issue of fact. The pleadings also appeared in the final judgment record filed in the Supreme Court clerk's office.

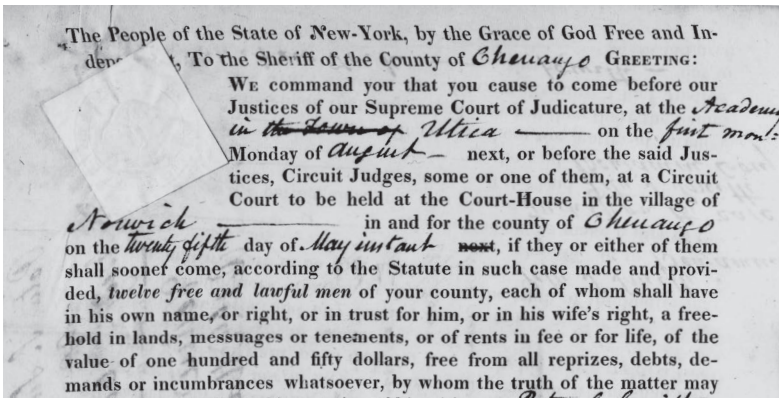
A party to an action might at some point decide not to plead to an allegation of fact but to "demur." A demurrer was a plea, usually by the defendant but occasionally by the plaintiff, which admitted that the facts alleged in the previous plea were true but denied they were sufficient in law to maintain the action. The demurrer might be made to only part of the previous plea, for instance to one count in a declaration. The opposing party was required to respond ("join in demurrer") within twenty days after service of notice of demurral. The demurrer was an enumerated motion placed on the calendar for argument in a Supreme Court term. The opposing party might move the court for judgment on the grounds that the demurrer was frivolous. If this motion was denied, the attorneys delivered arguments before the justices in term, and the court gave judgment against the party who entered the first legally insufficient plea, notwithstanding any subsequent errors in pleading by either side.

As explained above, when the defendant failed to plead to the declaration, the plaintiff obtained judgment by default. In such cases, and also in cases of judgment on demurrer or on the defendant's confession (*cognovit*), judgment for the plaintiff might be "interlocutory," not final, because the amount of damages to be recovered by the plaintiff still had to be determined. In that situation, a writ of inquiry would be issued on motion of the plaintiff. This writ directed the sheriff of the county where venue was

laid to summon a jury to "inquire into" the amount of damages due. The plaintiff had the right to examine witnesses to prove the amount of damages. The jury's inquisition was returned to the Supreme Court clerk for filing, and the jury's award of damages was incorporated into the judgment roll. An alternate method of determining the amount of damages was added by statute in 1797. If the action were brought upon a written contract for payment of money (such as a covenant, bill of exchange, or promissory note) or delivery of specific articles, the court could now order the Supreme Court clerk or (after 1829) the county clerk where the venue was laid to assess the damages to be awarded to the plaintiff. The clerk usually calculated the damages (including interest due) readily from the facts stated in the declaration, but he could take testimony from witnesses. The clerk's report stated the amount of damages to be awarded to the plaintiff, which became the final judgment award.[87] After return of the jury's award or the clerk's report, the plaintiff's attorney obtained from the court clerk (not from the court itself) a rule for final judgment. This was entered in the clerk's minute book or (starting 1796) in a separate common rule book.

Trial and Verdict

Only in a minority of cases was an issue of fact joined so that a case proceeded to jury trial. The plaintiff's attorney prepared a *nisi prius* roll for use during the trial in a circuit court. This document was a transcript of all pleadings and proceedings in the case, including the court's award of the writ of *venire facias juratores* (Latin, "you cause the jurors to come"). This writ ordered the sheriff to summon jurors to appear at the next term of the Supreme Court "unless before" (Latin, *nisi prius*) a circuit court should sit in the county where the venue was laid. The *Revised Statutes* of 1829 replaced the *nisi prius* roll with the "circuit roll." The circuit roll contained the transcribed pleadings as before but omitted the award of jury process (the writ of *venire*) and the *nisi prius* clause.[88] Waiver of jury trial by agreement of the parties was not allowed until the judicial reforms effected by the Constitution of 1846.[89] However, statutes allowed a dispute involving complex financial accounts (the action of account) to be submitted by the court to referees for determining the amount of damages owing to the plaintiff, with or without consent of the parties, in lieu of a jury trial.[90]


The People of the State of New-York, by the Grace of God Free and In-
dep[illegible], To the Sheriff of the County of Chenango Greeting:
We command you that you cause to come before our Justices of our Supreme Court of Judicature, at the Academy in the Town of Utica on the first Mon[illegible] Monday of August next, or before the said Justices, Circuit Judges, some or one of them, at a Circuit Court to be held at the Court-House in the village of Norwich in and for the county of Chenango on the twenty fifth day of May instant next, if they or either of them shall sooner come, according to the Statute in such case made and provided, *twelve free and lawful men* of your county, each of whom shall have in his own name, or right, or in trust for him, or in his wife's right, a freehold in lands, messuages or tenements, or of rents in fee or for life, of the value of one hundred and fifty dollars, free from all reprizes, debts, demands or incumbrances whatsoever, by whom the truth of the matter may

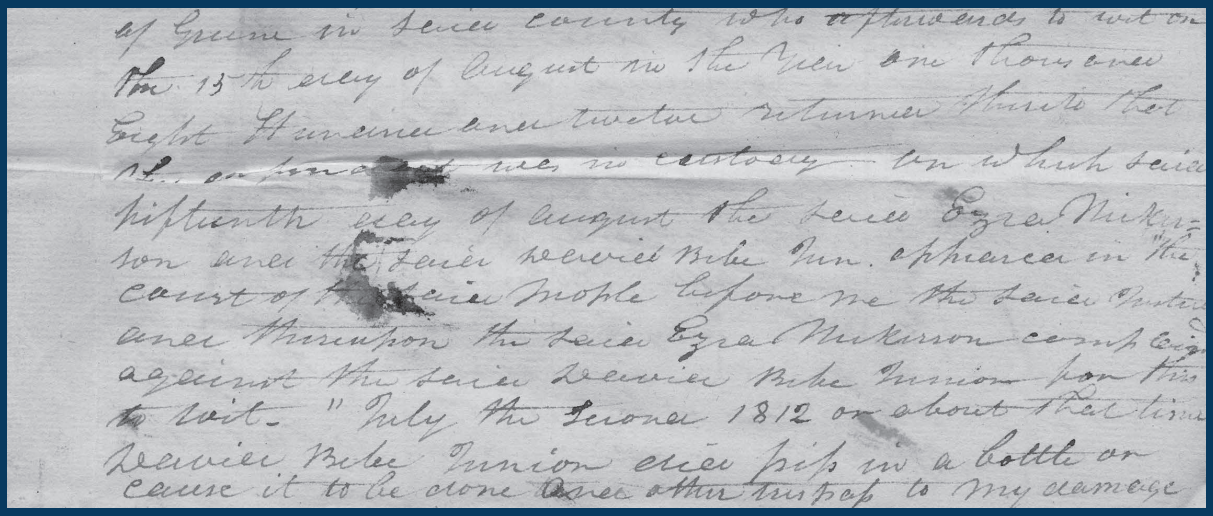
WRIT OF *VENIRE FACIAS JURATORES*, 1829.

Detail. See page 114.

Before 1796 the plaintiff's attorney delivered the *nisi prius* record to the clerk of the circuit courts statewide, who took it with him to the trial. After 1796 the *nisi prius* record or the circuit roll was sent to the county clerk, who in that year was designated the clerk of the circuit courts held in his county (except in New York City and County) as well as of the county courts.[91] Upon receipt of a note of issue from the plaintiff's attorney, giving notice of a suit, the clerk made up the trial calendar.[92] Testimony was delivered by witnesses orally, under oath. Documents, either originals or exemplified copies, could be presented at the trial in evidence. Testimony was not recorded, unless a witness was unable to appear at the trial to testify, because he or she resided in another

Reviewing proceedings before a justice of the peace, 1813.

Ezra Nickerson was a carpenter who supervised a barn raising in the town of Greene, Chenango County, on July 2, 1812. Several men joined to help, and a bottle of whiskey was passed around for refreshment, with unpleasant results. On August 12 Nickerson made a complaint to Charles Josslyn, justice of the peace, stating that David Beebe, Jr. "did piss in a bottle or cause it to be done and other trespass to my damage [of] twenty five dollars." Beebe pleaded the general issue, denying Nickerson's complaint, and demanded a jury trial. He also pleaded an award of four dollars made to Nickerson by arbitrators in his previous action against Lemuel Parker and Samuel Woodruff for the same trespass. A six-man jury was now summoned and sworn. During the trial the plaintiff's witnesses failed to prove that the defendant had committed the alleged trespass, putting the "nauseous mixture of urine and whiskey" into the bottle. The justice granted the defendant's motion for a nonsuit, with court costs to be paid by the plaintiff. Nickerson then hired attorneys to obtain a writ of *certiorari* to remove the case to the Supreme Court for review. Josslyn returned the writ with a summary of the proceedings, noting the previous arbitration award. The case never came up for argument and was apparently settled or dropped. The Supreme Court reviewed cases removed by *certiorari* from justices' courts until a statute of 1824 transferred that authority to the county courts of common pleas. Before that date the Supreme Court records contain ample evidence of the operations and the many alleged errors of courts held by country justices of the peace, who rarely were lawyers.



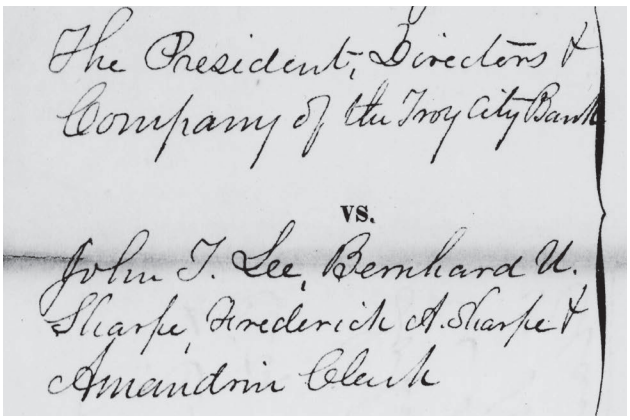
Justice's return to writ of certiorari *(detail, start of plaintiff's declaration), Ezra Nickerson vs. David Beebe, Jr.*

Ezra Nickerson vs. David Beebe, Jr., return to writ of *certiorari.*

(Series J0147, Writs of Certiorari, box 22.)

state or country, or resided in New York but could not appear because of illness or imminent departure from the state. In those cases a court officer could approve a writ of commission appointing commissioners to submit interrogatories to the absent witness and return the witness's deposition to the court.[93]

After trial and verdict, the circuit court proceedings were summarized in what was called the *postea* (Latin for "afterward"), which the winning party's attorney added to the *nisi prius* record. (After 1840 the *postea* was omitted as redundant.)[94] Attached to the record of pleadings was a certified copy of the minutes of the trial, the verdict, and the jury's award. The county clerk retained the original trial minutes. The prevailing party's attorney then prepared the judgment record, which incorporated the pleadings sent to the trial court; computed the court costs and had them "taxed" (allowed) by a court officer, who also signed the judgment; and then delivered the completed judgment record to the court clerk for filing and docketing, as discussed in detail in a later section.


The President, Directors &
Company of the Troy City Bank
vs.
John T. Lee, Bernhard U.
Sharpe, Frederick A. Sharpe &
Amandus Clark

TRIAL MINUTES, 1842.

Detail. See page 113.

The county sheriffs summoned jurors for circuit court trials or (before around 1800) for trials "at bar" in the Supreme Court. White males between the ages of twenty-one and fifty-nine years who possessed freehold property worth £50 (after 1741, £60; after 1801, $150), or personal property of that value in cities, were eligible for jury duty. (Tenants were therefore excluded, increasing the frequency of jury duty by freeholders.) Either party in a case had the right to challenge jurors individually, on grounds of a prospective juror's legal disqualification or his bias toward or against one of the parties or an interest in the action.[95] Minutes of trials held before the full Supreme Court indicate that trials were usually brief, typically occurring on a single day. Jury deliberations were even briefer, with verdicts sometimes being delivered right from the jury box.

At any time after the parties joined issue, but before a jury delivered its verdict, the defendant could enter a plea of *puis darrein continuance* (French, "after the last continuance," referring to any postponements of the case from term to term, entered on the *nisi prius* record or the circuit roll). The defendant did so if new information altered the defense (such as payment of a debt which has been ground for the action). Or the plaintiff who decided that the evidence was insufficient to obtain a favorable verdict might choose to be "nonsuited." This halted the proceedings but allowed the plaintiff to bring the action again after assembling a stronger case. The defendant could move for a nonsuit if the plaintiff's evidence appeared insufficient for the case to go to the jury. If the plaintiff failed to appear and prosecute his case at the trial, the defendant could move the court for a rule awarding judgment "as in case of nonsuit." (This resembled a nonsuit. It amounted to a default by the plaintiff, although it was a failure to prosecute the case, not a failure to plead.)

If the case did proceed to trial, the jury might find either a general verdict, in which they decided the issue, or a special verdict, in which they decided the facts but left it to the court to determine a point of law. The legal issue would be argued before and decided by the Supreme Court in term or (after 1832) by a circuit judge. (Sometimes the parties themselves agreed to seek a special verdict.) The verdict might be delivered

immediately from the jury box or after retirement and deliberation. Before the jury foreman announced the verdict the plaintiff had a last opportunity to enter a nonsuit. A jury that could not agree on a verdict after long deliberation was discharged, and the court could order a new trial.

The jury's award to a plaintiff had to correspond to and normally could not exceed the demand stated in the declaration. In most cases the jury's award was damages plus court costs. In actions of debt, the amount owed was awarded and the damages were nominal. Damages might be awarded for only one or two of several counts in the declaration. If judgment was in favor of the defendant, the award was for court costs only. If a defendant's case was considered to be insubstantial, the plaintiff's attorney could obtain an expedited jury verdict in an "inquest," not a full trial. The defendant could prevent an inquest and force a trial in the circuit court by serving and filing an "affidavit of merits" of his case.

Deciding Legal Issues

Legal issues, questions of law, sometimes arose during pleading and circuit court trials. Depending on the circumstances, 1) a party might demur to an opponent's plea (as mentioned above) or to evidence introduced at the trial; 2) the jury might find a special verdict; 3) the parties might agree to make a "special case." Before 1832, these issues of law were argued and decided as calendar cases in the Supreme Court terms. Starting in 1832, the circuit judges were authorized to hear arguments and decide these issues.[96] Appeals from circuit judges' rulings were taken to the Supreme Court in term.

A demurrer to evidence, like a demurrer to pleading, was an objection on a point of law, in this case to the legal validity of evidence introduced during the trial. A demurrer to evidence admitted the facts brought out in court but alleged that the facts did not support the issue before the jury. The demurrer to evidence was added to the end of the record of pleadings sent to the circuit court (*nisi prius* record or circuit roll) and returned to the Supreme Court clerk. A special verdict by the jury was likewise added to the pleadings sent back to the court clerk. The demurrer to evidence was infrequently used. Instead, an attorney usually waited until a verdict was returned by a jury then made a "special case," moved the court for a new trial, or submitted a bill of exceptions to accompany a writ of error.

The special case was similar to a special verdict found by a jury. The parties agreed that the jury should find a general verdict subject to the court's opinion on a particular legal issue. The party in whose favor the verdict was found prepared the "case." The case stated the facts proved at the trial (not the evidence for those facts, unless it related to the proceedings objected to) and reserved a question of law for the court to decide. Notice of the motion and a copy of the "case" were served on the opposing party, who might propose amendments. The "case" does not appear in the *nisi prius* record or the circuit roll unless it was converted into a special verdict (discussed below). Both parties then appeared before the Supreme Court justices in term or (after 1832) the circuit judge to argue the case. The proceedings were stayed until the court gave its decision. The "case" might contain a clause allowing either party to turn it into a special

verdict, which could be taken to the Court of Errors by a writ of error. This clause was necessary because the motion and affidavit in support of the case did not appear on the judgment record, while a special or general verdict did. A "case" might also be made with the stated intention of turning it into a formal bill of exceptions to accompany a writ of error.

A circuit court jury itself might find a general verdict for the plaintiff subject to the opinion of the Supreme Court on the entire case—both the facts and the law. This happened quite frequently, but the Supreme Court justices objected to the practice because it placed them, and not the trial jury, in the position of having to decide matters of fact as well as an issue of law. A court rule of 1829 required that either the jury find the facts or that the parties agree to them.[97]

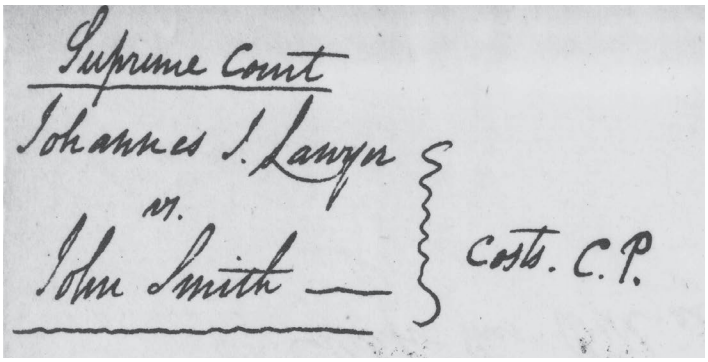
A party objecting to irregular proceedings during a circuit court trial could file a bill of exceptions or make a motion for a new trial. The bill of exceptions summarized for review by the Supreme Court proceedings and rulings alleged to be erroneous. A defendant might except to proceedings if the judge erred in stating or interpreting the law, either in charging the jury prior to its verdict, or in deciding any question prior to judgment; in allowing improper or disallowing proper testimony or evidence; or rejecting the plaintiff's request for a nonsuit. The party excepting was required to do so orally at the time of the alleged error, allowing time for the court to make a correction. The party later prepared the formal bill of exceptions, which was certified, signed, and sealed by the judge. The bill of exceptions was filed with the circuit court clerk and forwarded to the Supreme Court clerk for a second filing. Judgment and execution were stayed until the bill of exceptions was argued and decided by the Supreme Court justices in term. After 1832, a circuit judge normally heard and decided the case, and judgment and execution were not stayed.[98] Appealing a judgment of a lower court of record to the Supreme Court by writ of error did not require the tendering of a bill of exceptions if the alleged error appeared in the judgment record itself. The bill of exceptions placed additional information on the record, when the error occurred in proceedings off the record.

A motion for a new trial was made after the trial was over but before final judgment was signed and filed. The grounds for a new trial can be summarized under two headings: irregularity (improper notice of trial, improper jury, or misconduct by the prevailing party or by the jurors); and the merits of the case (absence of parties or their counsel or witnesses, newly discovered evidence, a verdict contrary to evidence or law, improper rulings on evidence, or damages that were too large or too small). A motion for a new trial on the merits was an enumerated motion argued before the Supreme Court in term (after 1832 usually before a circuit judge). A motion on grounds of irregularity was non-enumerated.

Judgment and Execution

Judgments, whether obtained by jury verdict or otherwise, were normally given after the prevailing party instructed the Supreme Court clerk to enter a rule for judgment, in the minute book or (starting 1796) in the common rule book during the current or

next court term. Judgment given on a special verdict, a special case, or a demurrer to evidence was granted upon motion after the legal issue was argued and decided.



BILL OF COSTS, 1812.

Detail. See page 173.

Upon final judgment, the prevailing party's attorney listed his costs (i.e., court and attorney fees) to be "taxed" (allowed) by a court officer. Allowable costs were established by ordinance during the colonial period, by statute under the state constitutions, and they were high.[99] After the costs had been calculated, the attorney prepared the judgment roll or record. This document contained the complete case record of pleadings and proceedings, including the judgment award of debt, damages, and costs. The record was signed and dated in the margin of the last page by the taxing officer, usually by a Supreme Court clerk, rarely by one of the justices, or by the early nineteenth century by a circuit judge or a Supreme Court commissioner.[100] After signing, the attorney took or sent the judgment roll to a Supreme Court clerk's office.

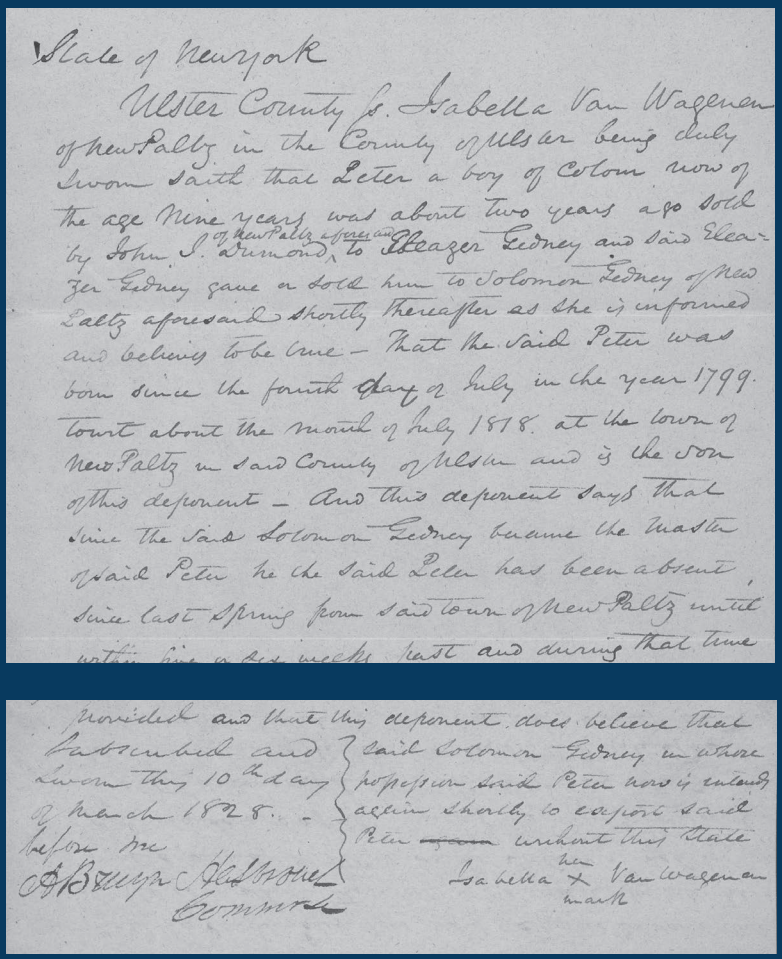
Until February 5, 1798, all judgments were required to be enrolled on parchment; an act of that date permitted use of paper. The shift to paper was immediate, undoubtedly because of the high cost of parchment. Thereafter judgments were no longer rolled up, but were tri-folded. The modern Civil Practice Law and Rules still refers to the "judgment roll," for well over two centuries an anachronism.[101]

The clerk filed the judgment roll or record and docketed the judgment in a docket book. The docket books were and are lists of judgment debtors and creditors; amounts of debts, damages, and costs awarded; and the dates of docketing judgments. Judgment docket books were required to be kept by an Assembly act of 1774, but none survive for the Supreme Court prior to 1785. After multiple clerk's offices were established, each clerk periodically sent a transcript of the judgment docket to each of the other clerks. Before 1830 the transcripts were sent to the other clerk's offices at the end of each Supreme Court term. Beginning in 1830 the transcripts were prepared semi-monthly. When a second clerk's office was established at Albany in 1797, the judgment roll or record could be filed either there or in New York City. Filing could also occur in the offices opened at Utica in 1807, and in Canandaigua in 1829, removed to Geneva in 1830. An 1840 law required that all money judgments in the Supreme Court also be docketed in the county clerk's office. This requirement anticipated the court reorganization effected by the Constitution of 1846, by which the county clerk became the clerk of the Supreme Court in his county and filed and docketed its judgments.[102]

Under the English Statute of Frauds of 1677, money judgments took effect upon signing, and from that date encumbered the judgment debtor's real property. An act of 1692 additionally required that the judgment must be docketed by the court clerk. New York laws of 1787 and 1801 confirmed that a judgment must be both filed and docketed by the clerk of the Supreme Court or a court of common pleas to establish a preference for the judgment creditor as against subsequent purchasers and mortgagees of the encumbered real property. If the judgment debtor conveyed or mortgaged his real property after filing and docketing of the judgment, that would have violated the New

Anti-slavery litigation, 1828.

Women are seldom mentioned in records of the pre-1848 Supreme Court. A notable exception is a black woman named Isabella, who after her conversion to Methodism took the name "Sojourner Truth" and became an anti-slavery activist. In the 1820s the lower Hudson Valley had the largest population of enslaved people in the state. Isabella was born into slavery in Ulster County and she had several owners, the last being John I. Dumont of New Paltz, from whom she escaped. She and a man named Thomas had several children, including Peter, born in 1818. About 1826, Dumont sold Peter to Eleazar Gedney of Newburgh for $20. On March 1, 1828, Isabella, who had taken the Van Wagenen surname of her new employers, applied to a Supreme Court commissioner, Abraham Bruyn Hasbrouck, for a writ of *habeas corpus* to obtain her son's freedom. Isabella's attorneys were Herman M. Romeyn and John Van Buren of Kingston. Her deposition alleged that Eleazar Gedney had sold Peter to his brother Solomon W. Gedney, who had exported the boy to a southern state. Solomon denied that he owned Peter and avoided mentioning export or sale of a slave. On March 14, both Solomon Gedney and Peter appeared before the commissioner, who was convinced by Isabella's evidence. He ordered Peter to be released under the New York law of 1817, which freed enslaved persons born after July 4, 1799, but bound them to serve their prior owners until they reached their twenties, and prohibited transporting such persons out of the state.



State of New York
Ulster County ss. Isabella Van Wagenen of New Paltz in the County of Ulster being duly sworn saith that Peter a boy of Colour now of the age Nine years was about two years ago sold by John I. Dumond of New Paltz aforesaid to Eleazer Gedney and said Eleazer Gedney gave & sold him to Solomon Gedney of New Paltz aforesaid shortly thereafter as she is informed and believes to be true – That the said Peter was born since the fourth day of July in the year 1799 to wit about the month of July 1818. at the town of New Paltz in said County of Ulster and is the son of this deponent – And this deponent says that since the said Solomon Gedney became the master of said Peter he the said Peter has been absent since last Spring from said town of New Paltz until within five or six weeks last and during that time

provided and that this deponent does believe that Subscribed and said Solomon Gedney in whose Sworn this 10th day possession said Peter now is intends of March 1828. – again shortly to export said Before me Peter without this State
A Bruyn Hasbrouck Isabella her X Van Wagenen
Commr mark

People vs. Solomon Gedney, writ of *habeas corpus* and return, 1828 (detail).

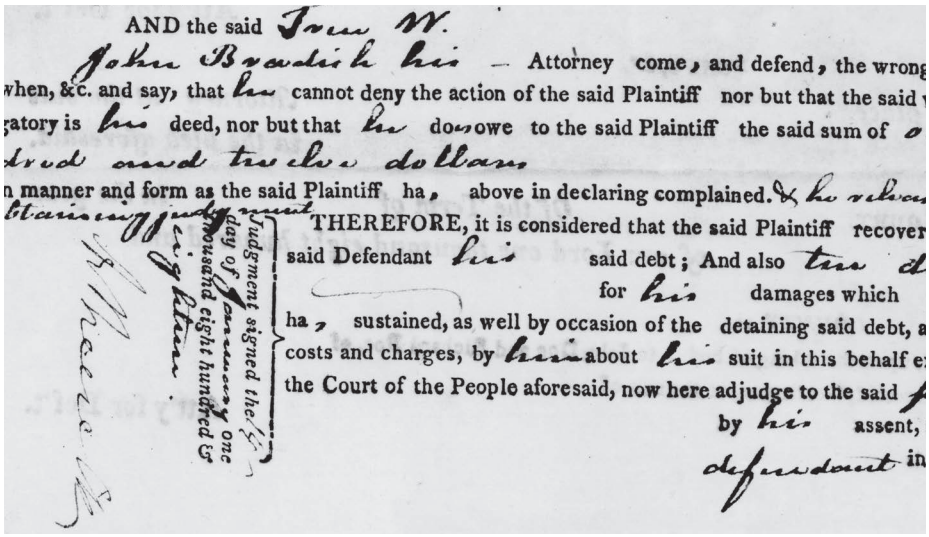
(Series J0029, Writs of Habeas Corpus, *box 3.)*

Return to writ of habeas corpus *(details of deposition of Isabella Van Wagenen), People vs. Solomon Gedney.*

York statute for the prevention of frauds. The *Revised Laws* of 1813 stated that filing and docketing of the judgment created a "lien" on the property for ten years, retroactive to April 9, 1811. That provision was continued by the *Revised Statutes* of 1829.[103]

JUDGMENT ROLL, 1818.

Detail. See pages 124-25.

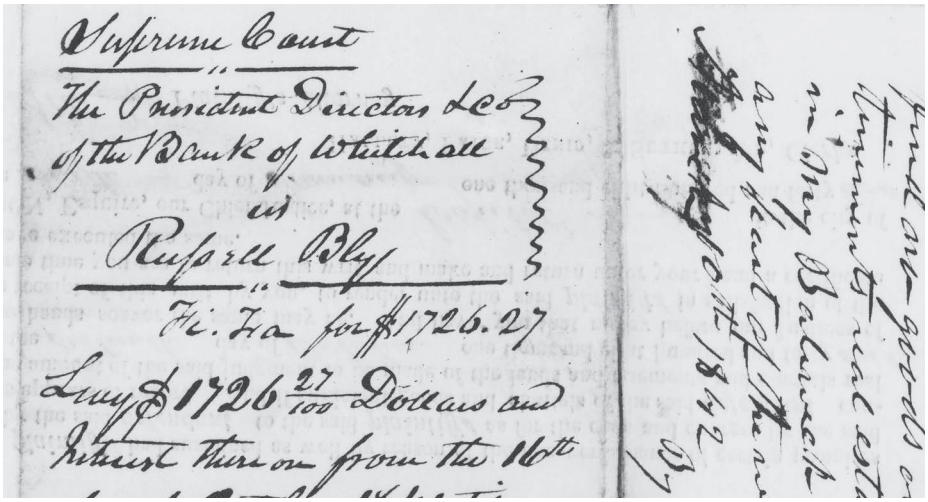


AND the said John W.
John Bradish his — Attorney come, and defend, the wrong
when, &c. and say, that he cannot deny the action of the said Plaintiff nor but that the said
gatory is his deed, nor but that he doth owe to the said Plaintiff the said sum of
dred and twelve dollars
n manner and form as the said Plaintiff ha, above in declaring complained. & he relea
btaining judgment
day of January one
thousand eight hundred &
THEREFORE, it is considered that the said Plaintiff recover
said Defendant his said debt; And also
for his damages which
ha, sustained, as well by occasion of the detaining said debt, a
costs and charges, by him about his suit in this behalf e
the Court of the People aforesaid, now here adjudge to the said
by his assent,
defendant in

Unless a debtor discharged the judgment debt by payment, the judgment creditor obtained from the court clerk a writ of execution in order to obtain payment of the money judgment, specifically the debt and/or damages, and costs, awarded by the court.[104] The writ of execution was either a writ of *fieri facias* (abbreviated *fi. fa.*) or a writ of *capias ad satisfaciendum* (*ca. sa.*). Both writs could not be employed at the same time and had to be issued within one year (starting 1830, two years) from the date a judgment was filed and docketed. The writ of *fieri facias* (Latin, "you cause to be made") commanded the sheriff to make a levy on, that is sell, sufficient personal property of the debtor to satisfy the judgment. (Certain items of personal property such as clothing, furniture, food, tools, and livestock were exempted from sale.) If the judgment debtor lacked sufficient personal property to satisfy the judgment, the sheriff was empowered to sell some or all of the debtor's real property.

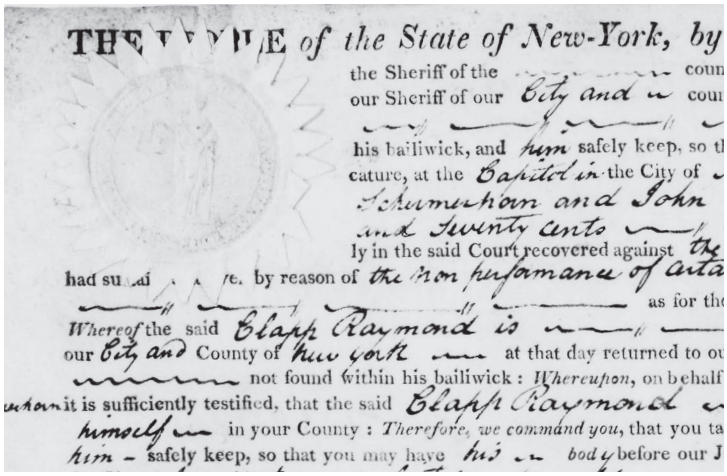
WRIT OF *FIERI FACIAS*, 1842.

Detail. See page 138.



Supreme Court
"
The President Directors &c
of the Bank of Wisconsin
vs
Russell Bly
"
Fi. Fa for $1726.27
Levy $1726 27/100 Dollars and
Interest thereon from the 16th

Before 1830, the first writ of *fieri facias* had to be issued to the sheriff of the county where the venue was laid. If the judgment debtor did not reside in the county where venue was laid, the judgment creditor had to obtain a writ of *testatum fieri facias*. This writ was directed to the sheriff of another county where the debtor was thought to possess property. Starting in 1830, the initial writ of *fieri facias* could be issued to any sheriff in the state. If the sheriff found no property to sell, second and third writs directed to the same sheriff were called *alias fi. fa.* and *pluries fi. fa.* The writ of *capias ad satisfaciendum* (Latin, "you take to satisfy") was available if the defendant had been held to special bail. The writ ordered a sheriff to arrest and imprison the judgment debtor until the judgment was paid or the creditor discharged the prisoner from his debt.[105] Routine imprisonment of judgment debtors was abolished in 1831, effective March 1, 1832, when the Legislature limited the types of cases in which special bail was required.[106]


THE PEOPLE of the State of New-York, by
the Sheriff of the coun
our Sheriff of our City and coun
his bailiwick, and him safely keep, so t
cature, at the Capitol in the City of
Schumachon and John
and Twenty cents
ly in the said Court recovered against the
had su ai e. by reason of the non performance of agra
as for th
Whereof the said Clapp Raymond is
our City and County of New York at that day returned to ou
not found within his bailiwick: Whereupon, on behalf
it is sufficiently testified, that the said Clapp Raymond
himself in your County: Therefore, we command you, that you ta
him safely keep, so that you may have his body before our J

WRIT OF *CAPIAS AD SATISFACIENDUM*, 1813.

Detail. See page 136.

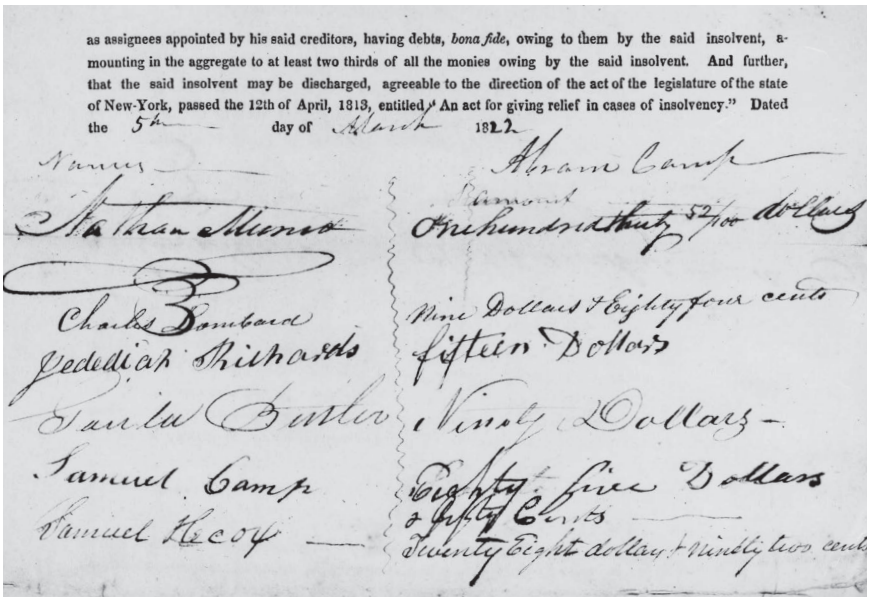
If a judgment was satisfied either by voluntary payment by the judgment debtor or by sheriff's sale of some or all of his property, the judgment creditor or his attorney filed a "satisfaction piece" (acknowledgment of satisfaction of the judgment) with the court clerk, who entered the satisfaction in the docket book. The paucity of satisfactions entered in the Supreme Court docket books suggests that few judgments were ever satisfied. However, a judgment was considered to be discharged if the sheriff sold sufficient property to pay the judgment creditor, even though no satisfaction piece may have been filed with the court clerk.[107] Under the common law, if a writ of execution was not issued within one year after a judgment was signed, the judgment was "dormant." A judgment creditor could thereafter obtain a writ of *scire facias* (Latin, "you cause to know," or "show cause"). (The writ could be issued sooner if one of the parties to the action died.) This writ ordered the sheriff to serve notice on the judgment debtor (or his heirs, administrator, executor, or assignee) to show cause why the judgment should not be revived and satisfied. Under the *Revised Statutes* of 1829, "dormancy" commenced two years after docketing of the judgment, and *scire facias* was unavailable after ten years. Under common law a judgment was assumed to have been satisfied after twenty years had passed. That became part of New York statute law in 1821.[108]

Statutory Jurisdiction – Insolvency Proceedings

Common-law actions comprised the vast majority of the Supreme Court's business. However, statute law vested the court with certain other areas of original jurisdiction. Many late colonial and state laws empowered judges of the Supreme Court, county courts of common pleas, and city courts to authorize and supervise insolvency proceedings. Legislative interest in relief for insolvent debtors and their creditors was especially strong in periods of economic depression. Insolvency laws helped debtors who were unable to pay their debts, and creditors who hoped to obtain payment of at least some of the debts owing to them. Insolvency proceedings were a statutory method of debt collection that supplemented the complex process of common-law litigation,

though close judicial supervision was retained. Insolvency laws described the proceedings in minute detail, and the laws were often amended or superseded. The laws were politically controversial, because of the competing interests of creditors and debtors. (See Appendix M, "Statutes Concerning Sale of Insolvent Debtors' Property for Benefit of Creditors.")

Several colonial laws enabled a debtor imprisoned for smaller debts to petition a court to assign his real and personal property to court-appointed trustees ("assignees"). The assignees then sold the debtor's property and distributed the proceeds to the creditors. Those laws were enacted at various times between 1730 and 1771 and expired usually after one year. More durable legislation authorized a debtor and his creditors jointly to petition a court for the assignment and sale of a debtor's property and discharge of his debts. Acts of 1755 and 1761, the latter act expiring in 1770, provided that creditors representing three-fourths of the total debts of an imprisoned debtor could petition the Supreme Court or a court of common pleas to assign the debtor's property to trustees. They then sold the property and distributed the proceeds to the creditors who presented claims. (The three-fourths standard was adopted because of the "obstinancy of some few of the Creditors" to agree to such assignments.) The debtor was discharged of his debts owing at the time of the assignment. Creditors were especially vexed by "absent or absconding" debtors who were unreachable by court process but owned property that could be sold to pay their debts. An Assembly act of 1751, continued and amended several times and expiring in 1785, allowed creditors to petition either the Supreme Court or, under the later acts, a court of common pleas, for assignment and sale of the property of such recalcitrant debtors.[109]


as assignees appointed by his said creditors, having debts, *bona fide*, owing to them by the said insolvent, amounting in the aggregate to at least two thirds of all the monies owing by the said insolvent. And further, that the said insolvent may be discharged, agreeable to the direction of the act of the legislature of the state of New-York, passed the 12th of April, 1813, entitled "An act for giving relief in cases of insolvency." Dated the 5th day of March 1822

INSOLVENT'S PETITION, 1822.

Detail. See page 164.

The economic depression after the Revolutionary War prompted new legislation providing relief for insolvent debtors and their creditors. An act of 1784 permitted any debtor who was imprisoned because his judgment debt had not been paid, to petition a judge of the court that had rendered the judgment to assign his property to trustees for sale and to discharge him from his debts. "Fraudulent practices to obtain those benefits ... intended only for the innocent and unfortunate" prompted repeal of the act in 1788. A law of 1801 allowed imprisoned judgment debtors with debts under specified money amounts to assign their property for sale for benefit of creditors; the money limit was removed in 1808. An 1811 law, passed during the depression resulting from the foreign trade embargo during the Napoleonic wars, allowed any insolvent debtor to petition for an assignment and obtain a full discharge of all his debts. The law's quick repeal the next year confirms that it harmed the interests of creditors. In 1819, during the economic depression following the War of 1812, another act allowed any insolvent

debtor to seek an assignment, though without discharge of his debts. Petitions and other documents under the insolvent debtor acts of 1811 and 1819 were to be filed with the county clerks.[110]

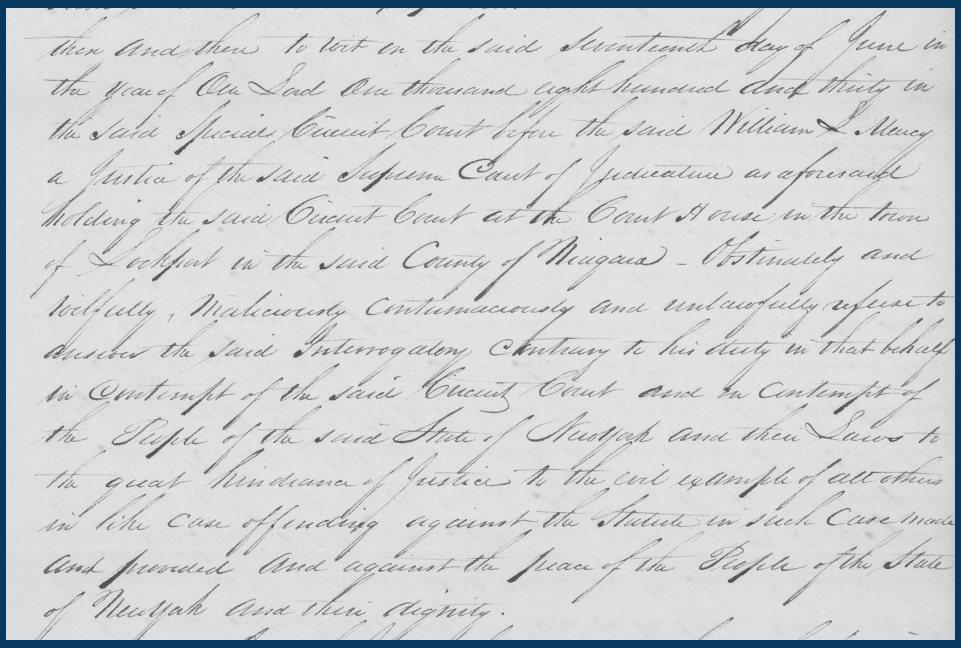
The most common insolvency proceeding was commenced by the joint petition of a debtor and creditors. A general act of 1786 "for giving relief in cases of insolvency" and similar acts of 1788, 1801, and 1813 permitted an insolvent debtor and creditors representing a majority of his debts jointly to petition a court for assignment of the debtor's property to trustees, sale by the trustees of the debtor's property for the benefit of creditors, and discharge of the debtor's liability for his debts at the time of the assignment. Any justice of the Supreme Court or judge of a court of common pleas, or (starting 1788) the chancellor, was authorized to receive and approve the petition of the insolvent debtor and his creditors and supervise the assignment proceedings. Accompanying the petition were the creditors' affidavits of the debts owing to them, and the debtor's inventory of his real and personal estate. The petitioners notified other creditors by a newspaper advertisement of the pending assignment. The court officer then ordered that the debtor's real and personal property be assigned to one or more trustees, nominated by the petitioning creditors, and discharged the debtor from his debts. The assignees held a conference with all the creditors to confirm their claims and refer any disputes to referees. The assignees then sold the debtor's personal and real property and distributed the money to the creditors. (Personal property exempted from sale included only the clothing and bedding of the debtor and his family, and militia arms and accouterments.) Between 1786 and 1813, the petitioning creditors had to represent at least three-fourths of the value of all the insolvent debtor's debts. From 1813 on, the creditors represented at least two-thirds of the total value of debts. The less than unanimous representation was intended to prevent a few creditors from blocking an assignment, "to the great prejudice of the rest, and to the injury of trade." Papers in these voluntary insolvency cases were filed with a Supreme Court clerk if a justice of that court granted the petition, or with the county clerk, in other cases. Many of these voluntary assignment papers filed with Supreme Court clerks before 1830 and with court clerks in New York City and County before and after that date, under the so-called "three-fourths" and "two-thirds" acts, are now in the State Archives.[111]

"Absconding and absent" debtors who "secretly depart this state" or "keep concealed" within the state, with "intent to defraud," posed major problems for creditors. State laws of 1786, 1801, and 1813 authorized creditors of such a debtor to petition a judge for the attachment and sale of the debtor's property for the creditors' benefit. After approving the petition, the judge ordered the county sheriff to seize ("attach") the debtor's real and personal property and his business records. The sheriff returned an inventory of the property to the court. If the debtor did not respond to a published notice and pay his debts or otherwise settle with his creditors, the judge receiving the petition appointed trustees to take legal possession of the debtor's property, sell both personal and real property as necessary, and distribute the proceeds of the sale to creditors who presented their claims after public notice of the sale. Though the debtor had opportunity to respond and pay, and shared in any surplus if all his debts were paid after the sale, these involuntary assignment laws clearly favored creditors.[112]

The *Revised Statutes* of 1829 repealed and replaced all existing insolvency laws, effective 1830. Voluntary assignment proceedings commenced by petition of the debtor and

Prosecution for contempt of court, 1830.

Orsamus Turner, a newspaper editor at Lockport, was one of dozens of Freemasons in several western counties who were indicted for alleged participation in the abduction of William Morgan of Batavia in September 1826. Morgan was forcibly transported to Fort Niagara and was never seen again. Morgan, himself a Freemason, had revealed details of Masonic rituals for publication by a Batavia printer. That incensed Freemasons because it violated their strict oaths of fraternity and secrecy. Freemasons tried for crimes against Morgan were difficult to convict because many of the judges and jurors belonged to the fraternal order but were not recused. The governor eventually appointed a special prosecutor to supersede the local district attorneys. In August 1828 Orsamus Turner and two other men were indicted and tried in Ontario County for conspiring to abduct Morgan and then doing so. Turner was acquitted after the single witness against him refused to take the required oath. Turner himself was called as a prosecutor's witness in the trial of Ezekiel Jewett, Elisha Adams, and William King at a "special circuit court" held in Lockport in September 1830. The defendants were charged with committing crimes against Morgan—conspiracy, assault, and forcible detention. Turner declined three times to testify about his knowledge of the affair. The right against self-incrimination was first established by the Constitution of 1821. But the Niagara County grand jury indicted Turner anyway for "obstinately and willfully, maliciously, contumaciously, and unlawfully" refusing to answer three times, in contempt of court. The three indictments were remitted from the Niagara County Court of General Sessions to the Court of Oyer and Terminer, at which a circuit judge would preside. Seeking another tribunal, Turner's lawyer, James F. Mason of Lockport, obtained from the circuit judge a writ of *certiorari* to remove the indictments to the Supreme Court. That court practically never held trials at bar, and eventually Turner was tried in Niagara County. Turner was convicted and punished with a $250 fine and ninety days in the county jail. His Masonic brethren visited him often and provided food and other items to make his incarceration comfortable.



People vs. Orsamus Turner, indictment, 1830 (detail).

(Series J0147-82, Writs of Certiorari, *box 86.)*

Return to writ of certiorari *(detail, part of indictment against defendant), People vs. Orsamus Turner.*

two-thirds of his creditors were to be brought in a county court. All documents in the proceeding were filed in the county clerk's office. The Supreme Court became involved only when a determination of the lower court alleged to be erroneous was appealed to it by writ of *certiorari*. The *Revised Statutes* also provided for court-ordered assignment of the property of "absconding, concealed, and non-resident debtors" for the benefit of creditors. The proceedings were similar to those under previous laws, except that the Supreme Court in all cases assumed jurisdiction after the appointment of trustees. All papers were filed with a Supreme Court clerk. Such involuntary assignments after 1829 were infrequent. Many of the resulting papers are preserved for the New York City, Albany, and Utica offices of the Supreme Court.[113]

Statutory Jurisdiction – Partition Proceedings

In England and early New York a common-law action was available for partition of real property owned by joint tenants (persons sharing the title to the undivided property, either by joint purchase or by inheritance, the latter including female "coparceners") or by tenants in common (having distinct, separate titles to the same real property).[114] In 1785 the state Legislature authorized a statutory proceeding for partition of real property. "Proprietors" of undivided lands, in many cases minor heirs or widows, were empowered to appoint three commissioners to allot or sell the jointly-owned lands, after giving public notice in newspaper advertisements. The commissioners could allot the lands to the owners, using paper ballots, and filing a field book and map of the lands in the offices of the county clerk and the Secretary of State. Alternatively, properties that could not easily be divided could be sold and the proceeds distributed to the owners. The commissioners could request that a Supreme Court justice or a common pleas judge monitor the proceeding. The commissioners executed deeds for the properties that were allotted or sold. A law of 1788 authorized use of a writ of partition issued by the Court of Chancery to compel a partition, by bringing an action in the Supreme Court or a court of common pleas if not all the owners agreed to a voluntary proceeding. The act of 1785 was frequently amended, indicating public confusion about the proceeding.

In 1801, the Legislature replaced this dual system by passing a single "Act for the partition of lands." The Supreme Court, the courts of common pleas, and the mayor's courts were empowered to supervise partition proceedings. Starting in 1813 the Court of Chancery also exercised jurisdiction if the petitioners sought an equitable remedy. One or more of the owners made a petition to the court for the partition. The court reviewed the rights of the petitioners, holding a trial if necessary, and after final judgment appointed three commissioners to allot the land if it were convenient to do so, or to distribute the proceeds of its sale. After 1801 the Supreme Court minute books include many lengthy entries of final orders in partition actions.[115]

Other Statutory Jurisdiction

Between 1786 and 1829 the Supreme Court had the exclusive power to prove and record wills devising real property located in more than one county. The county court of common pleas proved such wills if the decedent's property lay within the county, and the Supreme Court shared that authority starting 1813. (Starting 1830

all wills of real property were proved and recorded by the county surrogates.)[116] Several early nineteenth-century laws authorized the court to appoint commissioners to assess and award damages for lands taken for street openings or widening in New York City and Brooklyn.[117]

As a court of record, the Supreme Court had the authority under federal statutes to file declarations of intention and petitions to become a United States citizen. The clerk entered the final naturalization orders in the minute books. Also pursuant to federal law, the court filed a few affidavits of Revolutionary War service by pension applicants. (Most documents relating to Revolutionary War pensions and naturalizations of aliens are found in records of the county courts.)[118] Starting in 1815 the New York Supreme Court had concurrent jurisdiction with the United States District Court over suits by the United States relating to collection of two federal taxes: the excise tax on liquor and the direct tax on real property levied during the War of 1812. Such cases are found occasionally in the judgment rolls of the Supreme Court.[119] The Supreme Court also possessed original jurisdiction, rarely exercised, in certain types of cases relating to public officers, corporations, and real property.[120]

Summary Jurisdiction

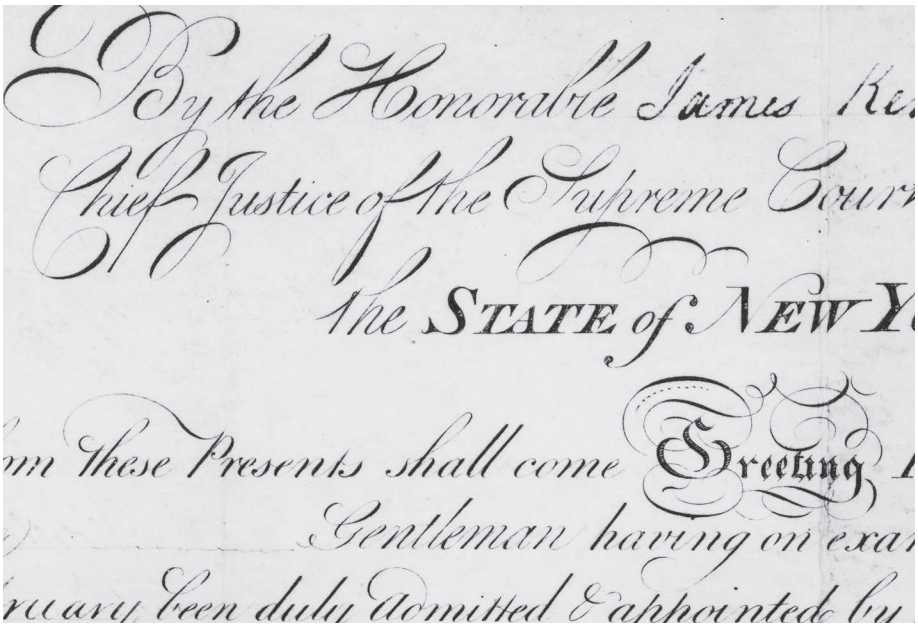
The Supreme Court possessed summary jurisdiction to regulate its own proceedings, to admit attorneys to practice in the court, and to proceed against persons in contempt of court. The Supreme Court adopted general rules concerning motions, rules, pleading, demurrers, defaults, contempts, trials, attorneys, notices, and other matters. The general court rules were entered in the minute books and, starting in 1801, periodically published. (See Bibliography.)[121] The Supreme Court established by rule the detailed qualifications and procedure for admission of attorneys to practice in the court, and the clerk entered in the minute books lists of persons examined and admitted.[122] The terms of the Supreme Court of Judicature were established by statute, but terms of the circuit courts were almost always set by court order, not by statute.[123] Finally, the Supreme Court could rule that attachments issue against sheriffs and other officers who had failed to obey a writ and who had thereby fallen into contempt. The most frequent situation was a sheriff's failure to return a writ on time. Rules for attachment were numerous, but completed attachments against sheriffs were rare.[124]

Equity Jurisdiction–The Court of Chancery

The Supreme Court of Judicature did not possess equity jurisdiction, which was vested in the Court of Chancery. (The records of the Court of Chancery were transferred to the State Archives in 1982 and 2017.)[125] Equity jurisdiction embraced a wide variety of proceedings for which there was no action or remedy available in a court of common law. Following is a brief review of chancery jurisdiction in New York during the early nineteenth century, as it had been received from the English Court of Chancery and considerably augmented by state laws. The most common types of equity proceedings, exclusive to Chancery, involved mortgaged property, marital relations, and the property of corporations and classes of people needing judicial protection. The Court of Chancery granted mortgage foreclosures; appointed, supervised, and discharged trustees for the property of married women, minors, "lunatics," "idiots," and "habitual

drunkards"; granted divorces, separations, and annulments; and supervised the sale of property of religious corporations. The Court of Chancery received enhanced statutory authority to appoint trustees to take control of insolvent or mismanaged business and financial corporations.

Another area of equity jurisdiction was the power to "assist" the Supreme Court and other common-law courts in ensuring that justice was done. The chancellor or a vice-chancellor could grant an injunction ordering a defendant to perform an act or not to perform it, to prevent injury to a plaintiff's rights. Chancery could issue an order of specific performance to enforce a judgment that had an equitable component. The court could compel the appearance of a witness or production of evidence by a writ of *subpoena*, and order the discovery of evidence prior to a trial. The common-law courts in England employed the *subpoena* by statutory authority. New York law courts likewise used subpoenas, and pre-trial discovery became available to them starting in 1830.[126] Equity jurisdiction embraced certain types of cases that would normally be brought in a common-law court but could be initiated in the Court of Chancery because an equitable remedy was required, again blurring jurisdictional lines. Such cases might involve fraud, insolvency, accident, accounting for profits or money received, or partition of real property. In a significant alignment of the powers of New York's common-law and equity courts, a legislative act of 1802 required the sheriffs to serve Chancery writs, including executions, the sale of personal or real property for payment of money awards by Chancery. The *Revised Statutes* of 1829 ordered the docketing of such decrees, with transcripts sent to the Supreme Court clerks for entering in their dockets.[127]


By the Honorable James Ke
Chief Justice of the Supreme Court
The STATE of NEW Y
om these Presents shall come Greeting
Gentleman having on exa
recently been duly admitted & sworn

LICENSE TO PRACTICE LAW, 1808.

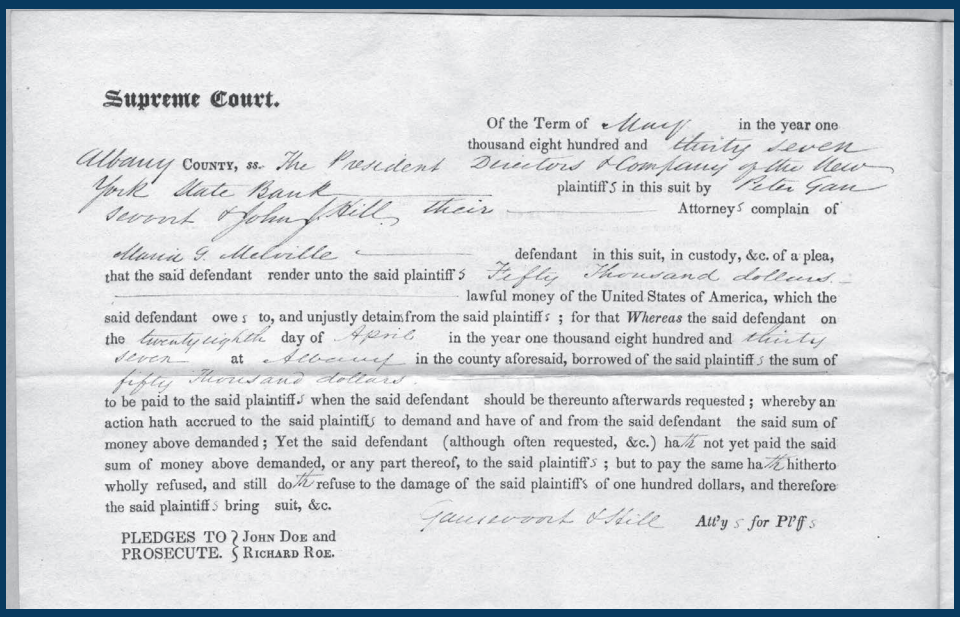
Detail. See page 176.

Appellate and Transfer Jurisdiction

The Supreme Court possessed appellate jurisdiction, which was divided into two general areas. The first, already discussed, was deciding issues of law arising during pleading and circuit court trials. The second area was appeals of judgments and transfers of cases from the lower civil and criminal courts. That happened when there was reason to believe legal errors had occurred, or when the Supreme Court decided to take a case for some other reason. Judgments of lower courts of record (the county and city courts) were brought up to the Supreme Court for review by writ of error. The court also decided cases transferred by writs of *certiorari* from lower courts of record, prior to final judgment. Defendants could also be transferred to the jurisdiction of the Supreme Court by writs of *habeas corpus.* And before 1824, the Supreme Court

Litigation reveals family finances, 1837.

The family of author Herman Melville had financial problems for decades, despite inherited wealth. Allan Melville, a New York City merchant and importer, had a lavish lifestyle and mismanaged his money. He moved to Albany in 1830 and died in early 1832. His widow Maria (Gansevoort) Melville and their son Gansevoort Melville became responsible for his many debts. Gansevoort's own business in Albany failed during the financial panic of mid-May 1837. Between that time and 1841 creditors obtained several large judgments in the Supreme Court against either Maria or Gansevoort or both of them. The largest single judgment was one for $50,000 against Maria G. Melville in favor of the New York State Bank in Albany, signed May 1, 1837. Though it took the form of a common-law action of debt, it was filed to secure repayment of a loan made to Maria on April 28. A family connection is obvious. A director of the bank and one of its attorneys in the proceeding was Peter Gansevoort, Maria's brother. Her warrant of attorney was witnessed by her younger son, Herman, who had been a clerk in the bank a few years before. Maria G. Melville could be a party to a court action because she was a widow. Married women could not sue or be sued in their own names until passage of the Married Women's Property Act in 1848.



Supreme Court.

Of the Term of May in the year one thousand eight hundred and thirty seven

Albany County, ss. The President Directors & Company of the New York State Bank by Peter Gansevoort & John Savage their Attorneys complain of Maria G. Melville defendant in this suit, in custody, &c. of a plea, that the said defendant render unto the said plaintiffs Fifty Thousand dollars lawful money of the United States of America, which the said defendant owes to, and unjustly detains from the said plaintiffs; for that *Whereas* the said defendant on the twenty eighth day of April in the year one thousand eight hundred and thirty seven at Albany in the county aforesaid, borrowed of the said plaintiffs the sum of fifty thousand dollars to be paid to the said plaintiffs when the said defendant should be thereunto afterwards requested; whereby an action hath accrued to the said plaintiffs to demand and have of and from the said defendant the said sum of money above demanded; Yet the said defendant (although often requested, &c.) hath not yet paid the said sum of money above demanded, or any part thereof, to the said plaintiffs; but to pay the same hath hitherto wholly refused, and still doth refuse to the damage of the said plaintiffs of one hundred dollars, and therefore the said plaintiffs bring suit, &c.

PLEDGES TO PROSECUTE. John Doe and Richard Roe.

Gansevoort & Hill Att'ys for Pl'ffs

Judgment roll (detail, plaintiff's declaration), The President, Directors and Company of the New York State Bank vs. Maria G. Melville.

The President, Directors and Company of the New York State Bank vs. Maria G. Melville, judgment roll, 1837.

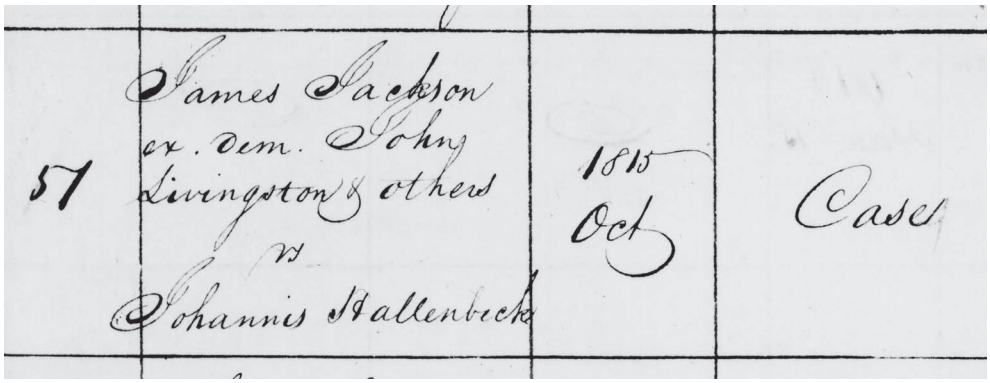
(Series J0140, Judgment Rolls [Albany].)

reviewed flawed judgments of justice's courts brought to it directly by writ of *certiorari*. In addition, the Supreme Court could review the non-discretionary decisions of lower courts, quasi-judicial bodies, and public officers brought to it by writ of *mandamus* and *certiorari*. The Supreme Court's records indicate that appellate and transfer jurisdiction was exercised occasionally during the colonial and early statehood periods, more frequently after around 1800.[128]

The Supreme Court had the power to review by writ of error final judgments of lower courts of record (those courts having a seal and a clerk). The writ of error was an "original" writ, before 1815 issued out of the Court of Chancery, starting 1815 out of the Supreme Court. Before 1801 the writ of error was a "writ of grace," allowed at the discretion of the chancellor. A statute of 1801 generally made it a "writ of right," subject to statutory regulation (which until 1829 was partial).[129] Procedure of the Court of King's Bench provided the model before the *Revised Statutes* of 1829 described in great detail the procedure for issuing and returning the writ of error, and reviewing the lower court judgment removed to the Supreme Court.[130] Under both the common law and the *Revised Statutes*, the return to the writ of error was the record of pleadings in and the final determination of the lower court, that is, the judgment roll plus any additional information added to the record in a bill of exceptions. In a criminal case it was the indictment or information and record of conviction and sentencing. In effect, the Supreme Court "tried the record" of the case being appealed. Only the facts proved in court needed to be stated, not the evidence for those facts.[131] The *Revised Statutes* of 1829 required that a writ of error be allowed by a Supreme Court justice, clerk, or commissioner. Statutes of 1801, 1813, and 1829 required a plaintiff in error in the Supreme Court to obtain sureties and file a bond for prosecution of the writ and payment of debt, damages, and costs if the original judgment were affirmed.[132]

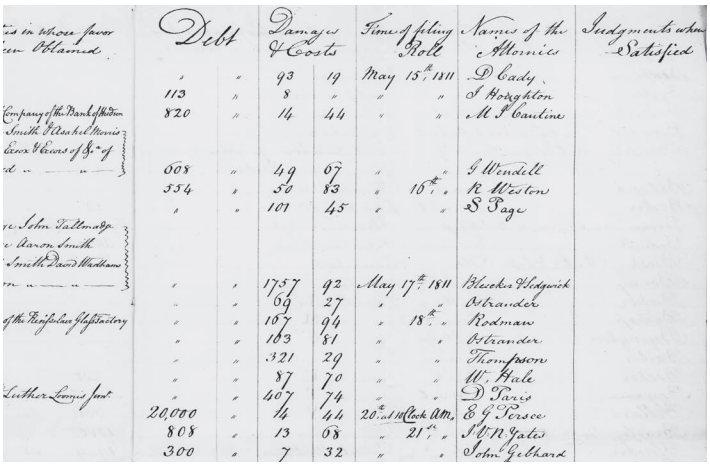
CALENDAR OF ENUMERATED MOTIONS, JANUARY TERM, 1816.

Detail. See page 151.



A civil judgment could be reviewed by writ of error returned to the Supreme Court from a county court of common pleas or a a mayor's or recorder's court in a city. The Supreme Court also reviewed judgments of the Superior Court of New York City, established in 1828, which thereafter heard all first-stage appeals from the Court of Common Pleas for the County and City of New York (formerly known as the "Mayor's Court" because the mayor or recorder had presided).[133] Under the common law there were strict standards for a writ of error to succeed in reversing the judgment of a lower court. The first ground was substantial error in law upon the face of the record (including erroneous judgment on demurrer). A second ground was error in law occurring in the trial of an issue of fact. In that case the error was stated on the bill of exceptions, which was signed and sealed by the presiding judge of the lower court and returned with the writ. Errors in law at the trial could be alleged if a judge acted improperly in admitting or rejecting testimony, ordering or refusing to order a

nonsuit, charging the jury, or ruling on a motion for a special verdict. A third ground for a writ of error was an error in fact upon the record (for instance, if the defendant were an infant appearing without a guardian, or a *feme covert* not appearing by her husband, or if the defendant were dead). Errors in fact in the record of a judgment in a lower court were correctable in the Supreme Court by writ of error. Errors of fact occurring in the Supreme Court itself (error *coram nobis;* Latin, "in our presence") were taken to circuit court by writ of error. During the colonial period errors in law in Supreme Court judgments could be but rarely were appealed to the royal governor and council. Under statehood the appeal lay to the Court for the Correction of Errors by writ of error, if the writ were allowed by the chancellor, or by a Supreme Court justice, clerk, or commissioner.



	Debt	Damages & Costs		Time of filing Roll	Names of the Attornies	Judgments when Satisfied
	"	93	19	May 15th 1811	D Cady	
	113	8		" "	S Houghton	
Company of the Bank of Hudson	820	14	44	" "	M P Cauline	
Smith & Asahel Morris						
Exrs & Exrs of Jr. of						
d " "	608	49	07	" "	J Wendell	
	354	50	83	" 15th "	R Weston	
	"	101	45	" "	S Page	
e John Tallmadge						
e Aaron Smith						
Smith David Wadham						
" " "	"	1757	92	May 17th 1811	Bleeker Hedgwick	
	"	69	27	" "	Strander	
of the Penitentiary Penitentiary	"	107	94	" 18th "	Rodman	
	"	103	81	" "	Strander	
	"	321	29	" "	Thompson	
	"	87	70	" "	W. Hale	
Luther Lewis Jun	"	407	74	" "	D Paris	
	20,000	4	44	20th at 11 Clock AM.	E G Persee	
	808	13	08	" 21st "	S V N Yates	
	300	7	32	" "	John Gebhard	

TRANSCRIPT OF JUDGMENT DOCKET, 1811.

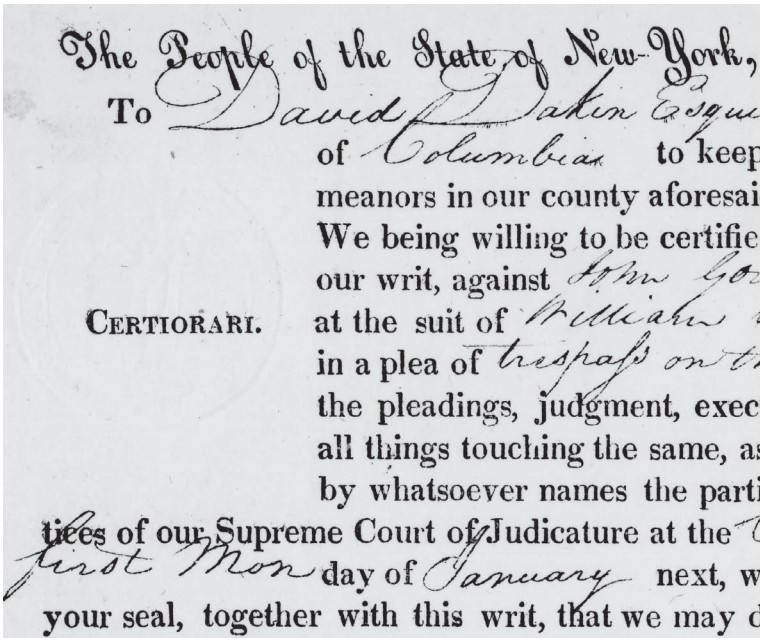
Detail. See page 132.

A defendant in error (usually the original plaintiff) had the right to demand an assignment of errors from the plaintiff in error (usually the original defendant). This document corresponded to a plaintiff's declaration in that it set forth the grounds for the case in error. The assignment of errors could allege either "common error," that the plaintiff's declaration did not sustain the action; or "special error," that the judgment was legally flawed. The opposing party would then join in error, make a special plea, or demur. These steps resembled those of ordinary pleading. After joinder in error the attorney for the plaintiff in error prepared the "error book," containing the writ, the judgment record returned with the writ, any bill of exceptions, and the pleadings in error. The attorney filed the error book with a Supreme Court clerk and sent a copy to the defendant in error. Argument of a case in error occurred in a Supreme Court term. After hearing arguments by attorneys for both parties, or considering the submitted papers, the court either affirmed or reversed the lower court judgment. If the Supreme Court reversed the judgment in favor of the plaintiff in error, the court might order a new trial and issue a writ of *venire facias de novo* (Latin, "you cause to come anew"), ordering the sheriff to empanel another jury in a circuit court. (This writ differed from an order for a new trial, mentioned above, in that it was given for error on the face of the record, not for irregularity in proceedings off the record.) If the Supreme Court affirmed a judgment, the defendant in error was entitled to the original judgment award plus additional court costs. Execution of an affirmed or reversed lower court judgment proceeded out of the Supreme Court, not out of the court where the case had originated. However, in cases appealed from the Supreme Court to the Court of Errors, judgments affirmed or reversed were then remitted, or sent down, to the Supreme Court for filing and execution.[134]

The writ of error was also available in criminal cases under even stricter conditions. The common law did not permit a bill of exceptions to be taken in criminal proceedings.[135] In New York State prior to 1830 a writ of error to review the judgment of a criminal court could not be allowed without the permission of the attorney general. The *Revised Statutes* of 1829 provided that a writ of error in a criminal case could be obtained without permission from that officer. A Supreme Court justice or

circuit judge could grant a stay of execution of sentence. The *Revised Statutes* also provided that a bill of exceptions could be taken in criminal as well as in civil cases and returned with the writ of error to the Supreme Court. That meant that legal errors in the trial of a criminal defendant could now be reviewed. In cases where the sentence was death, a writ of error could be obtained only by order of the chancellor or, after 1829, also a Supreme Court justice or a circuit judge, with notice to the attorney general or the prosecuting district attorney.[136] As a result of these restrictions, there were very few appeals of criminal convictions.

The writ of *certiorari* (Latin, "to be certified") was another important means by which the Supreme Court exercised appellate or transfer jurisdiction over lower courts. The writ ordered a lower court of record, a justice of the peace, or a quasi-judicial body to certify and return to the Supreme Court for review a transcript of proceedings or the final determination in a particular case or matter. The writ of *certiorari* could be employed only when a writ of error was not available, as when a case was transferred from a court of record for error in proceedings prior to final judgment; or when the judgment or determination to be reviewed occurred in a court not of record (courts of justices of the peace), or in an administrative body. When a writ of *certiorari* was granted to remove a certified transcript of proceedings in a court of common pleas or mayor's or recorder's court prior to final judgment, that transferred the case to the Supreme Court, which then rendered judgment.[137] Legislation curbed the overuse of writs of *certiorari* to transfer lesser civil cases. A 1787 law barred the use of the writ of *certiorari* to remove cases from a court of common pleas to the Supreme Court in a personal action in which the amount in controversy was under £100, changed by later laws to £10, then $250 ($500 in New York City, starting 1823, and $2500, starting 1837). This limitation did not apply to cases to which the state or a city was a party, or cases that involved title to real property, assault and battery, slander, replevin, or false imprisonment. Laws of 1788 and later dates required that a Supreme Court justice approve any writ of *certiorari* to remove a case to the Supreme Court.[138] Before 1830 statute law also authorized use of the writ of *certiorari* to transfer a criminal indictment to the Supreme Court from a court of general sessions, again with permission of a Supreme Court justice. The case was then tried in a circuit court. Starting 1830 *certiorari* could be employed to transfer an indictment to a court of oyer and terminer, but not to the Supreme Court. Such transfers of indictments were very infrequent.[139]


The People of the State of New-York,
To David Paken Esqu
of Columbia to keep
meanors in our county aforesai
We being willing to be certifie
our writ, against John Go
CERTIORARI. at the suit of William
in a plea of trespass on t
the pleadings, judgment, exec
all things touching the same, a
by whatsoever names the parti
tices of our Supreme Court of Judicature at the
first Mon day of January next, w
your seal, together with this writ, that we may

WRIT OF *CERTIORARI*, 1817.

Detail. This writ orders a Columbia County justice of the peace to certify and return to the Supreme Court for review a copy of proceedings in a civil case heard by him. An 1824 statute ended the routine appeal of cases from justice courts directly to the Supreme Court.

(Series J0147, Writs of Certiorari.*)*

Until 1824 the writ of *certiorari* was also used to remove judgments in justices' courts directly to the Supreme Court for review (the courts of common pleas and the mayors' courts had no appellate jurisdiction). An Assembly act of 1765 noted that many writs of *certiorari* had removed justices' determinations "upon the most frivolous Pretence," resulting in "great Delay of Justice." A party seeking review by *certiorari* was henceforth

required to submit an affidavit stating the grounds for the writ, and a Supreme Court justice could allow the writ upon reasonable cause, "either for Error therein or some unfair Practice of the Justice." An act of 1780 provided that a writ of *certiorari* be allowed either by a Supreme Court justice or commissioner, or by a judge of a county court of common pleas. Continued abuses were noted in a law of 1788, which stated that defendants employed *certiorari* "in the hope thereby to discourage and weary out the parties ... by great delays and expences." In 1799 the Supreme Court was directed to render judgment in such *certiorari* cases "without regarding any imperfection, omission or defect in the proceedings ... in mere matter of form." These *certiorari* cases were numerous; by 1814 the number was nearly two hundred a year.[140]

An 1824 law stopped the flow of appeals of these minor civil cases to the Supreme Court and gave the county courts of common pleas appellate jurisdiction for the first time. The law directed that errors in judgments of justices of the peace be reviewed and corrected by a court of common pleas by writ of *certiorari* when the debt and damages did not exceed $25. Judgments involving more than $25 were to be reviewed by common pleas on what was called an "appeal."[141] A judgment of a justice's court that was affirmed or reversed by a court of common pleas might be appealed by writ of *certiorari* to the Supreme Court, if the writ were allowed by a justice or other officer with authority to do so. That court reviewed only substantial legal error in the proceedings, not procedural error. Irregular pleadings in justices' courts were not grounds for error, because the proceedings in those courts were relatively informal and many mistakes were made. However, improper exercise of jurisdiction in a justice's court was grounds for a writ of error.[142] After 1828 the Superior Court of New York City exercised similar appellate jurisdiction over the court of common pleas, the assistant justices' courts, and the Marine Court in that city, with a possible further appeal to the Supreme Court by writ of error.[143]

Finally, statute law authorized the Supreme Court to review, by writ of *certiorari,* convictions (but not the evidence supporting them) in courts of special sessions, over which a justice of the peace or city magistrate presided. Such courts were first established by two Assembly acts passed in 1732. Once the conviction was affirmed or reversed, the Supreme Court remitted the judgment to the county court of general sessions for sentencing if the defendant did not prevail in his appeal. Such appeals of convictions in courts of special sessions were rare because they required permission of both a Supreme Court justice and the convicting magistrate.[144]

Besides these statutory uses of the writ of *certiorari* under the common law the writ was also employed during the early nineteenth century to review a quasi-judicial administrative determination of an executive officer or body, when the determination injured a person's rights or property. For example, the Supreme Court reviewed by writ of *certiorari* decisions of the canal appraisers in awarding damages, and of town, city, or village officers in awarding compensation for property taken for roads or streets, when the actions were alleged to exceed statutory jurisdiction or to be irregular. A writ of *certiorari* to review such determinations was issued at the discretion of the court. The court had the power to affirm or reverse the decision.[145]

The writ of *habeas corpus* took several forms. The writ was granted occasionally on motion of the defendant to transfer a defendant from the court of common pleas to the Supreme Court. Unlike a writ of *certiorari*, this form of the writ of *habeas corpus* usually transferred only custody of the defendant, not the prior record of proceedings, meaning that the case had to commence anew in the Supreme Court, which rendered judgment. *Habeas corpus cum causa* (Latin, "with the case") transferred both the defendant and the proceedings in the lower court. The *habeas corpus ad testificandum* (Latin, "for testifying") was employed to produce an individual already in custody of a court or jail to testify in another's trial, or to appear in an action to which he was a party in the Supreme Court.[146] On infrequent but important occasions the writ of *habeas corpus ad subjiciendum* was obtained to direct a sheriff or other officer to state the legal reason for an individual's detention, for the court's determination of its legality. This is the writ of *habeas corpus* that protects our liberty. The right to *habeas corpus* is guaranteed in both the state and federal constitutions.[147]

LICENSE TO PRACTICE LAW, 1808.

Detail. See page 176.

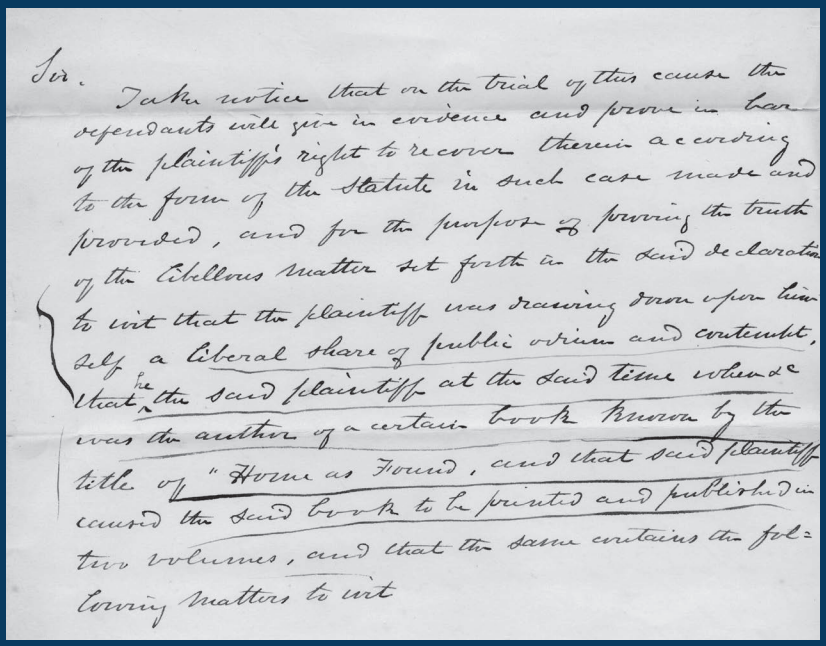
Writs of prohibition and *mandamus* were means by which the Supreme Court could correct actions of lower courts and public officers. The writ of prohibition was used very rarely if at all in the early nineteenth century; however, the writ was available if needed to restrain an inferior court from exceeding its jurisdiction prior to final judgment in a case. The writ of *mandamus* was in occasional use. The writ was issued to compel a lower court to perform a mandatory duty, if it had not done so, or an executive officer of state or local government to perform a legally mandated, nondiscretionary act. The writ was used where no other writ (writ of error or *certiorari*) was available. A Supreme Court justice allowed a writ of *mandamus* at his discretion, upon the relator's submission of an affidavit demonstrating a clear right to relief. The return of the writ of *mandamus* was treated as a declaration by a plaintiff, and it set in motion the usual proceedings of the Supreme Court, including pleading and possibly a trial in the county where the alleged failure to perform an official act occurred. The writ of *mandamus* was typically employed to compel a court of common pleas to give judgment on a verdict, to seal or amend a bill of exceptions, or to exonerate bail. There were also a few *mandamus* cases involving county boards of supervisors, county clerks, town supervisors and commissioners of highways, canal commissioners, canal appraisers, and the governor.[148]

***JUSTICE'S COURT IN THE BACKWOODS,* 1850**

Tompkins Harrison Matteson, oil on canvas. Courtesy of the Fenimore Art Museum, Cooperstown, New York, Gift of Stephen C. Clark. No 411.1955. Photograph by Richard Walker.

Civil action for libel, 1842.

In 1833 James Fenimore Cooper and his family returned to Cooperstown after a long stay in Europe. Cooper was annoyed that the townspeople were using Cooper family property on the shore of Otsego Lake as a picnic ground without permission. His novel *Home as Found* (1838), contained a thinly veiled criticism of that disrespectful behavior and satirized American social manners generally. Cooper's ban on use of the grounds and the local protests prompted comments in Whig newspapers in Otsego and Chenango Counties. Cooper, a conservative Democrat, then brought libel actions against the newspapers, and he was awarded money damages in several jury trials. Other Whig newspapers commented on the libel cases. Cooper sued editor Thurlow Weed and the publishers of the influential *Albany Evening Journal,* declaring that they had intended to injure "his good name fame and credit, and to bring him into general contempt and ignominy." The alleged injury was merely Weed's comment about another paper's comment on Cooper's libel actions: "It seems to be about time for Mr. Cooper to abandon the avocation of libel suits, and settle down at home infamous and contented." The *Journal* remarked that "Cooper has not yet made himself 'infamous' but he is drawing down upon himself a liberal share of the public odium and contempt." At the circuit court trial in Otsego County in April 1842 Cooper was awarded $55 in damages. The jury in this and other Cooper libel trials had no choice, since the law did not permit a defense in a civil action that the alleged libel was true. The defendants' attorney, Henry G. Wheaton, submitted as evidence a copy of Cooper's *Home as Found* in an unsuccessful attempt to do so.

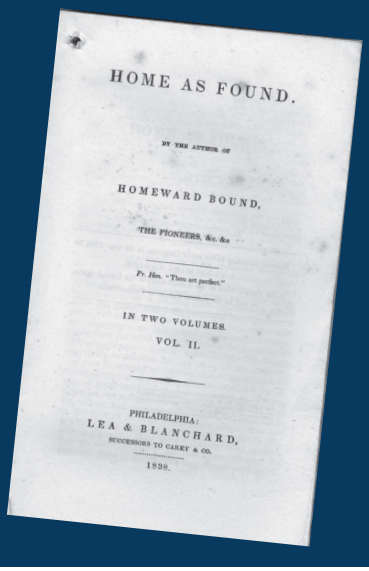


Sir. Take notice that on the trial of this cause the defendants will give in evidence and prove in bar of the plaintiff's right to recover therein according to the form of the statute in such case made and provided, and for the purpose of proving the truth of the libellous matter set forth in the said declaration to wit that the plaintiff was drawing down upon himself a liberal share of public odium and contempt, that the said plaintiff at the said time when &c was the author of a certain book known by the title of "Home as Found, and that said plaintiff caused the said book to be printed and published in two volumes, and that the same contains the following matters to wit

Pleadings provided to circuit court (letter from defendants' attorney and copy of Home as Found *submitted as evidence), James Fenimore Cooper vs. Thurlow Weed, Benjamin Hoffman, and Andrew White.*

James Fenimore Cooper vs. Thurlow Weed, Benjamin Hoffman, and Andrew White, pleadings provided to circuit court, 1842.

(Series J1013, Declarations and Motions [Utica].)



HOME AS FOUND.

BY THE AUTHOR OF

HOMEWARD BOUND,

THE PIONEERS, &c. &c.

Py. Hen. "Thou art perfect."

IN TWO VOLUMES.
VOL. II.

PHILADELPHIA:
LEA & BLANCHARD,
SUCCESSORS TO CAREY & CO.

1838.

Notes

1. Laws of 1691, Chap. 4. All references to statutes enacted before 1776 are to *The Colonial Laws of New York from the Year 1664 to the Revolution* ..., 5 vols. (Albany: 1894), citing the chapter numbers in that edition. On the court's origins and early years see Paul M. Hamlin and Charles E. Baker, *Supreme Court of Judicature of the Province of New York, 1691-1704*, 3 vols. (New York: 1945-47; reissued 1959). The Supreme Court was modeled on the judicial system of the short-lived Dominion of New England, 1688-91, which included New York. Robert L. Fowler, "The Jurisdiction of the Supreme Court of Judicature of the Province of New York," *Albany Law Journal,* 20 (1879), 167, notes that the court's jurisdiction was identical to that of the "Supreme Court" already established in the English colony of Jamaica. A summary of the Supreme Court's historical jurisdiction as it was understood at the end of the nineteenth century is Matter of Petition of Henry W. T. Steinway, 159 N.Y. 250 (1899).

2. On the Supreme Court's civil jurisdiction see Hamlin and Baker, *Supreme Court of Judicature*, vol. 1, pp. 3-4, 67-77, and Fowler, "Jurisdiction of the Supreme Court of Judicature," 166-71. The £20 threshold was established by the judicature act of 1691 and confirmed by Laws of 1714, Chap. 289 (disallowed by the Crown on other grounds in 1721) and Laws of 1728, Chap. 521. Laws of 1769, Chap. 1388, increased the amount to £50, but the act was disallowed by the Crown. Actions in which the plaintiff's demand was less than £20 had to be brought in a county court of common pleas. The so-called "Mayor's Court" in New York City and County, which functioned as a court of common pleas, was given plenary jurisdiction in common-law actions by the city charter of 1731. See James Kent, *The Charter of the City of New-York, with Notes Thereon* (New York: 1836), pp. 71-72 (charter text). On the Supreme Court's criminal jurisdiction see Julius Goebel and T. Raymond Naughton, *Law Enforcement in Colonial New York: A Study in Criminal Procedure* (New York: 1944), pp. 1-222.

3. Overviews of the judiciary in colonial New York are Martin L. Budd, "Law in Colonial New York: The Legal System of 1691," *Harvard Law Review*, 80 (1967), 1757-72, reprinted in *Courts and Law in Early New York: Selected Essays*, ed. Leo Hershkowitz and Milton M. Klein (Port Washington: 1978), pp. 7-18; Herbert A. Johnson, "The Advent of Common Law in Colonial New York," in *Selected Essays: Law and Authority in Colonial America*, ed. George A. Billias (Barre, Mass.: ca. 1965), pp. 74-87, reprinted in Johnson, *Essays in New York Colonial Legal History* (Westport, Conn.: 1981), pp. 37-54; and Johnson, "Civil Procedure in John Jay's New York," *American Journal of Legal History*, 11 (1967), 69-80. Contemporary descriptions of New York's colonial courts are in Matthew Clarkson, "An account of all Establishments of Jurysdictions within this province" (Apr. 20, 1699), Colonial Office Series 5, vol. 1038, fol. 12-VI, U.K. National Archives (microfilm, New York State Library); William Smith, Jr., *The History of the Province of New-York*, ed. Michael Kammen, 2 vols. (Cambridge, Mass.: 1972; first pub. 1757, 1830), vol. 1, pp. 259-72; and Governor William Tryon's report to the Board of Trade, June 11, 1774, in Edmund B. O'Callaghan, ed., *Documents Relative to the Colonial History of the State of New-York*, 11 vols. (Albany: 1856-61), vol. 8, pp. 444-45. See Appendix C for a discussion of the lower courts prior to the mid-nineteenth century.

4. On the colonial Supreme Court's appellate and transfer jurisdiction, see Hamlin and Baker, *Supreme Court of Judicature,* vol. 1, pp. 71-77, and Goebel and Naughton, *Law Enforcement in Colonial New York*, pp. 138-222, 256-84. The £20 requirement for removal of defendants by *habeas corpus* and of judgments by *certiorari* was established by the judicature act, Laws of 1691, Chap. 4, and continued by Laws of 1728, Chap. 521.

5. On appeals from the Supreme Court to the governor and council, see Hamlin and Baker, *Supreme Court of Judicature,* vol. 1, pp. 73-77, 241-44, and Goebel and Naughton, *Law Enforcement in Colonial New York*, pp. 238-56.

6. On appeals to the Privy Council (King in Council), see Joseph H. Smith, *Appeals to the Privy Council from the American Plantations* (New York: 1950), pp. 84-85, 220-22, 390-412, 668; Hamlin and Baker, *Supreme Court of Judicature*, vol. 1, pp. 69-70, 424-38; Goebel and Naughton, *Law Enforcement in Colonial New York*, pp. 224-38. On the difficulty and paucity of appeals to the governor and council and from there to the Privy Council, see letters of Lieutenant-Governor Cadwallader Colden, Dec. 13, 1764, and Feb. 27, 1765, in O'Callaghan, ed., *Documents Relative to the Colonial History of the State of New-York*, vol. 7, pp. 681-82, 707.

7. See Hamlin and Baker, *Supreme Court of Judicature*, vol. 1, pp. 295-347, and Goebel and Naughton, *Law Enforcement in Colonial New York*, pp. 138-47. The latter authors note that while terminology varied, what was usually called a "circuit court" was officially styled "court for the trial of causes brought to issue in the Supreme Court." The circuit courts operated under the English *nisi prius* system. A writ to a sheriff ordering him to empanel a jury stated that the jurors must appear at the next term of the Supreme Court in New York City, "unless before" (*nisi prius*) a circuit court should sit in his county. It usually did, saving jurors, witnesses, and attorneys a long journey. Circuit courts were occasionally omitted, trials being held in New York City. In 1734 Governor William Cosby removed Chief Justice Lewis Morris for political reasons, citing his failure to hold some circuit courts. See O'Callaghan, ed., *Documents Relative to the Colonial History of the State of New-York*, vol. 5, pp. 880-81, 942-45, vol. 6, pp. 8-10.

8. On colonial circuit courts and courts of oyer and terminer, see Hamlin and Baker, *Supreme Court of Judicature*, vol. 1, pp. 295-347, and Goebel and Naughton, *Law Enforcement in Colonial New York*, pp. 80-91. Property qualifications for jury duty by adult males, selection of jurors, and jury trials were the subject of several colonial acts; see Hamlin and Baker, *Supreme Court of Judicature*, vol. 1, pp. 177-83. The £50 freehold property requirement was enacted in 1699 and increased to £60 in 1741 (there were alternate personal property requirements in the incorporated cities of New York City and, until 1742, Albany). The latter act, Laws of 1741, Chap. 720, "An Act for the Returning of Able & Sufficient Jurors," cited the propensity of freeholders to avoid jury duty, sometimes through bribery of the sheriff. On court procedure and operations generally see Johnson, "Civil Procedure in John Jay's New York," 69-80, and Hamlin and Baker, *Supreme Court of Judicature*, vol. 1, *passim*. A discussion of the Supreme Court's business in the 1690s and 1750s is Deborah Rosen, "Civil Practice in Colonial New York: The Supreme Court of Judicature in Transition, 1691-1760," *Law and History Review*, 5 (1987), 213-47. On business in the criminal courts, see Goebel and Naughton, *Law*

Enforcement in Colonial New York, *passim*, and Douglas Greenberg, *Crime and Law Enforcement in the Colony of New York, 1691-1776* (Ithaca: 1976).

9. On the Supreme Court clerk, who also served as secretary of the province, and the deputy clerks who did the work, see Hamlin and Baker, *Supreme Court of Judicature*, vol. 1, pp. 136-38, and O'Callaghan, ed., *Documents Relative to the Colonial History of the State of New-York*, vol. 7, p. 684, vol. 8, p. 326-27. Goebel and Naughton, *Law Enforcement in Colonial New York,* pp. 765-68, and Greenberg, *Crime and Law Enforcement*, pp. 236-38, list custodians of superior criminal court records that survive from the colonial period.

10. *The Colonial Laws of New York*, vol. 1, pp. 226-31. Surveys of the jurisdiction, procedure, and evolution of the English common-law courts are John H. Baker, *An Introduction to English Legal History*, 5th ed. (Oxford: 2019) and Theodore F. T. Plucknett, *Concise History of the Common Law*, 5th ed. (Boston: 1956).

11. After a complaint was received by a magistrate, suspected criminals were tried on a grand jury indictment or an attorney general's information. See Goebel and Naughton, *Law Enforcement in Colonial New York*, pp. 74-79 (quote p. 76), 161-63, 344-78. Laws of 1754, Chap. 960, noted government abuses in use of the information to charge offenders and required reasonable cause for employing it.

12. Goebel and Naughton, *Law Enforcement in Colonial New York*, pp. 252-54, 319-20, 347, 360, 366-79, 574-75, 623-24, 733-34, etc. Governor Henry Moore remarked in 1767 that "the whole Burthen of every criminal prosecution in the Superior Courts ... lyes on the Attorney General," whose compensation in salary and fees he considered inadequate. O'Callaghan, ed., *Documents Relative to the Colonial History of the State of New-York*, vol. 7, pp. 906-907.

13. Lieutenant-Governor James Delancey wrote in 1760 that "though the Judgment of the Justices [of the Peace] may in some measure be said to be final, Yet in all cases of manifest partiality or corruption, their judgments may be removed by *Certiorari* into the Supreme Court (which is here in the Nature of the King's Bench)." O'Callaghan, ed., *Documents Relative to the Colonial History of the State of New-York*, vol. 7, p. 427; see also vol. 8, p. 445.

14. In England the action of ejectment lay within the jurisdiction of the Court of King's Bench, because a trespass was alleged, while the ancient and little-used "real" actions belonged exclusively to the Court of Common Pleas.

15. On the court's exchequer jurisdiction see Hamlin and Baker, *Supreme Court of Judicature*, vol. 1, pp. 30-36, 70, and vol. 2, pp. 105-107 (minutes of a Court of Exchequer, Apr.-May, 1702); and Fowler, "Jurisdiction of the Supreme Court of Judicature," p. 170. Fowler points out that the Supreme Court apparently functioned as a common-law court of exchequer "of pleas," with the attorney general filing informations to recover monies owing to the provincial government. Governors' attempts in the 1720s and 1730s to establish the "equity side" of exchequer failed and prompted major political controversies. See Joseph H. Smith, "Adolph Philipse and the Chancery Resolves of 1727," in *Courts and Law in Early New York: Selected Essays*, ed. Leo Hershkowitz and Milton M. Klein (Port Washington, N.Y.: 1978), pp. 30-45; Stanley N. Katz, *Newcastle's New York: Anglo-American Politics, 1732-1753* (Cambridge, Mass.: 1968), pp. 64-68; and Smith, *History of the Province of New-*

York, ed. Kammen, vol. 1, pp. 262-67, 331-32. No separate Court of Exchequer was successfully convened in the entire colonial period. The lack of such a court impeded the government's ability to collect delinquent court fines, forfeited bail, and quit rents. See O'Callaghan, ed., *Documents Relative to the Colonial History of the State of New-York*, vol. 6, p. 215, vol. 7, pp. 827, 900, 906-907, vol. 8, p. 444.

16. The ordinance of 1699 and a nearly identical one of 1704 are published in *Revised Laws* (1813), vol. 2, Appendixes, nos. 5-6, pp. x-xiii, and with omissions in Hamlin and Baker, *Supreme Court of Judicature*, vol. 1, pp. 63-66.

17. Johnson, "Advent of Common Law in Colonial New York," and "English Statutes in Colonial New York," *New York History*, 58 (1977), 277-96, reprinted in Johnson, *Essays in New York Colonial Legal History*, pp. 37-54; William B. Stoebuck, "Reception of English Common Law in the American Colonies," *William and Mary Law Review*, 10 (1968), 393-426. New York's close adherence to the common-law forms is noted by Julius Goebel, ed., *The Law Practice of Alexander Hamilton: Documents and Commentary*, vol. 1 (New York: 1964), pp. 8-9.

18. See letter of Cadwallader Colden to Earl of Halifax, Dec. 13, 1764, in O'Callaghan, ed., *Documents Relative to the Colonial History of the State of New-York*, vol. 7, p. 684. Colden contrasted the situation in New York with the much simpler and cheaper court procedure in the New England colonies.

19. The Constitution of 1777 recognized the Supreme Court in Arts. 25 (justices not to hold any other permanent office), 27 (clerk to be appointed by the court; attorneys and counselors to be appointed and licensed by the court), 31 (writs to be issued by authority of the chief justice), and 32 (justices to be members of the Court for the Correction of Errors and Trial of Impeachments).

20. The state Court of Exchequer was established by an act of 1786. The court was to receive and account for monies owed to the state as a result of court fines and forfeited bonds. Sheriffs and coroners were to submit their accounts to the court yearly. A junior justice of the Supreme Court presided, and the court had a seal and a clerk, who was required to keep minutes. The court's minutes and other records are lost, but occasional statutory references indicate that the court operated. See Laws of 1786, 9th Sess., Chap. 9, 16; Laws of 1788, 11th Sess., Chap. 37; Laws of 1796, 19th Sess., Chap. 35; Laws of 1801, Chap. 135; Laws of 1808, Chap. 163, sect. 10; *Revised Laws* (1813), Chap. 90, vol. 1, pp. 400-404. The court was abolished by the *Revised Statutes* of 1829, which repealed the act of 1813.

21. On the organization of the state Supreme Court of Judicature see Laws of 1797, 20th Sess., Chaps. 8, 13; Laws of 1801, Chaps. 8, 75; *Revised Laws* (1813), Chap. 3, vol. 1, pp. 318-22; *Revised Statutes* (1829), Part III, Chap. 1, Title 3. The latter enactment declared (Title 3, sect. 1) that "the supreme court shall possess the powers, and exercise the jurisdiction, which belonged to the supreme court of the colony of New York," as modified by the state constitution and legislative acts. That was the first statutory definition of the court's jurisdiction, as noted in *Report of the Commissioners Appointed to Revise the Statute Laws of This State, Made to the Legislature, September 9, 1828* (Albany: 1828), Part III, Chap. 1, p. 52. However, the revisers avoided explaining that jurisdiction, and Fowler, "Jurisdiction of the Supreme Court of Judicature," 166, remarks that the jurisdiction of the colonial Supreme

Court was never well defined. On the circuit courts and judges, see Constitution of 1821, Art. 5, sect. 5; Laws of 1823, Chap. 182; and *Revised Statutes* (1829), Part III, Chap. 1, Title 4.

22. Charles Z. Lincoln, *The Constitutional History of New York*, vol. 1 (Rochester: 1906), pp. 181-82; Bernard Mason, *The Road to Independence: The Revolutionary Movement in New York*, 1773-1777 (Lexington, Ky.: 1966), pp. 213-49; William Polf, *1777: The Political Revolution and New York's First Constitution* (Albany: 1977).

23. David Graham, Jr., *A Treatise on the Organization and Jurisdiction of the Courts of Law and Equity, in the State of New-York* (New York: 1839), pp. 133-40, describes the Supreme Court's operations in the last decades of the common-law era.

24. Laws of 1779, 3rd Sess., Chap. 25 ("Forfeiture Act"); Laws of 1780, 3rd Sess., Chap. 56. The Forfeiture Act allowed conviction of a Loyalist *in absentia* on the testimony of just one witness. It circumvented the existing English statute of treason (enacted in 1352, as later amended) which included significantly more protections for defendants. Many of the indictments and supporting depositions under the Forfeiture Act have been preserved, and they are found in series JN522. Laws of 1787, 10th Sess., Chap. 39, provided for prompt issuance of a writ of *habeas corpus* to produce detained prisoners for trial, and for bail until that occurred. The problems of wartime crime are described in a letter from Justices Yates and Hobart to Governor Clinton, Aug. 4, 1778, printed in *Public Papers of George Clinton* ..., 10 vols. (Albany and New York: 1900-1914), vol. 3, pp. 608-610.

25. On the circuit courts for trials of issues of fact "joined in the Supreme Court" see Laws of 1786, 9th Sess., Chap. 41. On courts of oyer and terminer and grand juries, see Laws of 1788, 11th Sess., Chap. 38.

26. Acts empowering the governor to set Supreme Court terms were Laws of 1778, 1st Sess., Chap. 12; Laws of 1779, 2nd Sess., Chap. 14; Laws of 1780, 3rd Sess., Chap. 42; Laws of 1782, 6th Sess., Chap. 8. General statutes establishing the court terms were Laws of 1785, 8th Sess., Chap. 61; Laws of 1800, 23rd Sess., Chap. 123; Laws of 1803, Chap. 2; Laws of 1811, Chap. 88; Laws of 1820, Chap. 216; Laws of 1823, Chap. 182; and Laws of 1841, Chap. 157.

27. Laws of 1784, 7th Sess., Chap. 41, called the special court a "temporary remedy." The court's authority to order special "sittings" for trials in New York City and Albany was continued by Laws of 1797, 20th Sess., Chap. 8 (court for "trial of issues"); Laws of 1800, 23rd Sess., Chap. 14; Laws of 1801, Chap. 8 (now called "sittings," already their informal name); and *Revised Laws* (1813), Chap. 66, sect. 5-6, vol. 1, pp. 336-37. Statutes limiting the special "sittings" to New York City were Laws of 1802, Chap. 31, sect. 1; Laws of 1804, Chap. 55; Laws of 1808, Chap. 8; Laws of 1823, Chap. 269, sect. 13; and *Revised Statutes* (1829), Part III, Chap. 1, Title 4, sect. 26-27, 45. See Appendix F, "Clerks of the Circuit Courts 'Sittings,' and Courts of Oyer and Terminer."

28. Effective July 1, 1797, New York State government adopted the "money of account of the United States," that is dollars, "dismes," cents, and mills. See Laws of 1797, 20th Sess., Chap. 9.

29. Laws of 1785, 8th Sess., Chap. 61; Laws of 1787, 10th Sess., Chap. 71; Laws of 1801, Chap. 170, sect. 4; *Revised Laws* (1813), Chap. 96, sect, 4, vol. 1, p. 344; *Revised Statutes* (1829), Part

III, Chap. 10, Title 1, sect. 4-5. On the possibly unintended results of these money thresholds, see "Report of the Commissioners Appointed Under the Act of the [Legislature] 15th May, 1837," Jan. 2, 1838, Senate Document no. 2 (1838), p. 2.

30. Laws of 1786, 9th Sess., Chap. 37; Laws of 1787, 10th Sess., Chap. 72; Laws of 1788, 11th Sess., Chap. 37. The jurisdiction of the courts of common pleas in transitory actions had been stated by Laws of 1728, Chap. 521. The attorney general could require that a criminal case be tried in the Supreme Court; see Laws of 1788, 11th Sess., Chap. 9, sect. 6.

31. Laws of 1789, 12th Sess., Chap. 28; Laws of 1801, Chap. 75, sect. 5. Civil trial minutes appear in the minutes of Albany terms in 1801 and 1806.

32. Laws of 1796, 19th Sess., Chap 10; Laws of 1801, Chap. 8, sect. 8; *Revised Laws* (1813), Chap. 66, sect. 10, vol.1, p. 338; *Revised Statutes* (1829), Part III, Ch. 1, Title 4, sect. 44.

33. Laws of 1796, 19th Sess., Chap. 8; Laws of 1799, 21st Sess., Chap. 1; Laws of 1801, Chap. 146; Laws of 1802, Chap. 31, sect. 3; Laws of 1818, Chap. 283. A district attorney was initially appointed in each of seven multi-county districts, with additional districts formed thereafter. The attorney general is still empowered to prosecute a criminal case in unusual circumstances, "whenever requested" by the governor, superseding a district attorney; see Executive Law, sect. 63(2). Statutes of 1788, 1796, and 1801 required that summary records of criminal convictions carrying the death penalty be transmitted to and filed by the clerk of the Court of Exchequer. No such records are known to survive.

34. Laws of 1830, Chap. 185; Laws of 1841, Chap. 224.

35. Constitution of 1821, Art. 5, sect. 5, authorized from four to eight circuits; Laws of 1823, Chap. 182, established eight. The circuit court judges also presided over courts of equity, which were branches of the expanded Court of Chancery. The circuit judges were given concurrent jurisdiction with the chancellor in cases arising within their circuits. The courts of equity were abolished in 1829 and commencing January 1, 1830, the circuit judges also served as vice-chancellors of the Court of Chancery. In the first circuit, starting in 1831, and the eighth circuit, starting in 1838, there were separate vice-chancellors. On the courts of equity, see Laws of 1823, Chap. 182, sect. 10-13, 15-17, and Laws of 1824, Chap. 325. On the vice-chancellors, see *Revised Statutes* (1829), Part III, Chap. 1, Title 2, Arts. 1-7; Laws of 1831, Chap. 16; Laws of 1838, Chap. 100; and Laws of 1839, Chap. 101 (assistant vice-chancellor to be appointed in the first circuit).

36. Constitution of 1821, Art. 5, sect. 5; Laws of 1823, Chap. 182; *Revised Statutes* (1829), Part III, Chap. 1, Title 4. Supreme Court justices retained the right to preside over a circuit court or court of oyer and terminer.

37. Outside of New York City and County indictments and other criminal papers were filed with the county clerk, who served as clerk of the court of oyer and terminer.

38. On the lengthening of court terms see Laws of 1801, Chap. 75 (two weeks); *Revised Laws* (1813), Chap. 3, sect. 1, vol. 1, p. 218 (three); Laws of 1823, Chap. 182, sect. 1 (four); Laws of 1827, Chap. 77 (five), which was continued by the *Revised Statutes* (1829), Part III, Chap. 1, Title 3, sect. 2-4. The report is in Senate Journal, 49th Sess., 1826, pp. 66-72.

39. Laws of 1831, Chap. 16; Laws of 1832,

Chap. 128. By a rule adopted in May Term 1832, the circuit judge's decision was filed and the resulting rule was entered in one of the Supreme Court clerk's offices, as follows: first and second circuits, New York City; third and fourth circuits, Albany; fifth and sixth circuits, Utica; seventh and eighth circuits, Geneva. See *Rules and Orders of the Supreme Court of the State of New-York* (Albany: 1837), rules 79-80. Laws of 1841, Chap. 224, sect. 4, made a circuit judge's decision final in several types of procedural motions.

40. A detailed discussion of the jurisdiction of the Supreme Court and the circuit courts is in Graham, *Organization and Jurisdiction of the Courts*, pp. 156-339.

41. On Supreme Court commissioners, see *Revised Statutes* (1829) Part I, Chap. 5, Title 1, sect. 1, and Part III, Chap. 3, Title 2, Art. 2, sect. 18-34. Earlier statutes were Laws of 1818, Chap. 195; *Revised Laws* (1813), Chap. 3, Sect. 11-12, vol. 1, p. 321, and Chap. 16, vol. 1, pp. 322-23; Laws of 1811, Chap. 123, sect. 25; Laws of 1810, Chap. 144 (Ontario County); Laws of 1805, Chap. 134 (Oneida County); Laws of 1801, Chap. 75, sect. 8-9; Laws of 1788, 11th Sess., Chap. 46; Laws of 1780, 3rd Sess., Chap. 44, sect. 14; and Laws of 1746, Chap. 824.

42. Laws of 1785, 8th Sess., Chap. 61. The deputy clerk at Albany was required to send all writs, pleadings, and judgment records to the clerk in New York City every six months.

43. Laws of 1797, 20th Sess., Chap. 31; Laws of 1807, Chap. 133 (originally the office was at Whitestown, near Utica); Laws of 1829, Chap. 42; Laws of 1830, Chap. 104; *Revised Statutes* (1829), Part I, Chap. 5, Title 1, sect. 1, and Part III, Chap. 1, Title 3, sect. 13-15. On removal of records see *Revised Laws* (1813), Chap. 3, sect. 6, vol. 1, pp. 319-20, and *Revised Statutes* (1829), Part III, Title 3, sect. 16, which permitted "removal of any papers in a cause, from one clerk's office to another." Laws of 1812, Chap. 43 ("Act to provide for the due preservation of the records and papers in the office of the clerk of the Supreme Court in the City of New-York") appropriated $600 for "boxes and cases" in which the "books, records and papers" were to be "properly arranged and deposited ... for safe keeping." Series J0999 Court of Appeals Notebook on New York Court Records and Judicial History, contains this note about the records of the Supreme Court of Judicature: "The papers in one suit (filed under attorney's name) may be filed in the different places where the court sat [i.e. court terms] when any action was taken."

44. Laws of 1796, 19th Sess., Chap. 10; Laws of 1800, 23rd Sess., Chap. 22; Laws of 1801, Chap. 8; Laws of 1808, Chap. 39, sect. 1; *Revised Laws* (1813), Chap. 66, vol. 1, pp. 335-41; Laws of 1823, Chap. 182 and 269, sect. 13; *Revised Statutes* (1829), Part I, Chap. 5, Title 4, Art. 2, sect. 13, Part III, Chap. 1, Title 4, sect. 45.

45. An exception is J0079 Minute Books for the Trial of Issues (Albany), 1798-1800. See also J3011 Summaries of Testimony Given in Circuit Courts and Courts of Oyer and Terminer, 1823-1828.

46. Deputy clerks were authorized by *Revised Statutes* (1829), Part III, Chap. 1, Title 3, sect. 14-15.

47. Henry D. Sedgwick, *The English Practice: A Statement, Showing Some of the Evils and Absurdities of the Practice of the English Common-law, as Adopted in Several of the United States, and Particularly the State of New-York* (New York: 1822), p. 26.

48. A late colonial statute, Laws of 1773, Chap. 1610, had simplified some of the more rigid rules of common-law

procedure. On the post-war enactments and reforms, see Laws of 1786, 9th Sess., Chap. 7 (regulate writ of right), Chap. 41 (trials of issues and jurors), 10th Sess., Chap. 5 (abolish wager of law), Laws of 1787, 10th Sess., Chap. 4 (action of dower), Chap. 26 (civil arrest and bail), Chap. 32 (general duties of sheriffs), Chap. 39 (*habeas corpus*), Chaps. 43, 50 (real actions); Laws of 1788, 11th Sess., Chap. 2 (*certiorari*), Chap. 5 (action of replevin), Chap. 11 (*mandamus*), Chap. 32 (amendment of technical errors such as mis-wordings, crossouts, etc.), Chap. 43 (statute of limitations), Chap. 46 (action of account; dilatory pleading).

49. Laws of 1786, 9th Sess., Chap. 41 (trials of issues, jurors); Laws of 1787, 10th Sess., Chap. 32 (sheriffs); Laws of 1788, 11th Sess., Chap. 46. See Elizabeth G. Brown, *British Statutes in American Law, 1776-1836* (Ann Arbor: 1964), pp. 69-75, 357-59.

50. Laws of 1815, Chap. 38, sect. 1, extended to the Supreme Court the power possessed by the Court of Chancery to devise new writs to meet new judicial needs. That authority was confirmed and elaborated by the *Revised Statutes* (1829), Part III, Title 2, Art. 1, sect. 1.3: "to devise and make such new writs and forms of proceedings, as may be necessary, to carry into effect the powers and jurisdiction possessed by them." The English Chancery in past centuries had generated new writs for novel legal situations; see Plucknett, *Concise History of the Common Law*, 5th ed., pp. 395-96, and Baker, *Introduction to English Legal History*, 5th ed., pp. 60-63. That archaic authority was exercised only once in New York, by the Legislature, not by the chancellor. A law of 1788 directed the Court of Chancery to devise a new writ for commencement of a partition action in a common-law court; see Laws of 1788, 11th Sess., Chap. 8. The court did not thereafter exercise that authority, and ultimately the Legislature did so in enacting the Code of Procedure of 1848.

51. Sedgwick, *English Practice*, p. 12. One of Sedgwick's law clerks was David Dudley Field, the main author of the 1848 Code of Procedure which abolished common-law writs and pleadings. See James R. Maxeiner, "David Dudley Field, Jr.," *American National Biography*.

52. On proposals to reform the judiciary see Graham, *Organization and Jurisdiction of the Courts*, pp. 78-79, and Anonymous, "Source Notes on Congestion in the Courts, 1825-1841" (typescript, 1954, New York State Library). On increased caseloads see Senate Journal, 49th Sess., 1826, pp. 66-69, and "Report of the Commissioners Appointed Under the Act of the 15th May, 1837" (Laws of 1837, Chap. 436). The commissioners remarked in their report that most of the county courts of common pleas "are composed of judges, in whose legal learning and ability the profession [i.e. lawyers] and the public have no great confidence." The county judges were also suspected of being inclined to "partiality or prejudice" because of their familiarity with local lawyers and litigants. The Court of Common Pleas in New York City and County was reorganized by Laws of 1821, Chap. 72, and continued by *Revised Statutes* (1829), Part III, Chap. 1, Title 5, sect. 22-26. A first judge usually presided, in place of the recorder or mayor, though they and the aldermen could join the multi-judge bench. On that court's organization, see Kent, *Charter of the City of New-York*, pp. 191-92, 209. The court's monthly terms were necessary to accommodate its large caseload. While New York City and New York County then had coterminous boundaries, the city of Albany occupied only a small

portion of Albany County. The courts in Albany city and county, considered to be a single jurisdiction, were separated in stages. For example, an amendment to the *Revised Statutes* gave the Mayor's Court of Albany the same jurisdiction as the court of general sessions in Albany County; see Laws of 1839, Chap. 328. Laws of 1841, Chap. 156, required that small suits involving parties residing in the city, and criminal offenses occurring within the city, were to be tried before city magistrates, not rural justices of the peace.

53. Charles M. Cook, *The American Codification Movement: A Study of Ante-Bellum Legal Reform* (Westport, Conn.: 1981), pp. 131-53. See *Revised Statutes* (1829), Part III, Chap. 1, Title 3 (jurisdiction of Supreme Court) and Title 4 (circuit courts, "sittings," and courts of oyer and terminer); Chaps. 4-7 (action, arrest, bail, pleading, witnesses, trials, judgments, executions, etc.); Chap. 9 (special writs). The proposed text of the chapters in Part III, concerning the judiciary and civil procedure, with commentary, was published in *Report of the Commissioners Appointed to Revise the Statute Laws* ... (Sept. 9, 1828). Part III of the *Revised Statutes* as enacted contained some significant changes, for example, regarding bail by civil defendants.

54. The old "real actions," except for nuisance, and dower, were abolished by Part III, Chap. 5, Title 7, sect. 24. The revisers had proposed expanding the scope of the writ of right to include "all the ordinary cases of claims to real estate"; see *Report of the Commissioners Appointed to Revise the Statute Laws* ... (Sept. 9, 1828), Part III, Chap. 5, pp. 1-18. The Legislature rejected that proposal and enacted a greatly-simplified version of the "mixed" action of ejectment, for trying titles to land, and a new proceeding to determine certain types of claims to real property. See *Revised Statutes* (1829), Part III, Chap. 5, Titles 1-2; and *The Revised Statutes of the State of New-York, as Altered by the Legislature* ..., 3 vols. (Albany: 1836), vol. 2, p. 706, note on Titles 1-3, 6.

55. The new statutory code empowered the Supreme Court to compel a party to an action to "produce and discover books, papers and documents." With limited exceptions, pre-trial discovery had been available previously only by application to the Court of Chancery or (starting 1823) to a regional Court of Equity. See *Revised Statutes* (1829), Part III, Chap. 1, Title 3, sect. 21-24, and *Report of the Commissioners Appointed to Revise the Statute Laws* ... (Sept. 9, 1828), Part III, Chap. 1, pp. 56-58.

56. *Revised Statutes* (1829), Part III, Chap. 1, Title 3, sect. 19 and 28 ("improvements in the practice"); *Rules and Orders of the Supreme Court of the State of New-York* (Albany: 1830 and 1837).

57. "Report of the Commissioners Appointed Under the Act of the 15th May, 1837," pp. 11, 19. A similar proposed constitutional amendment in 1841 was not approved by the voters. See text in *Laws of the State of New York, of a General Nature, Passed from 1828 to 1841* ... (Rochester: 1844), pp. 210-13.

58. The implementing legislation was Laws of 1847, Chap. 280, "An Act in Relation to the Judiciary." Provisions concerning the old Supreme Court and its records are in Art. 6, sect. 48, 52, 56, 60, 62, 64, 67, 69.

59. Lincoln, *Constitutional History*. vol. 2, pp. 140-64, surveys court organization through the end of the nineteenth century.

60. The code was Laws of 1848, Chap. 379, substantially amended by Laws of 1849, Chap. 438. See the works cited in the

Bibliography, under "Reform of Practice and Pleading."

61. Laws of 1799, 22nd Sess., Chap. 5.

62. Laws of 1807, Chap. 133; *Revised Laws* (1813), Chap. 3, sect. 6, vol. 1, p. 320; *Revised Statutes* (1829), Part III, Chap. 1, Title 3, sect. 17. The enactments of 1813 and 1829 required preservation of judgment rolls and writs, except for writs summoning jurors (*venires*), but permitted disposal of pleadings, which were incorporated in the final judgment record if there was one. Court orders authorizing destruction of papers are found in J0130 Minute Books (Albany), under following dates: Jan. 19, 1798; Aug. 15, 1807 (all clerks); Jan. 11, 1815 (Albany clerk); March 19, 1825 (all clerks); Feb. 2, 1839 (all clerks); Oct. 31, 1840 (Geneva clerk). At least four destruction orders appear in J0128 Minute Books (Utica): July 1830, July 1833, July 1835, and July 1836.

63. Laws of 1840, Chap. 295, 382; Laws of 1847, Chap. 133; Laws of 1858, Chap. 328. See *Court of Appeals Hall: Construction, Restoration and Renovation 1842-2004* (Albany: 2004).

64. "Inventory of Records Preserved, Court of Appeals Clerk's Office" (Albany: U.S. Works Progress Administration, Historical Records Survey, ca. 1936). The inventory guided the accessioning and cataloging of the records when they were transferred to the State Archives in 1982. Not all the records listed in the inventory were located at that time.

65. Laws of 1847, Chap. 280, sect. 69.

66. Geof Huth, "Inventory of New York County Clerk Court Records of Statewide Significance" (New York State Office of Court Administration, 2016), pp. 19-22. This inventory was invaluable in identifying, organizing, and cataloging the Supreme Court and Chancery Court records transferred to the State Archives in 2017-19.

67. Huth, "Inventory," pp. 22-26 and *passim*. The Commissioners of Records of the City and County of New York were established by Laws of 1855, Chap. 407, and renamed and reorganized by Laws of 1906, Chap. 661. Laws of 1938, Chap. 552, added a new article 9-A to the Consolidated Laws of 1909, concerning county officers in New York City, in which sect. 259-dd recognized the offices of Commissioner of Records in New York and Kings Counties. Those offices were abolished by the New York City government about 1941-42, as permitted by the Constitution of 1894 as amended in 1938, Art. 9, sect. 8. On the significant accomplishments of the Commissioner of Records in New York County see Isaac Newton Phelps Stokes, *The Iconography of Manhattan Island, 1498-1909*, vol 6, (New York: 1928), p. 212. The card indexes to older "law judgments" were apparently completed by the 1920s; see reference in Laws of 1924, Chap. 569.

68. In the early twentieth century a clerk of the Court of Appeals noted that "many papers in First Circuit [Court of Chancery] have been lost, many having been sold for junk by Mr. Plum who had charge of these records in the N.Y. Co. Clerk's Office for many years." ("Mr. Plum" has not been identified.) That statement undoubtedly applies also to writs and papers of the Supreme Court of Judicature. See J0999 Court of Appeals Notebook on New York Court Records and Judicial History.

69. Stokes, *Iconography of Manhattan Island*, vol 6, pp. 222-23; Huth, "Inventory."

70. Paul M. Hamlin, *Legal Education in Colonial New York* (New York: 1939), pp. 56-84.

71. Laws of 1714, Chap. 289 ("Act for the shortening of law suits, and regulating the practice of the law") outlines civil procedure in an early attempt to regulate some details of practice. Summarizing later eighteenth century practice and the legal learning of a young attorney is Alexander Hamilton's manuscript "Practical Proceedings in the Supreme Court of the State of New York" (ca. 1782), published in Goebel, *Law Practice of Alexander Hamilton*, vol. 1, pp. 37-135. Treatises published in New York between the 1790s and 1840s became increasingly lengthy and heavy with legal precedents. A well-organized manual clearly intended for novice practitioners is Alexander M. Burrill, *A Treatise on the Practice of the Supreme Court of the State of New-York in Personal Actions*, 2 vols. (New York: 1840). (The second volume contains forms.) The scope of Burrill's treatise omits the real actions, including ejectment, which was in frequent use; proceedings on writs of *certiorari*, *habeas corpus*, and *mandamus*; and various types of statutory proceedings, such as insolvencies. An authoritative treatise summarizing relevant case law is David Graham, Jr., *A Treatise on the Practice of the Supreme Court of the State of New-York*, 2d ed. (New York: 1836).

72. See John H. Moore, "One Hundred Fifty Years of Official Law Reporting and the Courts in New York," *Syracuse Law Review*, 6 (1955), 273-306, and other works cited in the Bibliography.

73. On ejectment see George W. Warvelle, *A Treatise on the Principles and Practice of the Action of Ejectment and Statutory Substitutes* (Chicago: 1905), pp. 8-13; Baker, *Introduction to English Legal History*, 5th ed., pp. 319-22, and Plucknett, *Concise History of the Common Law*, 5th ed., pp. 373-74. The procedural benefits of the action of ejectment were discussed in *Report of the Commissioners Appointed to Revise the Statute Laws* ... (Sept. 9, 1828), Part III, Chap. 5, pp. 53-65 *passim*.

74. The classification of the forms of action varies somewhat from author to author. A table of the forms of action under the categories of "real," "mixed," and "personal" is in Francis X. Carmody, *Carmody-Forkosch New York Practice with Forms*, 8th ed. (New York: 1963), p. 7. A table listing the forms of action under the types of "original" writs from which they derived is in Baker, *Introduction to English Legal History*, 5th ed., p. 77.

75. The Supreme Court in colonial New York employed initial process from both the English common-law courts whose jurisdiction it acquired. The writ of *capias* derived from the Court of Common Pleas. By alleging a fictitious "trespass" *quare clausum fregit* (Latin, "because he broke into an enclosure," i.e. unlawfully entered lands) the *capias* allowed that court to hear and determine quasi-criminal civil cases properly within the jurisdiction of King's Bench. (Each court employed legal fictions to encroach upon the other's business.) While the *capias* was commonly employed in colonial New York, the "bill of New York," deriving from the "bill of Westminster" in King's Bench, was used in the City and County of New York, the seat of the Supreme Court (the defendant assumed to be within its jurisdiction), as an alternative. (In the early years of statehood the "bill of Albany" was also employed because the Supreme Court held terms there.) The bill was not a sealed writ, but rather a "precept" signed by the court clerk. The writ of *alias capias ad respondendum* or the writ of *latitat* (Latin, the defendant "lurks") was employed, respectively, if the sheriff did not locate and arrest the defendant as commanded by the initial writ or bill. If the sheriff was

still unsuccessful, one or more writs of *pluries capias ad respondendum* ordered further attempts to arrest the defendant. See Goebel, *Law Practice of Alexander Hamilton*, vol. 1, pp. 64-66, 136-38; and William Wyche, *Treatise on the Practice of the Supreme Court of Judicature* ... (New York: 1794), pp. 41-46; George Caines, *Practical Forms of the Supreme Court* ... (New York: 1808), pp. 10-19; Burrill, *A Treatise on the Practice of the Supreme Court of the State of New-York*, vol. 1, pp. 83-85. On the English forms of initial process see Plucknett, *Concise History of the Common Law*, 5th ed., pp. 172-73, 386-87, and Baker, *Introduction to English Legal History*, 5th ed., pp. 49-50, 52-54, 71-73. Apprehension of defendants by bill or *latitat* seems not to have occurred in the early decades of the New York Supreme Court. See Hamlin and Baker, *Supreme Court of Judicature*, vol. 1, pp. 372-78, rules 5, 6, 13, 14, 15, which refer only to *capias*.

76. Laws of 1815, Chap. 38, sect. 2, permitted use of paper instead of parchment for writs. Laws of 1778, 1st Sess., Chap. 12, had permitted use of paper for writs and judgments for the duration of the war and for one year afterward.

77. The fictitious "trespass," committed with "force and arms" (Latin, *vi et armis*), an injury to the King's peace, had put the case within the jurisdiction of King's Bench instead of Common Pleas (the counter-example of the two courts' competition for business during the seventeenth century). See Burrill, *Treatise on the Practice of the Supreme Court*, vol. 1, pp. 83-84, 94, and references to Goebel, Wyche, Caines, Plucknett, and Baker in note 75.

78. Laws of 1787, 10th Sess., Chap. 32; Laws of 1801, Chap. 28, sect. 10. Surviving colonial writs generally lack the detailed endorsements found on post-Revolutionary writs. The endorsement on later writs includes court name, case title, type of writ, attorney's signature, sheriff's signature and note of his action, and date of filing. Until at least the 1790s all the county sheriffs seem to have attended each Supreme Court term and returned their writs in person, which would have made endorsements on the writs superfluous. See Hamlin and Baker, *Supreme Court of Judicature*, vol. 1, pp. 183-94, 359-63, and vol. 2, *passim*.

79. Laws of 1820, Chap. 236; Laws of 1829, Chap. 42; *Revised Statutes* (1829), Part III, Chap. 7, Title 6, Art. 6, Sect. 78; Laws of 1830, Chap. 104. The filing regions corresponded to the multi-county senatorial districts, with some variations. See Appendix B, "Suggestions for Locating Case Papers," and Appendix J, "Offices for Filing Supreme Court Writs."

80. Complying with an English statute of 1661 and colonial practice, New York State laws required that the true cause of action be stated in a writ of *capias*, or else the defendant could not be held to bail for appearance in court. Laws of 1787, 10th Sess., Chap. 26, set bail to the sheriff at no more than £40 in the latter situation. The cause of action was stated in the *capias* in the *ac etiam* (Latin, "and also") clause following the allegation of a fictitious trespass. The requirement of the "true cause of action" for bail to the sheriff (omitting the £40 limit) was continued by Laws of 1801, Chap. 28, sect. 14; *Revised Laws* (1813), Chap. 67, sect. 14, vol. 1, p. 424; and *Revised Statutes* (1829), Part III, Chap. 6, Title 1, sect. 6. See Wyche, *Treatise on the Practice of the Supreme Court*, p. 29; Hamilton's practice manual, in Goebel, *Law Practice of Alexander Hamilton*, vol. 1, pp. 112-14; Plucknett, *Concise History of the Common Law*, 5th ed., 386-87; and Baker, *Introduction to English Legal History*, 5th ed., pp. 52-54. The onerous requirement of bail to the sheriff was

criticized in *Report of the Commissioners Appointed to Revise the Statute Laws* ... (Sept. 9, 1828), Part III, Chap. 6, p. 6.

81. The common law required two individuals to be special bail, but one was usually fictitious (i.e., "John Doe"). On special bail, the recognizance of bail, the "bail piece," and common bail in the Supreme Court, see Laws of 1787, 10th Sess., Chap. 26; Laws of 1801, Chap. 102; Laws of 1807, Chap. 107, sect. 1; *Revised Laws* (1813), Chap. 17, vol. 1, pp. 323-25; and more detailed provisions of *Revised Statutes* (1829), Part III, Chap. 6, Title 6, Art. 3 ("Of bail ..."). If bail was not required, under an act of 1813 the sheriff's return of the writ to the clerk's office constituted the defendant's appearance in court. See *Revised Laws* (1813), Chap. 67, sect. 14, vol. 1, p. 424; *Revised Statutes* (1829), Part III, Chap. 6, Title 1, sect. 5; and *Report of the Commissioners Appointed to Revise the Statute Laws* ... (Sept. 9, 1828), Part III, Chap. 6, p. 2. Provisions governing surrender of defendant and exoneration of bail are in Laws of 1787, 10th Sess., Chap. 26; Laws of 1801, Chap. 387, sect. 2; *Revised Laws* (1813), Chap. 17, sect. 3, vol. 1, pp. 323-24; and *Revised Statutes* of 1829, Part III, Chap. 6, Title 6, Art 3, sect. 21-30. Special bail was abolished in most situations by Laws of 1831, Chap. 300. Starting in 1832 bail was still required if the defendant resided out-of-state, and also in actions concerning personal property, or "actions on promises to marry, or for monies collected by any public officer; or for any misconduct or neglect in office, or in any professional employment."

82. On common-law pleading in New York courts see Graham, *Treatise on the Practice of the Supreme Court*, 2d ed., pp. 190-261; Burrill, *Treatise on the Practice of the Supreme Court*, vol. 1, pp. 114-200; James Gould, *A Treatise on the Principles of Pleading in Civil Actions*, 2d ed. (New York: 1836); and John Van Ness Yates, *A Collection of Pleadings and Practical Precedents* ... (Albany: 1837).

83. On nonsuit by plaintiff's failure to declare see Laws of 1787, 10th Sess., Chap. 26. Taking of testimony *de bene esse* was regulated by the *Revised Statutes* of 1829, Part III, Chap. 7, Title 3, Art. 5.

84. Statutes distinguishing local and transitory actions were Laws of 1728, Chap. 521; Laws of 1769, Chap. 1388; Laws of 1788, 11th Sess., Chap. 9, sect. 2; Laws of 1801, Chap. 47, sect. 1; *Revised Laws* (1813), Chap. 4, sect. 1, vol. 1, p. 325; *Revised Statutes* (1829), Part III, Chap. 6, Title 2, sect. 4, Chap. 7, and Title 4, sect. 2-3. The latter statute generally defined as "local" any action concerning real property, actions for injuries to a person (formerly transitory), actions of "nuisance," and actions against a public officer. "Transitory" actions included actions concerning a contract (account, assumpsit, covenant, debt) or a tort that was not "local" (replevin, trover, injury to personal property, slander, libel). See explanation (noting exceptions) in Burrill, *Treatise on the Practice of the Supreme Court*, vol. 1, pp. 122-24.

85. *The Clerk's Assistant. Revised and Greatly Improved, by a Gentleman of the Bar* (Poughkeepsie: 1814). Similar early works, all essentially American adaptations of English manuals, were Thomas Spencer, *The New Vade Mecum; or, Young Clerk's Magazine* ... (Lansingburgh: 1794) and Charles R. Webster, *The Clerk's Magazine* ... (Albany: 1800). See Bibliography for full citations to these and other similar works.

86. *Revised Statutes* (1829), Part III, Chap. 6, Title 1, sect. 1; Chap. 5, Title 7, sect. 24; Chap. 8, Title 3, Art. 1.

87. On the court clerk's reporting of damages owing to a plaintiff on confession or default of the defendant, or judgment on demurrer, see Laws of 1797, 20th Sess., Chap. 5; Laws of 1801, Chap. 90, sect. 15-18; *Revised Laws* (1813), Chap. 56, sect. 15-18, vol. 1, pp. 522-23; *Revised Statutes* (1829), Part III, Chap. 6, Title 3. The jury of inquisition was still employed to report on damages arising on a bond or from non-performance or breach of certain types of contracts. See Laws of 1801, Chap. 90, sect. 7; *Revised Laws* (1813), Chap. 56, sect. 7, vol. 1, p. 518; *Revised Statutes* (1829), Part III, Chap. 6, Title 6, Art. 3, sect. 7-9. The latter enactment allowed the plaintiff to dispense with the writ of inquiry and instead have a circuit court jury determine and assess the damages. On determination of money damages after an interlocutory judgment see Burrill, *Treatise on the Practice of the Supreme Court*, vol. 1, pp. 371-82, and also Robert W. Millar, *Civil Procedure of the Trial Courts in Historical Perspective* (New York: 1952), pp. 368-69.

88. The contents of the *nisi prius* roll and issue roll are described in Wyche, *Treatise on the Practice of the Supreme Court*, pp. 146-51. Starting in 1830 the *nisi prius* roll was replaced by the "circuit roll" and the award of jury process (writ of *venire*) was omitted, pursuant to the *Revised Statutes* (1829), Part III, Chap. 7, Title 4, Art. 1, sect. 5-6, 9. On the circuit roll's contents see Graham, *Treatise on the Practice of the Supreme Court*, 2d ed., pp. 268-72. The issue roll resembled the *nisi prius* roll but was retained by the court clerk. It was abolished by Laws of 1818, Chap. 259, sect. 4-5, and again by *Revised Statutes* of 1829, Part III, Chap. 10, Title 3, sect. 21.

89. Waiver of jury trial in civil actions was first permitted by the Constitution of 1846, Art. I, sect. 2. The only previous exception to the common-law requirement of a jury trial was in small suits before a justice of the peace, where a six-man jury was optional.

90. On use of court-appointed referees to determine damages in disputes involving complex financial accounts, see Laws of 1768, Chap. 1363 (which seems to have recognized existing practice); Laws of 1781, 4th Sess., Chap. 25, sect. 2; Laws of 1788, 11th Sess., Chap. 46; Laws of 1801, Chap. 90, sect. 2-4; *Revised Laws* (1813), Chap. 56, sect. 2, vol. 1, p. 516-17; *Revised Statutes* (1829), Part III, Chap. 6, Title 6, Art. 4, sect. 39-53. See Millar, *Civil Procedure of the Trial Courts in Historical Perspective*, p. 281, and Johnson, "Civil Procedure in John Jay's New York," p. 75. Private arbitration was also employed the later eighteenth century. See *Earliest Arbitration Records of the Chamber of Commerce of the State of New York, Founded in 1768–Committee Minutes, 1779-1792* (New York: 1913).

91. Laws of 1796, 19th Sess., Chap. 10.

92. Trial calendars were required by a Supreme Court rule adopted in 1763. See Hamlin and Baker, *Supreme Court of Judicature*, vol. 2, p. 384. A description of jury trials of civil cases in the 1790s is in Wyche, *Treatise on the Practice of the Supreme Court*, pp. 152-69.

93. On the writ of commission appointing commissioners to examine absent witnesses and obtain written depositions of their testimony, see Laws of 1789, 12th Sess., Chap. 28; Laws of 1801, Chap. 90, sect. 11; *Revised Laws* (1813), Chap. 56, sect. 11, vol. 1, pp. 519-21; and *Revised Statutes* (1829), Part III, Chap. 7, Title 3, Arts. 2 and 3.

94. The circuit roll and *postea* were abolished by Laws of 1840, Chap. 386, sect. 21. Prior to 1796 the clerk of the

circuit courts had prepared the *postea* and returned it to the Supreme Court clerk; see Laws of 1796, 19th Sess., Chap. 10.

95. State laws regulating the jury system were Laws of 1786, 9th Sess., Chap. 41; Laws of 1798, 21st Sess., Chap. 75; Laws of 1801, Chap. 98; *Revised Laws* (1813), Chap. 4, vol. 1, pp. 325-35; and *Revised Statutes* (1829), Part III, Chap. 7, Title 4, Arts. 1-4. During the early nineteenth century categories of persons exempted from jury duty included legal incompetents such as idiots and lunatics; employees of iron, glass, and textile factories; certain canal employees; ministers and priests; and public officials, physicians, and teachers during actual performance of their duties. In certain northern and western counties, after 1829, those who held contracts for the purchase of real property worth $150 or more were eligible for jury duty. On jury procedure and the right to jury trial see Charles Edwards, *The Juryman's Guide Throughout the State of New-York* (New York: 1831), and Lewis Mayers, "The Constitutional Guarantee of Jury Trial in New York," *Brooklyn Law Review*, 7 (1937), 180-204.

96. Laws of 1832, Chap. 28.

97. *Rules and Orders of the Supreme Court* (1837), Rules 36, 37.

98. On bills of exceptions in civil cases see Laws of 1801, Chap. 98, sect. 6; *Revised Laws* (1813), Chap. 3, sect. 4, vol. 1, p. 319, and Chap. 4, sect. 6, vol. 1, p. 326; *Revised Statutes* (1829), Part III, Chap. 7, Title 4, Art. 4, sect. 73-82. They are discussed by Burrill, *Treatise on the Practice of the Supreme Court*, vol. 1, pp. 239-40, 456-59, and Graham, *Treatise on the Practice of the Supreme Court*, pp. 324-30, 675-76.

99. On fees and costs in the British colonial period, see Hamlin and Baker, *Supreme Court of Judicature*, vol. 1, pp. 258-76. The table of attorney fees and court costs promulgated by ordinance in 1710 remained in effect until it was superseded in 1768. State laws establishing and closely regulating fees and costs in the Supreme Court were Laws of 1785, 8th Sess., Chap. 71; Laws of 1789, 12th Sess., Chap. 25; Laws of 1801, Chap. 190; *Revised Laws* (1813), Chap. 83, vol. 2, pp. 14-21, 29; Laws of 1823, Chap. 269, pp. 425-26; *Revised Statutes* (1829), Part III, Chap. 10, Title 3, Art. 2, sect. 16-19, 33, 35-38; Laws of 1839, Chap. 388; and Laws of 1840, Chap. 386. The procedure for "taxation of costs" is described in *Revised Statutes* (1829), Part III, Chap. 10, Title 5.

100. Components of and variations in the judgment record are described in Burrill, *Treatise on the Practice of the Supreme Court*, vol. 1, pp. 15-17, 244-49, 253-57, 264-66.

101. Laws of 1798, 21st Sess., Chap. 8; Laws of 1801, Chap. 75. The current Civil Practice Law and Rules, rule 5017, states that "the judgment-roll shall contain the summons, pleadings, admissions, each judgment and each order involving the merits or necessarily affecting the final judgment," and other papers resulting from judgment by confession or default, or from trial and verdict or decision, etc.

102. Laws of 1774, Chap. 1653 required docketing of a judgment by the clerk of the Supreme Court or a court of common pleas, effective July 1, 1774. Subsequent laws on the signing, filing, and docketing of judgments and transcripts thereof were Laws of 1787, 10th Sess., Chap. 56; Laws of 1798, 21st Sess., Chap. 108; Laws of 1801, Chap. 75, sect. 6, and Chap. 105, sect. 2-3, 5; Laws of 1807, Chap. 133, sect. 1-2; *Revised Laws* (1813), Chap. 3, sect. 7-8, vol. 1, p. 320, and Chap. 50, sect. 2-3, vol. 1, p. 500; *Revised Statutes* (1829), Part III, Chap. 6, Title 4, Art. 1 ("General provisions concerning judgments"), and Art. 2 ("Of

docketing judgments ..."); and Laws of 1840, Chap. 386, sect. 25-29, 34. The statute of 1798 required that the Albany judgment dockets be compiled retroactive to April 22, 1797, and transcripts sent to New York and *vice versa*. The statutes of 1801 and 1813 stated that "all costs and judgment rolls in the same court may be taxed and signed by either of the said clerks," referring to the Supreme Court clerks at New York City, Albany, and (starting 1807) Utica. The same provision evidently applied to the clerk's office established at Canandaigua in 1829 and removed to Geneva in 1830. These laws indicate that a judgment roll could be filed in any clerk's office, which is confirmed by Graham, *Treatise on the Practice of the Supreme Court*, 2d ed., p. 341.

103. Laws of 1787, 10th Sess., Chap. 44 ("Act for the prevention of frauds," a reenactment of English statutory provisions) and Chap. 56 (judgments and executions); Laws of 1801, Chap. 105. The latter two acts required the sheriff to endorse a writ of execution with the date he received it, as evidence of the date when the judgment debtor's personal property was "bound," liable to be sold. On docketing of a judgment imposing a "lien" against real property, see *Revised Laws* (1813), Chap. 50, sect. 1-3, vol. 1, pp. 500-501; *Revised Statutes* (1829), Part III, Chap. 6, Title 4, Art. 1, sect. 3-4; and Laws of 1840, Chap. 386, sect. 25-26. The lien for ten years was reduced to five years by the latter act, sect. 31-32, but restored to ten years by laws of 1867, Chap. 781, and continued by the Code of Civil Procedure of 1876-77 and the Civil Practice Act of 1920. It remains the law today; see Civil Practice Law and Rules, sect. 5203(a). Starting in 1830 a judgment debtor could redeem lands sold on execution within one year after the sheriff's sale. See *Revised Statutes* (1829), Part III, Chap. 6, Title 5, Art. 2, sect. 62. (That recourse is no longer available in New York.) Discussing the question of whether issuing the writ of execution or docketing the judgment encumbered the judgment debtor's real property are Hulbert v. Hulbert, 216 N.Y. 430 (1916, opinion by Justice Seabury) and Stefan A. Riesenfeld, "Collection of Money Judgments in American Law—A Historical Inventory and a Prospectus," *Iowa Law Review*, 42 (1957), 159-60, 167-68.

104. On executions of civil judgments see Laws of 1787, Chap. 56; Laws of 1801, Chap. 105, sect. 1, 7-13; *Revised Laws* (1813), Chap. 50, sect. 1, 7-17, vol. 1, pp. 500-506; *Revised Statutes* (1829), Part III, Chap. 6, Title 5 ("Of executions ...").

105. Executions of money judgments were governed by the common law and English statutes, with certain details specified in Laws of 1801, Chap. 105, sect. 1, 7-13, and *Revised Laws* (1813), Chap. 50, sect. 7-16, vol.1, pp. 502-506. Proceedings in execution of a judgment were minutely described in the *Revised Statutes* (1829), Part III, Chap. 6, Title 5 ("Of executions ..."). On the one-year limit for issuing a writ of execution, see Barrie v. Dana, 20 Johns. 307 (1820). In England the writ of *fieri facias* ordered a sheriff to sell personal property only. An act of Parliament of 1732, 5 Geo. II, Chap. 7, sect. 4, authorized use of *fieri facias* in the American colonies to levy a judgment against real property as well, if sale of personal property were insufficient to satisfy the judgment. That authority was continued by Laws of 1787, 10th Sess., Chap. 56; Laws of 1801, Chap. 105, sect. 1; and subsequent enactments. The availability of *fieri facias* for a sheriff's levy on both personal and real property resulted in the disuse and eventual abolition of the alternate writ of *elegit* (Latin, "he chooses"), by which a judgment creditor could obtain the amount due to him out of the rents and profits of the judgment debtor's real

property. See Riesenfeld, "Collection of Money Judgments in American Law," pp. 157-60, 164-65, 167-68; Millar, *Civil Procedure of the Trial Courts in Historical Perspective*, pp. 422, 429; and Goebel, ed., *Law Practice of Alexander Hamilton*, vol. 1, p. 97, n. 87. On use of *fieri facias* and *elegit* see Catlin v. Jackson, 8 Johns. 520 (1811).

106. Laws of 1831, Chap. 300 ("Act to abolish imprisonment for debt, and to punish fraudulent debtors"). Arrest of a debtor with a criminal warrant could still occur if the debtor had committed fraud. Laws of 1786, 9th Sess., Chap. 22; Laws of 1787, 10th Sess., Chap. 98; and Laws of 1809, Chap. 10 had already required that imprisoned debtors owing moderate sums be released from prison, though without discharge of their debts.

107. Laws of 1811, Chap. 196; *Revised Laws* (1813), Chap. 50, sect. 17, vol. 1, p. 506; and *Revised Statutes* (1829), Part III, Chap. 6, Title 4, Art. 2, sect. 23-26, specified the procedure for acknowledging a satisfaction of judgment. When judgments were discharged with no satisfaction entered in the docket book, it "was a source of great difficulty, in tracing title to real property," as remarked in the *Report of the Commissioners Appointed to Revise the Statute Laws* ... (Sept. 9, 1828), Part III, Chap. 6, pp. 32.

108. *Revised Statutes* (1829), Part III, Chap. 6, Title 5, Art. 1, sect. 1 (writs of execution), and Chap. 9, Title 2, Art. 1 ("Of scire facias"). On the presumption of payment of a judgment debt after twenty years, see Laws of 1821, Chap. 238, sect. 4; *Revised Statutes* (1829), Part III, Chap. 4, Title 2, Art. 5, sect. 46-47; and Laws of 1848, Chap. 379, sect. 70. If no writ of execution were issued within the time limit, a judgment creditor could alternatively bring an action of debt against the judgment debtor, the judgment record being evidence of his obligation. On the writ of *scire facias*, dormancy of judgments, and statutory provisions in New York, see Harmon v. Dedrick, 3 Barb. 192 (1848), and Riesenfeld, "Collection of Money Judgments in American Law," pp. 172-73, 176.

109. See generally Peter J. Coleman, *Debtors and Creditors in America: Insolvency, Imprisonment for Debt, and Bankruptcy, 1607-1900* (Madison, Wisc.: 1974), pp. 3-15, 103-29. The complex history of New York's voluntary and involuntary insolvency laws is expertly summarized in *Revised Laws* (1813), vol. 1, p. 460, note; Mather and Strong v. Bush, 16 Johns. 233, note; and James L. Bishop, *A Treatise on the Common and Statute Law of the State of New York Relating to Insolvent Debtors,* 3d ed. (New York: 1895), pp. 1-14.

110. Chancellor James Kent made scathing remarks about the liberality of the 1811 law in Hicks v. Hotchkiss, 7 Johns. Ch. 297.

111. Laws of 1786, Chap. 34 ("injury of trade"). In 1819 the constitutionality of full discharges of debtors under the New York insolvency statute of 1811 was challenged in the U.S. Supreme Court, on the grounds that the U.S. Constitution (Art. I, sect. 8) gives Congress the exclusive power to adopt "uniform laws on the subject of bankruptcies throughout the United States." A characteristic of a bankruptcy proceeding, as eventually established in English law and adopted in American law, is discharge of the bankrupt from his debts incurred before his bankruptcy. The court decided (opinion by Chief Justice John Marshall) that the New York statute "impaired the obligation of a contract," which is prohibited by the U.S. Constitution (Art. I, sect. 10), but that state "bankruptcy" laws could operate when there was no Federal bankruptcy law (such laws have existed in the periods 1800-03, 1841-43, 1867-78,

and continuously since 1898). See Sturges v. Crowninshield, 4 Wheat. 70, modified in Ogden v. Saunders, 12 Wheat. 213. New York courts decided in 1819 and 1823 that despite Sturges, discharges of insolvent debtors under the "two-thirds" act of 1813 were valid for contracts made after the passage of that act. See Mather and Strong v. Bush, 16 Johns. 233 (opinion by Chief Justice John C. Spencer), and Hicks v. Hotchkiss et al., 7 Johns. Ch. 297 (opinion by Chancellor Kent).

112. See Laws of 1786, 9th Sess., Chap. 24 (debtors with "intent to defraud").

113. Filing requirements are in *Revised Statutes* (1829), Title 1, Art. 1, sect. 67-68 ("absconding, concealed, and non-resident debtors") and Art. 3, sect. 29 ("voluntary assignments").

114. See *Revised Laws* (1813), Chap. 100, vol. 1, p. 507, note, on the history of partition proceedings in New York.

115. Laws of 1785, 8th Sess., Chap. 39 (voluntary partition); Laws of 1788, 11th Sess., Chap. 8 (action to compel partition). Laws of 1801, Chap. 176; *Revised Laws* (1813), Chap. 500, vol. 1, p. 507; and *Revised Statutes* of 1829, Part III, Chap. 5, Title 3, successively regulated partition cases. The act of 1785 resembled several colonial acts that had established a procedure for subdividing large land patents, with minimal judicial involvement. The law provided an alternate method for partition of lands of lesser value: one or more of the joint owners could apply to a court of common pleas to appoint and supervise the commissioners.

116. On proof of wills in the Supreme Court, see Laws of 1786, 9th Sess., Chap. 27; Laws of 1801, Chap. 9, sect. 9; *Revised Laws* (1813), Chap. 23, sect. 6-9, vol. 1, pp. 365-66. Before 1830 the Supreme Court or a court of common pleas was required to prove and record any will whose witnesses were deceased or resided out-of-state. See Laws of 1790, 13th Sess., Chap. 51; Laws of 1801, Chap. 9; *Revised Laws* (1813), Chap. 23, sect. 7.

117. For New York City, *Revised Laws* (1813), Chap. 86, sect. 177-92, vol. 2, pp. 408-423, and Laws of 1816, Chaps. 81, 160; for Brooklyn, Laws of 1833, Chap. 319, and Laws of 1834, Chap. 92. See James W. Gerard, Jr., *A Treatise on the Title of the Corporation and Others to the Streets, Wharves, Piers, Parks, Ferries, and Other Lands and Franchises in the City of New York* (New York: 1873), pp. 97, 132.

118. 1 Stat. 103 (1790), 414 (1795); 2 Stat. 153 (1802) (naturalizations); 3 Stat. 410 (1818) (pensions).

119. 3 Stat. 244 (1815).

120. See Graham, *Organization and Jurisdiction of the Courts*, pp. 198-231. The Supreme Court had jurisdiction over proceedings "in the nature of a *quo warranto*," named for an English writ of that name. This proceeding was brought by the attorney general, when an individual had illegally usurped a privilege of government office or an office in a corporation, or a corporation had violated its charter. The writ of *scire facias* could be obtained by the attorney general to annul letters patent or charters of incorporation obtained by mistake or fraud, or violated by the patentee. Starting 1830 the Supreme Court determined claims to real property that could not be settled by an action of ejectment (the other "real actions" were abolished by the *Revised Statutes*).

121. Selected colonial Supreme Court rules are printed in Hamlin and Baker, *Supreme Court of Judicature*, vol. 1, pp. 372-78, vol. 2, pp. 379-86.

122. On admission of attorneys and counselors to practice in early New York courts see Hamlin, *Legal Education in Colonial New York*, pp. 120-26, 210-16; Anton-Hermann Chroust, *The Rise of the Legal Profession in America* (Norman, Okla.: 1965), vol. 2, pp. 10, 36-37, 245-52. The Supreme Court counselor was an attorney who had practiced in the court for at least two years (1783-1797), four years (1797-1804), three years (1804-1829), or four years (1830-on). No additional examination was required. Until 1835, a counselor's signature was required on any special pleadings filed with the court. In addition, only counselors were permitted to appear before the Supreme Court to argue cases. Detailed requirements for admission to the bar were adopted by the Supreme Court in a rule of October term 1797. See also *Rules and Orders of the Supreme Court* (1837), Rules 1-6, and earlier editions of the rules. Statutory provisions are in Laws of 1787, 10th Sess., Chap. 35, sect. 3; Laws of 1788, 11th Sess., Chap. 28; Laws of 1796, 19th Sess., Chap. 57; Laws of 1801, Chap. 32, sect. 4; *Revised Laws* (1813), Chap. 48, sect. 4-5, vol.1, pp. 416-17; Laws of 1816, Chap. 1; Laws of 1824, Chap. 41; and *Revised Statutes* (1829), Part III, Chap. 3, Title 2, Art. 3, sect. 64-74. Earlier rules and statutes on admission of attorneys and counselors are summarized and cited in Wyche, *Treatise on the Practice of the Supreme Court*, pp. 4-5. The 1787 law was a legislative attempt to prescribe attorney qualifications; otherwise the courts established such standards by rule.

123. Laws empowering the Supreme Court to designate circuit court terms were Laws of 1784, 7th Sess., Chap. 41; Laws of 1801, Chap. 8; and *Revised Laws* (1813), Chap. 66, vol. 1, pp. 335-36. For a few years starting 1797 the circuit court terms were set by statute; see Laws of 1797, 20th Sess., Chap. 13. Under the Constitution of 1821 the circuit court terms were designated by the circuit judges; see Laws of 1824, Chap. 325, sect. 4, and *Revised Statutes* (1829), Part III, Chap. 1, Title 4, sect. 5.

124. Detailed statutory provisions on attachment proceedings are in *Revised Statutes* (1829), Part III, Chap. 8, Title 13, *passim*. Attachment is discussed by Wyche, *Treatise on the Practice of the Supreme Court*, pp. 244-47.

125. On the jurisdiction and procedure of the Court of Chancery, see Goebel, ed., *Law Practice of Alexander Hamilton*, vol. 1, pp. 167-96; Dominick T. Blake, *An Historical Treatise on the Practice of the Court of Chancery of the State of New-York* (New York: 1818); Murray Hoffman, *A Treatise upon the Practice of the Court of Chancery* ... (New York: 1834); and Graham, *Organization and Jurisdiction of the Courts*, pp. 341-578. See also the unpublished administrative history of the Court of Chancery by Alan S. Kowlowitz.

126. An English statute had authorized use of subpoena to summon witnesses to testify at trials in common-law courts. That usage was confirmed by Laws of 1801, Chap. 110, sect. 14; *Revised Laws* (1813), Chap. 65, sect. 10, vol. 2, pp. 505-506; and *Revised Statutes* (1829), Part III, Chap. 3, Title 2, Art. 1, sect. 1.1. As already discussed, the *Revised Statutes* (1829), Part III, Chap. 1, Title 3, sect. 21-24, authorized pre-trial discovery in New York's common-law courts.

127. Laws of 1802, Chap. 25, sect. 6-9; *Revised Laws* (1813), Chap. 95, sect. 4-5, vol. 1, pp. 487-88; *Revised Statutes* (1829), Part III, Chap. 1, Title 2, Art. 3, sect. 93-100, 104-105. Prior to 1802 the sergeant-at-arms was the enforcement officer of the Court of Chancery.

128. On the history of appellate procedure generally see Roscoe Pound, *Appellate Procedure in Civil Cases* (Boston: 1941) and Julius Goebel, *History of the Supreme Court of the United States:* Vol. I, "Antecedents and Beginnings to 1801" (New York: 1971), pp. 19-35. On pre-1847 appellate courts in New York see Graham, *Organization and Jurisdiction of the Courts*, pp. 232-40, and Jill P. Botler et al., "The Appellate Division of the Supreme Court of New York: An Empirical Study of Its Powers and Functions as an Intermediate State Court," *Fordham Law Review*, 47 (1979), 932-35.

129. A statute of 1801 required that a writ of error removing a judgment from the Supreme Court to the Court of Errors be accompanied by the certificate of a Supreme Court counselor stating his opinion that there was "error in substance" in the record of proceedings and judgment. See Laws of 1801, Chap. 25, sect. 1, 4, and Laws of 1815, Chap. 38, sect. 1. A writ of error in a capital case remained until 1830 a "writ of grace," allowed at the discretion of the chancellor.

130. Brief provisions concerning writs of error are in Laws of 1780, 3rd Sess., Chap. 44, sect. 14; Laws of 1801, Chap. 25, reenacted in *Revised Laws* (1813), Chap. 25, vol. 1, pp. 143-44; and Laws of 1817, Chap. 179 (required writs of error to be brought within five years). Lengthy provisions are in the *Revised Statutes* (1829), Part III, Chap. 9, Title 3, Art. 1 (civil cases), and Part IV, Chap. 2, Title 6, Art. 2 (criminal cases).

131. The "record" of a final judgment on which a writ of error could be brought was defined in Clason v. Shotwell, 12 Johns. 31 (1814).

132. A plaintiff in error in the Supreme Court or the Court of Errors was required to file a bond. See Laws of 1801, Chap. 25, sect. 2-3; *Revised Laws* of 1813, Chap. 25, sect. 2-3, vol. 1, p. 143; and *Revised Statutes* of 1829, Part III, Chap. 9, Title 3, Art. 1, sect. 26-28.

133. The Superior Court of New York City was established by Laws of 1828, Chap. 137. The legislation was prompted by a financial crisis and scandal in 1826, involving member firms of the New York Stock Exchange. See Graham, *Organization and Jurisdiction of the Courts*, p. 115, and Eric Hilt, "Wall Street's First Corporate Governance Crisis: The Panic of 1826," *NBER Working Paper Series* (Cambridge, Mass.: National Bureau of Economic Research, 2009), available at http://www.nber.org/papers/w14892.

134. On the writ of error in the colonial period, see Hamlin and Baker, *Supreme Court of Judicature*, vol. 1, pp. 72-77 and *passim*; and Goebel and Naughton, *Law Enforcement in Colonial New York*, pp. 256-60. Detailed discussions of proceedings by writ of error during statehood are in Wyche, *Treatise on the Practice of the Supreme Court*, pp. 272-81; Burrill, *Treatise on the Practice of the Supreme Court*, vol. 1, pp. 508-513, 519-25; and Graham, *Organization and Jurisdiction of the Courts*, pp. 232-86, and same, *Treatise on the Practice of the Supreme Court*, 2d ed., pp. 931-68.

135. Goebel and Naughton, *Law Enforcement in Colonial New York*, pp. 251-55.

136. Oliver L. Barbour, *The Magistrate's Criminal Law* (New York: 1841), pp. 337-49; Laws of 1801, Chap. 25, sect. 1 (capital cases). On the availability of the writ of error in criminal cases prior to 1830, see Lavett v. People and Eggleston v. People, both at 7 Cowen 339 (1827). Lengthy provisions on the writ of error in criminal cases were enacted in *Revised Statutes* (1829), Part IV, Chap. 2, Title 6,

Art. 2. On bills of exceptions in criminal cases, see Part IV, Chap. 2, Title 5, sect. 21-25. The Code of Criminal Procedure, Laws of 1881, Chap. 442, Title 10, Chap. 1, first established a general right of criminal defendants to appeal erroneous proceedings and judgments.

137. On *certiorari* see Wyche, *Treatise on the Practice of the Supreme Court*, pp. 248-50, and Graham, *Organization and Jurisdiction of the Courts*, pp. 318-39. Leading cases concerning *certiorari* were Harwood v. French, 4 Cowen 501 (1825), Munro v. Baker, 6 Cowen 396 (1836), and People ex rel. Onderdonk v. Queens County, 1 Hill 195 (1841).

138. On use of *certiorari* to transfer civil cases to the Supreme Court from courts of common pleas prior to judgment, see Laws of 1787, 10th Sess., Chap. 72; Laws of 1788, 11th Sess., Chap. 37; Laws of 1801, Chap. 13, sect. 1-3; *Revised Laws* (1813), Chap. 13, sect. 1-3, vol. 1, pp. 140-42; Laws of 1823, Chap. 207; Laws of 1824, Chap. 238, sect. 36-40; *Revised Statutes* (1829), Part III, Chap. 7, Title 2; Laws of 1837, Chap. 468. A summary of *certiorari* procedure under the *Revised Statutes* is in Graham, *Treatise on the Practice of the Supreme Court*, 2d ed., pp. 557-60.

139. On early use of *certiorari* to remove an indictment to the Supreme Court from a county court of general sessions, see Goebel and Naughton, *Law Enforcement in Colonial New York*, pp. 154-61. Relevant state laws were Laws of 1788, 11th Sess., Chap. 2 and Chap. 37, sect. 13; Laws of 1801, Chap. 13, sect. 1, 4; *Revised Laws* (1813), Chap. 13, sect. 1, 4, vol. 1, p. 141, and Chap. 8, sect. 7, vol. 1, p. 496. *Revised Statutes* (1829), Part IV, Chap. 2, Title 4, Art. 3, sect. 76-84, prohibited use of *certiorari* to remove indictments from a court of general sessions to the Supreme Court, and substituted a Supreme Court justice's order to remove an indictment from general sessions to oyer and terminer. Indictments could still be removed by *certiorari* from a court of oyer and terminer to the Supreme Court, but that rarely occurred.

140. On use of *certiorari* to review civil judgments appealed directly to the Supreme Court from justice's courts, see Laws of 1765, Chap. 1279 (regulating existing practice); Laws of 1780, 3rd Sess., Chap. 44, sect. 14; Laws of 1787, 10th Sess., Chap. 89; Laws of 1788, 11th Sess., Chap. 3; Laws of 1799, 22nd Sess., Chap. 92; Laws of 1801, Chap. 165, sect. 19; Laws of 1808, Chap. 204, sect. 16; and *Revised Laws* (1813), Chap. 53, sect. 17-18, vol. 1, pp. 396-97. Numerous justices' returns to writs of *certiorari* survive for upstate clerks' offices, in series J0147 (Albany) and J1025 (Utica). They provide abundant evidence of the operations of the justice's courts upstate in the early nineteenth century. Almost no such returns survive for New York City.

141. Direct appeals from justice's courts to the Supreme Court was were effectively abolished by Laws of 1824, Chap. 238, sect. 36-39. Sect. 1 and 3 of that act granted to justices of the peace the authority to "hear, try and determine" cases "according to law and equity." This was a notable union of two realms of jurisprudence, occurring in the state's lowest civil courts, foreshadowing the expanded jurisdiction of the Supreme Court effected by the Constitution of 1846. Review of judgments of justices of the peace by writ of *certiorari* or appeal to a court of common pleas was first authorized by the 1824 law and continued by *Revised Statutes* (1829), Part III, Chap. 2, Title 4, Arts. 10-11. Laws of 1836, Chap. 526, allowed a common pleas decision on *certiorari* or appeal to be reviewed by the Supreme Court by a writ of error, at the discretion of the first judge of the trial court.

142. See Graham, *Organization and Jurisdiction of the Courts*, pp. 80-83, 89-113, on the appellate jurisdiction of the county courts after 1824.

143. Laws of 1828, Chap. 137, sect. 19, 24.

144. State laws concerning Supreme Court review of convictions in courts of special sessions of the peace by writ of *certiorari* were Laws of 1788, 11th Sess., Chap. 2; Laws of 1801, Chap. 13, sect. 1, 4; *Revised Laws* (1813), Chap. 13, sect. 1, 4, vol. 1, pp. 140-42; *Revised Statutes* (1829), Part IV, Chap. 2, Title 3, Art. 4. See Graham, *Organization and Jurisdiction of the Courts*, pp. 334-38. Courts of special sessions were first established in 1732. They were empowered to try, without a jury, offenses under the degree of grand larceny if the defendant was unable to procure bail for appearance at the next county court of sessions. See Goebel and Naughton, *Law Enforcement in Colonial New York*, pp. 110-29. Courts of special sessions were continued by state laws of 1801, 1813, and 1829.

145. Harold Weintraub, "Mandamus and Certiorari in New York from the Revolution to 1880," *Fordham Law Review*, 32 (1964), 717-48; Graham, *Organization and Jurisdiction of the Courts*, pp. 318-27. A leading case on common-law *certiorari* was Lawton v. Commissioners of Highways of the Town of Cambridge, 2 Caines 179 (1804), in which the Supreme Court asserted its authority to review administrative decisions to ensure compliance with the law.

146. On the infrequent use of *habeas corpus* in the colonial period see Hamlin and Baker, *Supreme Court of Judicature*, vol. 1, pp. 391-404, and Goebel and Naughton, *Law Enforcement in Colonial New York*, pp. 502-506. On its use in the 1790s, see Wyche, *Treatise on the Practice of the Supreme Court*, pp. 285-91. Laws of 1787, 10th Sess., Chap. 72, and Laws of 1788, 11th Sess., Chap. 37, provided for issuance of writs of *habeas corpus* to remove civil defendants from lower courts of record into the Supreme Court. The writ was allowed by a Supreme Court justice only when the sum in dispute exceeded £100. Laws of 1801, Chap. 13, sect. 1-3, and *Revised Laws* (1813), Chap. 13, Vol. 1, pp. 140-42, continued those provisions, changing the minimum amount to $250. (See note 138 on the writ of *certiorari* to transfer a civil case to the Supreme Court.) Laws of 1787, 10th Sess., Chap. 39; Laws of 1801, Chap. 13, sect. 1, 4; and *Revised Laws* (1813), Chap. 13, sect. 1, 4, vol. 1, pp. 140-42, regulated transfer of criminal defendants in courts of general sessions into the jurisdiction of the Supreme Court. The statutory provisions on *habeas corpus* in civil and criminal cases were consolidated and expanded in *Revised Statutes* (1829), Part III, Chap. 9, Title 1, Arts. 1-3.

147. Laws of 1801, Chap. 28, sect. 19 (sheriff's duty), and Chap. 65, and *Revised Laws* (1813), Chap. 57, vol. 1, pp. 354-58, provided for the speedy execution and return of the writ of *habeas corpus* "to prevent unjust imprisonment." *Revised Statutes* (1829), Part III, Chap. 9, Title 1, Art. 2, contains very detailed provisions on writs of *habeas corpus* and *certiorari* "when issued to inquire into the cause of detention." (*Habeas corpus* required personal appearance in court, while *certiorari* did not.) See Graham, *Organization and Jurisdiction of the Courts*, pp. 169-230, which includes a discussion of *habeas corpus* for fugitive slaves. On the right to *habeas corpus* to inquire into the cause of detention, see U.S. Constitution, Art. I, sect. 9, and N.Y. Constitution (1894), Art. I, Sect. 4.

148. Weintraub, "Mandamus and Certiorari in New York," pp. 683-717; Laws of 1788, 11th Sess., Chap. 11; *Revised Statutes* (1829), Part III, Chap. 9, Title 2, Art. 3. A significant case narrowing the scope of the writ of *mandamus* was Judges of the Oneida Common Pleas v. People ex rel. Savage, 18 Wendell 79 (1837).

Inventory of Record Series Supreme Court of Judicature

(Clerk's Offices in New York City, Albany, Utica, Geneva, 1691-1847)

Introduction

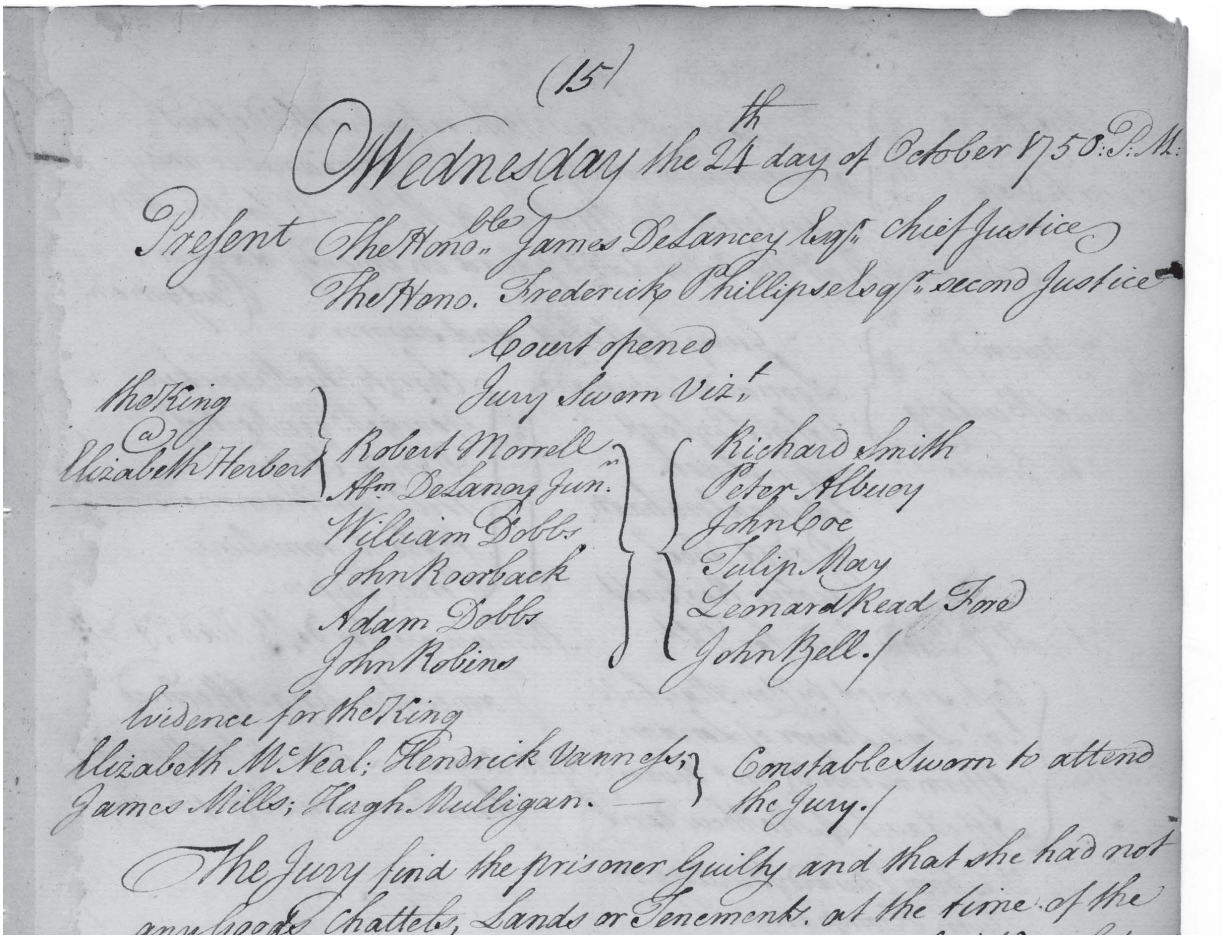
The New York State Archives preserves an estimated 2500 cubic feet of pre-1848 Supreme Court documents. Many of those records are also available on microfilm. The records are arranged in 194 series. Most series are an aggregate group of documents filed or record books created by one of the four court clerks, whose offices were in New York City, Albany, Utica, and Geneva, or by later custodians after 1847. Archivists have placed a small number of unfiled documents in series to facilitate cataloging and access. The documents in a particular series have the same form or deal with the same subject or activity or are arranged serially.

The inventory is preceded by a summary list of all record series. The order of series follows the progress of a case through the court: civil arrest or summons, bail, pleading, trial (if there was one), judgment, execution of the judgment, and satisfaction (payment of the money judgment). Listed next are series documenting motions and rules; cases appealed or transferred from lower courts; special proceedings such as insolvencies; collection of court fees; and attorney admissions. The summary list provides the title, dates, and quantity of each series and indicates the clerk's office where the documents were filed or record books were created. Following the summary list are detailed record series descriptions. In addition to the series title, dates, and quantity, the descriptions contain information about the function, content, arrangement, and indexing (if any) of each record series. Many series have gaps, and missing years are noted. Because the same or very similar series existed at each of the Supreme Court clerk's offices, most entries start with a general discussion of the common characteristics of several similar series. There follows a description of the distinguishing features of each individual series.

The list of record series (pages 87-96) provides an overview of the following record series descriptions.

Documents relating to a specific case in the Supreme Court of Judicature may be found in up to a dozen or more different record series, depending on the type of case and the complexity of the proceedings. However, the most extensive record series—in terms of quantity of records (nearly 1000 cubic feet) and the completeness of information about cases—are the judgment rolls. The judgment roll contains a summary of the pleadings and proceedings in the case, including the trial verdict (if any), or the defendant's confession of debt or damages, and the award of judgment.

Access to Supreme Court of Judicature cases is complicated because record series have varying arrangements. Most filed papers are arranged chronologically by year and thereunder either alphabetically by name of a party to the case (usually the defendant), or by name of filing attorney. The judgment rolls, for example, are arranged


(15)

Wednesday the 24th day of October 1750. P. M.

Present The Honble James DeLancey Esqr. chief Justice
The Hono. Frederick Phillipse Esqr. second Justice

Court opened
Jury Sworn Viz.t

The King
vs
Elizabeth Herbert

Robert Morrell
Wm DeLancey Junr.
William Dobbs
John Roorback
Adam Dobbs
John Robins

Richard Smith
Peter Albury
John Coe
Tulip May
Leonard Read Foreman
John Bell.

Evidence for the King
Elizabeth McNeal; Hendrick Vanneps;
James Mills; Hugh Mulligan.

Constable Sworn to attend the Jury.

The Jury find the prisoner Guilty and that she had not any Goods Chattels, Lands or Tenements, at the time of the

chronologically by year, thereunder alphabetically by first letter of the surname or corporate name of the defendant (New York City) or the judgment debtor (losing party) (Albany, Utica, Geneva). Court-produced dockets and transcripts of dockets of money judgments served as the original indexes to the judgment rolls, and they are still the only complete indexes to judgments filed at Albany, Utica, and Geneva. The dockets and transcripts list judgment debtors in alphabetical order by first letter of debtor's name, then in chronological order by date of filing and docketing the judgment in the clerk's office. The dockets of judgments commence in 1785 and continue complete through 1847. The dockets list those Supreme Court judgments, the vast majority, that resulted in a money award. They omit a small number of judgments that did not require payment of money.

A partial cumulative index to the judgment dockets is an index to judgment debtors covering all four court offices for the years 1829 to 1835. Other voluminous series of papers filed in the Supreme Court clerk's offices at Albany, Utica, and Geneva, such as pleadings, motion papers, and writs, are not indexed at all. The judgment rolls, pleadings, and other papers filed by the Supreme Court clerk in New York City are indexed by plaintiff on cards, and by plaintiff and defendant in electronic spreadsheet indexes which include selected data from the card indexes.

Most series described in the inventory have finding aids, which are volume or container lists giving span dates of individual books or boxes of filed documents. Most of those finding aids are available on the State Archives' website.

SUPREME COURT MINUTES, OCT. 24-25, 1750.

Both criminal and civil cases appear on this page (detail). On Oct. 24, a jury found Elizabeth Herbert guilty of a felony (not specified); she was granted a pardon and discharged on Jan. 19, 1750/51. On Oct. 25, judgments were entered against two men who owed money to the Crown. The defendant in a civil action was ordered to plead within twenty days after service of plaintiff's declaration.

(Series JN531, Minute Books.)

Series Identification Codes

The State Archives' series identification codes for the Supreme Court records consist of an alphanumeric code (for example, J0154 or JN527). The initial letter 'J' denotes records from the judicial branch of government. 'J' series described in this inventory were transferred to the State Archives by the Court of Appeals in 1982. 'JN' series were transferred by the Unified Court System from the New York County Clerk's Office in 2017-19. The digits in a 'J' series code derive from series numbers assigned by the WPA Historical Records Survey (HRS) during the 1930s. The HRS compiled but never published an "Inventory, Records Preserved, Court of Appeals" (Albany: ca. 1936). However, much of the information in this inventory is inaccurate. Some of the HRS series were actually aggregates of several original series. Wherever possible, the original series have been identified, separated out, and cataloged as such. They are indicated by sequential digits (starting with '1') occupying the second space of the code. For example, series J1011 Fines and Chirographs (Albany) was found in a labeled bundle among J0011 Motions and Declarations (Albany). Because the documents in this bundle related to a particular type of proceeding and were unrelated to other documents in the series, they were designated as a separate series.

'JN' series numbers derive from an inventory of pre-1848 records of the Supreme Court of Judicature at the New York County Clerk's Office, Division of Old Records, that was prepared by staff of the Unified Court System. Completed in 2016, the inventory was amended in 2017, 2018, and 2019 as additional Supreme Court records were located and transferred to the State Archives. That inventory describes existing record series as they were reorganized and then indexed by court employees in the late nineteenth and early twentieth centuries. The inventory also identifies additional documents that could not be assigned to existing series. Those collections of similar documents have been cataloged by the State Archives as record series.

Series Titles

Most of the record series listed in this inventory are groups of records of the Supreme Court of Judicature that were assembled and organized by court clerks. Each series of record books or filed documents results from a particular court function, or related functions. Examples of record series are judgment rolls, dockets of judgments, and writs (sealed court orders of various types). Series titles assigned by the State Archives are derived from the titles used by custodians of records of the old Supreme Court of Judicature after the court was reorganized as the Supreme Court in 1847. Staff of the Court of Appeals and the New York County Clerk's Office sometimes employed different titles for the same types of documents. For example, what were termed "declarations" (or *narr., narratio*, the Latin term for a declaration) in Albany were called and indexed in New York City as "pleadings," a more inclusive and accurate term. (In common-law pleading, the declaration was the plaintiff's initial demand for payment of a debt or damages; it was followed by the defendant's plea and possibly additional pleadings by the parties.) Such variant series titles have been retained, often in modified form, because they have been cited as such by researchers. The series title is followed by span dates (earliest and latest documents in a series) and sometimes bulk dates (year range of most documents).

List of Record Series (c.f. = cubic foot/feet)

Writs of Arrest and Summons (see also Writs of Execution below)

JN536	Precipes (New York), 1713-1812 (with gaps)	0.4 c.f.
J0168	Precipes and Original Writs (Albany or Utica), 1815-25	0.8 c.f.
J1026	Precipes and Writs of Summons (Geneva), 1831-42	0.8 c.f.
JN543	Writs of *Capias ad Respondendum* and Other Sheriff's Writs (New York), 1736-1840 (with gaps)	4.4 c.f.
A0262	Miscellaneous Writs and Bail Pieces, 1763, 1785-1824	0.5 c.f.
JN595	Miscellaneous Writs (New York), 1795-1799	0.1 c.f.
JN999	Sheriff's Writs and Other Historical Documents (New York), 1737-1834	1.0 c.f.
J5013	Writs of Dower (Utica), 1824-29	0.4 c.f.
J0028	Writs of *Capias ad Respondendum* (Geneva), 1829-47	9.9 c.f.
J0030	Writs of Replevin (Geneva), 1838-47	0.8 c.f.
J8013	Writs of Attachment (Utica), 1825-43	0.4 c.f.

Special Bail Pieces

JN508	Special Bail Pieces (New York), 1748-1823	1.0 c.f.
J0096	Special Bail Pieces (Albany), 1797-1847	16.3 c.f.
J0098	Special Bail Pieces (Utica), 1829-47	15.5 c.f.
J0099	Special Bail Pieces (Geneva), 1829-47	2.6 c.f.

Special Bail Books

J1202	Special Bail Books (Albany), 1799-1827	0.3 c.f.
J2202	Special Bail Books (Utica), 1807-33	1.0 c.f.
J3202	Special Bail Books (Geneva), 1829-43	0.5 c.f.

Recognizance Rolls and Plaintiffs' Bonds

J0002	Recognizance Rolls (Albany), 1797-1834	2.6 c.f.
J0003	Recognizance Rolls (Utica), 1807-34	1.3 c.f.
J1003	Recognizance Rolls (Geneva), 1829-39	0.4 c.f.
J0152	Bonds of Plaintiffs and Appellants (Albany), 1808-48	1.7 c.f.

Affidavits of Justification of Special Bail

J1098	Affidavits of Justification of Special Bail (Utica), 1807-47	0.4 c.f.

J3026	Affidavits of Justification of Special Bail (Geneva), 1839-47	0.4 c.f.

Committiturs and Orders for Exoneration of Bail

J0143	Committiturs and Orders for Exoneration of Bail (Albany), 1797-1829	2.2 c.f.
J0144	Committiturs and Orders for Exoneration of Bail (Utica), 1807-37	2.2 c.f.

Declarations and Pleadings (includes some Motion Papers)

JN522	Pleadings and Other Civil and Criminal Court Documents (New York), 1685-1837 (bulk 1751-1837)	74.0 c.f., microfilm
JN535	Pleadings and Other Civil Court Documents (New York), 1838-47	27.0 c.f.
JN121	Card Index to Supreme Court Pleadings and Other Court Documents, ca. 1699-1910	14.3 c.f., microfilm
JN110	Spreadsheet Index to Supreme Court Pleadings and Other Documents, ca. 1699-1910 (bulk 1751-1910)	90 MB
JN505	Registers of Defendants' Appearances (New York), 1832-47	0.8 c.f.
J0015	Declarations (Albany), 1838-47	126.0 c.f.
J0009	Declarations (Utica), 1831-42	61.5 c.f.
J0017	Declarations (Geneva), 1829-47	43.4 c.f.
J0011	Motions and Declarations (Albany), 1796-1847	187.9 c.f.
J0010	Declarations and Motions before 1830 (Utica), 1821-29	1.3 c.f.
J1013	Declarations and Motions (Utica), 1841-47	41.3 c.f.
J1012	Pleas and Demurrers (Geneva), 1837-47	1.3 c.f.
J0004	Cognovits (Geneva), 1829-47	5.2 c.f.

Reports of Judgment Awards

JN551	Writs of Inquiry and Inquisitions (New York), 1707, 1758, 1784-1844 (with gaps)	0.1 c.f.
J0027	Writs of Inquiry and Inquisitions (Albany, Utica, Geneva), 1823-47	12.5 c.f.
J0006	Reports of Referees (Geneva), 1830-47	0.4 c.f.

Copies of Pleadings Furnished to Trial Courts

J0022	Copies of Pleadings Furnished to Circuit Courts ("*Nisi Prius* Records," "Circuit Rolls") (Albany), 1797-1847	47.7 c.f.

J0023	Copies of Pleadings Furnished to Circuit Courts ("*Nisi Prius* Records," "Circuit Rolls") (Utica), 1828-47	22.8 c.f.
J0146	Copies of Pleadings Furnished to Circuit Courts ("Circuit Rolls") (Geneva), 1837-47	7.3 c.f.
J3013	Issue Rolls and Continuance Rolls (Utica), 1819-30	0.4 c.f.

Depositions and Summaries of Testimony

JN548	Writs of Commission (New York), 1799-1847	2.3 c.f.
J0014	Writs of Commission (New York), ca. 1802-62	0.8 c.f.
J0170	Writs of Commission (Albany and Utica), 1802-43	1.3 c.f.
J0151	Testimony Taken Conditionally, 1833-46	0.4 c.f.

Proceedings in Courts of Oyer and Terminer and Circuit Courts

JN521	Courts of Oyer and Terminer Minute Books,1716-1717, 1721-1749	0.3 c.f., microfilm
JN593	Courts of Oyer and Terminer Indictments and Miscellaneous Papers (New York), 1685-1793 (with many gaps)	0.2 c.f.
JN596	Circuit Courts Minute Book (New York), 1721-1749	0.1 c.f.
JN598	Circuit Court and "Sittings" Rough Minute Books (New York), 1784-86, 1801-20, 1842	2.0 c.f.
JN518	Circuit Court and "Sittings" Engrossed Minute Books (New York), 1784-1817, 1824-27	1.4 c.f., microfilm
JN513	Circuit Court Trial Calendars, Rough Minutes, Pleadings, and Other Papers (New York), 1752-1847 (with gaps)	4.0 c.f.
JN517	Circuit Court and "Sittings" Trial Calendars (New York), 1802-18, 1823-34 (with gaps)	2.0 c.f.
JN511	Account Book of Costs in Circuit Courts (New York), 1793-1800	0.1 c.f.
JN512	Accounts of Fines in Circuit Court and Court of Oyer and Terminer (New York), 1796-1829, 1843-1845	0.1 c.f.
B0138	Precepts for Circuit Courts and Courts of Oyer and Terminer, Queens County, 1788-1794	0.1 c.f.
JN516	Certifications of Constables' Attendance at Circuit Courts (New York), 1803-1847	0.1 c.f.
JN554	Writs of *Venire Facias Juratores* (New York), 1766-1830	7.5 c.f.
J4011	Lists of Freeholders Qualified to Serve as Jurors (Albany), 1789-1821	1.3 c.f.

J2011	Criminal Case Documents (Albany), 1797-1808	0.4 c.f.
J3011	Summaries of Testimony Given in Circuit Courts and Courts of Oyer and Terminer, 1823-28	2.6 c.f.

Judgment Rolls

JN519	Judgment Rolls and Other Documents on Parchment (New York), 1684-1848 (bulk ca. 1765-1810)	100.0 c.f.
JN120	Card Index to Supreme Court and Court of Chancery Documents on Parchment, 1684-1848	4.0 c.f., microfilm
JN109	Spreadsheet Index to Supreme Court Judgment Rolls and Other Documents on Parchment, Court of Chancery and First Circuit Filed and Transcribed Documents, and New York City Court of Common Pleas and New York City Superior Court Filed Documents, 1684-1895	4.2 MB
JN528	Miscellaneous Judgment Rolls (New York), 1772-1826	0.2 c.f.
JN529	Judgment Rolls (New York), 1781-1847	240.5 c.f.
JN117	Card Index to Supreme Court Judgment Rolls (New York), 1781-1910	101.5 c.f., microfilm
JN199	Spreadsheet Index to Supreme Court Judgment Rolls and Other Records (New York), ca. 1783-1953	111 MB
J0140	Judgment Rolls (Albany), 1797-1847	326.4 c.f.
J0134	Judgment Rolls (Utica), 1807-47	207.7 c.f.
J0137	Judgment Rolls (Geneva), 1827-47	111.8 c.f.
J1011	Fines and Chirographs (Albany), ca. 1793-1829	1.0 c.f.

Dockets of Money Judgments

JN527	Docket of Judgments (New York), 1785-1851	2.5 c.f., microfilm
J0131	Docket of Judgments (New York), 1797-1810	1.0 c.f.
J0132	Transcripts of Docket of Judgments (New York), 1809-47	4.5 c.f., microfilm
JN526	Transcripts of Docket of Judgments (Albany, Canandaigua, Geneva, Utica, and New York), 1790-1847	18.0 c.f., microfilm
J0141	Docket of Judgments (Albany), 1797-1847	10.0 c.f.
J1141	Transcripts of Docket of Judgments (Albany), 1808, 1810-11	0.2 c.f.
J0135	Transcripts of Docket of Judgments (Utica), 1807-47	7.0 c.f., microfilm

J0138	Transcripts of Docket of Judgments (Geneva), 1829-47	4.0 c.f., microfilm
J0142	Index to Dockets of Judgments (Albany, Utica, Geneva, New York), 1829-35	1.0 c.f.
JN111	Consolidated Index of Court Judgments Docketed in New York County and City, 1844-1855	4.0 c.f.
JN597	Transcript of Docket of Judgments in U.S. District Court, Southern District of N.Y. (New York), 1829-1839	0.3 c.f., microfilm
J6013	Transcripts of Judgments in U.S. District and Circuit Courts, 1831-36	0.2 c.f.
J0222	Transcripts of Docket of Judgments in U.S. District and Circuit Courts, (Utica), 1830-36	0.5 c.f.
J0074	Transcripts of Chancery Decrees, (Albany, Utica, Geneva), 1830-47	4.2 c.f.

Writs of Execution (includes some Writs of Arrest)

J0024	Writs of Arrest and Execution (Albany), 1797-1847	79.1 c.f.
J0013	Writs of Arrest and Execution (Utica), 1807-47	64.5 c.f.
J0025	Writs of Execution (Geneva), 1829-47	29.7 c.f.
J4026	Writs of Possession (Geneva), 1840-43	0.4 c.f.
J7026	Precepts and Precipes (Geneva), 1829-47	0.4 c.f.
JN553	Writs of *Scire Facias* (New York), 1794-1814	0.1 c.f.
J1031	Writs of *Scire Facias* (Utica), 1843-45	0.2 c.f.
J1002	Post-1847 Documents Relating to Cases in the Supreme Court of Judicature and Court of Chancery, 1838-61	0.2 c.f.

Registers of Return of Writs

A0178	Register of Writs Sealed and Issued (New York), 1757-62	0.5 c.f.
JN545	Registers of Writs Sealed and Issued (New York), 1772-76, 1790-99	4.0 c.f.
JN599	Registers of Returns of Writs (New York) 1796-1845	3.0 c.f.
J0210	Index to Returns of Writs, Summonses, and Executions (New York), 1814-17, 1826-58	4.0 c.f., microfilm
J3130	Minutes of Return of Writs by Sheriffs (Albany), 1797-99	0.2 c.f.
J1153	Registers of Returns of Writs of Execution (Albany), 1837-54	1.0 c.f.
J0226	Registers of Returns of Writs (by County), 1815-47	0.8 c.f.

Satisfaction Pieces

J0139	Satisfaction Pieces (Albany), 1832-39	1.3 c.f.
J0133	Satisfaction Pieces (Utica), 1808-45	3.4 c.f.
J0136	Satisfaction Pieces (Geneva), 1829-42	1.7 c.f.

Common Rule Books

JN520	Common Rule Books (New York), 1797-1854	19.3 c.f.
J1165	Common Rule Books (Albany), 1797-1849	58.0 c.f.
J2165	Common Rule Books (Utica), 1807-49	48.0 c.f.
J0167	Common Rule Books (Geneva), 1829-47	13.0 c.f.
J1167	Common Rule Books for Returns of Writs of *Capias* (Geneva), 1829-39	0.6 c.f.
J2167	Common Rule Books for Judgments on Default (Geneva), 1837-47	1.0 c.f.

Minute Books

JN531	Minute Books (New York), 1691-1847	14 c.f.
JN594	Rough Minutes (New York), 1795	0.1 c.f.
JN510	Clerk's Register of Cases Argued and Decided (New York), 1842	0.1 c.f.
J0130	General and Special Term Minute Books (Albany), 1797-1847	11.0 c.f.
J1130	Rough Minute Books (Albany), 1797-1807	0.5 c.f.
J0079	Minute Books for the Trial of Issues (Albany), 1798-1800	0.2 c.f.
J2130	Index (Partial) to Minute Books (Albany), 1797-1847	0.2 c.f.
J0128	General Term Minute Books (Utica), 1820-46	3.0 c.f.
J0129	General Term Minute Books (Geneva), 1841-46	0.2 c.f.

Calendars of Enumerated Motions

J0241	Calendars of Enumerated Motions (Albany), 1806-47	1.3 c.f.
J1241	Calendars of Enumerated Motions (Utica), 1820-47	1.3 c.f.
J2241	Calendars of Enumerated Motions (Geneva), 1841-47	0.3 c.f.

Motions and Miscellaneous Papers (see also Declarations and Pleadings above)

J7011	Briefs, Draft Rules, and Motions (Albany), 1812-27	1.3 c.f.
J0001	Miscellaneous Motions (Albany, Geneva), ca. 1806-47	6.0 c.f.

J0126	Motions ("Term Papers") (Utica), 1820-46	14.2 c.f.
J1126	Miscellaneous Motions (Utica), 1832, 1837	1.3 c.f.
J0175	Orders of Circuit Judges on Motions for New Trials or for Commissions (Utica), 1834-47	0.4 c.f.
J2013	Motions Denied (Utica), ca. 1841-47	1.4 c.f.
J0125	Motions and Notices of Joinder in Demurrer (Geneva), 1841-46	0.4 c.f.
J5026	Orders for Appointment of Guardian or Next Friend (Geneva), 1829-47	0.4 c.f.
J6026	Orders for Commissions (Geneva), 1829-47	0.4 c.f.
J8026	Orders of Circuit Judges on Motions for New Trials (Geneva), 1833-47	0.4 c.f.
J0005	Stipulations (Geneva), 1844	0.1 c.f.
J0012	Miscellaneous Filed Documents (Geneva), 1829-44	0.8 c.f.
J9813	Miscellaneous Unfiled Documents (Geneva), ca. 1839-44	0.2 c.f.
JN532	Briefs, Draft Rules, and Motions (Albany), 1812-27	1.3 c.f.
J1000	Assorted Estrayed Documents, ca. 1786-1857	13.5 c.f.

Writs for Transfer or Review of Cases from Lower Courts

JN550	Writs of *Habeas Corpus* (New York), 1766-1816	0.8 c.f.
JN552	Writs of *Procedendo* (New York), 1786-1812	0.2 c.f.
JN547	Writs of *Certiorari* (New York), 1783-1812	0.4 c.f.
JN549	Writs of Error (New York), 1787-1817	0.5 c.f.
JN591	Writs of *Certiorari*, Error, and *Habeas Corpus* (New York), 1832-1855	0.4 c.f.
J0147	Writs of *Certiorari*, ca. 1796-1847	49.0 c.f.
J0029	Writs of *Habeas Corpus* (Albany, Utica), 1807-1829	1.3 c.f.
J0031	Writs of Error (Utica), 1807-47	14.6 c.f.
J0021	Bills of Exceptions, ca. 1805-47	0.9 c.f.
J8011	Assignments of Errors (Albany), 1837-39, 1844-47	0.2 c.f.
J2026	Assignments of Errors (Geneva), 1829-42	0.4 c.f.
J4013	Writs of *Mandamus*, 1822, 1825-44	0.4 c.f.
J1025	Writs of *Certiorari*, Error, *Habeas Corpus*, and *Mandamus* (Albany, Utica), 1800-47	9.9 c.f.
J1001	Remittiturs from the Court for the Correction of Errors (Albany), 1814-43	0.4 c.f.

Insolvency Papers

J2000	Insolvency Papers (New York), 1784-1828	8.6 c.f.
JN503	Assignments and Discharges of Insolvent Debtors (New York), 1830-1850	microfilm
JN114	Docket of Insolvent Assignments (New York), 1754-1864	0.3 c.f., microfilm
J0120	Index of Insolvent Assignments Filed in New York City, 1754-1855	0.2 c.f.
JN534	Petitions for Attachment of Property of Absconding, Concealed, and Non-Resident Debtors (New York), 1784-1852	3.0 c.f.
JN934	Index of Absconding, Concealed, and Non-Resident Debtors (New York), 1800-1874	microfilm
J0154	Insolvency Papers (Albany), 1795-1842	40.0 c.f., microfilm
J0156	Insolvency Papers (Utica), 1806-47	5.6 c.f., microfilm

Partition Papers

J0019	Reports of Commissioners to Partition Lands (Albany), 1802-29 (with gaps)	1.7 c.f.
J9913	Reports of Commissioners to Partition Lands (Utica), 1825-30	0.4 c.f.

Naturalization Papers

J5011	Naturalization Papers (Albany), 1799-1812	0.2 c.f.
J9013	Naturalization Papers (Utica), 1822, 1838-39	0.2 c.f.

Wills and Probates

JN540	Record of Wills Proved at New York, 1787-1829, 1847-1856	1.0 c.f., microfilm
J1041	Petitions and Affidavits for Proof of Wills (Albany), 1801-28	0.2 c.f.
J0041	Record of Wills Proved at Albany, 1799-1829	0.3 c.f.
J0020	Record of Wills Proved at Utica, 1818-29	0.2 c.f.
J1020	Wills and Petitions for Probate (Utica), 1820-29	0.4 c.f.

Other Statutory Proceedings

J1014	Reports of Commissioners Appointed to Appraise Lands Taken for Street Openings in New York and Brooklyn (Albany, Utica), 1817, 1830, 1837, 1845.	0.4 c.f.
J6011	Affidavits of War Service and Property by Revolutionary War Veterans (Albany), 1820	0.4 c.f.

Clerks' Financial Records

JN507	Clerk's Register of Attorney Accounts (New York), 1795-98	0.3 c.f.
JN537	Receipt Book for Satisfaction of Judgments (New York), 1826-28	0.3 c.f.
J0007	Clerk's Registers of Cases in Supreme Court of Judicature and Courts of Common Pleas, 1797-1836	0.4 c.f.
J1244	Ledgers of Accounts with Attorneys (Albany, Utica, Geneva), ca. 1813-17, 1842-1844	0.4 c.f.
J0214	Indexes and Abstracts of Attorneys' Accounts (Albany), 1839-47	1.0 c.f.
J0230	Cash book for Clerk's Fees (Albany), 1846-47	0.2 c.f.
J0244	Day Book for Clerk's Fees (Geneva), 1839-47	0.5 c.f.
J7013	County Treasurer's Receipts for Fees, 1841-44	0.2 c.f.
J1152	Bills of Costs (Albany), 1802-12	0.2 c.f.
JN601	Bills of Costs Taxed by Court Officers (Albany and New York), 1813-1821	0.2 c.f.

Lists of Attorneys, Attorneys' Agents, and Supreme Court Commissioners

JN541	Rolls of Attorneys and Counsellors and of Solicitors in Chancery, 1754-1847	2.3 c.f., microfilm
J0044	Oaths of Office of Attorneys, Solicitors, and Counselors, 1796-1847	0.5 c.f.
J9011	Lists of Supreme Court Commissioners (Albany), 1788-1800	0.1 c.f.
J1150	Registers of Agents (Albany), 1799-1813	0.2 c.f.
J0150	Notices of Appointment of Agents (Albany), 1826-40	1.3 c.f.
J0149	Notices of Appointment of Agents (Utica), 1809-41	2.2 c.f.

Certificates of Clerkships

JN504	Certificates of Clerkships and Other Attorney Admission Documents (New York), 1799-1859	2.0 c.f.
J0104	Certificates of Clerkships (Albany), 1803-47	8.6 c.f.

J1104	Certificates of Clerkships (Utica), 1807-36	1.3 c.f.
J2104	Certificates of Clerkships (Geneva), 1838-44 (with gaps)	1.3 c.f.

Writs of Arrest and Summons

(See also Writs of Execution, p. 137)

Before 1831, the writ of arrest (*capias ad respondendum* or *capias*) was the usual means of commencing a civil action, bringing a defendant into the jurisdiction of the Supreme Court. Starting in 1831 an action was usually commenced by serving the plaintiff's declaration on the defendant, and the writ of *capias* was employed only in special situations. For a detailed discussion of these writs, see J0028 Writs of *Capias* (Geneva) below. Most writs of *capias* filed in the Supreme Court clerk's office at New York City were destroyed in the early twentieth century (some examples survive in series JN543 and JN999). Writs of *capias* returned to the clerks' offices at Albany and Utica were filed with the writs of execution, which were issued after judgment. The Albany and Utica series of writs of arrest and execution are in series J0013 and J0024. (See Appendix J, "Offices for Filing Supreme Court Writs," which lists the counties from which writs were to be returned to a particular Supreme Court clerk's office during the period 1820-1847.)

"Original" writs were employed to initiate certain actions involving title to real property or in actions in which the defendant was a corporation (i.e. a fictitious person which could not be physically arrested by a writ of *capias*). There were two general types of original writs in use: writs of summons and writs of attachment. In civil actions of debt, covenant, etc., the original writ served on a corporation was a summons. In quasi-criminal actions of trespass, case, etc., the original writ was an "attachment," which ordered the sheriff to seize the defendant's property as security for satisfaction of a judgment against him. Use of the writ of attachment was abolished for most purposes in 1817. The writ continued to be used against sheriffs who failed to perform a court order, such as executing a writ of *fieri facias* for sale of a judgment debtor's property.

JN536	Precipes (New York), 1713, 1762, 1790, 1795-1800, 1812.	0.4 c.f.

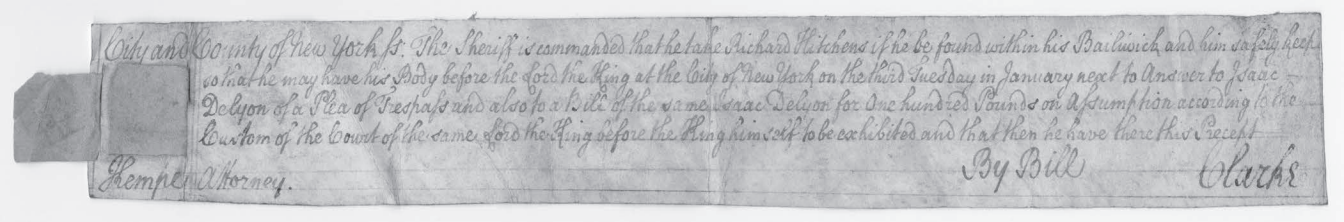
The "precipe" was an attorney's written instruction to the court clerk to seal a writ or to enter a common rule, for which no court or judge's order was required. Documents are sorted by year.

J0168	Precipes and Original Writs (Albany or Utica), 1815-25.	0.8 c.f.

An original writ ordered a sheriff to summon or attach a defendant to appear in court. The writ contains a brief statement of the cause of action and a demand for payment of debt or damages. On the verso of the writ is the sheriff's certificate that he has summoned or attached the defendant. Examples of both types of writ (summons and attachment) are found in this series. There are also a few precipes (plaintiff's instructions to a clerk to prepare an original writ). All the documents in this series concern promissory notes given by banks; the plaintiff is the creditor or an assignee. The documents are unarranged, and it is uncertain whether they were originally filed in Albany or Utica.

J1026 Precipes and Writs of Summons (Geneva), 1831-42. 0.8 c.f.

This series consists of original writs ordering a sheriff to summon a corporate defendant to appear in court and answer the plaintiff's demand as stated in the writ. The sheriff's certificate of service appears on the verso. Also found are precipes for the writs of summons. Many of the actions involve promissory notes given by banking corporations, but there are also cases involving railroads, churches, schools, and manufacturing and insurance companies. The manner of proceeding in actions against corporations was specified in the *Revised Statutes* of 1829, Part III, Chap. 8, Title 4, Art. 1. The documents in this series are unarranged and unindexed.


City and County of New York ss. The Sheriff is commanded that he take Richard Hitchens if he be found within his Bailwick and him safely keep so that he may have his Body before the Lord the King at the City of New York on the third Tuesday in January next to Answer to Isaac Delyon of a Plea of Trespass and also to a Bill of the same Isaac Delyon for One hundred Pounds on Assumption according to the Custom of the Court of the same Lord the King before the King himself to be exhibited and that then he have there this Precept

Hempe Attorney. By Bill Clarke

JN543 Writs of *Capias ad Respondendum* and Other Sheriff's Writs (New York), 1736-1840 (bulk 1759-1815). 4.4 c.f.

Most of the documents are writs of *capias ad respondendum*, ordering a sheriff to arrest a defendant for appearance in the Supreme Court. Also present are writs of *fieri facias* and writs of *capias ad satisfaciendum*, ordering a sheriff to execute a judgment. There are a few other writs for special purposes, issued under the seal of the Supreme Court or the Court of Chancery. The writs in this collection were assembled from various locations at the New York County Clerk's Office. The writs are sorted by year, and in some cases under the filing attorney's surname.

PRECEPT, 1772.

This precept orders the sheriff of New York City and County to arrest the defendant to appear and answer the plaintiff's plea of a trespass (fictitious) "and also" his "bill" seeking payment of one hundred pounds. The "bill of New York" was the substitute for the writ of *capias* if both parties resided in New York City. On the reverse of the writ (on page 15) the sheriff states that he had arrested the defendant.

(Series JN543, Writs of Capias ad Respondendum *and Other Sheriff's Writs.)*

A0262 Miscellaneous Writs and Bail Pieces, 1763, 1785-1824 0.5 c.f.

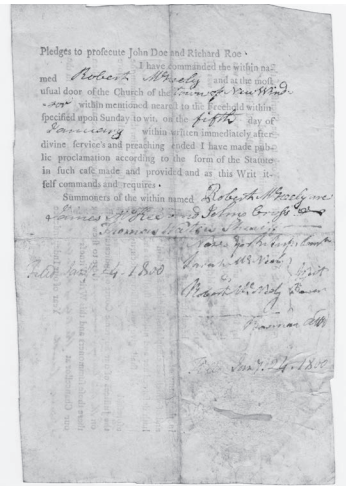
This series consists mostly of writs of *capias ad respondendum*. Other documents include other writs, common bail pieces, one recognizance roll, and one indictment (dated 1763). Also found are two parts of a fine, the record of a conveyance of real property made in court. The documents are unarranged and unindexed. They were given to the New York State Library by the New England Historic Genealogical Society about 1966 and transferred to the State Archives in 1978.

JN595 Miscellaneous Writs, 1795, 1798-1799, and no date 0.1 c.f.

Writs include one example each of a writ of covenant, writ of *habere facias possessionem,* and writ of proclamation. There is also a folder of unidentified writs in poor condition.

JN999 Sheriff's Writs and Other Historical Documents (New York), 1737-1834. 1.0 c.f.

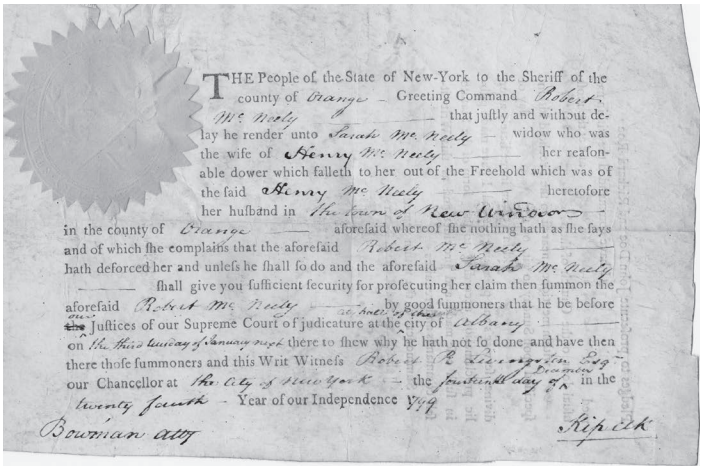
This collection of writs, other court documents, and a few non-government historical documents was donated to the New York State Archives in 2018. The court documents were originally maintained in the New York County Clerk's Office. They are a small remnant of a very large number of writs and other documents that were destroyed, probably in the early twentieth century. Writs in the collection include writs of *capias ad respondendum*, *fieri facias*, *capias ad satisfaciendum*, *scire facias*, and *venire facias juratores*. They were filed by the clerk of the Supreme Court of Judicature in New York City, except for those dating 1825-26, which were filed by the clerk of the Court of Common Pleas for the City and County of New York. The collection also contains mortgages given by Daniel D. Tompkins and his wife Hannah, 1807, 1815; a printed broadside address by Daniel Webster at Saratoga Springs, August 19, 1840; and other historical documents.



Pledges to prosecute John Doe and Richard Roe.

I have commanded the within named Robert Mc Neely that at the usual door of the Church of the [illegible] within mentioned nearest to the freehold within specified upon Sunday to wit, on the fifth day of January within written immediately after divine service and preaching ended I have made public proclamation according to the form of the Statute in such case made and provided and as this Writ itself commands and requires.

Summoners of the within named Robert Mc Neely me



THE People of the State of New-York to the Sheriff of the county of Orange — Greeting Command Robert Mc Neely — that justly and without delay he render unto Sarah Mc Neely — widow who was the wife of Henry Mc Neely — her reasonable dower which falleth to her out of the Freehold which was of the said Henry Mc Neely — heretofore her husband in The Town of New Windsor — in the county of Orange — aforesaid whereof she nothing hath as she says and of which she complains that the aforesaid Robert Mc Neely — hath deforced her and unless he shall so do and the aforesaid Sarah Mc Neely — shall give you sufficient security for prosecuting her claim then summon the aforesaid Robert Mc Neely — by good summoners that he be before the Justices of our Supreme Court of judicature at the city of Albany — on the third tuesday of January next there to shew why he hath not so done and have then there those summoners and this Writ Witness Robert R Livingston Esq Chancellor our Chancellor at the City of New York — the fourteenth day of — in the twenty fourth — Year of our Independence 1799

Bowman atty

Rip'd clk

WRIT OF DOWER, 1799.

Writ was issued by the chancellor, ordering the Orange County sheriff to command delivery to a widow of the dower share of her husband's real property, unlawfully "deforced" (withheld) from her.

(Series J0024, Writs of Arrest and Execution [Albany]).

J5013 Writs of Dower (Utica), 1824-29. 0.4 c.f.

A writ of dower ordered a sheriff to command the heirs of a deceased owner of real property to render unto the decedent's widow the dower right due to her (the lifetime income from one-third of her husband's property) and to summon the owners to appear before the court if they refused to do so. On the verso of the writ is the sheriff's certificate of service and of proclamation of the summons at the door of the church nearest to the disputed property. The writ is usually a writ of dower *unde nil habet* (Latin, "from which she has nothing"), i.e. no part of her dower was delivered to her within the forty-day limit specified by law. The series includes examples of the writ of right of dower, which commanded a tenant to deliver the remainder of the dower, part having been delivered; a writ of grand cape ordering a sheriff to seize the dower share which the tenant has refused to yield up; and a report of commissioners in admeasurement of dower, which describes the premises to be delivered to the widow.

J0028 Writs of *Capias ad Respondendum* (Geneva), 1829-47. 9.9 c.f.

The writ of *capias ad respondendum* (*capias*) ordered the sheriff to arrest a defendant in a civil case for appearance in court to answer the plaintiff's demand for debt or damages. The writ states the name of defendant; the court term when he was required to appear; the name of the plaintiff; the form of action; and the names of the chief justice,

THE PEOPLE *of the* STATE OF NEW-YORK, *to the SHERIFF of the* – – – – – *County of* Cayuga GREETING:

WE COMMAND YOU, – – – – – – – – – – – – – – that you take Francis D. Miner – – – – – –

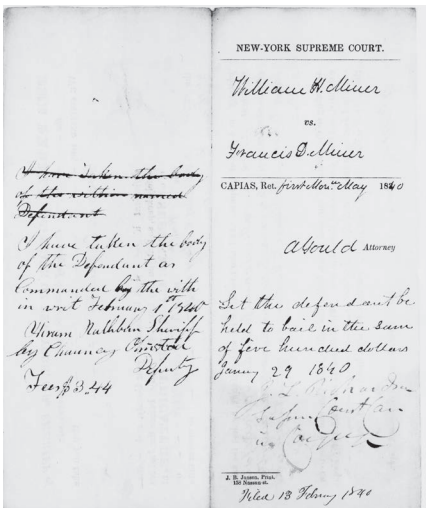
defendant if he shall be found in your County, and him safely keep, so that you may have his *body* before the Justices of our **SUPREME COURT OF JUDICATURE,** at the City Hall in the City of Brugark – – – on the first Monday of May next to – – – – – – to answer unto William H. Miner

plaintiff in a plea of trespass. And also to a bill of the said *plaintiff* against the said *defendant* for preaching uttering and publishing certain false scandalous malicious and actionable words against the said William H. Miner to his damage of one thousand dollars

according to the custom of our said Court, before our said Justices then and there to be exhibited, and have you then and there this writ. **Witness, SAMUEL NELSON,** Esq., our Chief Justice, at the the City of Albany – – – – – – – the first Monday of January one thousand eight hundred and forty

A Gould Attorney

Hallett, Paige, Savage and Sutherland, Clerks.



NEW-YORK SUPREME COURT.

William H. Miner

vs.

Francis D. Miner

CAPIAS, Ret. first Tuesday May 1840

~~Defendant not~~

I have taken the body of the Defendant as Commanded by the within writ February 1 1840

Abram Nathaniel Sheriff by Chauncey Crandall Deputy

Fees $3.44

A Gould Attorney

Let the defendant be held to bail in the sum of five hundred dollars

January 29 1840

Bail 18 February 1840

WRIT OF *CAPIAS AD RESPONDENDUM*, 1840.

This writ orders the Cayuga County sheriff to arrest the defendant, Francis D. Miner, for appearance before the Supreme Court of Judicature during its May 1840 term in New York City. (In fact, this "appearance" was a fiction, since the subsequent pleadings were exchanged between the parties and filed with the court clerk by mail.) The plaintiff, William H. Miner, brought an action of trespass for an alleged slander. The reverse of the writ indicates that the deputy sheriff arrested the defendant and that bail was set at $500.

(Series J0028, Writs of Capias ad Respondendum *[Geneva].)*

court clerks, and plaintiff's attorney. The writ does not contain a detailed statement of the plaintiff's claim or of the facts supporting it. On the verso of the writ is the sheriff's certificate of service *(cepi corpus,* "I seized the body") or non-service (*non est inventus*, "he was not found"), and the amount of bail, if any. When bail was not required there is an endorsement by the defendant agreeing to appear in court. The writs are arranged chronologically by court term. Those dated prior to 1837 are bundled by county of residence of the defendants; those dated 1837 through 1847 are arranged roughly alphabetically by name of plaintiff's attorney. A few scattered writs of execution (*fieri facias* and *capias ad satisfaciendum*) are found in the early years of this series. See J0025 Writs of Execution (Geneva). Returns of writs of *capias ad respondendum* are entered in J1167 Common Rule Books for Returns of Writs of *Capias* (Geneva).

J0030 Writs of Replevin (Geneva), 1838-47. 0.8 c.f.

A plaintiff obtained a writ of replevin to recover physical possession of movable goods that had been unlawfully taken by the defendant. The writ, addressed to the sheriff of the county where the goods lay, names the parties to the action, describes the goods, and commands the sheriff to deliver the goods to the plaintiff and to arrest the defendant for appearance in court. Subscribed or attached to the writ is the plaintiff's affidavit that the property described has not been seized for any tax or fine, or for execution of a judgment or an attachment. The manner of execution of the writ is stated by the sheriff on the verso. Accompanying the writ and affidavit is the bond of the plaintiff and two sureties made out to the sheriff, promising to pay court costs if the judgment was awarded to the defendant. A few files contain the inquisition of a jury as to the value of the goods in dispute. Upon return of the writ of replevin, the case proceeded in the same manner as any other civil action. The writs in this series are bundled by year and are unindexed.

J8013 Writs of Attachment (Utica), 1825-43. 0.4 c.f.

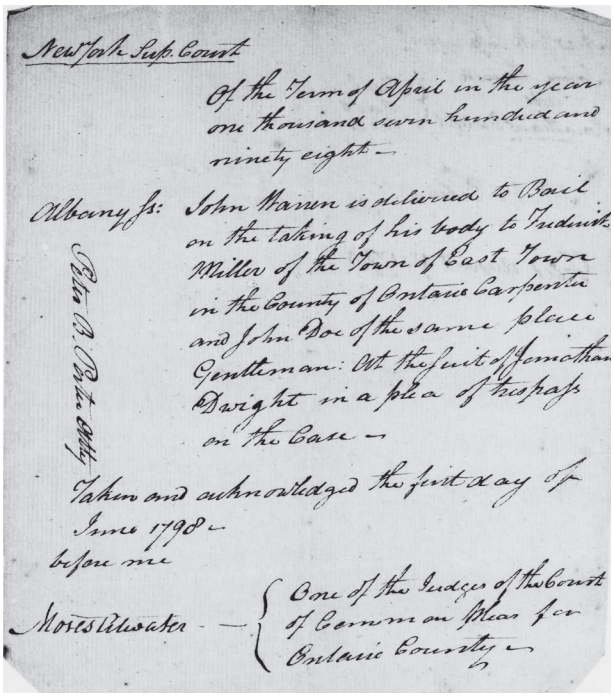
This series consists of writs of attachment ordering a sheriff or coroner to attach a person disobeying a court rule and hold him to appear in court to answer for his contempt. Officers subject to attachment included judges, court clerks, attorneys, sheriffs, witnesses, jurors, and other public officers. The writ was most frequently issued after an incumbent or former sheriff had failed to execute and return a writ of *fieri facias*, commanding him to levy a judgment on the property of a losing party. The rule for attachment required the defendant (i.e., the sheriff) to give a bond for his appearance, and many of the writs have these bonds enclosed. The series includes a few interrogatories, or lists of questions posed by the serving officer to the sheriff; and a few warrants for the arrest of persons who had refused to appear in court to testify as material witnesses. The plaintiff in an attachment proceeding is the People of the State of New York ex *relatione* (Latin, "on the relation of") the aggrieved party, who is termed the "relator." The documents are bundled by term but are otherwise unarranged and unindexed. The series includes some writs from western New York because Laws of 1829, Chap. 42, required that all attachments from that region be filed with the Supreme Court clerk at Utica.

Special Bail Pieces

Before 1832 most defendants in civil actions in which an exact amount of debt or damages was demanded were required to obtain "special bail," or sureties for satisfaction of a judgment. The special bail piece is a memorandum filed with the court stating that the defendant has been "delivered" to special bail. The special bail piece states the names of the defendant and plaintiff; the name, occupation or rank, and residence of the bail (two persons are named, but generally one is fictitious—"John Doe" or "Richard Roe"); and the form of common-law action. The bail piece is acknowledged before a judge or other court officer and (starting 1830) signed by the bail. The amount of the special bail bond is not stated. A few bail pieces have exceptions by the plaintiff objecting to the bail. The bail piece has a distinctive shape–the lower corners of the document are always clipped off. Before the 1830s, bail pieces were generally filed separately; thereafter they were usually included in the judgment rolls. The special bail pieces are arranged chronologically. Entries in the special bail books, described below, are arranged alphabetically by last name and serve as indexes to the bail pieces.

JN508 Special Bail Pieces (New York), 1748-1823 (bulk 1752-1800). 1.0 c.f.

The bail pieces were assembled from various locations at the New York County Clerk's Office and are sorted by year. Other bail pieces filed in New York City are in JN522 Pleadings and Other Civil and Criminal Court Documents.



New York Sup. Court

Of the Term of April in the year one thousand seven hundred and ninety eight —

Albany ss: John Warren is delivered to Bail on the taking of his body to Fridrick Miller of the Town of East Town in the County of Ontario Carpenter and John Doe of the same place Gentleman: At the suit of Jonathan Dwight in a plea of trespass on the Case —

Peter R. Bitts atty

Taken and acknowledged the first day of June 1798 — before me

Moses Ellwater — { One of the Judges of the Court of Common Pleas for Ontario County —

SPECIAL BAIL PIECE, 1798.

This bail piece states that the defendant, John Warren, has obtained special bail. (One of the bail named "John Doe" is fictitious.) The bail piece always has the lower corners clipped off, as in this example. Under common-law procedure, many civil defendants were required first to give a bond to the sheriff or appearance in court, then to obtain special bail for satisfaction of a judgment award in favor of the plaintiff.

(Series J0096, Special Bail Pieces [Albany].)

J0096 Special Bail Pieces (Albany), 1797-1847. 16.3 c.f.

The Albany bail pieces have various arrangements. From 1797 to 1807, the bail pieces are bundled by term. From 1808 to 1826, they are bundled by year or years, then arranged roughly alphabetically by name of attorney. From 1827 on, they are bundled by year or years, then arranged alphabetically by name of defendant. Many are out of order. Some estrayed Albany bail pieces are found in J0099 Special Bail Pieces (Geneva). The Albany special bail pieces from 1797 through 1827 are docketed in J1202 Special Bail Books (Albany).

J0098 Special Bail Pieces (Utica), 1807-47. 15.5 c.f.

The Utica bail pieces are bundled by year or court term, then arranged alphabetically by name of defendant. Some estrayed Utica bail pieces are found in J0099 Special Bail Pieces (Geneva). The Utica special bail pieces from 1807 through 1826 are docketed in J2202 Special Bail Books (Utica). See also J1098 Affidavits of Justification of Special Bail (Utica).

J0099 Special Bail Pieces (Geneva), 1829-47. 2.6 c.f.

The Geneva bail pieces are bundled by year or term but are unarranged beyond that. The bail pieces from 1829 through 1843 are docketed in J3202 Special Bail Books (Geneva). See also J3026 Affidavits of Justification of Special Bail (Geneva).

Special Bail Books

These volumes are dockets of undertakings of bail. Each entry gives the names of the defendant and plaintiff, names of the bail (sometimes with their residences and occupations or ranks), name of defendant's attorney, and date of filing of the special bail piece. The entries are arranged alphabetically by last name of defendant, then chronologically by court term and filing date.

J1202 Special Bail Books (Albany), 1799-1801, 1807-27. 0.3 c.f.

These volumes serve as indexes to J0096 Special Bail Pieces (Albany). The special bail book for 1799-1801 is fragmentary.

J2202 Special Bail Books (Utica), 1807-33. 1.0 c.f.

These volumes serve as indexes to J0098 Special Bail Pieces (Utica). The volume for 1827-33 (letters A-L) is missing.

J3202 Special Bail Book (Geneva), 1829-43. 0.5 c.f.

This volume serves as an index to J0099 Special Bail Pieces (Geneva).

Recognizance Rolls and Plaintiffs' Bonds

The recognizance roll is a record of the undertaking of bail, made before a justice of the Supreme Court. The roll contains the same information as is found in the plaintiff's declaration, followed by a statement of the obligation of the bail. A copy of the bail piece is usually found attached to the roll. The recognizance roll was the formal record upon which a plaintiff could bring an action against the defendant's bail for recovery of a judgment award. (The bail piece was merely a memorandum of the undertaking.) Laws of 1818, Chap. 259, stated that no costs were to be allowed for recognizance rolls except in actions against bail; hence there are few recognizance rolls found after that year. Plaintiffs in error and in some cases original plaintiffs were required to obtain sureties for payment of damages and costs in the event that the opposing party prevailed. See description of such bonds under series J0152, below.

J0002 Recognizance Rolls (Albany), 1797-1834. 2.6 c.f.

The Albany recognizance rolls are arranged by filing date. Some Albany rolls may be found in J0003.

J0003 Recognizance Rolls (Utica), 1807-34. 1.3 c.f.

The Utica recognizance rolls are arranged by filing date. Some of the rolls in boxes 2 and 3 may have been filed at Albany.

J1003 Recognizance Rolls (Geneva), 1829-39. 0.4 c.f.

The Geneva recognizance rolls are unarranged.

J0152 Bonds of Plaintiffs and Appellants (Albany), 1808-48. 1.7 c.f.

The series consists of bonds of plaintiffs and their sureties for payment of damages and costs if they did not prevail in a proceeding. Most of the bonds were filed by plaintiff-appellants when they obtained review by writ of error of a judgment against them. Such review occurred in the Supreme Court or the Court for the Correction of Errors. Bonds could also be required of non-resident or insolvent plaintiffs or trustees for minor plaintiffs, by a rule of the court on motion by the defendant. The bonds are signed by the plaintiff or plaintiff in error and by the surety. The bonds are bundled by court term; few are dated before 1823.

Affidavits of Justification of Special Bail

Affidavits of special bail state that the surety has property worth double the amount demanded by the plaintiff in the writ of *capias ad respondendum*, after payment of all debts; the amount was itself double the demand stated in the plaintiff's declaration. The affidavit also states that the special bail is a freeholder or housekeeper in the county where the defendant resides. The affidavit is signed and acknowledged before a judge or other court officer.

J1098 Affidavits of Justification of Special Bail (Utica), 1807-47. 0.4 c.f.

A few of the Utica affidavits are accompanied by orders for allowance of bail, signed by a Supreme Court commissioner or other court officer. The documents were apparently arranged by filing date but many are out of order. See also J0098 Special Bail Pieces (Utica).

J3026 Affidavits of Justification of Special Bail (Geneva), 1839-47. 0.4 c.f.

This series also includes a few affidavits of merits of a case, made by defendants. This affidavit states that the defendant has "fully and fairly stated his case" to his attorney and that the defendant is advised and believes that he has a "good and substantial case on the merits," that is, in law, and seeks to prevent an expedited judgment against him. This series is unarranged and unindexed. See also J0099 Special Bail Pieces (Geneva).

Committiturs and Orders for Exoneration of Bail

These series contain documents pertaining to the surrender of a defendant and exoneration of his bail from liability for damages and costs awarded in a judgment. Bail might choose to render over the principal (i.e., the defendant) either before or after judgment, but he had to do so before return of a writ of *capias ad satisfaciendum*, which commanded a sheriff to arrest and imprison a judgment debtor until the judgment was satisfied. A typical file in this series contains the following documents: the committitur, a copy of bail piece on which the sheriff states that he has taken the defendant into custody,

and a judge or other court officer orders that the defendant stand committed in the case; a copy of the justice's order to the plaintiff to show cause why the *exoneretur* should not be endorsed upon the bail piece; a copy of notice of impending order to show cause, sent to the plaintiff's attorney by the attorney for the bail; and a justice's final order that the *exoneretur* be subscribed upon the bail piece filed with the clerk of the Supreme Court. Later files in these series occasionally include the original bail piece with the *exoneretur*. The documents are bundled by year but are not otherwise arranged or indexed.

J0143	Committiturs and Orders for Exoneration of Bail (Albany), 1797-1829.	2.2 c.f.
J0144	Committiturs and Orders for Exoneration of Bail (Utica), 1807-37.	2.2 c.f.

Declarations and Pleadings (includes some Motion Papers)

The plaintiff's declaration was the initial pleading in most common-law actions. (The abbreviated term for the declaration was *narr.,* from the Latin *narratio*.) The declaration was drawn up by the plaintiff's attorney after the defendant had been arrested and brought into the court's jurisdiction by a writ of *capias ad respondendum*. (After 1829 the writ of *capias* was omitted in most cases.) The declaration contains the following parts: caption (name of the court and the term in which the writ of *capias* was to be returned); venue (county from which the jury was to come if the case proceeded to trial); commencement (names of the plaintiff and defendant and of the plaintiff's attorney, manner of defendant's appearance, and a brief statement of the cause of action); a detailed "declaration" of the cause of action; and conclusion (demand for payment of debt or damages, or restitution of real or personal property or its value). The statement of the cause of action relates the grounds for the plaintiff's claim. It alleges exactly when, where, and how the plaintiff obtained the credit, sustained the damages, or otherwise became entitled to a court award. The conclusion may contain several separate "counts," each stating the plaintiff's right to the thing demanded, whether it be payment of a debt, recovery of real or personal property, or compensation ("damages") for injury to himself or his property. (The counts each could be the ground for a separate action but were grouped together for convenience.) Printed forms were often used for common types of actions (e.g., trespass on the case and *assumpsit*).

Following the declaration may be found the "oyer," a copy of a promissory note or other written obligation sued upon. The notice of the rule to plead usually appears on the verso of the declaration. The notice informs the defendant that a rule has been entered in the common rule book kept by the clerk of the Supreme Court, ordering him to plead within twenty days of service of the declaration. (Starting 1837 the notice was required only in cases commenced by service of the declaration.) The sheriff's affidavit of service or non-service of the declaration and notice is appended or attached to the declaration. Statutory provisions concerning declarations appear in *Revised Statutes* of 1829, Part III, Chap. 6, Titles 1-2.

Filed with the declarations are subsequent pleadings by defendants and plaintiffs, and determinations of the amounts of damages to be awarded. (Some of the series also contain motion papers, described in detail under series J0011.) Various pleas might

be made following the declaration. When a defendant pleaded the "general issue" and denied the injury, he had to enter the plea appropriate to the form of action. Examples of pleas were "not guilty," in actions of trespass, trespass on the case, and trover; *non assumpsit*, in actions of *assumpsit*; *nil debet,* in actions of debt. The defendant's plea sometimes contains more details about the dispute than does the plaintiff's declaration. Special pleadings, found occasionally in these series, are called the "replication" (plaintiff's reply to defendant's plea) and "rejoinder" (defendant's reply to replication). Other special pleadings are rarely, if ever, found. The purpose of pleading was to reach a point where an issue was "joined," that is, defined precisely enough so that a jury could determine the facts. After joinder of issue, the plaintiff's attorney made up a copy of all the pleadings and sent it to a circuit court for trial. (See Copies of Pleadings Furnished to Trial Courts, p. 112.)

The various series of declarations also contain many *cognovit*s and demurrers. The *cognovit* is the defendant's confession of the facts alleged in the plaintiff's declaration. The demurrer is one party's formal objection to the sufficiency in law of the opposing party's plea, regardless of the facts of the case. If the opposing party did not move successfully to quash a demurrer, the court ruled on the point of law after arguments in a court term. Other documents commonly filed with the declarations are court clerk's reports of damages to be awarded to plaintiffs, and reports of referees appointed to determine the amount of debt or damages in complicated financial cases. There are also writs of inquiry directing a sheriff to empanel a jury to assess damages due to a plaintiff who had been awarded interlocutory judgment upon the defendant's default, demurrer, or confession. (The return attached to the writ of inquiry is called the "inquisition.") For fuller descriptions of some of these documents see J0004 *Cognovit*s (Geneva), J0027 Writs of Inquiry and Inquisitions (Geneva), and J0006 Reports of Referees (Geneva).

JN522	Pleadings and Other Civil and Criminal Court Documents (New York), 1685-1837 (bulk 1751-1837).	74.0 c.f., 90 microfilm rolls

The series consists mostly of documents relating to civil litigation and criminal prosecution in the Supreme Court of Judicature. They were filed by the court clerk in New York City, or in Albany during the years 1778-1783. The majority of the documents are pleadings. There are many other document types, including documents from the circuit courts and courts of oyer and terminer, which were in effect the trial branches of the Supreme Court. A few documents are from other courts. There are also many non-court documents filed by the clerk of the City and County of New York. The present series was assembled and indexed in the early twentieth century. The series consolidates and reorganizes documents that were previously filed in separate series, whose original order is entirely lost. The series is continued by JN535 Pleadings and Other Civil Court Documents, 1838-1847.

The most numerous documents in this series are declarations by plaintiffs (initial pleading in a common-law action); pleadings by defendants and (rarely) additional special pleadings; bonds; bail pieces; draft rules; and defendants' affidavits of merits. Documents relating to trial proceedings include pleadings sent to circuit courts, notes of issue, trial minutes, and juror lists. Documents reporting the amount of damages owing to a plaintiff include clerks' and referees' reports, and jury inquisitions. Writs of arrest and execution include writs of *capias ad respondendum*, *fieri facias*, attachment, and

capias ad satisfaciendum. Documents relating to cases transferred or appealed from trial courts include writs of *certiorari*, writs of *habeas corpus*, writs of error, and assignments of errors. Miscellaneous documents include petitions of insolvent debtors and clerkship papers. Dozens of other document types are represented in small numbers.

The series contains many documents relating to criminal proceedings, mostly from the years 1753-1795. They include indictments returned by grand juries, informations filed by the attorney general, and depositions of witnesses supporting criminal charges. Under the "Forfeiture Act" of 1779 all indictments of Loyalists ("enemies of this state") and supporting depositions of witnesses were required to be returned to and filed by the clerk of the Supreme Court of Judicature. Many of those indictments and depositions are found in this series, and they concern the prosecution and conviction of several hundred Loyalists. Rough minutes of circuit courts and courts of oyer and terminer are present for the years 1782-1798 (mostly 1788-1795). There are also some trial calendars for the same period. The minutes and calendars relate to trials of civil cases and felony offenses in almost all counties of New York State, including New York City and County.

A law of 1799 authorized the clerk of the Supreme Court of Judicature to destroy "with all convenient speed" pleadings, bail pieces, motion papers, inquisitions, and indictments and other criminal case papers pre-dating July 9, 1776. However, many such court documents survive in this series after ca. 1750.

Other documents in this series include coroner's inquisitions into unwitnessed or suspicious deaths, 1780-1797, for most counties in the state. For New York City and County only, there are bonds of individuals receiving liquor licenses, 1785 and 1797 only, and duplicate militia officer commissions by the governor, 1797-1822.

Documents in this series are arranged by an assigned code entered on the verso of each document. Each code starts with "PL 1754 to 1837" ("PL" stands for "pleadings"), then adds the initial letter of the plaintiff's name and a sequential document number (up to four digits). The plaintiff in a criminal case is the "King" (before 1776) or the "People" (starting 1777). The documents are now arranged by document file code in two sub-series: documents not needing immediate conservation, and documents in very poor condition and needing conservation.

Many documents are missing (particularly in letter codes B, C, G, H, and I). Also missing are microfilm rolls 65 and 72-85 of 104 total. Most of the documents are indexed by plaintiff name in JN121 Card Index to Supreme Court Pleadings and Other Court Documents, and by plaintiff and defendant in JN110 Spreadsheet Index to Supreme Court Pleadings and Other Documents.

JN535	Pleadings and Other Civil Court Documents (New York), 1838-1847.	27.0 c.f.

This series contains pleadings and other documents filed by the clerk of the Supreme Court of Judicature in New York City between January 1, 1838, and July 1, 1847. (There are few documents for 1845 and 1846, more for the first six months of 1847.) Additional documents dated between July 5 and December 31, 1847, were filed by the New York County Clerk as clerk of the reorganized Supreme Court in that county. The latter files

include some bills of complaint, answers, and other documents in cases commenced in the Court of Chancery, first circuit, prior to July 1, 1847. The other documents for the latter part of 1847 concern equity proceedings in the "Supreme Court in Equity," New York County. The files for July-December 1847 do not include any pleadings in civil actions for debt or damages. This series was compiled and indexed in the early twentieth century. The series consolidates and reorganizes documents that were previously filed in separate series, whose original order is entirely lost.

In addition to pleadings, the series contains many other document types, including affidavits of service, cognovits, bonds for court costs, motion papers, clerk's reports of damages, writs of inquiry and inquisitions, circuit rolls (including trial minutes), bills of exceptions, clerkship papers, etc. There are many declarations by the New York County district attorney seeking payment of fines by criminal defendants who had been arrested, gave bond for their appearance in the court of general sessions, and failed to appear. The series continues JN522 Pleadings and Other Civil and Criminal Court Documents (New York) (1699-1837).

Documents in this series are arranged by an assigned code entered on the verso of each document. Each code starts with "PL" ("pleadings"), followed by the initial letter of the plaintiff's name and a sequential document number (up to four digits). Some documents are missing (particularly for codes 1842 M, 1844 H, and 1847 A), and as noted above there are very few documents for 1845 and 1846. Documents are indexed by plaintiff name in JN121 Card Index to Supreme Court Pleadings and Other Court Documents, and by plaintiff and defendant in JN110 Spreadsheet Index to Supreme Court Pleadings and Other Documents.

JN121	Card Index to Supreme Court Pleadings and Other Court Documents (New York), ca. 1699-1910.	14.3 c.f., 49 microfilm rolls

Card index provides access to filed documents in JN522 Pleadings and Other Civil and Criminal Court Documents (1685-1837) and JN535 Pleadings and Other Civil Court Documents (1838-1847). Each card contains names of plaintiff and defendant, name of court, date of filing, and reference to the alphanumeric document code. Multiple plaintiffs are indexed individually. There are sub-sets of cards for special categories of documents: "Inquisitions" by coroners statewide; "Liquor Licenses" in New York City; "Military Commissions" for officers in New York City and County; and "Minutes" of circuit courts and courts of oyer and terminer statewide. The cards also index documents filed by the New York County Clerk as clerk of the Supreme Court in that county, between July 1, 1847 and the end of 1910. Most cards are arranged alphabetically by plaintiff name (exceptions are noted above). Documents dated after 1847 remain in the New York County Clerk's Office, Division of Old Records.

Cards were microfilmed by the Genealogical Society of Utah in 1978 (rolls #1204906-1204944) and cataloged as "New York Supreme Court (New York County), Index to Pleadings, 1754-1910." Data extracted from the index cards is in series JN110 Spreadsheet Index to Supreme Court Pleadings and Other Documents.

JN110	Spreadsheet Index to Supreme Court Pleadings and Other Documents (New York), 1699-1910 (bulk 1751-1910)	90 MB electronic file

This electronic spreadsheet index contains selected data from series JN121 Card Index to Supreme Court Pleadings and Other Court Documents. The spreadsheet also indexes a much larger volume of post-1847 Supreme Court filed documents that are in the New York County Clerk's Office, Division of Old Records. Index data fields include plaintiff name, defendant name, year of filing document, alphanumeric document code, and entry or line number.

The electronic spreadsheet indexes filed documents in the following record series: JN522 Supreme Court of Judicature, Pleadings and Other Civil and Criminal Court Documents, 1699-1837 (codes "1754-1837" and "Pleadings") and JN535 Supreme Court of Judicature, Pleadings and Other Civil Court Documents, 1838-1847 (codes [Year] and "Pleadings"). Post-1847 Supreme Court records indexed by the spreadsheet include pleadings (codes [Year] and "Pleadings"), commissions and depositions (testimony by non-resident witnesses) (codes "CD" and "Commissions"), and special proceedings (petitions for judicial relief) (codes "DO" and "Special Proceedings").

JN505	Registers of Defendants' Appearances, 1832-1837, 1839-1847.	0.8 c.f.

Volumes contain entries of defendants' appearance (submission to the court's jurisdiction) after service of plaintiff's declaration (initial plea). Each entry contains the date, case title, and name of the plaintiff's attorney. Keeping a record of defendants' appearances was required by the *Revised Statutes* of 1829, Part III, Chap. 6, Title 1, sect. 2.

Volumes were reassembled from disbound signatures and fragments by staff of the Unified Court System. Most volumes are incomplete, and all are in poor condition.

J0015	Declarations (Albany), 1838-47.	126.0 c.f.

The Albany "declarations" (pleadings by plaintiffs and defendants and related papers) are arranged alphabetically by first letter of last name of the plaintiff's attorney, then bundled chronologically by month and day of filing. Declarations filed prior to 1838 are found in J0011 Motions and Declarations (Albany). There is no index to this series, but J1165 Common Rule Books (Albany) contain rules to plead entered under names of plaintiffs' attorneys. Notice of the rule to plead accompanied the declaration served on a defendant.

J0009	Declarations (Utica), 1831-42.	61.5 c.f.

The Utica "declarations" (pleadings by plaintiffs and defendants and related papers) are arranged alphabetically by the first letter of the last name of the plaintiff's attorney and then chronologically by month and day of filing. This series was broken up into three parts by employees of the Court of Appeals, and the Historical Records Survey described each part separately. These parts are maintained as subseries. The few extant

Utica declarations prior to 1830 are found in J0010 Declarations and Motions before 1830. Utica declarations for the years 1841 through 1847 are filed along with motions in J1013 Declarations and Motions (Utica). There is no index to this series, but the accompanying rules to plead are entered in J2165 Common Rule Books (Utica).

J0017	Declarations (Geneva), 1829-47.	43.4 c.f.

The Geneva "declarations" (pleadings by plaintiffs and defendants and related papers) are arranged chronologically by filing date. There is no index to this series, but J3167 Common Rule Books (Geneva) contain rules to plead entered under names of plaintiffs' attorneys.

J0011	Motions and Declarations (Albany), 1796-1847 (bulk 1815-1847).	187.9 c.f.

This series contains two main groups of documents arranged by filing attorneys' names. The first group consists of plaintiffs' declarations, the affidavits and admissions of service of these declarations, and related documents such as common bail pieces, replications, rejoinders, demurrers, stipulations, cognovits, writs of inquiry and inquisitions, and reports of judgment awards as determined by court clerks or referees. Other documents found occasionally are assignments of error; petitions for partition of real estate held jointly or in common; petitions for appraisal of land taken for street openings in New York City; judgment records remitted (sent back) by the Court for the Correction of Errors; and interrogatories and answers thereto, taken down and returned by commissioners in execution of a writ of commission.

The second group of documents found in this series is motion papers. These are notices of motions accompanied by affidavits stating the grounds on which the court is to be moved for a ruling. The motion papers include documents relating to "enumerated motions" placed on the calendar for argument in the Supreme Court's regular terms. Enumerated motions always required the attention and decision of the full court because they posed substantive legal questions. The series contains a few legal briefs, "demurrer books," and "error books" which state legal arguments in considerable detail. Also in this series are numerous papers for non-enumerated motions that were procedural in nature. Motions might be made to oppose any other motion. The notice of motion is addressed to the attorney for the opposing party. It states that the court will be moved on a certain day during general or special term and specifies the ruling sought from the court. The notice is endorsed with an affidavit of service and an admission of service by the person served. The affidavit is a sworn deposition of the attorney for the party moving the court, stating the grounds for the motion. It usually states the form of action, the venue, the date when issue was or is to be joined, and all other facts pertinent to the motion. The motion papers occasionally bear annotations, apparently made by a justice or clerk, concerning the motion and its merits. For fuller descriptions of motion papers, see J0126 Motions (Utica). (Appendix L, "Common and Special Rules and Judges' Orders in Personal Actions" lists numerous types of enumerated and non-enumerated motions represented in this and other series of motion papers.)

The series is arranged chronologically by year, then alphabetically by name of attorney for the plaintiff (declarations), or attorney for defendant or plaintiff (motion papers). Documents filed by an attorney for several different cases may be found bundled together. The series contains plaintiff's declarations only through 1837; after that year they are found in a separate series, J0015 Declarations (Albany).

The great bulk of the documents were filed after 1815. Even after that year this series has many gaps, and at least some of the missing documents are found in J0001 Miscellaneous Motions. The original bundles of documents in this series were wrapped with pieces of paper on which were written in alphabetical order the names of the attorneys found in that bundle. Some of these labels for the years 1815 through 1835 survive, and they may serve as a partial finding aid to documents filed by the attorneys named. Papers for enumerated motions placed on the court calendar may be identified in J0241 Calendars of Enumerated Motions (Albany). Rules to plead granted as a matter of course after filing of the declaration were entered in J1165 Common Rule Books. Prior to 1837, entries of rules to plead in the common rule books allow one to identify declarations filed by a particular attorney.

J0010 Declarations and Motions before 1830 (Utica), 1821-29. 1.3 c.f.

This series contains declarations, writs of inquiry and inquisitions, motion papers, cognovits, stipulations, exceptions, demurrers, and other miscellaneous documents. The series is fragmentary. Documents were bundled by year and first letter of attorney's last name. There is no index or other finding aid. For fuller description of the various document types, see J0011 Motions and Declarations (Albany). For pleadings filed at Utica after 1829, see J0009 Declarations (Utica). Other Utica motion papers are in series J0126, J1126, and J1013.

J1013 Declarations and Motions (Utica), 1841-47. 41.3 c.f.

This series consists mainly of declarations, affidavits and admissions of service of those declarations, subsequent pleadings, demurrers, cognovits, writs of inquiry and inquisitions, and reports of damages as determined by court clerks or referees. There are also some motion papers. The series contains a few circuit rolls that may be estrayed from J0023 Copies of Pleadings Furnished to Circuit Courts (Utica). The arrangement of the declarations is alphabetical by first letter of last name of plaintiff's attorney, then chronological by month and day of filing. Motions and circuit rolls are usually found bundled together at the end of the boxes for each year. There is no index to this series, but J2165 Common Rule Books (Utica) contain rules to plead entered at the time of filing of declarations. There are some gaps in this series, and the missing declarations (particularly for 1842) are found in J0009. This series of declarations and motions was formerly interfiled in J0013, which is now exclusively a series of writs of arrest and execution spanning the years from 1807 through 1847. Utica declarations prior to 1841 are found in J0010 Declarations and Motions before 1830 (Utica) and J0009 Declarations (Utica). Other Utica motion papers are in series J0126 and J1126.

J1012 Pleas and Demurrers (Geneva), 1837-47. 1.3 c.f.

This series contains defendant's and plaintiff's pleadings made subsequent to the plaintiff's initial declaration. Most of the documents are simple pleas in which a defendant's attorney denies the facts set forth in the plaintiff's declaration. The plea is accompanied by the defendant's affidavit of merits, in which he swears that he has a "good substantial defense on the merits." There are also many demurrers and a few special pleadings. The series also includes amended pleadings, joinders in demurrer, and avowries (in which the defendant avows the right to property claimed by the plaintiff in an action of replevin). The documents are grouped together by year of filing but are otherwise unarranged and unindexed. A few other Geneva pleadings are found in J0012 Miscellaneous Filed Documents.

J0004 Cognovits (Geneva), 1829-47. 5.2 c.f.

The *relicta et cognovit*, or *cognovit*, is a defendant's confession of liability for the debt or other damages demanded in the plaintiff's declaration, plus any costs and charges arising out of the action. (Technically, the cognovit is not a plea.) The document states the names of the parties and their attorneys and the amount demanded. It is signed by the plaintiff or his attorney. The records are arranged by filing date and are not indexed. Cognovits for Albany and Utica are found in the judgment rolls, series J0140 and J0134.

Reports of Judgment Awards

JN551 Writs of Inquiry and Inquisitions (New York), 1707, 1758, 1784-1844 (with many gaps). 0.1 c.f.

This collection contains two writs of inquisition from the colonial period, the rest from the early national period. Some of the writs include the jurors' inquisition, or report of money damages owing to a plaintiff. For information about writs of inquiry and inquisitions, see series J0027. This small collection was assembled from various locations in the New York County Clerk's Office. Other writs of inquiry filed in New York City are in JN522 Pleadings and Other Civil and Criminal Court Documents and JN535 Pleadings and Other Civil Court Documents.

J0027 Writs of Inquiry and Inquisitions (Albany, Utica, Geneva), 1823-47. 12.5 c.f.

The writ of inquiry is an order commanding a sheriff to empanel a jury to determine the exact damages sustained by a plaintiff who had obtained an interlocutory, not a final, judgment. The writ contains a copy of the plaintiff's declaration and of the interlocutory judgment of the court. The writ was issued in cases where judgment went against the defendant by default because of his confession (*cognovit*) or his failure to plead, or by a court ruling on demurrer. Execution of the writ was made by an inquest by twelve jurors summoned by the sheriff of the county where the original venue was laid. The inquisition states the amount of damages awarded and is subscribed and sealed by the jurors. The inquisition is attached or appended to the writ. The

documents are arranged chronologically by court term, then by filing date. The first box in this series contains writs of inquiry and inquisitions from Albany and Utica for the years 1823 through 1829. All the rest appear to be from Geneva. Other writs of inquiry and inquisitions are found in the series containing plaintiffs' declarations, J0009, J0015, J0017, and in J0011 Motions and Declarations (Albany). Orders for issuance of writs of inquiry were entered in J1165, J2165, J3167, and JN520 Common Rule Books.

J0006 Reports of Referees (Geneva), 1830-47. 0.4 c.f.

This series consists of reports of referees who were appointed to report the amount of damages due to a plaintiff in an action that involved complex money accounts. Each report includes the title of the case, the amount of damages awarded, the signatures of the three referees, and the date of the award. Occasionally the reports are accompanied by a certified copy of the court rule appointing the referee, or by a stipulation by the parties that the case be referred in lieu of a rule of the court. Attached to a few reports is the signed oath of the referees, by which they swear to "make a just and true report ... according to the best of our understanding." The documents are arranged in rough chronological order by filing date but are otherwise unarranged and unindexed.

Copies of Pleadings Furnished to Trial Courts

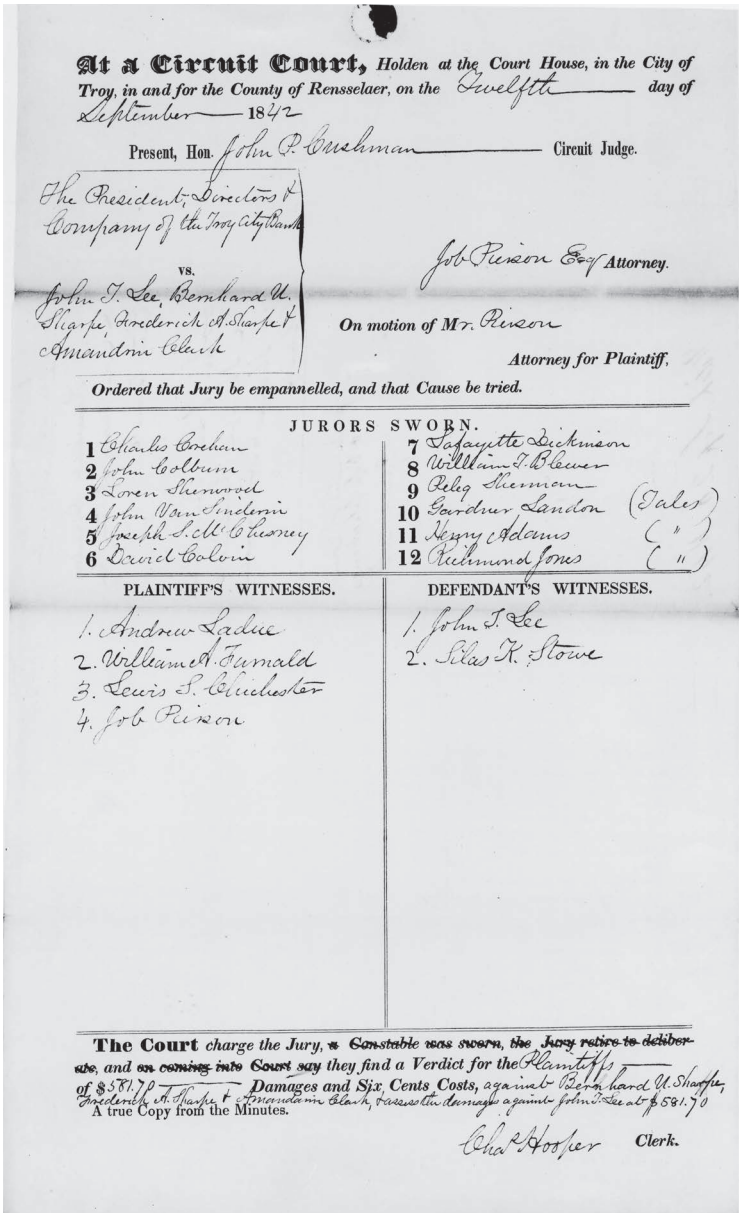
The series described below contain records of the pleadings, issue of fact to be tried, and jury trial and verdict in civil cases tried in the circuit courts. The content and format of these documents were determined by common-law practice and by statutes. Laws of 1786, 9th Sess., Chap. 41, provided that a transcript of the pleadings with an award of jury process should be sent under seal of the Supreme Court to the justice holding a circuit court in the county where the venue was laid. This transcript, or *nisi prius* record, was prepared by the plaintiff's attorney. Laws of 1796, 19th Sess., Chap. 10, required the circuit court, at the end of the trial, to deliver the *nisi prius* record and a certified copy of the trial minutes to the attorney for the winning party, who filed it with the clerk of the Supreme Court.

The *nisi prius* record has the following parts: the *placita* (name of the court; court term; names of the presiding justice, court clerk, and attorneys); memorandum (this starts with the phrase "Be it remembered" and summarizes the plaintiff's declaration); any subsequent pleadings by defendant and plaintiff; the imparlance (allowance to the defendant of time to plead); the award of jury process in circuit court (issuance of the writ of *venire facias juratores*); and the continuances, or postponements, if any, of the trial. The *postea*, a summary of the trial proceedings in circuit court, is subscribed or attached at the end of the record or enclosed as a separate document. The *nisi prius* record bears on the verso the name of the court, the names of the parties and plaintiff's attorney, and the time and place for return of the record to the Supreme Court. Often found with the *nisi prius* record is the writ of *venire facias juratores*, an order to the sheriff of the county where the circuit court is to be held, commanding him to summon a panel of trial jurors.

Accompanying the *nisi prius* record is a certified copy of the circuit court trial minutes, which states the names of the judge, the parties to the action, their attorneys, the jurors, and any witnesses; the jury's verdict; and its award of debt or damages and costs. The

copy of the minutes is signed by the clerk of the circuit court. There are no summaries of oral testimony, though there may be a list of documents introduced in evidence. The copy of the minutes is signed by the clerk of the circuit court.

The *Revised Statutes* of 1829, Part III, Chap. 7, Title 4, Art. 1, made changes in the name and content of the record submitted to the justice holding a circuit court. The record is now called a "circuit roll," and it omits the award of jury process, substituting a simple order that the issue be tried in circuit court. Between 1830 and 1840, therefore, the file consists of a circuit roll with *postea* and certified copy of the trial minutes. An 1840 law abolished the circuit roll and *postea* and required instead that a copy of the pleadings be furnished to the circuit court holding trial. Documents called "circuit rolls" are still found occasionally after 1840. After the trial the *nisi prius* record, circuit roll, or copy of pleadings was returned to the Supreme Court clerk for filing, and the attorney for the winning party then prepared the judgment roll. The judgment roll contains a duplicate record of the pleadings, issue, verdict, and judgment, but it does not include the trial minutes.



At a Circuit Court, *Holden at the Court House, in the City of Troy, in and for the County of Rensselaer, on the* Twelfth *day of* September 1842

Present, Hon. John P. Cushman Circuit Judge.

The President, Directors & Company of the Troy City Bank vs. John T. Lee, Bernhard U. Sharpe, Frederick A. Sharpe & Amandus Clark

Job Pierson Esq Attorney.

On motion of Mr. Pierson Attorney for Plaintiff,

Ordered that Jury be empannelled, and that Cause be tried.

JURORS SWORN.

1	Charles Corbin	7	Lafayette Dickinson
2	John Colburn	8	William T. Blewer
3	Loren Sherwood	9	Peleg Sherman
4	John Van Sinderin	10	Gardner Landon (Tales)
5	Joseph L. McChesney	11	Henry Adams (")
6	David Colvin	12	Richmond Jones (")

PLAINTIFF'S WITNESSES.	DEFENDANT'S WITNESSES.
1. Andrew Ladue	1. John T. Lee
2. William A. Fumald	2. Silas K. Stowe
3. Louis L. Winchester	
4. Job Pierson	

The Court *charge the Jury,* ~~a Constable was sworn, the Jury retire to deliberate, and on coming into Court say~~ *they find a Verdict for the* Plaintiffs of $581.70 *Damages and Six Cents Costs, against* Bernhard U. Sharpe, Frederick A. Sharpe & Amandum Clark, *and as to the damages against* John T. Lee at $581.70

A true Copy from the Minutes.

Chas P. Hooper Clerk.

TRIAL MINUTES, 1842.

These typical trial minutes state the time and place of the trial; the names of the parties, the circuit judge, and the witnesses; and the jury's award of damages. The three "tales" jurors were summoned by the sheriff from bystanders around the courthouse after the panel of jurors had been exhausted.

(Series J0022, Copies of Pleadings Furnished to Circuit Courts [Albany].)

J0022 Copies of Pleadings Furnished to Circuit Courts ("*Nisi Prius* Records" and "Circuit Rolls") (Albany), 1797-1847. 49.9 c.f.

The Albany *nisi prius* records and circuit rolls are filed by year, then arranged alphabetically by name of defendant. Many are out of order. Losing parties may be identified in J0141 Docket of Judgments (Albany), but there is no index to the present series.

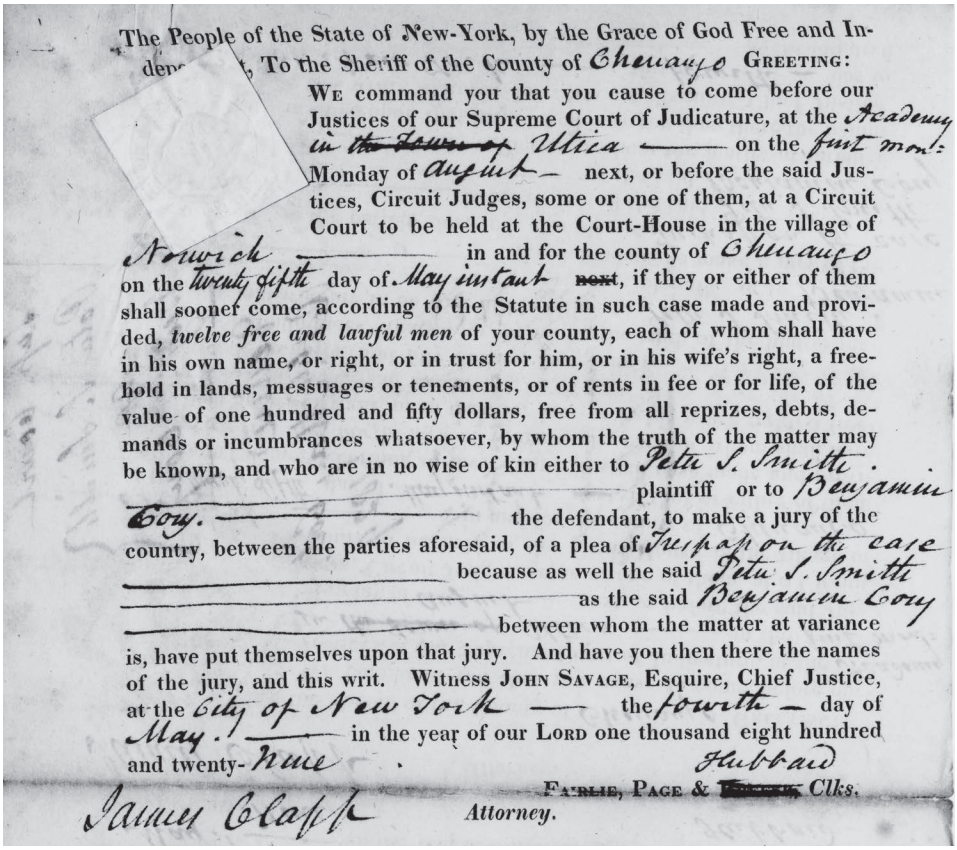
J0023 Copies of Pleadings Furnished to Circuit Courts ("*Nisi Prius* Records" and "Circuit Rolls") (Utica), 1828-47. 21.1 c.f.

The Utica *nisi prius* records and circuit rolls for each year are arranged alphabetically by name of defendant, up to about 1840; thereafter they are arranged alphabetically by losing party. Many are out of order. There is no index to the present series, but losing parties may be identified in J0135 Transcripts of Docket of Judgments (Utica).

WRIT OF *VENIRE FACIAS JURATORES*, 1829.

This writ orders the Chenango County sheriff to summon jurors for a circuit court trial to be held at the courthouse in Norwich, May 25, 1829. Jurors were needed constantly for circuit court trials and for inquisitions to determine judgment awards due to plaintiffs.

(Series J0023, Copies of Pleadings Furnished to Circuit Courts [Utica].)



The People of the State of New-York, by the Grace of God Free and Independent, To the Sheriff of the County of Chenango GREETING:

WE command you that you cause to come before our Justices of our Supreme Court of Judicature, at the Academy in the Town of Utica — on the first mon: Monday of August — next, or before the said Justices, Circuit Judges, some or one of them, at a Circuit Court to be held at the Court-House in the village of Norwich — in and for the county of Chenango on the twenty fifth day of May instant ~~next~~, if they or either of them shall sooner come, according to the Statute in such case made and provided, *twelve free and lawful men* of your county, each of whom shall have in his own name, or right, or in trust for him, or in his wife's right, a freehold in lands, messuages or tenements, or of rents in fee or for life, of the value of one hundred and fifty dollars, free from all reprizes, debts, demands or incumbrances whatsoever, by whom the truth of the matter may be known, and who are in no wise of kin either to Peter S. Smith — plaintiff or to Benjamin Coy. — the defendant, to make a jury of the country, between the parties aforesaid, of a plea of Trespass on the case — because as well the said Peter S. Smith — as the said Benjamin Coy — between whom the matter at variance is, have put themselves upon that jury. And have you then there the names of the jury, and this writ. Witness JOHN SAVAGE, Esquire, Chief Justice, at the City of New York — the fourth — day of May. — in the year of our LORD one thousand eight hundred and twenty-nine.

Hubbard

FAIRLIE, PAGE & [illegible], Clks.

James Clapp Attorney.

J0146 Copies of Pleadings Furnished to Circuit Courts ("Circuit Rolls") (Geneva), 1837-47. 7.3 c.f.

The Geneva circuit rolls were filed chronologically by court term, then alphabetically by name of losing party's attorney. Many are out of order. There is no index to this series, but losing parties may be identified in J0138 Transcripts of Docket of Judgments (Geneva). Geneva circuit rolls prior to 1838 were presumably destroyed pursuant to a court rule adopted at Utica on July 16, 1836.

J3013	Issue Rolls and Continuance Rolls (Utica), 1819-30.	0.4 c.f.

This series consists of issue rolls and continuance rolls. The issue roll contains all the same parts and information as the *nisi prius* roll up to and including the award of writ of *venire facias juratores*. The issue roll remained on file with the clerk of the court, while the *nisi prius* roll was sent to the clerk of the circuit court in the county where trial was to be held. Issue rolls were also prepared in the rare instances when a trial was held at the bar of the Supreme Court. The issue roll was abolished by an 1818 statute, but later examples are found in this series. The continuance roll is a record of proceedings on a writ of execution (*fieri facias* or *capias ad respondendum*) issued after an award of judgment. It summarizes the issuance and return of successive process in cases where the winning party was apparently determined to have the judgment debt satisfied, no matter what the trouble and expense. The documents in this series were found bundled together. They are unarranged and unindexed.

Note: No separate series of pleadings sent to Circuit Courts survives for the Supreme Court clerk's office in New York City. Some early *nisi prius* records are found in JN519 Judgment Rolls and Other Documents on Parchment and a few in JN513 Circuit Court Trial Calendars, Rough Minutes, Pleadings, and Other Papers.

Depositions and Summaries of Testimony

Writs of Commission

Writs of commission directed commissioners appointed by the writ to take depositions from witnesses who were unable to appear at the trial to testify. The return to the writ consists of answers by the witness to interrogatories, transcribed and certified by the commissioners. Attached to the writ and the return are the interrogatories, and occasionally cross-interrogatories, submitted by attorneys for parties to the action. Many of the returns are enclosed in the original wrappers with seals.

JN548	Writs of Commission (New York), 1799-1847 (bulk 1799-1833).	2.3 c.f.

The writs of commission are infrequently accompanied by interrogatories and the witness's responses. The writs of commission were assembled from various locations in the New York County Clerk's Office, and from a large series of "Commissions and Depositions" that continues after 1847. A few of the commissions relate to cases in the Court of Chancery, first circuit, and were filed with the writs of commission returned to the clerk of the Supreme Court of Judicature in New York City.

Two groups of writs of commissions were transferred from the New York County Clerk's Office to the State Archives, in 2017 and 2018. In the 2018 group the writs are arranged chronologically by year, then by document code, starting with the initials "CD" ("commissions and depositions") and followed by an alphanumeric code. There are long gaps in the document codes, because most of the commissions post-date 1847 and remain in New York City. The two groups are maintained separately because the writs transferred in 2017 are not indexed, while the writs transferred in 2018 are indexed by plaintiff name on cards at the end of the single box.

J0014 Writs of Commission (New York), ca. 1802-1862. 0.8 c.f.

These documents were originally filed or kept in the office of the clerk of the Supreme Court of Judicature in New York City, and it is not known why they were sent to the Court of Appeals in Albany. Some of the commissions in this series were returned to the clerk of the reorganized Supreme Court after July 1, 1847. The documents are unarranged and unindexed.

J0170 Writs of Commission (Albany and Utica), 1802-43. 1.3 c.f.

These documents were found in several "miscellaneous" series identified in the Historical Records Survey inventory of 1936. Rules for issuance of writs of commission were entered in J0128, J0130 Minute Books (Albany, Utica).

J0151 Testimony Taken Conditionally, 1833-46. 0.4 c.f.

Testimony was taken conditionally (*de bene esse*) from a witness who was a transient or a nonresident or who was unable to testify at a trial because of illness. A party seeking an order allowing the testimony to be taken submitted an affidavit stating the nature of the action, the plaintiff's demand, the name and address of the witness, and the reason he or she could not appear at the trial. The order allowing the testimony to be taken is subscribed on the affidavit; it requires the attorney for the opposing party to attend the examination of the witness. Attached to the affidavit and order is the deposition of the witness recounting facts pertinent to the case. The documents in this series are unarranged and unindexed. The office or offices in which they were filed is uncertain, but at least some were filed at Utica.

Proceedings in Courts of Oyer and Terminer and Circuit Courts

A court of oyer and terminer was a trial court vested with general jurisdiction in cases of felony and misdemeanor. During the colonial period a justice of the Supreme Court of Judicature presided over the court at least once a year in each county outside of New York City and County. He was assisted on the bench by local magistrates. The court had exclusive jurisdiction in capital cases. Many criminal offenses in New York City and County were tried before the full bar of the Supreme Court of Judicature in its regular terms. Some cases originating elsewhere were prosecuted there as well. In all counties, including New York City and County, a court of general sessions had equivalent jurisdiction in criminal cases, except in capital cases. In practice, the courts of general sessions adjudicated lesser crimes.

In New York Colony the full name of a circuit court was "court for the trial of causes brought to issue in the Supreme Court." That long name describes the court's function: it was the trial branch of the Supreme Court for civil cases. A circuit court was required to be held in each county at least once a year. The chief justice of the Supreme Court usually presided, assisted by one other justice. Copies of the pleadings ("*nisi prius* roll") were sent to the circuit court for the trials. All case documents, including writs,

pleadings, judgment rolls, etc., were filed by the Supreme Court clerk in New York City. This system continued with no essential changes during and after the Revolutionary War.

JN521	Courts of Oyer and Terminer Minute Books (New York), 1716-1717, 1721-1749.	0.3 c.f. (including 2 vols.); 2 microfilm rolls

Minutes of courts of oyer and terminer for 1716-17 were transferred from the New York County Clerk's Office to the State Archives in 2017. They include court sessions in all counties outside of New York City and County. The minutes include lists of grand jurors, entries of indictments returned and defendants arraigned, and minutes of trials and sentences.

A photocopy of a nineteenth-century transcription of minutes of courts of oyer and terminer held in counties outside of New York City and County, 1721-49, contains entries similar to those in the minutes for 1717-18. The copy was provided to the State Archives by the library of the Association of the Bar of the City of New York in 2017. The table of contents was prepared by Henry Onderdonk, Jr., in 1871. He was an historian residing in Jamaica, N.Y., but the transcription is not in his handwriting. The identity of the transcriber is unknown, and the original minutes are lost and presumed destroyed.

The minutes for 1717-18 were microfilmed for the New York County Clerk's Office in the 1950s, and again by the Genealogical Society of Utah in 1977 (microfilm roll #1021265 items 1-2). The latter microfilm has been digitized by FamilySearch. It is cataloged as "New York Court of Oyer and Terminer Minutes 1716-1717, for Various Counties."

Rough minutes of courts of oyer and terminer in most if not all counties during the period 1787-1798 are in JN522 Pleadings and Other Civil and Criminal Court Documents.

Additional minutes of courts of oyer and terminer are available elsewhere. Minutes for New York County, 1693-95 and 1700, and for Westchester County, 1700, are published in "Minutes of the Supreme Court of Judicature April 4, 1693 to April 1, 1701," *Collections of the New-York Historical Society for the Year 1912* (New York: 1913), pp. 41-214. Minutes of a court of oyer and terminer held in New York City and County, November 1760, are found in JN531 Minute Books, at the end of volume 8. The library of the New-York Historical Society holds engrossed minutes of the courts of oyer and terminer for Ulster County, 1779-1782 and 1785; the City and County of Albany, 1781; Suffolk County, 1784-1785; and the City and County of New York, 1787. Those minutes are part of the John McKesson Papers, 1761-1825. (McKesson served as clerk of the circuit courts and courts of oyer and terminer statewide between 1778 and 1787.) The New York County Clerk's Office, Division of Old Records, holds minute books of courts of oyer and terminer for 1796-1884 (with gaps). County clerk's offices statewide may hold minutes of courts of oyer and terminer up to the court's abolition, effective January 1, 1896.

JN593	Courts of Oyer and Terminer Indictments and Miscellaneous Papers (New York), 1685, 1704, 1710, 1754-1755, 1759, 1791-1793.	0.2 c.f.

Documents include ten indictments and complaints in criminal cases, also one pleading in a civil case before a court of oyer and terminer in 1685. The items were found in various locations in the New York County Clerk's Office. Additional pre-1800 indictments and other criminal case documents are found in JN519 Judgment Rolls and Other Documents on Parchment and JN522 Pleadings and Other Civil and Criminal Court Documents.

JN596 Circuit Courts Minute Book (New York), 1721-1749. 0.1 c.f.

A photocopy of a nineteenth-century transcription of minutes of circuit courts held in counties outside of New York City and County, 1721-49, contains minutes of jury trials and related proceedings. Most cases involved complex real property disputes. The copy was provided to the State Archives by the library of the Association of the Bar of the City of New York in 2017. Page number references indicate that the minutes of the circuit courts and courts of oyer and terminer were originally in the same volume. See above, JN521 Courts of Oyer and Terminer Minute Books.

At the end of the transcription is a "Catalogue of Books," a list of short titles of published English law reports, digests, treatises, and statutes, also a few American titles. The date of the catalogue appears to be ca. 1790s. The owner of the law library is not identified.

Minutes of circuit courts held in Kings, Queens, Suffolk, Ulster, and Westchester Counties, on various dates, are published in "Minutes of the Supreme Court of Judicature April 4, 1693, to April 1, 1701," *Collections of the New-York Historical Society for the Year 1912* (New York: 1913), pp. 41-214.

JN598 Circuit Court and "Sittings" Rough Minute Books (New York), 1784-1786, 1801-1820, 1842. 1.8 c.f. (7 vols., 3 booklets, 2 bundles).

Rough minute books contain minutes of civil trials and other proceedings in the circuit courts in New York City and County and in additional "sittings." The minute books were evidently kept by the court clerk in the courtroom, and the handwriting is hasty with many abbreviations and strikeouts. Minutes of a trial include the names of plaintiff and defendant, attorneys, jurors, and witnesses. They sometimes list documents introduced as evidence. The minutes state the jury verdict and the amount of money judgment awarded. The minutes also record the award by a jury of inquisition if the defendant defaulted or confessed liability for judgment. The minute books contain occasional entries of motions and orders, and fines against non-appearing jurors. Entries are chronological by court term, then by date of trial or other court action. Each case is numbered sequentially. Most of the minutes are for "sittings," a few for circuit courts. Each volume contains multiple booklets, one for each "sitting" or term. The circuit minutes for 1842 are fragmentary. The rough minute books are unindexed. Additional rough minutes are in JN513 Circuit Court Trial Calendars, Rough Minutes, Pleadings, and Other Papers.

JN518	Circuit Court and "Sittings" Engrossed Minute Books (New York), 1784-1817, 1824-1827.	1.4 c.f. (9 vols.), 2 microfilm rolls

Engrossed minute books contain the minutes, in fine handwriting, of civil trials and other proceedings of the circuit court for the City and County of New York and in additional "sittings." Each volume is attested by the court clerk. The engrossed trial minutes are more complete than the rough trial minutes in JN598, described above. Besides trial minutes, the engrossed minute books also contain occasional entries of motions and orders, fines against non-appearing jurors, and naturalizations of aliens (almost all during the years 1795-1797). Entries are chronological by court term or additional "sittings," then by date of trial or other court action. Naturalization orders are indexed at the end of the first two volumes. Otherwise the minutes are unindexed. The minute books for 1824-27 were destroyed after microfilming.

JN513	Circuit Court Trial Calendars, Rough Minutes, Pleadings, and Other Papers (New York), 1752-1847 (bulk 1780-1847).	4.0 c.f.

This collection contains a variety of documents relating to the circuit courts held in New York City and County and circuit courts in other counties. It includes trial calendars, rough minutes of trials and inquests, pleadings, and other documents relating to civil cases commenced in the Supreme Court of Judicature and noticed for trial in the circuit court. Calendars span the years 1787-1846, with many gaps. The calendars list cases to be tried in the circuit court, though in many cases no trial occurred. Rough minutes span the years 1787-1832, with gaps. They contain minutes of jury trials of issues of fact, and of jury inquests to determine money damages owing to a plaintiff if the defendant confessed or defaulted (failed to plead). Additional trial calendars are in JN517 Circuit Court and "Sittings" Calendars.

Other documents include reports of referees (arbitration proceedings, late colonial); plaintiffs' declarations; pleadings furnished to the circuit court (*nisi prius* rolls and circuit rolls); recognizances; notes of issue; motion papers and draft rules; affidavits of merits by defendants; writs of *venire facias juratores* and juror lists; and other documents. Almost all documents relate to proceedings in New York City. A few concern trials in other counties. The documents were assembled from several locations in the New York County Clerk's Office. They are remnants of much larger record series that were destroyed, probably in the early twentieth century.

JN517	Circuit Court and "Sittings" Calendars (New York), 1802-1818, 1823-1834 (with gaps).	2.0 c.f. (8 vols., 13 booklets).

Calendars list civil cases commenced in the Supreme Court of Judicature and noticed for trial in terms of the circuit court for New York City and County and additional "sittings." Entries in earlier calendars are chronological, and each case is numbered sequentially. Later calendars list cases under attorneys' names, then alphabetically by plaintiff. Each case entry includes the names of the plaintiff and defendant and their attorneys, date when issue was joined, and type of common-law action. The

calendars were prepared by the court clerk, and they contain many notes indicating the disposition of cases ("tried," "inquest," "settled," etc.). Each volume contains multiple booklets, one for each term or "sittings." Earlier booklets also contain the clerk's financial accounts with attorneys. Most of the minutes through 1818 are for "sittings." Those for 1823-34 are for circuit courts.

JN511	Account Book of Costs in Circuit Courts, 1793-1800 (New York).	0.1 c.f. (1 vol.)

Book contains accounts of court costs in circuit courts held in New York City and County and in other counties in eastern and southern New York. Each entry contains the name of the plaintiff's attorney, names of plaintiff and defendant, itemized court costs relating to a trial or other proceeding in a circuit court, and total costs assessed (computed in pounds, shillings, and pence).

JN512	Accounts of Fines in Circuit Court and Court of Oyer and Terminer, New York City and County, 1796-1829, 1843-45.	0.1 c.f. (1 vol. part)

Volume contains accounts of fines (money penalties) levied in terms of the circuit court for New York City and County and in additional "sittings." Fines were imposed on jurors and constables who failed to appear as summoned, and on persons bound by a recognizance to appear in court who failed to appear. There are also entries of fines levied on individuals convicted in the court of oyer and terminer between 1796 and 1807. Each entry states the name of the individual fined, his or her occupation and residence (city ward), and amount of the fine. Entries are grouped by court term and signed by the clerk. Record is in same volume as series JN516.

B0138	Precepts for Circuit Courts and Courts of Oyer and Terminer, Queens County (New York), 1788-94.	0.1 c.f. (9 items)

This series consists of precepts (orders) issued under seal of the Supreme Court of Judicature, commanding the sheriff of Queens County to summon freeholders of the county for service as grand and petit jurors; to deliver the jail of its prisoners; to give notice to coroners, justices of the peace, and other officers to appear at the impending court term; and to appear himself at the terms of the circuit court or court of oyer and terminer to be held at the Queens County courthouse. On the verso of each precept is the sheriff's return stating that he has carried out the order and the filing date. These documents were damaged in the 1911 Capitol fire but they are legible and usable. They were transferred by the State Library to the State Archives in 1978.

JN516	Certifications of Constables' Attendance at Circuit Courts (New York), 1803-1847.	0.1 c.f. (1 vol.)

Volume contains certifications by the clerk of the City and County of New York that constables have attended a term of the circuit court and, before 1823, in additional "sittings." Entries for each court term or "sittings" list the names of the constables and the number of days or actual dates of service. On compensation of constables attending court, see Laws of 1819, Chap. 27; *Revised Statutes* of 1829, Part III, Chap. 1, Title 3, sect. 7. Record is in same volume as series JN512.

JN554	Writs of *Venire Facias Juratores* (New York), 1766-1830 (bulk 1795-1829).	7.5 c.f.

A writ of *venire facias juratores* commands the sheriff to summon qualified individuals to appear for service as jurors in the trial of a specified civil case in the Supreme Court of Judicature or in a circuit court. A few of the writs have an attached panel of jurors stating their names, residences, and sometimes their occupations. Almost all the writs are from New York City and County, but a few of the earliest writs are from other counties. This collection of writs of venire was assembled from several locations in the New York County Clerk's Office. The writs are sorted by year.

Note: Freeholders were eligible to serve as jurors. "Freeholder" was defined by statute (Laws of 1786, Chap. 41) as persons possessing real property worth at least £60, above all mortgages and other encumbrances thereon. Property held by leasehold did not qualify. Residents of incorporated cities might qualify if the value of their personal property exceeded the same amount.

J4011	Lists of Freeholders Qualified to Serve as Jurors (Albany), 1789-1821 (with gaps).	1.3 c.f.

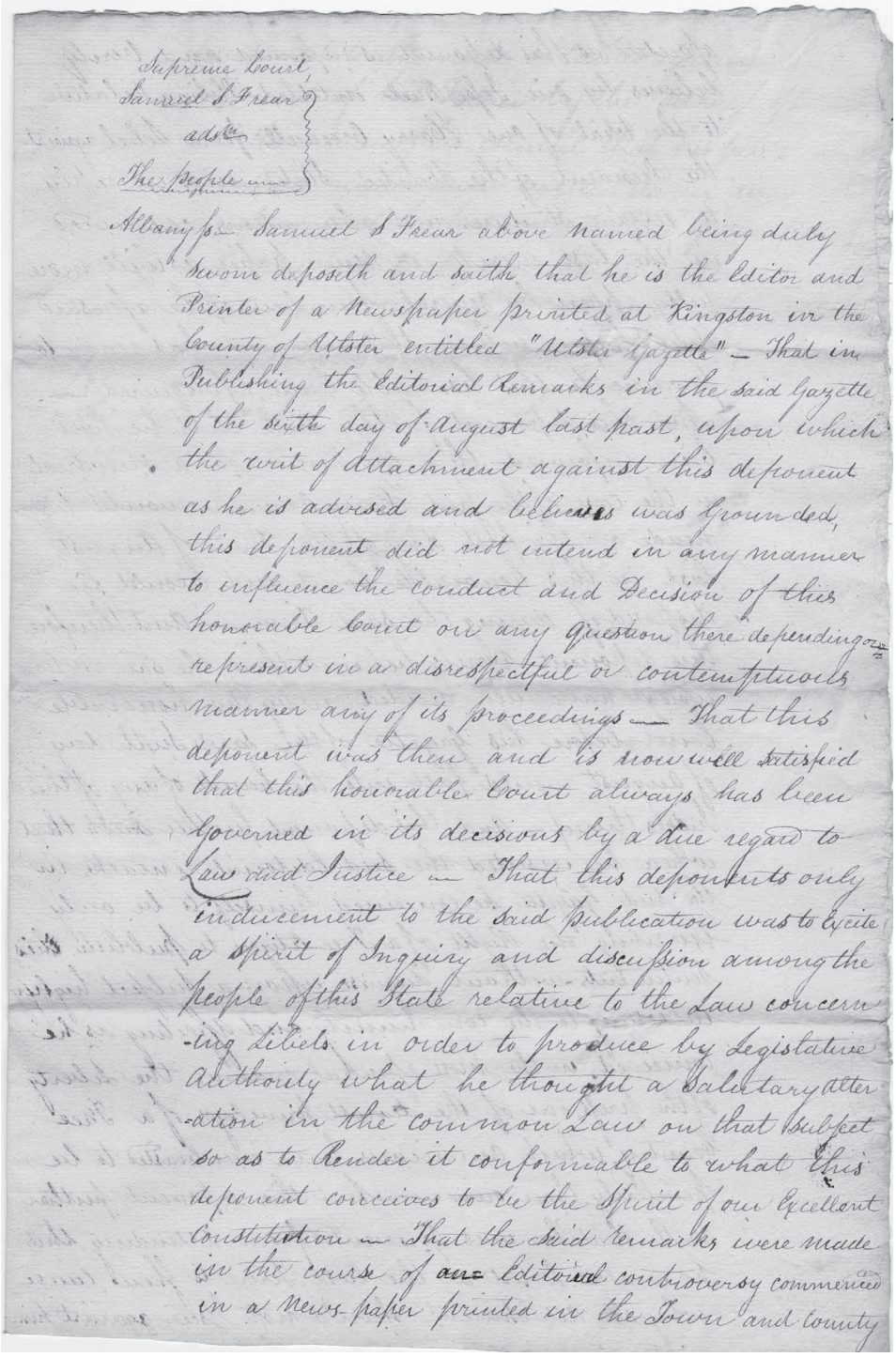
This incomplete series consists of lists of adult male freeholders qualified to serve as jurors in circuit court trials. The lists were prepared and returned by sheriffs or county clerks. Each list gives the names of freeholders, their places of residence, and their "additions" (occupations or ranks). Most of the lists were compiled for the empaneling of "struck" juries. In such lists some of the names of freeholders have lines drawn through them, indicating the names that were "struck off." Several of the documents in this series are lists of all persons qualified to serve as jurors in their counties. The returns of jurors for New York City and County for 1816, 1816-19, and 1821 are actually statistical summaries by ward. The documents in this series are arranged by county, then by year.

Note: Laws of 1786, 9th Sess., Chap. 41, required the sheriff of the county where an issue was to be tried to make up a special list of freeholders if the court ordered a "struck jury." From the list of freeholders the court clerk compiled a shorter list of forty-eight disinterested persons. Attorneys for the opposing parties struck off names on the list alternately until a panel of twenty-four jurors was left. Laws of 1798, 21st Sess., Chap. 75, transferred the duty of preparing lists of freeholders for struck juries to the county clerks and stated that these special juries would not be allowed except in cases distinguished by their "importance or intricacy."

DEPOSITION OF SAMUEL S. FREAR, PEOPLE V. FREAR, 1803.

Frear was editor of the Federalist *Ulster Gazette* and criticized the Supreme Court proceedings in the famous case of People v. Croswell. (Croswell, another editor, was indicted for seditious libel for the attacks he printed on Thomas Jefferson.) Frear was then prosecuted for criminal contempt, and this document (first page shown) is part of his defense. His attorney was Alexander Hamilton. Both Croswell and Frear lost their cases because of strict interpretation of existing libel laws, but Hamilton's arguments were a ringing defense of the right of freedom of the press.

(Series J2011, Criminal Case Documents [Albany].)



Supreme Court,
Samuel S Frear
ads
The People

Albany ss. Samuel S Frear above named being duly sworn deposeth and saith that he is the Editor and Printer of a Newspaper printed at Kingston in the County of Ulster entitled "Ulster Gazette" — That in Publishing the Editorial Remarks in the said Gazette of the sixth day of August last past, upon which the writ of attachment against this deponent as he is advised and believes was grounded, this deponent did not intend in any manner to influence the conduct and Decision of this honorable Court on any Question there depending or to represent in a disrespectful or contemptuous manner any of its proceedings — That this deponent was then and is now well satisfied that this honorable Court always has been governed in its decisions by a due regard to Law and Justice — That this deponents only inducement to the said publication was to excite a Spirit of Inquiry and discussion among the people of this State relative to the Law concerning Libels in order to produce by Legislative Authority what he thought a Salutary alteration in the common Law on that Subject so as to Render it conformable to what this deponent conceives to be the Spirit of our Excellent Constitution — That the said Remarks were made in the course of ~~an~~ Editorial controversy commenced in a News paper printed in the Town and County

J2011 Criminal Case Documents (Albany), 1797-1808. 0.4 c.f.

This series consists of documents filed in criminal cases heard and decided by the justices of the Supreme Court of Judicature, usually in their capacity as judges of the court of oyer and terminer for Albany County. Documents include writs of *venire facias juratores* commanding the sheriff to empanel a jury; bills of indictment by the grand jury; recognizances for the appearance of defendants and witnesses; records of

conviction, which include the entire proceedings of a case from indictment to sentence; and a few other documents of uncertain origin. The first volume of J0130 Minute Books (Albany), contains occasional records of indictments, trials, and convictions, and at least some of the documents in this series relate to those cases. The documents are unarranged and unindexed.

J3011	Summaries of Testimony Given in Circuit Courts and Courts of Oyer and Terminer, 1823-1828.	2.6 c.f.

This series consists of summaries of testimony and proceedings in the circuit courts and courts of oyer and terminer. At the head of each summary is written the name of the court, the venue, the date, and the name of the presiding justice. Following are entries for each case (civil or criminal) heard by the justices. Entries for a case include the names of the parties and their attorneys, the form of action (civil) or charge (criminal), the pleadings, summaries of testimony given by each witness, extracts from documents introduced as evidence, very brief notes on the summary arguments by attorneys for both sides, and the verdict found by the jury. The records are arranged by year, county, and term. The following counties are represented: Broome, Chautauqua, Chenango, Clinton, Columbia, Cortland, Delaware, Essex, Franklin, Greene, Herkimer, Madison, Monroe, Montgomery, New York, Oneida, Otsego, Rensselaer, St. Lawrence, Saratoga, Schoharie, Tompkins, Warren, Washington. The series is incomplete, and there are no similar records for other counties and years.

Judgment Rolls

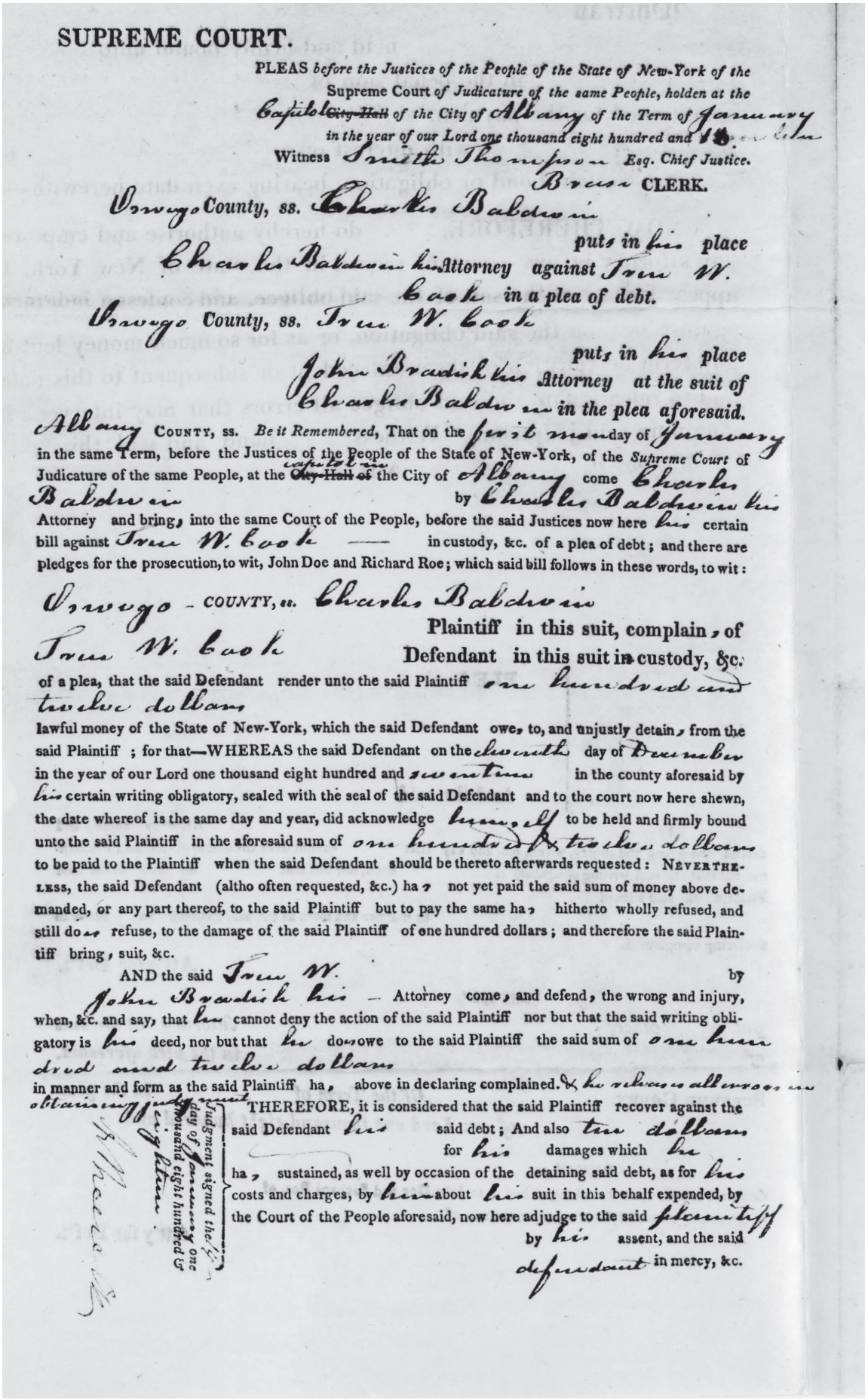
These series consist of judgment rolls that have been filed and docketed by the Supreme Court clerks. The judgment roll contains the record of pleadings and proceedings in a cause and was prepared by the attorney for the party who was awarded the judgment. The judgment in a typical case that went to trial consists of the following parts: caption (name of the court, term, names of justices and clerks); warrants of attorney (names of parties to the action and their attorneys); memorandum (summary of proceedings upon the writ of *capias*); plaintiff's plea (the substance of his declaration); defendant's plea (replication); any subsequent pleadings; joinder of issue; award of jury process (the writ of *venire facias juratores*) or, after 1829, an order that the issue be tried at a circuit court; continuances (postponements of trial from term to term); summary of trial proceedings and verdict, copied from the *nisi prius* record or, after 1829, from the circuit roll; and the award of judgment, signed in the margin by a Supreme Court clerk, Supreme Court commissioner, city recorder or, in rare instances, by one of the justices.

In the many cases in which there was no trial, the trial-related parts of the judgment roll were, of course, omitted and others were substituted. When the defendant admitted the debt or damages, his *cognovit* was entered on the roll. When the defendant defaulted through failure to plead or rejoin, an interlocutory judgment was granted to the plaintiff along with an order that a writ of inquiry issue to a sheriff to summon a jury to determine the damages due (this might also occur on a judgment awarded on demurrer). The jury's inquisition and award were entered on the roll. Alternatively, the report of referees or the court clerk as to the amount of a judgment award likewise became part of the judgment record.

JUDGMENT ROLL, 1818.

This judgment roll in an action of debt contains the court's judgment, along with copies of the pleadings by plaintiff Charles Baldwin and defendant Trueworthy Cook. The signed judgment is found at the bottom of the lefthand sheet. The plaintiff's declaration and defendant's plea are found on the right sheet, along with the common bail piece (at bottom). Printed forms for routine judgments and other court documents became common by the 1820s, saving law clerks much time, labor, and writer's cramp.

(Series J0134, Judgment Rolls [Utica].)



SUPREME COURT.

PLEAS *before the Justices of the People of the State of New-York of the* Supreme Court *of Judicature of the same People, holden at the* Capitol ~~City Hall~~ *of the City of* Albany *of the Term of* January *in the year of our Lord one thousand eight hundred and* 18.

Witness Smith Thompson Esq. Chief Justice.

Bruce CLERK.

Oswego County, ss. Charles Baldwin puts in his place Charles Baldwin his Attorney against Trueworthy W. Cook in a plea of debt.

Oswego County, ss. Trueworthy W. Cook puts in his place John Bradish his Attorney at the suit of Charles Baldwin in the plea aforesaid.

Albany COUNTY, ss. *Be it Remembered*, That on the first monday of January in the same Term, before the Justices of the People of the State of New-York, of the *Supreme Court* of Judicature of the same People, at the ~~City Hall of~~ capitol in the City of Albany come Charles Baldwin by Charles Baldwin his Attorney and bring, into the same Court of the People, before the said Justices now here his certain bill against Trueworthy W. Cook —— in custody, &c. of a plea of debt; and there are pledges for the prosecution, to wit, John Doe and Richard Roe; which said bill follows in these words, to wit:

Oswego - COUNTY, ss. Charles Baldwin Plaintiff in this suit, complains of Trueworthy W. Cook Defendant in this suit in custody, &c. of a plea, that the said Defendant render unto the said Plaintiff one hundred and twelve dollars lawful money of the State of New-York, which the said Defendant owes, to, and unjustly detains, from the said Plaintiff; for that—WHEREAS the said Defendant on the twenty sixth day of December in the year of our Lord one thousand eight hundred and seventeen in the county aforesaid by his certain writing obligatory, sealed with the seal of the said Defendant and to the court now here shewn, the date whereof is the same day and year, did acknowledge himself to be held and firmly bound unto the said Plaintiff in the aforesaid sum of one hundred & twelve dollars to be paid to the Plaintiff when the said Defendant should be thereto afterwards requested: NEVERTHELESS, the said Defendant (altho often requested, &c.) has not yet paid the said sum of money above demanded, or any part thereof, to the said Plaintiff but to pay the same has hitherto wholly refused, and still does refuse, to the damage of the said Plaintiff of one hundred dollars; and therefore the said Plaintiff brings suit, &c.

AND the said Trueworthy W. Cook by John Bradish his Attorney come, and defend, the wrong and injury, when, &c. and say, that he cannot deny the action of the said Plaintiff nor but that the said writing obligatory is his deed, nor but that he doth owe to the said Plaintiff the said sum of one hundred and twelve dollars in manner and form as the said Plaintiff has, above in declaring complained. & he releases all errors in obtaining judgment

THEREFORE, it is considered that the said Plaintiff recover against the said Defendant his said debt; And also twelve dollars for his damages which he has sustained, as well by occasion of the detaining said debt, as for his costs and charges, by him about his suit in this behalf expended, by the Court of the People aforesaid, now here adjudge to the said plaintiff by his assent, and the said defendant in mercy, &c.

Judgment signed the 27th day of January one thousand eight hundred & eighteen

SUPREME COURT. *Of the Term of January in the year of our Lord one thousand eight hundred and eighteen*

Oswego COUNTY, ss. Charles Baldwin Plaintiff in this suit, complains of True W. Cook Defendant in this suit in custody, &c. of a plea that the said Defendant render unto the said Plaintiff one hundred & twelve Dollars lawful money of the State of New York, which the said Defendant owes to, and unjustly detains from the said Plaintiff; for that, WHEREAS the said Defendant on the eleventh day of December in the year of our Lord one thousand eight hundred and seventeen in the county aforesaid, by his certain writing obligatory, sealed with the seal of the said Defendant and to the Court now here shewn, the date whereof is the same day and year, did acknowledge himself to be held and firmly bound unto the said Plaintiff in the aforesaid sum of one hundred and twelve dollars to be paid to the said Plaintiff when the said Defendant should be thereto afterwards requested: NEVERTHELESS, the said Defendant (tho often requested, &c.) has not yet paid the said sum of money above demanded, or any part thereof to the said Plaintiff but to pay the same has hitherto wholly refused, and still does refuse, to the damage of the said Plaintiff of one hundred dollars, and therefore the said Plaintiff brings suit, &c.

C. Baldwin [redacted] for Pl'ff.

Pledges to prosecute, } JOHN DOE and RICHARD ROE.

Oswego COUNTY, ss. Charles Baldwin *puts in his place* Charles Baldwin *his attorney* *Attorney against* True W. Cook *in a plea of debt.*

SUPREME COURT.

True W. Cook
adm^r
Charles Baldwin } PLEA.

And the said True W. by John Bradish his Attorney comes and defends the wrong and injury, when, &c. and says that he cannot deny the action of the said Plaintiff nor but that the said writing obligatory is his deed, nor but that he does owe to the said Plaintiff the said sum of one hundred & twelve dollars in manner and form as the said Plaintiff has above in declaring complained. & he relies all errors in obtaining judgment

J^n Bradish Att'y for Def't.

Oswego COUNTY, ss. True W. Cook *puts in his place* John Bradish *his Attorney at the suit of* Charles Baldwin *in the plea aforesaid.*

SUPREME COURT. *Of the Term of January in the year of our Lord one thousand eight hundred and 18*

Oswego - COUNTY ss. True W Cook is delivered to bail, upon the taking of body to John Doe and Richard Roe, of Volney in the county aforesaid, Gentlemen, at the suit of Charles Baldwin in a plea of debt

Att'y for Def't.

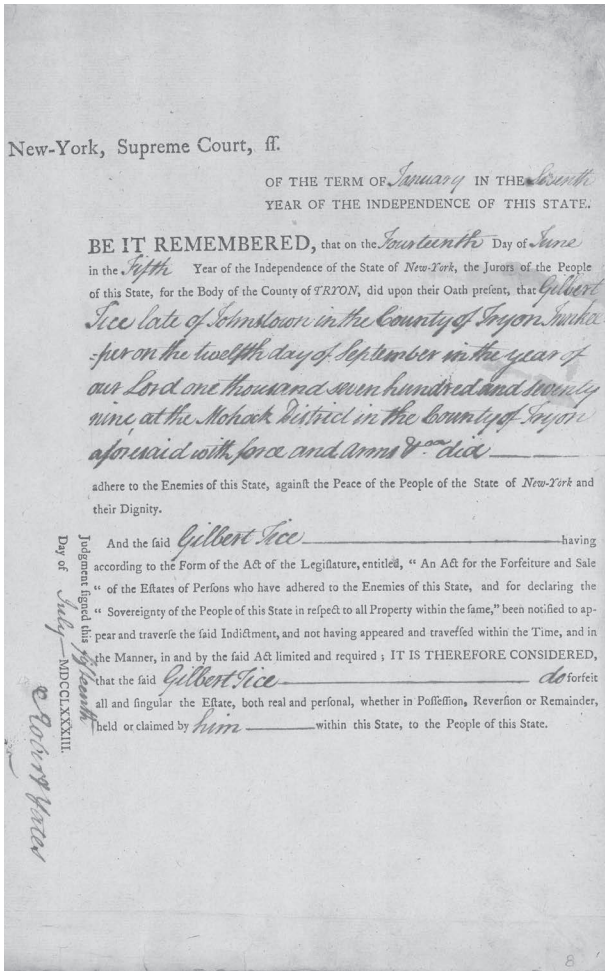
J^n Bradish

The plaintiff's judgment award was damages and costs in cases of *assumpsit*, covenant, trespass, and trespass on the case; debt, damages, and costs in cases of debt; damages and costs in cases of replevin; and possession of and title to real property plus costs in actions of ejectment. The defendant's judgment award, in the few cases that went against the plaintiff, either by verdict or nonsuit, was usually costs only, although it might be possession of real or personal property in dispute. On the verso of the judgment record are written the name of the court, the title of the cause, name of winning party's attorney, amount of judgment award, and date of filing.

JUDGMENT AGAINST AN "ENEMY OF THIS STATE," 1783.

Chief Justice Robert Yates signed the judgment against Gilbert Tice, formerly innkeeper at Johnstown and a convicted Loyalist. Tice was an associate of Sir William Johnson and fled to Canada in 1775 with the Johnson family. He was an officer in John Butler's company of rangers during the Revolutionary War. Tice forfeited his property to the State under the Forfeiture Act of 1779. These judgments are the earliest known use of a printed form in the New York Supreme Court.

(Series JN519, Judgment Rolls and Other Documents on Parchment, file P-B-2-10.)



New-York, Supreme Court, ff.

OF THE TERM OF January IN THE Seventh YEAR OF THE INDEPENDENCE OF THIS STATE.

BE IT REMEMBERED, that on the Fourteenth Day of June in the Fifth Year of the Independence of the State of *New-York*, the Jurors of the People of this State, for the Body of the County of *TRYON*, did upon their Oath present, that Gilbert Tice late of Johnstown in the County of Tryon Innkeeper on the twelfth day of September in the year of our Lord one thousand seven hundred and seventy nine at the Mohawk District in the County of Tryon aforesaid with force and arms &c did

adhere to the Enemies of this State, against the Peace of the People of the State of *New-York* and their Dignity.

And the said Gilbert Tice having according to the Form of the Act of the Legislature, entitled, "An Act for the Forfeiture and Sale "of the Estates of Persons who have adhered to the Enemies of this State, and for declaring the "Sovereignty of the People of this State in respect to all Property within the same," been notified to appear and traverse the said Indictment, and not having appeared and traversed within the Time, and in the Manner, in and by the said Act limited and required; IT IS THEREFORE CONSIDERED, that the said Gilbert Tice do forfeit all and singular the Estate, both real and personal, whether in Possession, Reversion or Remainder, held or claimed by him within this State, to the People of this State.

Judgment signed this Day of July MDCLXXXIII.

Often accompanying the judgment proper are copies of other case documents. They include the plaintiff's declaration (statement of cause of action with plea and "counts"); oyer (copy of the bond or other obligation sued upon); bail piece (either common bail or special bail); defendant's plea or *cognovit*; warrant of attorney (by which a defendant appoints an attorney to receive a declaration and confess liability for judgment); and the satisfaction piece (acknowledgment of satisfaction of judgment by both parties to the action). By the 1820s all these documents (except the satisfaction piece and warrant of attorney) are usually found on one printed form, along with the judgment itself.

The series of judgment rolls also include judgments affirming or reversing judgments of lower courts. Those judgments were reviewed by the Supreme Court by writ of error or writ of *certiorari*. In such cases the judgment record contains a copy of the writ and the return thereto by the inferior court. See J0147 Writs of *Certiorari* and J0031 Writs of Error for a detailed discussion of these writs. Occasionally, but not always, the verso of the judgment roll notes that the judgment was rendered on reversal or affirmance of a lower court's judgment. The judgment rolls also include judgments in cases transferred to the Supreme Court from a lower court prior to a judgment by writ of *certiorari* or *habeas corpus*. See J0029 Writs of *Habeas Corpus* for a detailed discussion of the latter writ. The judgment dockets, described below, give no indication of whether a judgment was awarded on a writ of error, *certiorari* or *habeas corpus,* or in an original proceeding.

Each of the four clerk's offices maintained its own series of judgment rolls. The judgment rolls filed at Albany, Utica, and Geneva (series J0140, J0134, J0137 respectively) are arranged chronologically by year, then alphabetically by first letter of last name of losing party, then chronologically by filing date. (Some are out of order.) Judgment rolls filed in New York City (series JN529) are arranged by year, then by a filing code corresponding to the first letter of the last name of the defendant. The major exception to this arrangement is ejectment cases. (The action of ejectment was commonly used to determine claims to real property.) Prior to 1830, judgment rolls in ejectment cases are filed under names of fictional plaintiffs or defendants. If the actual defendant prevailed, the judgment roll is filed under the name of the fictional plaintiff, usually "James Jackson." If the actual plaintiff prevailed, the judgment roll may be filed either under the name of the fictional defendant, usually "John Stiles," or under the name of the actual defendant. Starting in 1830 judgment rolls in ejectment actions are filed like the other judgment rolls.

JN519	Judgment Rolls and Other Documents on Parchment (New York), 1684-1848 (bulk ca. 1765-1810).	100.0 c.f.

Most of the documents in this series are judgment rolls, issue rolls, and *nisi prius* rolls of the Supreme Court of Judicature. Other Supreme Court documents include bonds, writs of *capias*, writs of *venire facias juratores*, and a few examples of many other document types. Criminal case documents (all pre-dating 1776) include indictments, informations, writs of *capias*, judgments, and entries of money fines levied on individuals convicted of crimes. The series also contains a very few Court of Chancery documents, such as bills of complaint, answers, and exhibits, and also a few documents from other courts.

Laws of 1799, 22nd Sess., Chap. 5, authorized the clerk of the Supreme Court of Judicature to destroy pleadings, bail pieces, motion papers, inquisitions, and indictments and other criminal case papers pre-dating July 9, 1776. However, some such documents are found in this series.

This series was assembled and indexed by staff of the New York County Clerk's Office in the early twentieth century. Most of the documents are on parchment, the rest on paper. The documents were rolled and stored in cabinets until the 1990s, when a conservator flattened them and placed them in large portfolios or boxes. Documents are arranged by group numbered from 1 to 248 (which refers to a portfolio, a box, or one of two sections within a box). That number is followed by an alphabetic code from 'A' to 'L' omitting 'I', referring to each bundle of flattened documents within a portfolio or box; then by a document number from 1 to 10, referring to each document within a bundle. The resulting document code is represented by this example: 1-A-1. The series is indexed by JN120 Card Index to Supreme Court and Court of Chancery Documents on Parchment and by JN109 Spreadsheet Index to Supreme Court Judgment Rolls and Other Documents on Parchment, Court of Chancery and First Circuit Filed and Transcribed Documents, and New York City Court of Common Pleas and New York City Superior Court Filed Documents.

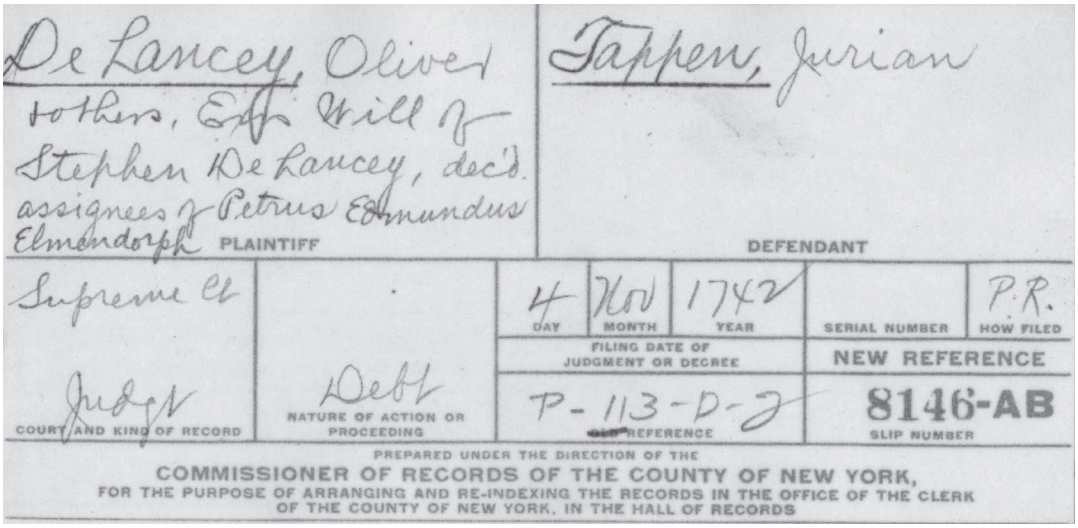
JN120	Card Index to Supreme Court and Court of Chancery Documents on Parchment (New York), 1684-1848 (bulk ca. 1765-1810).	4.0 c.f.; 16 microfilm rolls

The card index provides access to individual documents in series JN519 Judgment Rolls and Other Documents on Parchment (New York). An index card contains the names of plaintiff and defendant, name of court, type of document, type of common-law action or proceeding, date of filing, and reference to the document code. The cards are arranged alphabetically by plaintiff name, either an individual's surname and given name or by corporation name. Multiple plaintiffs are indexed individually. Documents in criminal cases and claims by the sovereign are indexed under the "King" (colonial period) or the "People" (statehood period). Selected data from the index cards is in series JN110 (described below).

INDEX CARD FOR JUDGMENT ROLL, 1742.

The card, filed under the lead plaintiff's name (Oliver DeLancey), contains the file code for a judgment roll in Series JN519, Judgment Rolls and Other Documents on Parchment.

(Series JN120, Card Index to Supreme Court and Court of Chancery Documents on Parchment. Selected data from the card index is available in an electronic spreadsheet, series JN109.)


De Lancey, Oliver
others, Exr. Will of
Stephen De Lancey, dec'd.
assignees of Petrus Edmundus
Elmendorph PLAINTIFF

Tappen, Jurian
DEFENDANT

Supreme Ct
COURT AND KIND OF RECORD

Judgt

Debt
NATURE OF ACTION OR PROCEEDING

4 DAY | Nov MONTH | 1742 YEAR
FILING DATE OF JUDGMENT OR DECREE

P.R. HOW FILED

P-113-D-2 REFERENCE

NEW REFERENCE
8146-AB
SLIP NUMBER

PREPARED UNDER THE DIRECTION OF THE
COMMISSIONER OF RECORDS OF THE COUNTY OF NEW YORK,
FOR THE PURPOSE OF ARRANGING AND RE-INDEXING THE RECORDS IN THE OFFICE OF THE CLERK OF THE COUNTY OF NEW YORK, IN THE HALL OF RECORDS

The card index was created by staff of the New York County Clerk's Office in the early twentieth century. The index was microfilmed by the Genealogical Society of Utah in 1978 (microfilm rolls #1204976-1204982) and cataloged as "New York County (New York), County Clerk, Index to Parchments." That microfilm has been digitized by Ancestry.com and is available through the Ancestry New York portal on the State Archives' website. The index was microfilmed again in 2000 for the New York County Clerk's Office.

JN109	Spreadsheet Index to Supreme Court Judgment Rolls and Other Documents on Parchment, Court of Chancery and First Circuit Filed and Transcribed Documents, and New York City Court of Common Pleas and New York City Superior Court Filed Documents, 1684-1895 (bulk ca. 1765-1895)	4.2 MB electronic file

This electronic spreadsheet index contains selected data from series JN103 Card Index to Court of Chancery Enrolled Decrees and Filed Papers and JN120 Card Index to Supreme Court and Court of Chancery Documents on Parchment. The electronic index also contains data from other indexes and records that are held by the New York County Clerk's Office, Division of Old Records, specifically records of the Court

of Common Pleas for the County and City of New York (known as the "Mayor's Court" until 1821) (files dating ca. 1786-1821) and the New York City Superior Court (1828-1895). Index data fields include plaintiff name, defendant name, year of filing document, alphanumeric document code, and entry or line number.

The electronic spreadsheet indexes filed documents in the following record series: JN306 Court of Chancery, Transcriptions of Enrolled Decrees into Libers, 1799-1890 (code "CL"); JN312 Court of Chancery, Enrolled Decrees, 1821-1847 (small part of series) (code "D-CH"); JN315 Court of Chancery, Filed Papers, 1701-1899 (codes "BM" and "INC BM"); and JN519, Supreme Court of Judicature, Judgment Rolls and Other Documents on Parchment, 1684-1848 (codes "P" and "Parchments," and "Supreme Court Judgments").

JN528	Miscellaneous Judgment Rolls (New York), 1772-1826 (with gaps).	0.2 c.f.

These judgment rolls were filed by the clerk of the Supreme Court of Judicature at New York City. They were not included in the main series of judgment rolls, JN519 and JN529, and are not indexed. They are sorted by year.

JN529	Judgment Rolls (New York), 1781-1847 (bulk 1799-1847).	240.5 c.f.

Series contains judgment rolls (so-called "Law Judgments") filed by the clerk of the Supreme Court of Judicature in New York City prior to July 1, 1847. It also contains judgment rolls filed by the New York County Clerk as clerk of the reorganized Supreme Court between July 5 and December 31, 1847. The judgment roll contains a summary of pleadings and proceedings in a common-law action, including the trial if there was one, and the final judgment award. The file may include additional documents relating to the defendant's attorney and bail, and satisfaction of the judgment, if that occurred.

The judgment rolls are filed chronologically by year, then alphabetically by the first letter of the defendant's last name, then numerically by an assigned sequential file code. The code is stamped on the verso of each document. It consists of the year a judgment was filed, the initial letter of the defendant's surname or corporate name, and an assigned sequential file number. The series is indexed in JN117 Card Index to Supreme Court Judgment Rolls (New York); JN111 Consolidated Index of Court Judgments Docketed in New York County and City (1844-1847 only); and JN199 Spreadsheet Index to Supreme Court Judgment Rolls and Other Records.

JN117	Card Index to Judgment Rolls (New York), 1781-1910 (bulk 1799-1910).	101.5 c.f.; 128 microfilm rolls

The card index provides access to judgment rolls filed by the clerk of the Supreme Court of Judicature in New York City between 1781 and June 30, 1847, and by the clerk of the reorganized Supreme Court in New York City and County between July 1 and December 31, 1847. Those judgments are found in series JN529. Also included in the

index are the so-called "Law Judgments" of the reorganized Supreme Court through the end of 1910. Those post-1847 judgment rolls remain at the New York County Clerk's Office, Division of Old Records. The index cards are arranged alphabetically by plaintiff's name. Each card contains the names of plaintiff and defendant, name of court, filing date, and file reference code. The code consists of the year, first letter of defendant's surname or corporate name, and a sequential file number.

All index cards for names starting with 'A' are missing, but they are available on microfilm. The card index was microfilmed by the Genealogical Society of Utah in 1977, cataloged as "New York Supreme Court (New York County), Index to Law Judgments, 1781-1910" (microfilm rolls #1002926-1003000, 1204501-1204538, 1204605-618).

JN199	Spreadsheet Index to Supreme Court Judgment Rolls and Other Records (New York), ca. 1783-1953.	111 MB electronic file

This electronic spreadsheet index contains selected data from series JN117 Card Index to Supreme Court Judgment Rolls. Most entries in both the card index and the spreadsheet refer to the much larger quantity of post-1847 judgment rolls ("Law Judgments") that are held by the New York County Clerk's Office, Division of Old Records. Index data fields include plaintiff name, defendant name, year of filing document, alphanumeric document code, and entry or line number. The electronic spreadsheet indexes filed documents in series JN529 Supreme Court of Judicature, Judgment Rolls (New York).

J0140	Judgment Rolls (Albany), 1797-1847.	326.4 c.f.

Most of the rolled parchments for 1797 and 1798 have been rearranged alphabetically by name of plaintiff. J0141 Docket of Judgments provides access to the complete series of Albany judgment rolls. J0142 Index to Dockets of Judgments covers the years 1829 to 1835.

J0134	Judgment Rolls (Utica), 1807-47.	208.1 c.f.

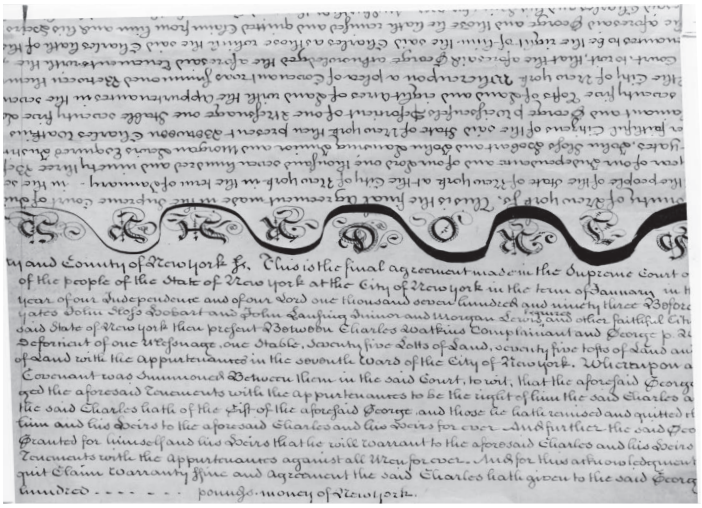
J0135 Transcripts of Docket of Judgments provides access to the Utica judgment rolls. J0142 Index to Documents of Judgments covers the years 1829 to 1835. Some of the Utica judgment rolls for 1827 and 1828 were misfiled in J0137 Judgment Rolls (Geneva).

J0137	Judgment Rolls (Geneva), 1827-47.	110.5 c.f.

J0138 Transcripts of Docket of Judgments provides the only access to the complete series of Geneva judgment rolls. J0142 Index to Dockets of Judgments covers the years 1829 to 1835. The judgment rolls labeled "Geneva" for the years 1827 to 1828 are evidently estrays from J0134 Judgment Rolls (Utica).

J1011 Fines and Chirographs (Albany), ca. 1793-1829. 0.9 c.f.

A "fine" was the record of an amicable agreement in court ending an action at law to enforce a covenant to convey real property. The conveyance was accomplished after the plaintiff asked the court's permission to terminate his suit. In origin this proceeding settled a genuine dispute, but for centuries a fine was based upon a fictitious lawsuit agreed to by the parties. This archaic proceeding was employed occasionally because the (fictitious) lawsuit and all other (genuine) claims of title to the lands conveyed were forever ended after the fine was proclaimed in court and enrolled. The documents included in the fine are (1) the original writ of covenant (or writ of *praecipe),* (2) the license to agree, (3) the concord, (4) the note of the fine, and (5) the foot of the fine.



CHIROGRAPH, 1793.

Shown here are the top and bottom parts of a chirograph, a conveyance of property in the seventh ward of New York City. The letters of the word CHIROGRAPH were written on the interlocking teeth of the indenture. (The plaintiff-grantee usually received the other half of the indenture as proof of the conveyance.) The chirograph was the concluding agreement of a centuries-old real action called fine and recovery.

(Series J1011, Fines and Chirographs [Albany}.)

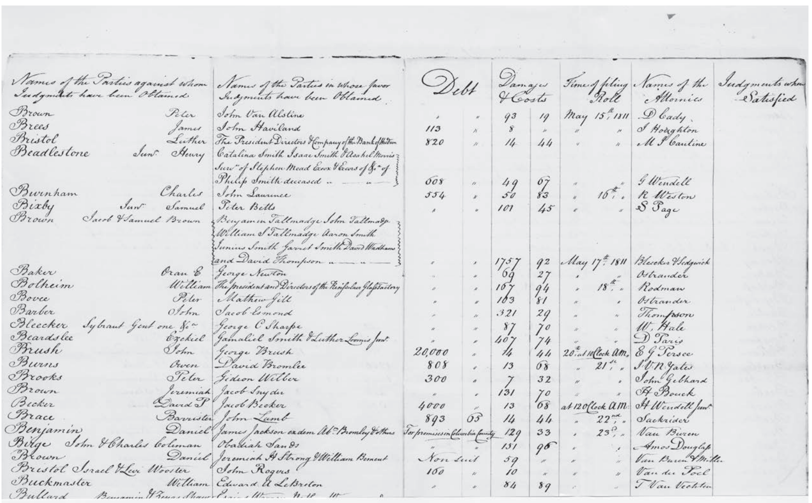
The writ of covenant was usually issued by an inferior court of record (such as the court of common pleas). It commanded the "deforciant" (the name for the defendant in this type of proceeding) to perform the (fictitious) covenant made by him with the plaintiff to convey a parcel of land, which is described in detail. The license to agree is an enrolled note signed by a Supreme Court justice giving leave to the plaintiff to settle his dispute with the deforciant, despite the fact that he has commenced an action against him. The concord is an enrolled order to the deforciant to perform the covenant made to convey the parcel of land. The note of the fine is a summary of the writ of covenant and the concord. The foot of the fine is the actual conveyance of the property made in the Supreme Court. The conveyance was executed in duplicate on one sheet of parchment and is a true indenture because the two parts were cut apart in an indented (wavy) line. On the interlocking teeth of the indenture was written the word CHIROGRAPH, an ancient name for an instrument of conveyance. The foot or bottom part was filed with the court, while the top part went to the plaintiff. Other documents may be found along with those comprising the fine. The warrant of attorney designated a person to prosecute a writ of covenant on behalf of a plaintiff who was unable to appear in court to acknowledge the fine. The writ of *dedimus potestatem* ordered other persons to act in place of the justices of the Supreme Court in taking acknowledgment of the fine from a party to the action who was unable to appear in court. The affidavit of newspaper publication of the notice of levying a fine contains an attached copy of the notice.

The documents in this series are unarranged and unindexed, and occasionally some parts of a fine are missing. Orders for the proclamation of fines were entered in the Albany and Utica minute books of the Supreme Court, J0130, J0128. JN519 Judgment Rolls and Other Documents on Parchment (New York) contains a few documents relating to fine and recovery. The procedure for levying a fine was carefully outlined in Laws of 1787, 10th Sess., Chap. 43, and *Revised Laws* (1813), Chap. 58, vol. 1, pp. 358-63, but in essentials it dated back to the twelfth century. The acts required that fines be recorded in the clerk's office in the county where the property conveyed was located,

and enrolled "to be of record forever, and to remain in the safe custody of the clerk of the Supreme Court." The proceeding of "fine and recovery" was abolished by the *Revised Statutes* of 1829, Part II, Chap. 5, Title 7, sect. 24. The action of ejectment provided an equivalent remedy thereafter.

Dockets of Money Judgments

These series are dockets and transcripts of dockets of money judgments filed by the clerks of the Supreme Court at New York City, Albany, Utica, and Geneva. The dockets serve as indexes to the judgment rolls filed by the clerks at Albany, Utica, and Geneva, which are otherwise unindexed. Each docket entry gives the following summary information about a case: name of party against whom judgment has been obtained, name of party in whose favor judgment has been obtained, amount of debt, amount of damages and costs, date and hour of filing judgment roll, name of attorney for losing party, and date of satisfaction, if any. The entries are alphabetical by first letter of last name of losing party (usually the defendant), then chronologically by date (and sometimes hour) of filing. Some of the dockets include additional categories of information. The clerk prepared a docket for each term, year, or groups of years. The transcripts of dockets were compiled either each term (before 1830) or semimonthly (starting 1830), and the transcripts were forwarded to the other clerks. The transcripts now in the State Archives are those received by the Supreme Court clerks at New York City and Albany. The judgment docket books maintained by the clerks of the Supreme Court of Judicature at Utica and Geneva were transferred to the county clerk's offices in Oneida County and Ontario County, respectively. The only index to the dockets and transcripts of dockets in all four clerk's offices is J0142 "Docket Index," 1829-35. The transcripts were made and their contents were certified as to accuracy by the clerk of the court.



Names of the Parties against whom Judgments have been Obtained		Names of the Parties in whose favor Judgments have been Obtained	Debt		Damages & Costs		Time of filing Roll	Names of the Attornies	Judgments when Satisfied
Brown	Peter	John Van Alstine	"	"	93	19	May 15th 1811	D Cady	
Brees	James	John Haviland	113	"	8	"	" "	J Houghton	
Bristol	Luther	The President Directors & Company of the Bank of Hudson	820	"	14	44	" "	M I Cantine	
Beadlestone	Junr Henry	Catalina Smith Isaac Smith & Asahel Morris Junr of Stephen Mead Exox & Exors of &c of Philip Smith deceased							
Burnham	Charles	John Laurence	608	"	49	67	" "	G Wendell	
Bixby	Junr Samuel	Peter Betts	554	"	50	83	" 16th "	R Weston	
Brown	Jacob & Samuel Brown	Benjamin Tallmadge John Tallmadge William S Tallmadge Aaron Smith Junius Smith Garret Smith David Wadhams and David Thompson	"	"	101	45	" "	S Page	
Baker	Oran E	George Newton	"	"	1757	92	May 17th 1811	Bleecker & Sedgwick	
Bolheim	William	The president and Directors of the Rensselaer Glass Factory	"	"	69	27	" "	Ostrander	
Bovee	Peter	Mathew Gill	"	"	167	94	" 18th "	Rodman	
Barber	John	Jacob Esmond	"	"	103	81	" "	Ostrander	
Bleecker	Sybrant Gent one &c	George C Sharpe	"	"	321	29	" "	Thompson	
Beardslee	Ezekiel	Gamaliel Smith & Luther Loomis Junr	"	"	87	70	" "	W. Hale	
Brush	John	George Brush	"	"	407	74	" "	D Paris	
Burns	Owen	David Bromlee	20,000	"	14	44	20th at 10 Clock am.	E G Persee	
Brooks	Peter	Gideon Wilber	808	"	13	68	" 21st "	J V N Yates	
Brown	Jeremiah	Jacob Snyder	300	"	7	32	" "	John Gebhard	
Becker	David P	Jacob Becker	"	"	131	70	" "	H Bouck	
Brace	Barrister	John Lamb	4000	"	13	68	at 12 O Clock am.	H Wendell Junr	
Benjamin	Daniel	James Jackson ex dem Abm Bromley & others	893	65	14	44	" 22nd "	Sackrider	
Birge	John & Charles Coleman	Obadiah Sands	For premises in Columbia County		129	33	" 23d "	Van Buren	
Brown	Daniel	Jeremiah H Strong & William Bement	"	"	131	96	" "	Amos Douglass	
Bristol	Israel & Levi Wooster	John Rogers	Non Suit		59	"	" "	Van Buren & Miller	
Buckmaster	William	Edward W LeBreton	160	"	10	"	" "	Van der Poel	
Bullard	[illegible]	[illegible]	"	"	84	89	" "	T Van Vechten	

TRANSCRIPT OF JUDGMENT DOCKET, 1811.

Each docket entry states the name of judgment debtor (usually defendant); judgment creditor (usually plaintiff); the amount of debt, damages, and costs; the date when the clerk docketed the judgment; name of judgment creditor's attorney; and date of satisfaction, if any.

(Series J1141, Transcripts of Docket of Judgments [Albany].)

JN527	Docket of Judgments (New York), 1785-1851.	2.5 c.f. (17 vols.); 10 rolls microfilm

The dockets of money judgments were compiled by the clerk of the Supreme Court of Judicature in New York City, through June 30, 1847, and by the clerk of the Supreme Court in New York City and County, starting July 1, 1847. Entries are grouped chronologically by court term, 1785-94; or by year or groups of years, 1795-1851. Thereunder the entries are alphabetical by first letter of judgment debtor's surname or corporate name, then chronological by date of docketing judgment. Entries for corporations are typically entered in a separate section.

Three of the docket books appear to list judgments that remained unsatisfied when the Supreme Court was reorganized effective July 1, 1847. Two of those books are dockets of money judgments that had been filed in the Supreme Court clerks' offices in New York City, Albany, Utica, and Geneva, and in the New York City and County Court of General Sessions (money fines levied on individuals convicted of criminal offenses), 1844-46. The third book appears to be a docket of unsatisfied judgments in courts of common pleas in various counties, and in mayor's courts in cities outside of New York City, 1840-47. Satisfactions of judgments were entered in these three docket books as late as 1864. Docketing of a judgment imposed a lien on the real property of the judgment debtor in the county where the docketing occurred.

Judgment docket books for the period 1785-1841 and microfilm reproductions were transferred from the New York County Clerk's Office to the State Archives in 2017. Docket books for 1842-51 were transferred on microfilm only.

J0131	Docket of Judgments (New York), 1797-1810.	1.0 c.f. (4 vols.)
J0132	Transcripts of Docket of Judgments (New York), 1809-47.	4.5 c.f. (11 vols.)

These dockets and transcripts were maintained by the Supreme Court clerk at Albany. They were transferred by the Court of Appeals to the State Archives in 1982.

JN526	Transcripts of Dockets of Judgments (Albany, Canandaigua, Geneva, Utica, New York), 1790-1847.	18.0 c.f. (42 vols.); 25 rolls microfilm

The transcripts were filed in the office of the clerk of the Supreme Court in New York City. The transcripts record money judgments filed in Albany (starting 1790), Utica (1807), and Canandaigua or Geneva (1829). They are arranged by court term (through 1829) or semimonthly (starting 1830). The transcripts were microfilmed at the New York County Clerk's Office in 1953.

J0141	Docket of Judgments (Albany), 1797-1847.	10.0 c.f. (28 vols.)

The Albany dockets were compiled for several years at a time. They function as an index to J0140 Judgment Rolls (Albany).

J1141	Transcripts of Dockets of Judgments (Albany), 1808, 1810-11.	4 items

This is a fragmentary series. The four unbound fascicles cover the periods August through November 1808, May through August 1810, February through May 1811, and May through August 1811.

J0135 Transcripts of Docket of Judgments (Utica), 1807-47. 7.0 c.f. (14 vols.)

Through 1829 the transcripts were compiled for each term; starting in 1830 they were compiled semimonthly. They function as an index to J0134 Judgment Rolls (Utica). The Oneida County Clerk's Office in Utica holds the original docket of judgments kept by the clerk of the Supreme Court of Judicature at Utica.

J0138 Transcripts of Docket of Judgments (Geneva), 1829-47. 4.0 c.f. (9 vols.)

The Geneva transcripts were compiled semimonthly. They function as an index to J0137 Judgment Rolls (Geneva). The Ontario County Clerk's Office in Canandaigua holds the original docket of judgments kept by the clerk of the Supreme Court of Judicature at Geneva.

J0142 Index to Dockets of Judgments (Albany, Utica, Geneva, New York), 1829-35. 1.0 c.f. (3 vols.)

This series is an index to losing parties in judgments rendered by the Supreme Court of Judicature. The names of judgment debtors are entered in alphabetical order, and following each name are the dates of judgments against him. Following the date is the letter 'U,' 'G,' or 'N,' standing for judgments filed at Utica, Geneva, or New York, respectively. If there is no letter, the judgment roll was filed at Albany. Corporations are listed under 'The.' This series was evidently compiled from J0141 Docket of Judgments (Albany), and J0132, J0135, and J0138 Transcripts of Dockets of Judgments (New York, Utica, and Geneva). It serves as an index to the judgment debtors listed in those volumes and to the judgment rolls themselves for the years 1829 through 1835.

JN111 Consolidated Index of Court Judgments Docketed in New York City and County, 1844-1855. 4.0 c.f. (25 vols.)

Printed volumes contain summary information on money judgments in the superior civil courts in New York County and City, and occasionally other courts in New York City and State. The entry for each civil case states the names of the judgment debtor and creditor; amounts of debt and/or damages, and court costs; date and time when judgment was filed and docketed; date and time when judgment was perfected (awarded by the court); which court rendered the judgment; name of filing attorney; and date of filing satisfaction (if any). Entries are alphabetical by first letter of judgment debtor's surname or corporate name, then chronological by date of filing and docketing judgment. Most of the entries are for judgments docketed by the clerks of the Supreme Court of Judicature and the Court of Chancery, first circuit, in New York City (before July 1, 1847); the Supreme Court in New York County (starting July 1, 1847); the Court of Common Pleas for New York City and County; and the Superior Court of New York City. Judgments in other courts in New York City and elsewhere in the state are listed if a prevailing party had a transcript of the judgment filed in New York City. Also included are money fines levied by the court of General Sessions for the City and County of New York in criminal convictions.

The volumes were published as *Indices of Judgments; Docketed in the City and County of New-York, from January 1, 1844, to December 31, 1855,* 25 vols. (New York: 1857). The publication was authorized by the Commissioners of Records for the City and County of New York, who were appointed pursuant to Laws of 1855, Chap. 407.

JN597	Transcript of Docket of Judgments in U.S. District Court, Southern District of New York, 1829-1839.	0.3 c.f. (1 vol.); 1 microfilm roll (part)

Volume is a transcript of the docket of money judgments awarded in the United States District Court, Southern District of New York, in New York City. Each entry states the names of the judgment debtor and creditor; amount of judgment and court costs; date and time of signing and filing judgment roll; name of judgment creditor's attorney (almost always the U.S. Attorney); and date of satisfaction of judgment (usually blank). The entries are alphabetical by first letter of last name of losing party, then chronological by date of docketing judgment. There is no index. Volume includes the transmittal letter and certification of the court clerk. These transcripts (and those in series J6013 and J0222) were compiled by the clerk of the U.S. District Court, Northern District of New York, in Albany, and filed in the New York Supreme Court clerk's offices pursuant to the N.Y. *Revised Statutes* of 1829, Part III, Chap. 7, Title 17, sect. 38-42, as amended by Laws of 1832, Chap. 210. See also U.S. Statutes at Large, 25th Congress, 3rd Session, Chap. 81, sect. 8 (March 3, 1839).

J6013	Transcripts of Judgments Entered Up in U.S. District and Circuit Courts, 1831-36.	0.2 c.f.

This series consists of transcripts from dockets of judgments in the United States Circuit Court and District Court for the Southern District of New York. The transcripts vary in format, but all entries give the names of the losing and winning parties, the amount of judgment and costs, the date of filing and docketing the judgment, and the filing attorney's name. Each transcript bears the certificate of the clerk of the United States court that the transcript is correct. Most of the transcripts are copies forwarded to the clerks of the Supreme Court at Utica and Geneva, but some appear to be the originals sent to Albany.

J0222	Transcripts of Docket of Judgments in U.S. District and Circuit Courts (Utica), 1830-36.	0.5 c.f. (1 vol.)

This volume contains entries of judgments against parties to actions in the United States district and circuit courts in New York State. Each entry gives the names of the judgment debtor and creditor; how the judgment was obtained; amounts of debt, damages, and costs; date and time of filing and docketing judgment; name of filing attorney; name of court in which the judgment was obtained (U.S. District Court, Northern or Southern District of New York; or U.S. Circuit Court); and date of satisfaction, if any. The entries are alphabetical by first letter of last name of losing party, then chronological by date of docketing judgment. There is no index.

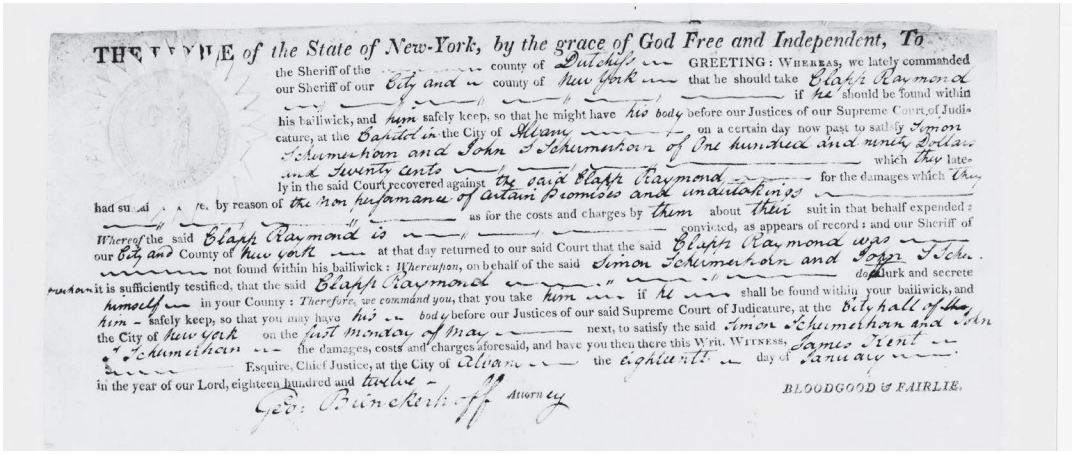
J0074 Transcripts of Chancery Decrees (Albany, Utica, Geneva), 1830-47. 4.2 c.f.

This series consists of transcripts of decrees requiring money payments and docketed in the Court of Chancery and its circuits. Each entry gives the name of the person against whom the decree was rendered; his residence; the amount of debt, damages, costs, or other sums decreed; the date and hour of docketing the decree; the names of the parties to the suit; and the date when the decree was discharged, reversed, or vacated. Each document is signed by the clerk, register, or assistant register from whose docket the entry was copied. Documents filed with the clerks at Albany, Utica, and Geneva are found in this series. Some are bundled by year, and others are disarranged. Not all years are present for each office. Prevailing parties in Chancery suits could on payment of a fee have the decrees in their favor docketed and transcripts of the docket entries sent to the clerks of the Supreme Court for filing, pursuant to *Revised Statutes* of 1829, Part III, Chap. 1, Title 2, Art. 3, sect. 94-95.

WRIT OF ***CAPIAS AD SATISFACIENDUM*****, 1813.**

This writ orders the Onondaga County sheriff to arrest a judgment debtor. On the reverse of the writ the sheriff states that he "took into custody" *(cepi in custodia)* the defendant, who remained in jail until the debt was paid. Imprisonment of judgment debtors was abolished in 1831.

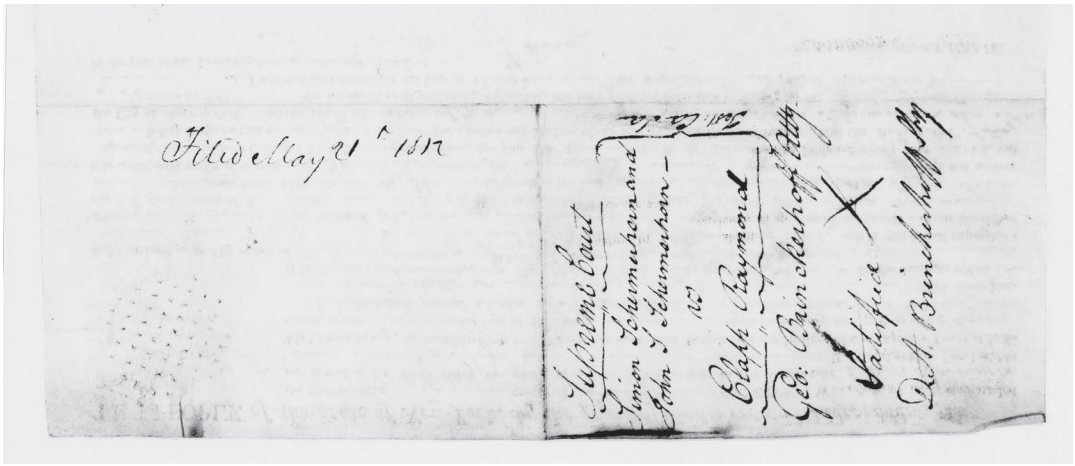
(Series J0024, Writs of Execution [Albany].)



THE PEOPLE of the State of New-York, by the grace of God Free and Independent, To the Sheriff of the county of Dutchess GREETING: WHEREAS, we lately commanded our Sheriff of our City and county of New York that he should take Blakk Raymond if he should be found within his bailiwick, and him safely keep, so that he might have his body before our Justices of our Supreme Court of Judicature, at the Capitol in the City of Albany on a certain day now past to satisfy Simon Schumelhan and John J. Schumelhan of One hundred and ninety Dollars and Twenty cents which they lately in the said Court recovered against the said Blakk Raymond for the damages which they had sustained by reason of the non performance of certain promises and undertakings as for the costs and charges by them about their suit in that behalf expended: Whereof the said Blakk Raymond is convicted, as appears of record: and our Sheriff of our City and County of New York at that day returned to our said Court that the said Blakk Raymond was not found within his bailiwick: Whereupon, on behalf of the said Simon Schumelhan and John J. Schumelhan it is sufficiently testified, that the said Blakk Raymond do lurk and secrete himself in your County: Therefore, we command you, that you take him if he shall be found within your bailiwick, and him safely keep, so that you may have his body before our Justices of our said Supreme Court of Judicature, at the City hall of the City of New York on the first monday of May next, to satisfy the said Simon Schumelhan and John J. Schumelhan the damages, costs and charges aforesaid, and have you then there this Writ. WITNESS, James Kent Esquire, Chief Justice, at the City of Albany the eighteenth day of January in the year of our Lord, eighteen hundred and twelve 19

Geo. Brinckerhoff Attorney

BLOODGOOD & FAIRLIE.



Filed May 21st 1817

Supreme Court
Simon Schumelhan and
John J. Schumelhan
vs
Blakk Raymond

Geo. Brinckerhoff Att'y for Pltffs

D.A. Brinckerhoff Atty

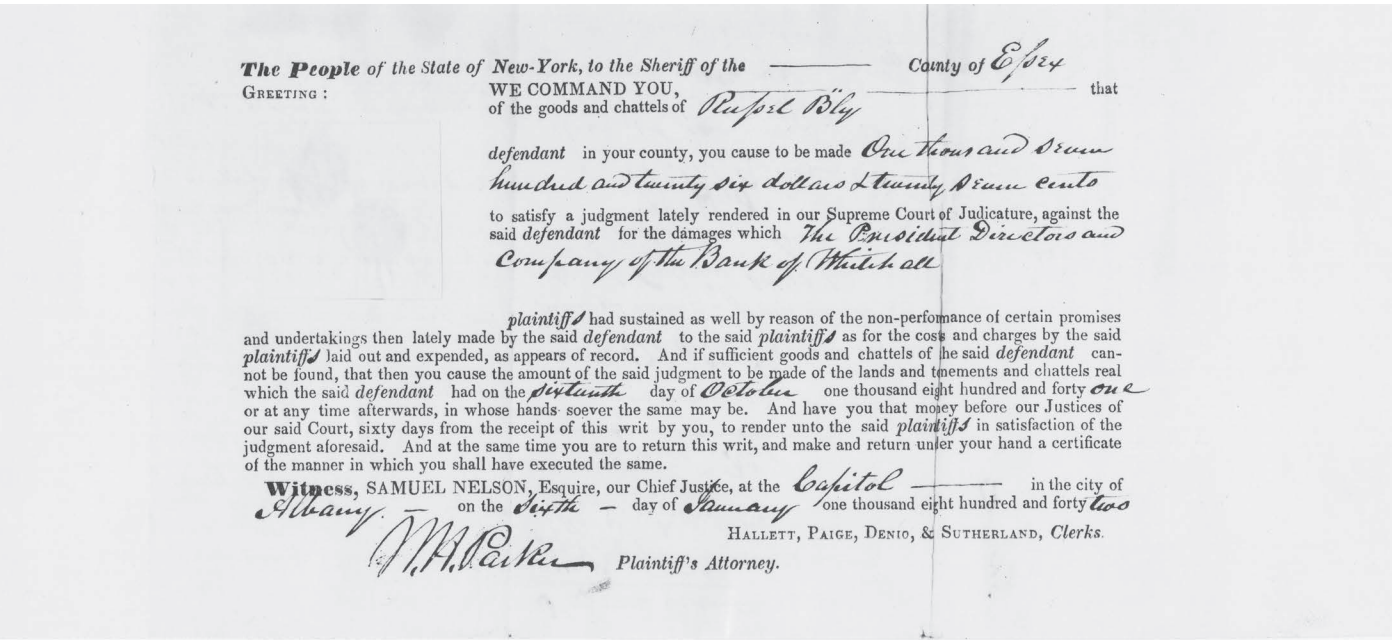
Writs of Execution (includes some Writs of Arrest)

These series contain writs of execution obtained by prevailing parties to enforce Supreme Court judgments. The overwhelming majority of writs of execution are of two types: *fieri facias* and *capias ad satisfaciendum*. The writ of *fieri facias (fi. fa.)* commands a sheriff to levy the amount of the judgment award from the personal or real property of a judgment debtor. The writ states the names of the debtor and the winning party, the amount and date of the judgment, the date for return of the writ, and the names of the justice, clerk, and plaintiff's attorney. On the verso of the writ are found the names of the parties and the plaintiff's attorney, amount of judgment, a summary of the command to the sheriff, date of receipt of writ by sheriff, and his statement as to how he carried out the order. The latter statement may be a receipt for payment, or a list of property sold to satisfy the judgment, or (frequently) a statement that "no goods" *(nulla bona)* were found for sale. Writs of *fieri facias* were sometimes reissued to the same sheriff a second time (*alias fi. fa.*) or even a third time (*pluries fi. fa.*) when a previous writ had not resulted in a judgment levy. When the sheriff of the county where the judgment debtor resided returned the writ saying that the defendant was "not found" (*non est inventus*), a writ of *testatum fieri facias* might be issued to the sheriff of another county where the debtor was believed to possess property.

The writ of *capias ad satisfaciendum* (*ca. sa.*) commands a sheriff to take custody of a judgment debtor and imprison him until the judgment be satisfied. This writ could be issued only after a writ of *fieri facias* was returned unsatisfied. The information in the writ of *ca. sa.* is similar to that found in the writ of *fi. fa.* The sheriff's action is stated on the verso. It might be arrest of the judgment debtor ("I seized the body," *cepi corpus*), failure to find him (*non est inventus* or *non est,* "he is not found"), or receipt of payment. If the initial writ did not succeed in its object, the subsequent writ of *testatum capias ad satisfaciendum* could be issued to the sheriff of another county where the defendant was thought to be. After routine imprisonment for debt was finally abolished effective 1832, the writ of *capias ad satisfaciendum* was still available in cases where a judgment debtor absconded.

These series also contain other types of writs. The writ of *scire facias* is an order to the losing party in an action (or his heirs) to "show cause" why he should not satisfy the judgment; it was often employed when one or the other of the parties to the original action was dead. The writ of possession *(habere facias possessionem, hab. fa.)* is a writ of execution used in ejectment cases. It ordered a sheriff to put the rightful owner in possession of real property awarded to him by a court judgment. The writ of replevin is a writ of execution ordering a sheriff to deliver movable goods, taken unlawfully, to their rightful owner. See J0030 Writs of Replevin.

In each of these writs the type of common-law action is usually stated on the verso, along with the sheriff's statement of how the writ was executed, or was not. (See Appendix J, "Offices for Filing Supreme Court Writs," which lists the counties from which writs were to be returned to a particular Supreme Court clerk's office, 1820-1847.)



The People of the State of New-York, to the Sheriff of the ——— County of Essex
GREETING:
WE COMMAND YOU,
of the goods and chattels of Russel Bly ——— that

defendant in your county, you cause to be made One thousand seven hundred and twenty six dollars & twenty seven cents to satisfy a judgment lately rendered in our Supreme Court of Judicature, against the said defendant for the damages which The President Directors and Company of the Bank of Whitehall

plaintiffs had sustained as well by reason of the non-performance of certain promises and undertakings then lately made by the said defendant to the said plaintiffs as for the costs and charges by the said plaintiffs laid out and expended, as appears of record. And if sufficient goods and chattels of the said defendant cannot be found, that then you cause the amount of the said judgment to be made of the lands and tenements and chattels real which the said defendant had on the Sixteenth day of October one thousand eight hundred and forty one or at any time afterwards, in whose hands soever the same may be. And have you that money before our Justices of our said Court, sixty days from the receipt of this writ by you, to render unto the said plaintiffs in satisfaction of the judgment aforesaid. And at the same time you are to return this writ, and make and return under your hand a certificate of the manner in which you shall have executed the same.

Witness, SAMUEL NELSON, Esquire, our Chief Justice, at the Capitol ——— in the city of Albany — on the Sixth — day of January one thousand eight hundred and forty two

HALLETT, PAIGE, DENIO, & SUTHERLAND, *Clerks.*

W. H. Parker *Plaintiff's Attorney.*

WRIT OF *FIERI FACIAS*, 1842.

This writ orders the Essex County sheriff to sell sufficient property of the defendant, Russell Bly, to satisfy a Supreme Court judgment for $1726.27 in favor of the plaintiff, the Bank of Whitehall. The deputy sheriff states on the reverse that he discovered no real or personal property belonging to Bly on which to levy a judgment.

(Series J0024, Writs of Execution [Albany].)

J0024 Writs of Arrest and Execution (Albany), 1797-1847. 79.1 c.f.

This series contains many writs of arrest (*capias*) as well as writs of execution. The writs are arranged chronologically by year of filing, then alphabetically by name of plaintiff's attorney. Prior to 1809 the writs are bundled by court term for each year. The series as it was arranged on receipt by the State Archives contained many writs of execution filed at Utica. Those which could be readily identified have been refiled in J0013 Writs of Execution (Utica), but some may remain in the present series. Returns of writs of execution for 1797 through 1799 are minuted in J3130 Minutes of Return of Writs by Sheriffs. Returns of writs for the years 1818 through 1825 and 1837 through 1854 are entered in J1153 Registers of Returns of Writs. Additional access to the present series may be had through J0026 Registers of Returns of Writs (by County).

J0013 Writs of Arrest and Execution (Utica), 1807-47. 64.5 c.f.

Besides writs of execution, this series contains, starting in 1819, many writs of arrest (*capias*). Between 1819 and 1837 the writs of *capias* are filed separately from the writs of execution. Starting in 1838 all the writs are interfiled. The writs are arranged chronologically by year of filing, then alphabetically by name of plaintiff's attorney. As organized by the Court of Appeals, this series was interfiled with bundled declarations and motion papers spanning the years 1838 through 1847. These have been removed to J0009 Declarations (Utica).

J0025 Writs of Execution (Geneva), 1829-47. 29.7 c.f.

The Geneva writs are arranged by first letter of attorney's last name, then by year. Some writs are missing. The only access to the Geneva writs is through J0026 Registers of Returns of Writs (by County).

J4026 Writs of Possession (Geneva), 1840-43. 0.4 c.f.

This series consists of writs of possession *(habere facias possessionem)* commanding a sheriff to give possession of real property to the person who was entitled to it by a judgment of the Supreme Court in an action of ejectment. The location and boundaries of the property are described in the writ. The sheriff's certificate of execution of the writ is found on the verso of the writ. Some of the writs include a clause of *fieri facias*, directing the sheriff to levy costs of the action from the personal property of the person wrongfully in possession of the parcel; or a clause of *capias ad satisfaciendum*, directing him to arrest and imprison that person until costs were paid. The documents are unarranged and unindexed.

J7026 Precepts and Precipes (Geneva), 1829-47. 0.4 c.f.

This small series consists of precepts and precipes. The precept is a writ commanding a sheriff to arrest and imprison a judgment debtor for refusal to pay court costs. Each precept bears instructions to the sheriff as to the amount to be collected. The sheriff's return sometimes states whether the defendant was found and whether the judgment was satisfied. The series also includes a few precipes, or instructions to a court clerk to make out a writ. The documents in this series are separated by type (precept or precipe) but are otherwise unarranged and unindexed.

JN553 Writs of *Scire Facias* (New York), 1794-1814 (with gaps). 0.1 c.f.

J1031 Writs of *Scire Facias* (Utica), 1843-45. 0.2 c.f.

The writ of *scire facias* was an order to a defendant or his heirs to "show cause" why an action should not proceed or a judgment not be revived and levied. Additional writs of *scire facias* are in JN519 Judgment Rolls and Other Documents on Parchment.

J1002 Post-1847 Documents Relating to Cases in the Supreme Court of Judicature and Court of Chancery, 1838-1861. 0.2 c.f.

Most of the documents are writs of *fieri facias* (executions), issued out of the Supreme Court of Judicature and returned after reorganization of the Supreme Court effective July 5, 1847. Other documents include satisfaction pieces, orders to transfer Chancery case papers to the Supreme Court clerk in a particular county, and a few orders.

Registers of Return of Writs

A0178 Register of Writs sealed and issued (New York), 1757-62. 0.5 c.f. (1 vol.)

This volume contains entries of writs sealed and issued by the clerk of the Supreme Court of Judicature in New York City. Each entry gives the names of the parties, the type of writ, the form of action (*assumpsit*, trespass, etc.), and the name of the attorney to whom the writ was issued. The entries appear to be chronological, but this

is uncertain because the tops of the pages have been burned away. Every type of writ is included. Writs of *capias ad respondendum (caps.), fieri facias (fi. fa.),* and *capias ad satisfaciendum* (*ca. sa.*) are the most common. There are also many entries for bills of New York ("bill"), a counterpart to the writ of *capias ad respondendum* used in actions where the defendant resided in the city and county of New York. This volume was badly damaged in the 1911 Capitol fire and the covers and edges of the pages are burned away. Use is restricted.

JN545	Registers of Writs Sealed and Issued (New York), 1772-76, 1790-99 (with gaps).	4.0 c.f. (5 vols.)

Registers contain lists of writs sealed and issued by the clerk of the Supreme Court of Judicature at New York City. Each entry in a register includes date of issuance, names of plaintiff and defendant, and type of writ. If a writ was directed to a sheriff outside of New York City and County, the county is noted. Most entries are for writs of *capias ad respondendum*, *capias ad satisfaciendum*, and *fieri facias*, but many other types of writs are represented. Entries in each register are alphabetical, usually by first letter of attorney's surname; then chronological by court term and date of writ. Each register contains a list of attorneys' names with page references.

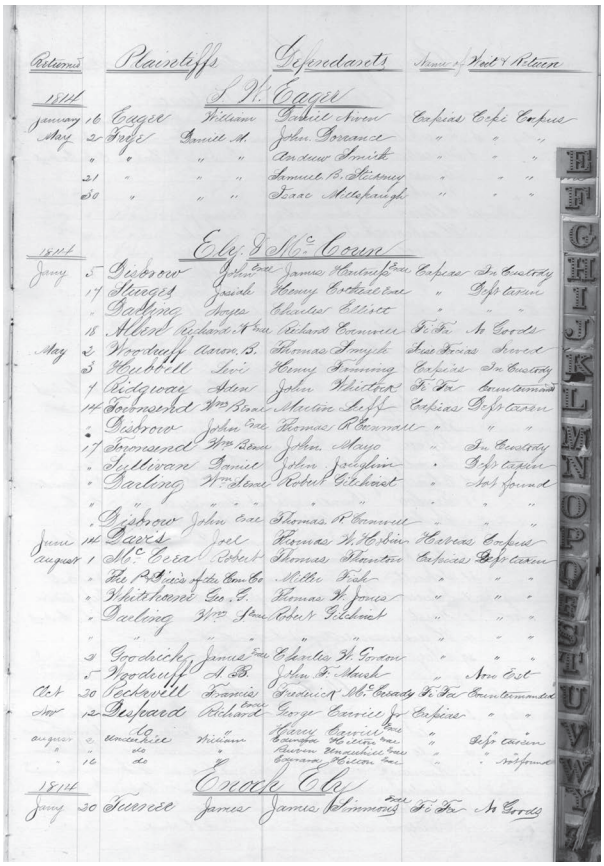
JN599	Registers of Returns of Writs (New York), 1796-1845 (with gaps).	3.0 c.f. (17 vols.)

Registers list writs returned by sheriffs and other officers to the clerk of the Supreme Court of Judicature at New York City. Each entry states the date or court term when the writ was returned, names of plaintiff and defendant, type of writ, and a summary of the action by the sheriff or other officer in executing the writ. Most writs were returned by the sheriff of New York City and County, but some were from other counties. Most of the entries are for writs of *capias ad respondendum*, *capias ad satisfaciendum*, and *fieri facias*, but many other types of writs are represented. Entries are chronological by court term or year, then alphabetical by initial letter of filing attorney's surname, then chronological by term or date when a writ was returned to the court clerk. Registers are partly indexed in J0210 Indexes to Returns of Writs, Summonses, and Executions.

J0210	Index to Returns of Writs, Summonses, and Executions (New York), 1814-58	4.0 c.f. (9 vols.), 4 microfilm rolls

This series indexes writs returned by sheriffs and other court officers to the clerk of the Supreme Court of Judicature at New York City before July 1, 1847, and to the clerk of the reorganized Supreme Court for New York City and County after that date. Entries before 1836 are chronological by year, then alphabetical by initial letter of attorney's surname, then chronological by court term or date of filing. Each entry gives the date when the writ was returned, names of plaintiff and defendant, and type of writ and the sheriff's action. The entries are mostly for writs of *capias ad respondendum*, *fieri facias*, and *capias ad satisfaciendum*. A few entries are for writs of summons, replevin, *habeas corpus*, *scire facias*, attachment, etc. Starting 1830 most of the entries are for writs or

orders subsequent to judgment, because the writ of *capias* was seldom used after that date. Some entries state that the writs were countermanded by rule of the court. Starting 1836 entries are alphabetical by initial letter of plaintiff's name, then chronological by return date. Each entry states the date of return, names of plaintiff and defendant, and sheriff's action. (Names of attorneys are not given.) Most of the entries are for writs of execution (*fi. fa.* and *ca. sa.*) and for executions issued after the common-law writs were abolished in 1848. The entries starting July 1, 1847, are returns of sheriff's executions of judgments in the Supreme Court of Judicature prior to that date, or in the new Supreme Court for the City and County of New York.



ENTRIES OF WRITS FILED BY A NEW YORK CITY LAW FIRM, 1814.

Isaac M. Ely and William T. McCoun had writs of *capias, fieri facias,* and *habeas corpus* filed by the court clerk. McCoun later served as vice-chancellor in the first circuit and as a judge of the Court of Appeals. Almost all writs filed by the clerk of the Supreme Court of Judicature in New York City have been destroyed. This index is the best evidence of the issuance and return of those writs.

(Series J0210, Index of Returns of Writs, Summonses, and Executions [New York].)

Bound volumes were transferred from the Court of Appeals to the State Archives in 1982. Microfilm reproductions were transferred from the New York County Clerk's Office to the Archives in 2017. One volume (1854-55) is available only on microfilm; another volume (1856-58) was not microfilmed. Series J0210 includes former series J0153 Registers of Returns of Writs, 1818-25, which was misidentified as being created by the clerk at Albany.

J3130 Minutes of Return of Writs by Sheriffs (Albany), 1797-99. 0.2 c.f. (1 vol.)

This volume contains minutes of the return of writs by sheriffs (or by coroners, in cases of attachments against sheriffs), with occasional notes of motions and orders for proper execution of writs that had been returned only partially executed. The most frequent entries are for writs of *capias ad respondendum* (*capias*), *fieri facias,* and *capias ad satisfaciendum*. A few entries are for the writ of *scire facias*, ordering a party to show cause, usually as to why a judgment should not be revived and satisfied; writ of *venditione exponas,* ordering a sheriff to put up for sale the personal property of a judgment debtor; and writ of *latitat*, ordering a defendant's arrest after a writ of *capias* was returned *non est inventus*. The entries in this volume are grouped first by court term and then by attorney, under whose name one or more parties are listed. The title of the case is given in each entry. This volume is unindexed. The writs themselves are found in J0024 Writs of Arrest and Execution (Albany).

J1153 Registers of Returns of Writs of Execution (Albany), 1837-1854. 1.0 c.f. (4 vols.)

These registers list returns of writs of execution by sheriffs in counties served by the Albany office of the Supreme Court of Judicature. The returns are mostly writs of *fieri facias* and *capias ad satisfaciendum*, but there are a few for writs of *habere facere possessionem* and *scire facias*. Each entry states the names of judgment debtor (usually the defendant) and judgment creditor (usually the plaintiff); type of writ; county from which the writ was returned; whether or how the writ was executed; and name of attorney for the party obtaining the writ. The entries in the registers for 1837 through 1846 are grouped by court term, and thereunder by first letter of last name of judgment debtor. The register for 1847 through 1854 contains chronological entries for writs of execution returned by sheriffs in every county of the state, including New York City and County. These returns were for writs issued after judgments in the Supreme Court of Judicature prior to the judicial reorganization of 1847. The registers in this series serve as indexes to J0024 Writs of Execution (Albany) for the period after 1837.

J0226 Registers of Returns of Writs (by County), 1815-47. 0.8 c.f. (6 vols.)

This incomplete series consists of registers of writs returned by sheriffs to the circuit courts. The returns are for writs of *capias ad respondendum*, by which defendants were arrested; for writs of summons, by which corporations were summoned to appear; and for writs of execution issued subsequent to a judgment (writs of *fieri facias*, *capias ad satisfaciendum*, and *habere facias possessionem*). Each entry in these books states the names of the parties to the cause, the abbreviated name of the writ (*caps., fi. fa., sci. fa., ca. sa.,* etc.), the name of the attorney to whom the writ was issued, and the action taken by the sheriff. The entries are grouped together by county, then by court term, and in some books entries for attorneys are grouped together in alphabetical order by name of attorney. All but one of the volumes contain two sections, one for a county, commencing at either end. Counties represented for various date spans are Albany, Columbia, Delaware, Jefferson, Oneida, Oswego, Otsego, Rensselaer, Tioga, Wayne, and Yates. Registers of writs returned by sheriffs to the circuit courts for other counties have not survived. For other registers of writs, see J0210 and J1153, described above.

Satisfaction Pieces

The satisfaction piece is the acknowledgment by a prevailing party in a civil action that the judgment in his favor has been paid "satisfied." The document is signed by the prevailing party or his attorney and acknowledged before a judge or commissioner of deeds. Filed with the satisfaction pieces are a few powers of attorney and certificates of satisfaction. The satisfaction pieces filed in the Albany, Utica, and Geneva clerk's offices are bundled by year (or years). Satisfaction pieces for later years are often found on printed forms as part of the judgment rolls. No series of satisfaction pieces survives from the clerk's office in New York City, but satisfactions are entered in JN527 Docket of Judgments.

J0139	Satisfaction Pieces (Albany), 1832-39.	1.3 c.f.

Satisfactions are entered in J0141 Docket of Judgments

J0133	Satisfaction Pieces (Utica), 1808-45.	3.4 c.f.

Satisfactions are entered in J0135 Transcripts of Docket of Judgments

J0136	Satisfaction Pieces (Geneva), 1829-42.	1.7 c.f.

Satisfactions are entered in J0138 Transcripts of Docket of Judgments

Common Rule Books

Common rule books contain a record of rules by the court, entered by the clerk on notice given or on filing of a judgment by attorney for the plaintiff or defendant. Common rules were procedural, granted as a matter of course, without a justice's order. Examples of common rules relating to a defendant's appearance and the subsequent pleadings are: order to defendant to plead; order to enter appearance of defendant; order to plaintiff to answer the defendant's plea (or vice versa); order to plaintiff to declare; order to discontinue a case; order to a party to join in demurrer. There are also numerous rules relating to judgments and executions and to appealed cases. Common rules ordering judgment were entered in the common rule book upon return of a *nisi prius* roll or circuit roll, including the trial minutes and jury verdict; upon a defendant's confession of a debt owing to the plaintiff; or upon a report of damages as determined by the court clerk, sheriff, jury of inquisition, or referees. Common rules concerning change of venue or commissions for the taking of testimony from material witnesses were technically special rules based on non-enumerated motions. Such rules are more often found entered in the minute books. (See Appendix L, "Common and Special Rules and Judges' Orders in Personal Actions.")

Each entry in the common rule books contains the title of the case, the name of the attorney seeking the rule, and the rule granted. The first party in the title may be either the plaintiff or the defendant, depending on which was granted the rule. If it is the plaintiff, the form is "William Jones vs. John Smith." If it is the defendant, the form is "John Smith ads. William Jones" (*ads.* stands for *ad sectam,* "at the suit of"). In most of the books the entries are alphabetical by the initial letters of the attorneys' names, then chronological. The clerks of the Supreme Court of Judicature were directed to keep common rule books by court rule in April term, 1796. Rule 64, adopted in 1829, continued this requirement. Prior to 1796 common rules were entered in J0131 Minute Books.

JN520	Common Rule Books (New York), 1797-1854 (bulk 1797-1848).	19.3 c.f. (168 vols. plus fragments)

In these books, rules dating prior to July 1, 1847, were entered by the clerk of the Supreme Court of Judicature in New York City. Starting July 5, 1847, rules were entered by the clerk of the Supreme Court in New York County. Entries are chronological by

date of rule (1797-1800) or alphabetical by initial letter of attorney's surname, then chronological by date of rule (1800-1854). Each volume includes one or more initial letters for a range of years. These common rule books were assembled from several locations in the New York County Clerk's Office. Portions of many books are missing. The common rule books are not indexed.

J1165	Common Rule Books (Albany), 1797-1849.	58.0 c.f. (101 vols.)
J2165	Common Rule Books (Utica), 1807-49.	48.0 c.f. (90 vols.)
J0167	Common Rule Books (Geneva), 1829-47.	13.0 c.f. (79 vols.)

Each volume in series J1165, J2165, and J0167 contains two sections, back-to-back, with different initial letters on the two covers. The common rule books are not indexed. The clerk at Geneva also kept subsidiary common rule books for judgments obtained by plaintiffs by default of the defendants, during the years 1829-39, series J2167, and for return of writs of *capias ad respondendum*, years 1837-47, series J1167.

J1167	Common Rule Books for Returns of Writs of *Capias* (Geneva), 1829-39.	0.6 c.f. (10 vols.)

The volumes in this series contain common rules ordering the appearance of defendants served with writs of *capias ad respondendum*. The rule was entered on notice by the plaintiff's attorney. If the defendant was not required to file special bail, another rule entered his appearance (the defendant's endorsement of the writ served and returned by the sheriff). If bail was required and the arrested defendant failed to put in special bail within twenty days, the plaintiff's attorney obtained a common rule directing the sheriff to arrest the defendant again.

Each entry in these books contains the case title, the rule entering the defendant's appearance or directing the sheriff to make a second arrest if the defendant was not located on the first attempt, the sheriff's fee in each case, and the name of the plaintiff's attorney. In place of a rule the entry may simply state that the defendant was arrested (and that he put in bail), or that he was not found. All rules for a particular county are found together in one book, and there are two sections in each book. Individual entries are grouped together under each court term, and similar rules are placed together. There are no indexes. Rules for the return of writs of *capias* are also found occasionally in the main series of Geneva Common Rule Books, J3167. The writs of *capias ad respondendum* are found in series J0028.

J2167	Common Rule Books for Judgments on Default (Geneva), 1837-1847.	1.0 c.f. (9 vols.)

The volumes in this series contain common rules for interlocutory or final judgments, in cases where a defendant failed to enter a plea to the plaintiff's declaration and therefore was in default. Most of the rules grant the plaintiff an interlocutory judgment and direct a county clerk to assess and report the damages due him. The same rule or a separate one gives final judgment to the plaintiff. Occasionally a common rule

directs a sheriff or coroner to return a writ of inquiry with an inquisition by a jury into the amount of damages due the plaintiff. In some instances the rule simply grants the plaintiff a final judgment for the amount claimed in his declaration, on default of the defendant. In actions of ejectment the judgment award is possession of and title to the premises in dispute.

Each entry in these books contains the case title, the rule granting the plaintiff interlocutory or final judgment, the amount of award if determined, and the name of the plaintiff's attorney. The entries are alphabetical under the first letter of the plaintiff's attorney's last name, then chronological. Similar rules are placed together. There are no indexes to these books, but J0138 Transcripts of Docket of Judgments (Geneva) indexes losing parties. For rules entering judgments on default prior to October 1837, see J0167 Common Rule Books (Geneva).

Minute Books

JN531	Minute Books (New York), 1691-92, 1704-14, 1723-39, 1750-1760, 1762-83, 1785-86, 1788, 1790-1847.	14.0 c.f. (41 vols.); 19 rolls microfilm

The minute books are the record of proceedings in the terms of the colonial Supreme Court held in New York City from 1691 to 1776; and of the state Supreme Court in Kingston and Albany during the Revolutionary War, in Albany from 1785 to 1796, and in New York City from 1785 to 1847. In New York City there were two terms each year from 1785 to 1819 (the months varied); between 1820 and 1847, one term each year, in May. (See list of court terms in Appendix H.)

Between 1691 and 1776 the Supreme Court minute books contain entries relating to both civil litigation and criminal prosecutions throughout the colony of New York. In civil cases there are numerous entries concerning appearances of defendants, pleadings by plaintiffs and defendants, motions for court rules, awards of damages owed to a plaintiff if the defendant confessed the judgment or failed to plead, final judgments, and execution of judgments. The minute books contain minutes of occasional civil trials, many of them ejectment cases concerning title to real property. However, most trials occurred in the circuit courts held in each county in the colony outside New York City and County. A grand jury was empaneled in each Supreme Court term to return indictments of persons arrested in New York City for alleged crimes. Subsequent entries include minutes of criminal trials and final judgments and sentences. The minute books also include affirmances or reversals of judgments appealed from county-level courts by writs of error, and judgments in cases transferred prior to judgment by writs of *certiorari* and *habeas corpus*, or by Crown informations. In the transferred cases trial occurred before the bar of the Supreme Court. The court also reviewed judgments of justices of the peace alleged to be erroneous and brought up by writ of *certiorari*.

The last session of the Supreme Court of Judicature of the Province of New York occurred in April 1776. The same minute book continues with the first session of the Supreme Court of the State of New York in October 1777. Both before and after the Revolution the minutes of each court term record the date, place, and names of the justices present. The minutes refer to the opening proclamations ordering each of

the sheriffs to deliver the writs and precepts returnable on the first day of the term. Another proclamation ordered sheriffs, coroners, justices of the peace, and mayors to put into the court the recognizances of bail and inquisitions of money damages taken by them. A concluding proclamation empaneled a grand jury, and fined those who had been summoned but failed to appear. During a Supreme Court term in the 1780s and 1790s the courthouse would have been thronged with people–the justices, the attorney general, the clerk, the crier, sheriffs, coroners, local magistrates, attorneys and their clients, grand and trial jurors, and witnesses. Undoubtedly there were spectators, because until the turn of the nineteenth century the Supreme Court terms included some jury trials as well as oral arguments on legal issues to be decided by the court.

Between late 1779 and 1783 the Supreme Court minutes include numerous entries of indictments and convictions (usually *in absentia*) of "enemies of this state" (Loyalists) pursuant to the Forfeiture Act of 1779. Through the early 1780s, when the court terms were held in Albany, many other entries of indictments and trials indicate the new state's efforts to maintain public order. Starting 1785 the minute books record many criminal proceedings in the City and County of New York. The minutes of a criminal trial identify the defendant and state the charge; list the names of the attorneys, jurors, and witnesses; and record the verdict found by the jury. If the defendant was convicted, the minutes of sentencing follow after a day or two. The last entry of a criminal trial is in 1801; the last grand jury was empaneled in 1804. Thereafter the courts of oyer and terminer and courts of general sessions adjudicated all felony offenses. The circuit court system established in the colonial era was continued after the Revolution, and for the first time it was extended to New York City. Starting in 1784 most, and after 1806 practically all trials of civil cases originating in the Supreme Court were held not during the court's terms but in the circuit courts or at additional "sittings" in New York City.

The minute books diminish in their contents after the 1790s because the court terms no longer included grand jury returns, jury trials in criminal and civil cases, and issuance of common rules. Those procedural rules, granted of course by the court clerk, disappear from the minute books because they were kept in separate "common rule books" starting in 1797. Minute books of the Supreme Court terms in New York City now largely recorded the court's determinations of issues of law, which included hearing arguments and granting orders on special motions, and reviewing judgments appealed from lower courts. Entries in the minute books are usually organized by type of proceeding. "Cases argued and submitted" included motions for new trials, demurrers, "cases" (legal issues referred from a circuit court for argument and decision), and lower court judgments reviewed by writ of error. Listed separately were decisions in *certiorari* cases, which could be argued before the court or considered on submitted papers. The minute books after 1801 also contain numerous entries relating to the partition of real property; court-appointed commissioners' appraisal of real property appropriated for street openings, mostly in New York City; and attachments against sheriffs in all parts of the state for failure to execute a court order (such as a writ of *fieri facias*).

Minute books for all periods contain entries relating to admission of attorneys and counselors to practice in the court. The minutes also include rules governing court procedure, which starting in 1801 were periodically published. The minute books for

the years 1795-1805 contain orders for naturalization of aliens, who appeared in court and whose names are listed at the front of each volume. Prior to 1830 the minutes have a few entries relating to proof of wills.

Most of the minute books for the later 1780s and 1790s contain indexes to plaintiffs by court term. The rest of the books are not indexed. The minute books have several gaps before 1791, after which they are complete. No minutes survive, either in engrossed or rough formats, for the years 1715-22, 1740-49, 1784, 1787, and 1789. Minutes for some court terms in additional years are evidently missing. (The losses of minute books occurred sometime before 1928, when the gaps are noted in a published inventory.) Most of the minute books are engrossed versions, in fine handwriting. Rough minutes in this series cover all or parts of the years 1750-61, 1764-67, 1772-76, and 1795, and some of them include court terms for which engrossed minutes are missing. The first volume of minutes, for 1691-92, was in custody of the Court of Appeals in 1939. It was transferred to the New York County Clerk's Office sometime after 1945, and from there to the State Archives in 2017. The minutes for 1693-1701 were acquired by the New-York Historical Society soon after its founding in 1804. The society received the minutes for 1701-1704 in 1930. (See Hamlin and Baker, *Supreme Court of Judicature,* vol. 1, pp. xxx-xxxi.)

The Supreme Court minute books were microfilmed for the New York County Clerk's Office in 1959 and again in 1995. They were also microfilmed by the Genealogical Society of Utah in 1977 (rolls #1018632-1018650) and cataloged as "New York Supreme Court (New York County) Minute Books, 1704-1847." That microfilm has been digitized by FamilySearch. Digital images of the minute books are also available in the New York State Archives' online "Digital Collections" and some of them have been name-indexed.

Minutes for 1691-1692 and 1701-1704 are published, annotated, and indexed in Paul M. Hamlin and Charles E. Baker, eds., *Supreme Court of Judicature of the Province of New York 1691-1704,* 3 vols. (New York: New-York Historical Society, 1945-47; reissued 1959). Minutes for 1693-1701 are published in *Collections of the New-York Historical Society for the Year 1912* (New York: 1913), pp. 39-214, without annotations.

JN594	Rough Minutes (New York), 1795.	0.1 c.f. (1 item)

Booklet contains rough minutes for October Term 1795, which was held in Albany. Document is extremely fragile.

JN510	Clerk's Register of Cases Argued and Decided (New York), 1842.	0.1 c.f. (1 vol.)

Register contains entries of cases placed on the calendar during May Term 1842. Disposition of each case is stated. Cases include arguments on demurrer, motions for a new trial (including a few criminal cases), motions to set aside a referee's report, and applications for a special writ (attachment against defaulting sheriff, *mandamus*, *habeas corpus*, etc.). A few entries concern partition of real property and admission of attorneys to practice in the court. Entries are numerical by calendar case number, then chronological.

J0130	General and Special Term Minute Books (Albany), 1797-1847.	11.0 c.f. (29 vols.)

Minutes of Supreme Court terms held in Albany during the years 1778-1796 are in series JN531. The present series of minute books commences with April Term 1797. Starting in 1798 two court terms were held in Albany each year, one in January or February, the other usually in August or October. In 1841 the fall term was moved to Rochester. (See list of court terms in Appendix H.) The Albany minute books contain minutes of a few criminal trials during the years 1797-1801, and civil trials as late as 1806. But trial business was now being diverted to other courts, and procedural matters were being handled by the court clerks. The minute books reflect those changes. They now contain mostly special rules granted after oral or written arguments on points of law raised during pleading or trial; decisions affirming or reversing judgments of lower courts of record and of justices of the peace; and final orders in certain real property actions and street opening proceedings. The minutes also contain rules setting circuit court terms in all counties; rules governing court procedure; and orders admitting attorneys to practice in the court.

The court's main business after ca. 1800 was hearing arguments and ruling on motions. The minute books include many rules on both enumerated and non-enumerated motions. Enumerated motions were those placed on the court calendar for argument during the court term. Each entry in the minutes states the names of the parties to a case and of the attorney moving the court for a rule. The motion is summarized and the ruling of the court is entered. Until 1830, non-enumerated motions were argued during a regular court term but were not calendar cases. Beginning in 1830, non-enumerated motions were heard and determined during special terms held in Albany monthly (except in January, May, and July). Beginning in 1830 the minutes of the Albany "special terms" are found in these volumes, along with minutes of what were now called the "general terms." Starting in 1832 certain enumerated motions were usually argued before and ruled on by circuit judges. For additional information about motions, see below under "Calendars of Enumerated Motions" and "Motion Papers." (A list of motion types is in Appendix L, "Common and Special Rules and Judges' Orders in Personal Actions.")

The Albany minute books, like those kept by the clerk in New York City, also record final orders in numerous cases involving real property. Many of them were partition cases. A petition for partition sought the division and allotment, or the sale of undivided real property for the benefit of joint tenants or tenants in common. Court rules in a partition action included appointment of a guardian to represent a minor defendant; notice to tenants to appear and show their titles to the property; appointment of commissioners to make the partition and to confirm and certify their actions. Prior to 1830 the minute books contain a few orders for a writ of right summoning the electors (i.e. jurors) of a grand assize, which determined the undocumented title or right of a tenant of real property in dispute. Also before 1830 there are minutes of the engrossment of final concords (or fines), of the proclamation of the fine in court, and of the delivery of the upper part of the fine to the demandant and the foot of the fine to the clerk for filing. (Both of those types of proceedings were abolished in 1829.) See descriptions of fines and chirographs, series J1011, and partition papers, series J0019 and J9913.

The court minutes contain numerous special orders confirming the proceedings of commissioners appointed to assess the value of lands taken for laying out or widening streets in New York City, Brooklyn, and other cities. These orders are also found in the New York and Utica minute books, JN531 and J0128. The orders include copies of the commissioners' reports, which contain detailed descriptions of the property taken. Some filed papers for street openings in New York City are in series J1014. Most such files remain at the New York County Clerk's Office, Division of Old Records.

Other entries in the minute books concern the admission of attorneys to the bar. There are orders appointing commissioners to examine the qualifications of persons applying for admission; lists of applicants; orders admitting them to practice; orders to newly admitted attorneys and counselors to take and subscribe their oaths; and orders striking from the roll names of attorneys and counselors who had been convicted of crimes or who had committed irregularities. General rules of procedure adopted by the court are entered in the minute books. (The nineteenth-century rules were published and are listed in the Bibliography.)

The Albany minute books in the years around 1800 also contain a few orders for the naturalization of aliens (these are unindexed). See also J5011 Naturalization Papers (Albany). Before 1830 the Albany minutes contain a few orders for proof of wills. The orders sometimes include the text of the will proved. See J0041 Record of Wills.

Starting with February Term 1824, each of the Albany minute books is indexed by term. Starting in 1831 the indexes are compiled by year, not term. The indexes consist of alphabetical lists of parties whose attorneys made a motion or submitted a petition. See also J2130 Index (Partial) to Minute Books (Albany).

J1130 Rough Minute Books (Albany), 1797-1807. 0.5 c.f. (2 vols.)

These two volumes contain the rough version of the engrossed minutes of the Supreme Court terms at Albany, which are found in the first two volumes of series J0130. These rough minutes generally contain less information than the engrossed minutes.

J0079 Minute Books for the Trial of Issues (Albany), 1798-1800. 0.2 c.f. (3 vols.)

This series consists of minutes of the "Court for the Trial of Issues" held at Albany. This court was held by a justice of the Supreme Court for trials of issues of fact that were not tried on circuit. All the cases are civil actions. The trial minutes for a case include the case title, the plaintiff's motion for the return of jury process, lists of jurors selected and witnesses called, and the jury's verdict and award of damages. Occasionally the result is a nonsuit of the plaintiff. The minutes also include lists of jurors summoned, some of whom were fined for nonappearance. These minutes are unindexed.

J2130 Index (Partial) to Minute Books (Albany), 1797-1847. 0.2 c.f. (1 vol.)

This volume is a partial index to minutes of the Supreme Court terms at Albany, series J0130. The index was compiled in the later nineteenth or early twentieth century. Only selected cases are included, and the criteria for selection are unstated. The entries are alphabetical by first letter of plaintiff's name, then sequential by volume and page numbers in the minute books. The minute books are cited by volume number (vols. 1-16) through 1834, and then by year through 1847. Admissions of attorneys and counselors are entered under the letter 'A,' with page numbers, but names of individuals are not indexed. Petitions and orders for street openings are indexed by name of city (mostly New York and Brooklyn), then by name of street. Petition proceedings *in re* ("In the matter of") are indexed under the letter 'I.' (Most of these are petitions for partition and for proof of wills, about thirty-seven total.) Fuller indexes to the Albany minutes are found in each volume of that series commencing with the February Term 1824.

J0128 General Term Minute Books (Utica), 1820-46. 3.0 c.f. (13 vols.)

The contents of the Utica minute books are very similar to those in J0130 Minute Books (Albany). Each of the books is indexed by name of party making a motion or submitting a petition. Until 1820 the Supreme Court held its terms only in Albany and New York City; hence there are no minute books for Utica before that year. Minute books for 1830 and 1834-35 are missing. Information about cases in those years is in J0126 Motions (Utica), box 1, which contains lists of cases argued and decided in the Supreme Court terms at Utica, 1822-1846. See also J1241 Utica calendars.

J0129 General Term Minute Books (Geneva), 1841-46. 0.2 c.f. (2 vols.)

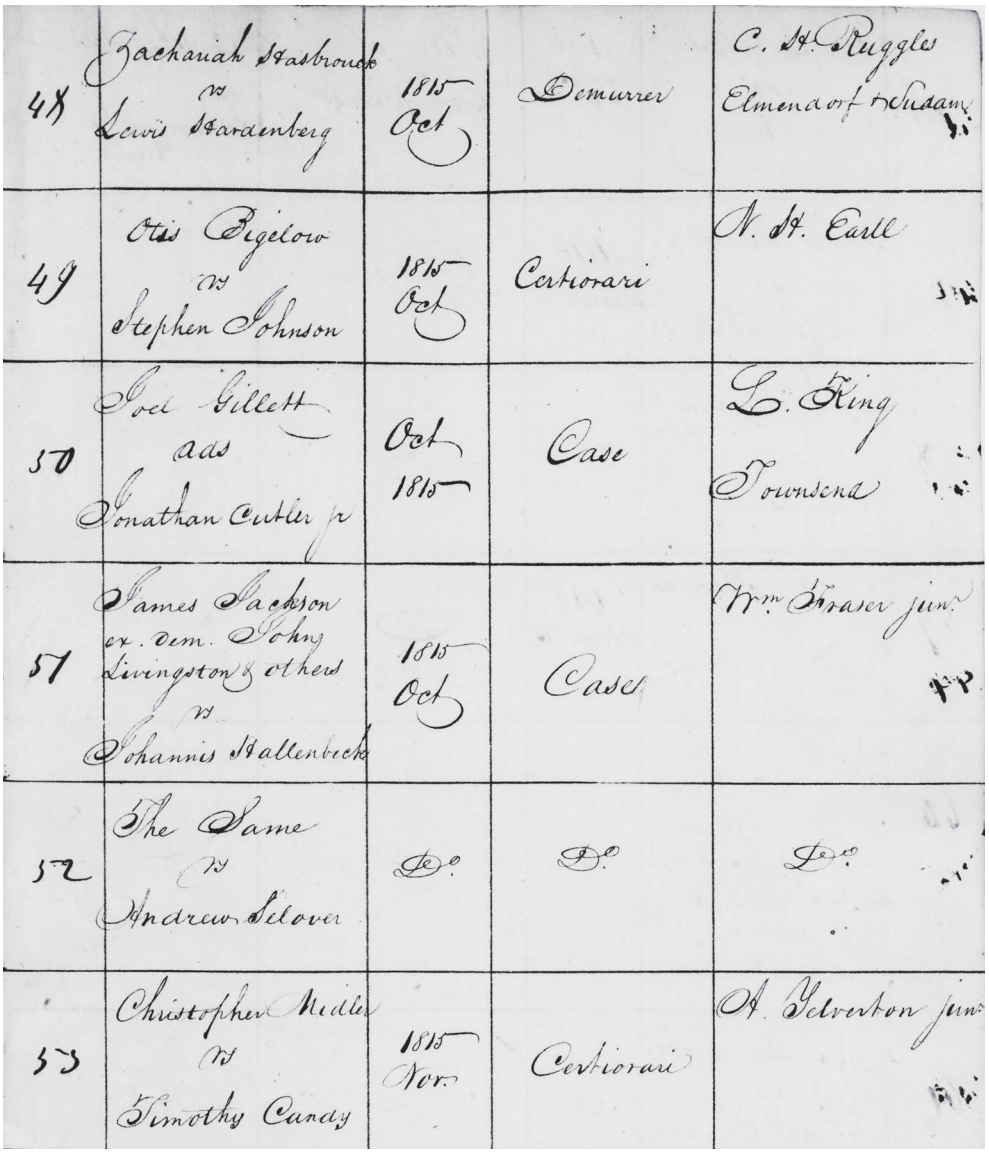
These two volumes contain minutes of rules and orders entered during the terms of the Supreme Court held at Rochester each October between 1841 and 1846, pursuant to Laws of 1841, Chap. 157. (Previously the October term had been held at Albany.) Each entry states the names of the parties and of the attorney making the motion for the rule, and the court rule granted, if any. Most of the rules were issued to enter the default of a sheriff for failure to return a writ (technically common rules); to award a judgment to a plaintiff on default of the defendant, or on a frivolous demurrer; to award or deny a new trial; to affirm or reverse the judgment of a lower court; or to issue a writ of error or *mandamus*. There are a few rules for a partition of lands or admeasurement of dower. The minute books also contain a few rules appointing examiners of candidates for admission as attorneys (but no lists of attorneys admitted); general court rules adopted in November 1845; and other miscellaneous rules. The entries are chronological by court term and daily session. The volumes are not indexed.

Calendars of Enumerated Motions

Calendars list enumerated motions argued before the Supreme Court of Judicature in its terms. Enumerated motions were made to argue a "case" or legal question raised either at a circuit court trial or by the parties without trial; and to argue points of law raised by a special verdict found by circuit court jury, a demurrer to evidence, a writ of error, a bill of exceptions, or a writ in the nature of a writ of error (including writs of *mandamus* and some writs of *certiorari*). Enumerated business also included motions

to set aside a verdict, an inquisition or report of damages, or a nonsuit. Enumerated motions were usually placed on the calendar in chronological order by the date when the question arose, and each motion was numbered. Some of the questions originated a year or more before the term in which arguments were heard. Each entry in the calendar gives the names of the parties and their attorneys, the type of motion to be argued, and the date of joinder in error or joinder in demurrer or the date of notice of motion. Some entries have notes stating the date the motion was argued.

The clerk made up a calendar for each court term. The calendars are arranged in chronological order. They are unindexed. The affidavits and notices of motions, briefs, and other documents supporting the arguments for or against enumerated motions are found in the various series containing motion papers. Enumerated motions were defined in the first rule of the Supreme Court adopted in January Term 1799. The earliest rule explicitly requiring clerks to keep a calendar dates from January Term, 1803. Rule 51, adopted in 1829, required the clerks to make up calendars from the notes of issue submitted by attorneys.



48	Zachariah Hasbrouck vs Lewis Hardenberg	1815 Oct	Demurrer	C. H. Ruggles Elmendorf Schuyler
49	Otis Bigelow vs Stephen Johnson	1815 Oct	Certiorari	N. H. Earll
50	Joel Gillett ads Jonathan Cutler jr	Oct 1815	Case	L. King Townsend
51	James Jackson ex. dem. John Livingston & others vs Johannis Hallenbeck	1815 Oct	Case	Wm Fraser jun.
52	The Same vs Andrew Selover	do	do	do
53	Christopher Medler vs Timothy Candy	1815 Nov.	Certiorari	A. Yelverton jun.

CALENDAR OF ENUMERATED MOTIONS, JANUARY TERM, 1816.

This page from a calendar of term cases lists an argument on demurrer, several *certiorari* cases, and cases, or legal points referred to the full Supreme Court by parties to a civil action. Names of the parties are given in the left hand column and names of their attorneys on the right. Item 51 involves an ejectment action, in which a claim to real property was decided. (The plaintiff James Jackson was fictional.)

(Series J0241, Calendars of Enumerated Motions [Albany].)

J0241 Calendars of Enumerated Motions (Albany), 1806-47. 1.3 c.f. (68 vols.)

Motion papers filed at Albany are found in J0011 Motions and Declarations, J7011 Briefs, Draft Rules, and Motions, and J0001 Miscellaneous Motions.

J1241 Calendars of Enumerated Motions (Utica), 1820-47. 1.3 c.f. (28 vols.)

Motion papers filed at Utica are found in series J0010, J0126, J1126, and J1013.

J2241 Calendars of Enumerated Motions (Geneva), 1841-1847. 0.3 c.f. (6 vols.)

This series consists of calendars of enumerated motions argued before the Supreme Court in the terms held at Rochester starting in 1841. Motion papers filed at Geneva are found in series J0125 and J0001.

Motion and Miscellaneous Papers (see also Declarations and Pleadings)

The various series of motion papers contain many types of filed papers, the most numerous being affidavits and notices of motions. The affidavit states the grounds for the motion and may contain a brief summary of case proceedings. The attached notice informs the opposing party that the court will be moved at a specified time and place to issue a rule. The filing date and names of the parties and the filing attorney are written on the verso. The affidavit may bear rough notes summarizing the argument of the attorney making the motion, with appropriate citations to published case reports. On the verso of the affidavit is usually found a note stating whether the motion was granted or denied, and if applicable whether a stay of proceedings or execution was granted. The notice of motion includes an affidavit of service by the person serving. There are only a few affidavits and briefs opposing motions.

Motions were of two general types: "enumerated motions," which were always placed on the calendar, and "non-enumerated motions." Enumerated motions in general involved points of law affecting the final outcome of a case. Examples were motions in arrest of judgment (defendant only); motions for judgment "notwithstanding the verdict" (plaintiff only); and motions arising on a writ of error, *certiorari*, or *habeas corpus*, or a demurrer to pleading. Before 1832 enumerated motions on a special verdict, bill of exceptions, case reserved at trial, case agreed to by the parties without trial, and demurrer to evidence, as well as motions for a new trial on the merits were argued before the full Supreme Court. After 1832 these motions were usually argued before a circuit judge. Motion papers and decisions thereon by circuit judges were required to be filed in, and the rules entered, specific clerk's offices, according to Rule 80 of the Supreme Court. (See Appendix I, "Judicial Circuits.")

Before 1830, non-enumerated motions were argued before the Supreme Court during a regular term. Starting in 1830 special terms were in Albany in months when the court was not in session) for argument of non-enumerated motions. (see Appendix H, "Supreme Court Terms.") Non-enumerated motions were usually procedural in nature and did not affect the merits of a case. Non-enumerated motions were made to change a venue, to amend pleadings, to send a complex case to referee to decide the judgment

award, to appoint a commissioner to take evidence from witnesses unable to attend a trial, to obtain judgment "as in the case of nonsuit," and to obtain a new trial on account of irregularity. Non-enumerated motions also included those made to set aside an inquest, a nonsuit, a verdict, a referees' report, a judgment, or an execution. After 1830 a few types of non-enumerated motions—for example, motions in real property and criminal cases—continued to be argued during the general terms, although they were not placed on the calendar. (See Appendix L, "Common and Special Rules and Judges' Orders in Personal Actions.") The various series of motion papers also include a wide variety of other filed papers.

J7011 Briefs, Draft Rules, and Motions (Albany), 1812-27. 1.3 c.f.

This series consists of briefs, draft rules, affidavits and notices of motions, certificates of clerkships, and other documents bundled together by court term. The bundles are labeled "Miscellaneous Papers" or "Draft Rules." The series also contains a few rules for attachment of property of sheriffs who had failed to put in bail for defendants; orders for holding circuit courts; judges' opinions; and petitions for appointment of Supreme Court commissioners. There are a few affidavits of war service and property by veterans of the Revolutionary War who intended to apply for pensions. See also J6011 Affidavits of War Service and Property by Revolutionary War Veterans (Albany). The bundles of documents in this series have similar labels and were found in several series of papers marked "Miscellaneous." Bundles for several court terms are lacking. The documents are unindexed. Additional documents belonging to this series may have been dispersed in other series, particularly J7011 and J0001.

J0001 Miscellaneous Motions (Albany, Geneva), ca. 1806-47. 6.0 c.f.

This series consists of documents from other series originally filed in the Albany, Geneva, and perhaps Utica offices of the Supreme Court. Most of the documents are motions, cognovits, writs of execution, briefs, and affidavits of service of declarations. There are also a few returns to writs of *certiorari*, witness depositions *de bene esse*, returns to writs of commission, etc. The documents are in haphazard order.

J0126 Motions ("Term Papers") (Utica), 1820-46. 14.2 c.f.

This series consists mainly of affidavits and notices of motions arranged by court term. Other documents found frequently in this series are petitions for appraisal of land taken for street openings in New York City, for the partition of real estate held jointly or in common, and for attachment of the property of absent or absconding debtors. Documents found occasionally are draft rules, stipulations, petitions for the appointment of next friends or guardians (to represent married women and minors in court), and demurrers and notices of joinder in demurrer (a party's notice that he will argue against a demurrer). Documents found rarely are writs of view (ordering a sheriff to appoint four men to view real property and return a description of the same to the court), writs of summons (usually in cases of dower), and minutes of proclamations of fines (notices that a conveyance of real property is to be made in court). After about

1835 the series also contains many notices of argument, in which the attorney for one party to the action notifies the other that a motion will be argued at a stated time and place. There are also a few certificates of clerkships. This series includes the filed motions and other papers supporting cases placed on the calendar for argument in a Supreme Court term at Utica. See J1241 Calendars of Enumerated Motions. Rules granted on both enumerated and non-enumerated motions are entered in J0128 General Term Minute Books (Utica). (See Appendix L, "Common and Special Rules and Judges' Orders in Personal Actions.")

The documents in this series are bundled by term and are then arranged by attorney's name. Many are out of order. The first box contains lists of cases decided each term at Utica during the years 1822-46. The lists state the names of parties and attorneys for each case and notes the outcomes: judgment granted, judgment of lower court affirmed or reversed (on writ of *certiorari* or writ of error), motion for a new trial granted or denied, and so on. For some court terms there are separate lists of judgments in *certiorari* cases. This subseries also contains a few draft rules and lists of Supreme Court counselors from the 1830s. Other motion papers filed at Utica are in series J0010, J1013, and J1126.

J1126 Miscellaneous Motions (Utica), 1832, 1837. 1.3 c.f.

This is a fragmentary series of motion papers arranged by attorney's name (1832 'B', 'C' and 1837 'B', 'G' only). There are motions for judgment as in case of nonsuit, for change of venue, for taxation of a bill of costs, to set aside a judgment, to obtain writs or writs of *certiorari*, error, *mandamus*, and so on. Other documents found in this series are petitions for attachment of the property of absent or absconding debtors; plaintiff's declarations; clerks' reports of damages due a plaintiff; writs of inquiry and inquisitions determining judgment awards; and cognovits, in which defendants acknowledge their liability for debts. The documents bear filing dates, but the declarations and related papers were never filed in the main series, J0009, and the motion papers were never filed with the Utica "Term Papers," series J0126.

J0175 Orders of Circuit Judges on Motions for New Trials or for Commissions (Utica), 1834-47. 0.4 c.f.

This series consists mostly of circuit judges' orders granting or denying motions for new trials, after hearing arguments on bills of exceptions (in which defendants alleged error in earlier proceedings). There are also a few motions and orders for commissions to take testimony. Orders for new trials were entered in J0128 Minute Books (Utica).

J2013 Motions Denied (Utica), ca. 1841-47. 1.4 c.f.

This series consists of affidavits and notices of motions that were denied by the court. Each document bears the letter 'D' or the word "Denied." Sometimes a justice added notes explaining why the motion was denied. This series also contains a few declarations and other documents that were not filed because the clerk's fees were not paid. The documents are in random order and are not indexed.

J0125 Motions and Notices of Joinder in Demurrer (Geneva), 1841-46. 0.4 c.f.

Most of the documents in this series are notices of joinder in demurrer, in which the plaintiff states that the court will be moved for judgment on the ground that the defendant's demurrer is frivolous. There are also a few motions for appointment of commissioners to admeasure dower, for stay of proceedings, for issuance of writs of *certiorari* or *mandamus*, and so on. Other documents include petitions for partition of real property, interrogatories (questions posed to absent parties or witnesses), declarations, stipulations, writs of attachment, and draft rules. The documents are unarranged. Earlier Geneva motion papers appear to have been destroyed. Enumerated motions appear on the Geneva calendars, J2241, and special rules granted are entered in the minute books, J0129.

J5026 Orders for Appointment of Guardian or Next Friend (Geneva), 1829-47. 0.4 c.f.

This series consists of petitions to a Supreme Court justice, or commissioner, or judge of a court of common pleas for appointment of a guardian *ad litem* for an infant-defendant or a next friend *(prochein ami)* for an infant-plaintiff. (This appointment was necessary because a minor could not appear in court.) The petition states the age of the infant and summarizes the case to which he or she is a party. Cases involved matters such as slander, negligence, assault, recovery or partition of lands, promissory notes, breach of promise to marry, and so on. Accompanying the petition are the signed consent of the person designated to be the guardian or next friend; the affidavit of a court officer attesting to the signatures of the infant and the guardian or next friend; and the order admitting the guardian or next friend to appear for the infant in court. The documents are unarranged and unindexed. Appointment of a guardian or next friend was governed by the *Revised Statutes* of 1829, Part III, Chap. 8, Title 2.

J6026 Orders for Commissions (Geneva), 1829-47. 0.4 c.f.

This series consists primarily of motions and orders for commissions to take testimony from material witnesses residing out-of-state. There are also a few court orders granting or denying new trials, to refer a cause, etc. The documents are unarranged and unindexed. The whereabouts of the writs of commissions filed in the Geneva office is unknown.

J8026 Orders of Circuit Judges on Motions for New Trials (Geneva), 1833-47. 0.4 c.f.

This series consists mostly of orders of circuit judges granting or denying motions for new trials. There are also a few orders granting judgment as in the case of nonsuit, giving additional time to plead, setting aside a default, etc. The documents are in haphazard order and are not indexed.

J0012 Miscellaneous Filed Documents (Geneva), 1829-44. 0.8 c.f.

This series consists of miscellaneous documents that were filed together by the court clerk. They include draft rules, orders for exoneration of bail and surrender of defendants, recognizances of bail, consents to change attorneys, petitions and orders for appointment of guardians or next friends to represent infants, testimony taken conditionally (*de bene esse*), rules to refer a cause to determine amount of damages, copies of bonds sued upon, a few records of cases remitted or sent back from the Court for the Corrections of Errors, appointments of court clerks, a few pleadings, and other miscellaneous documents. The documents in this series are arranged by year of filing, but there is no index.

J0005 Stipulations (Geneva), 1844 0.1 c.f.

Stipulations relate to a judgment by a justice of the peace in the Town of Romulus, removed to the Seneca County Court of Common Pleas by writ of *certiorari.* The case was subsequently submitted to the Supreme Court by stipulation. Documents include writ of *certiorari* and return, stipulations, plaintiff's brief, and a letter.

J9813 Miscellaneous Unfiled Documents (Geneva), ca. 1839-44. 0.2 c.f.

This series consists of judgment rolls, declarations, and other documents that were never filed because the attorneys were delinquent in paying their court fees. Most of the papers are still enclosed in the original wrappers, which bear notes in red ink as to the contents and the fees not paid. These items are unarranged and unindexed.

JN532 Miscellaneous Papers (New York), 1740-1846 (with gaps). 0.4 c.f.

These documents were assembled from various locations in the New York County Clerk's Office. Document types include accountings of court costs, assignments of judgments, satisfaction pieces, reports of sheriff's sales of judgment debtors' property, and transcripts of Chancery decrees ordering money payments. There are also a few attorney clerkship papers and single examples of other document types.

J1000 Assorted Estrayed Documents, ca. 1786-1857 13.5 c.f.

These are documents of the Supreme Court of Judicature (Albany, Utica, and Geneva cleark's offices) that were among the records transferred by the Court of Appeals to the Historical Documents Collection at Queens College. While there, many of the documents became disorganized and were in a state of disarray when they were transferred to the State Archives in 1982. Archives staff restored the original order of most of the files. Series J1000 comprises the documents that had lost all semblance of original order. They include motion papers, bonds, writs, circuit rolls, judgment rolls, clerkship papers, insolvency papers, and other documents, now sorted by type.

Writs for Transfer or Review of Cases from Lower Courts

Described below are series of writs by which proceedings or defendants in lower courts were transferred to, or their judgments reviewed by the Supreme Court of Judicature. Writs of error were employed by the Supreme Court to review final judgments of inferior courts of record (courts possessing a seal and a clerk). Writs of *certiorari* were used to transfer proceedings to the Supreme Court from a lower court of record prior to final judgment; to review the final judgment of an inferior court not of record (such as a justice of the peace); and to review quasi-judicial decisions of public officers. Also described are small series of writs of *habeas corpus*, *procedendo,* and *mandamus*. The office of filing of the writs from the upstate clerks' offices is sometimes uncertain. The small collections of writs filed in the New York City office were assembled from several locations in the New York County Clerk's Office. They are evidently small remnants of series that were mostly destroyed, probably in the early twentieth century. However, series JN529, J0134, J0137, J0140 Judgment Rolls include the money judgments awarded in cases brought to the Supreme Court on writs of error, *certiorari*, and *habeas corpus*. The judgment record in such cases contains a copy of the writ and the return thereto. The Supreme Court minute books, series JN531, J0130, J0128, J0129, contain entries relating to arguments and decisions in cases brought to the Supreme Court by writs of error, *certiorari*, and *habeas corpus*.

JN550 Writs of *Habeas Corpus* (New York), 1766-1816 (with gaps). 0.8 c.f.

Most of the writs of *habeas corpus* in this collection were directed to the Court of Common Pleas for the City and County of New York (known as the Mayor's Court, since that officer or his designee presided). The writ transferred the defendant or the case to the Supreme Court of Judicature. Most of these writs concerned imprisoned debtors. One writ ordered the keeper of the city jail to produce defendants charged with treason during the War of 1812. The writs are sorted by year. For full discussion of writs of *habeas corpus* see J0029, below.

JN552 Writs of *Procedendo* (New York), 1786-1812 (with gaps). 0.2 c.f.

These writs of *procedendo* ordered the sheriff of New York City and County to deliver a defendant in the Mayor's Court to the Supreme Court of Judicature, which assumed jurisdiction in the case. The writ was issued after a previous writ of *habeas corpus* had been issued and disregarded. The writs are sorted by year.

JN547 Writs of *Certiorari* (New York), 1783-1812 (with gaps). 0.4 c.f.

All of the writs in this collection order a lower court of record to send the record of preliminary proceedings in a case to the Supreme Court of Judicature, in effect transferring the case. These writs were directed to the courts of common pleas, both in New York City and County and in several other counties in eastern New York. Attached to most of the writs is the return of pleadings and proceedings in the court of common pleas. The writs are sorted by year. For full discussion of writs of *certiorari* see J0147.

JN549 Writs of Error (New York), 1787-1817 (bulk 1794-1809). 0.5 c.f.

These writs of error were directed to the judges of the courts of common pleas, both in New York City and County and in other counties in eastern New York, and returned to the clerk of the Supreme Court in New York City. The writs are sorted by year in two sub-series: 1) writs with no attached record of proceedings in the lower court; 2) writs with record attached. For full discussion of writs of error see J0031.

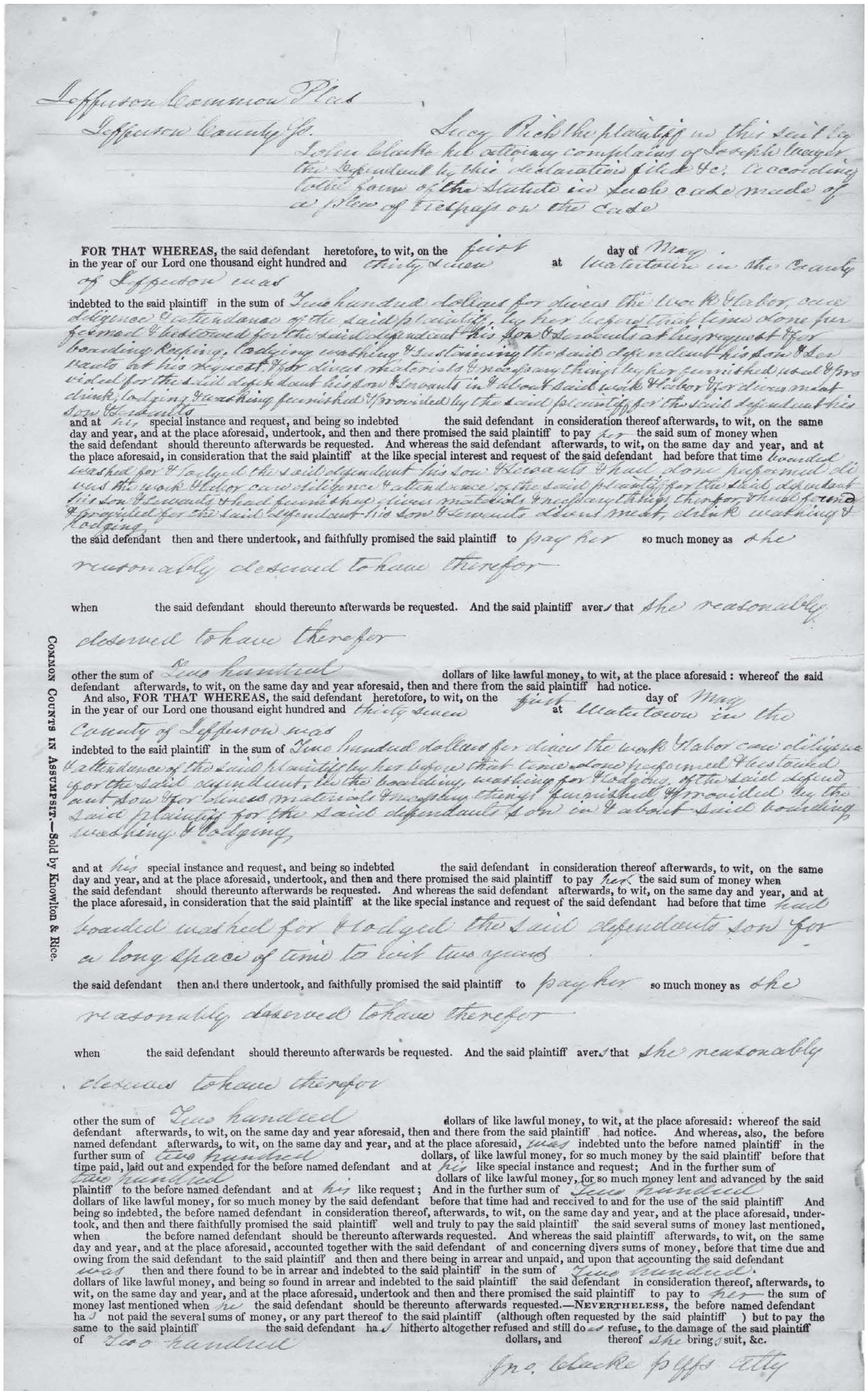
JN591 Writs of *Certiorari*, Error, and *Habeas Corpus* (New York), 1832-1855 (bulk 1832-1846). 0.4 c.f.

Collection includes writs of error and related documents, writs of *habeas corpus*, and one writ of *certiorari*. All the writs of error were directed to the Court of Common Pleas for the City and County of New York. Several of the writs of *habeas corpus* concern custody of minors. Few of the writs include the lower court's response. These writs are arranged by an alphanumeric document code. An index to plaintiffs is on slips at the end of the box. This collection was extracted from a large collection of writs that remains in the New York County Clerk's Office, Division of Old Records, because they post-date 1847.

J0147 Writs of *Certiorari*, ca. 1796-1847 49.0 c.f.

Until the 1820s most of the cases reviewed by the Supreme Court by writ of *certiorari* (Latin, "to be certified") were judgments rendered by justices of the peace. An 1824 law ended this use of writ of *certiorari* in civil cases, and thereafter the county court of common pleas had appellate jurisdiction over local justices of the peace. The writ of *certiorari* still could be used to review a criminal judgment in a justice's court of special sessions, but only if the writ were allowed by a Supreme Court justice, which seldom occurred. A writ of *certiorari* could also be employed to transfer a civil case from a lower court of record (court of common pleas or a mayor's court) into the Supreme Court prior to final judgment. (After judgment a writ of error was employed.) A few criminal cases were transferred by *certiorari* to the Supreme Court from the courts of general sessions and courts of oyer and terminer. Finally, common law permitted use of writs of *certiorari* to review quasi-judicial decisions of officials such as the canal appraisers and town commissioners of highways.

A typical file in this series contains the following documents: affidavit, writ of *certiorari*, and certified record of proceedings in the lower court. The writ of *certiorari* was applied for in an affidavit, in which the applicant specified the type of civil action or the criminal charge and summarized the proceedings, stating any errors alleged to have occurred. The affidavit bears a note that the writ was allowed by a Supreme Court justice or commissioner. The writ of *certiorari* was an order of the Supreme Court, commanding the judges of a lower court or a justice of the peace to return a certified transcript of the pleadings and proceedings in the case. On the verso of the writ are found the names of the parties and defendant's attorney, the filing date, and the signature of the justice or other officer who allowed the writ to be issued.



Jefferson Common Pleas
Jefferson County ss. Lucy Rich the plaintiff in this suit by John Clarke her attorney complains of Joseph Wager the Defendant by this declaration filed &c. according to the form of the Statute in such case made of a plea of trespass on the case

FOR THAT WHEREAS, the said defendant heretofore, to wit, on the first day of May in the year of our Lord one thousand eight hundred and thirty seven at Watertown in the County of Jefferson was indebted to the said plaintiff in the sum of Two hundred dollars for divers the work & labor, care diligence & attendance of the said plaintiff by her before that time done performed & bestowed for the said defendant his son & servants at his request & for boarding keeping, lodging washing & sustaining the said defendant his son & servants at his request & for divers materials & necessary things by her furnished used & provided for the said defendant his son & servants in & about said work & labor & for divers meat drink, lodging & washing furnished & provided by the said plaintiff for the said defendant his son & servants and at his special instance and request, and being so indebted the said defendant in consideration thereof afterwards, to wit, on the same day and year, and at the place aforesaid, undertook, and then and there promised the said plaintiff to pay her the said sum of money when the said defendant should thereunto afterwards be requested. And whereas the said defendant afterwards, to wit, on the same day and year, and at the place aforesaid, in consideration that the said plaintiff at the like special interest and request of the said defendant had before that time boarded washed for & lodged the said defendant his son & servants & had done performed divers the work & labor care diligence & attendance of the said plaintiff for the said defendant his son & servants & had furnished divers materials & necessary things therefor, & had found & provided for the said defendant his son & servants divers meat, drink washing & lodging the said defendant then and there undertook, and faithfully promised the said plaintiff to pay her so much money as she reasonably deserved to have therefor when the said defendant should thereunto afterwards be requested. And the said plaintiff avers that she reasonably deserved to have therefor other the sum of Two hundred dollars of like lawful money, to wit, at the place aforesaid: whereof the said defendant afterwards, to wit, on the same day and year aforesaid, then and there from the said plaintiff had notice.

And also, FOR THAT WHEREAS, the said defendant heretofore, to wit, on the first day of May in the year of our Lord one thousand eight hundred and thirty seven at Watertown in the County of Jefferson was indebted to the said plaintiff in the sum of Two hundred dollars for divers the work & labor care diligence & attendance of the said plaintiff by her before that time done performed & bestowed for the said defendant, in the boarding, washing for & lodging, of the said defendant son & for divers materials & necessary things furnished & provided by the said plaintiff for the said defendants son in & about said boarding washing & lodging and at his special instance and request, and being so indebted the said defendant in consideration thereof afterwards, to wit, on the same day and year, and at the place aforesaid, undertook, and then and there promised the said plaintiff to pay her the said sum of money when the said defendant should thereunto afterwards be requested. And whereas the said defendant afterwards, to wit, on the same day and year, and at the place aforesaid, in consideration that the said plaintiff at the like special instance and request of the said defendant had before that time had boarded washed for & lodged the said defendants son for a long space of time to wit two years the said defendant then and there undertook, and faithfully promised the said plaintiff to pay her so much money as she reasonably deserved to have therefor when the said defendant should thereunto afterwards be requested. And the said plaintiff avers that she reasonably deserved to have therefor other the sum of Two hundred dollars of like lawful money, to wit, at the place aforesaid: whereof the said defendant afterwards, to wit, on the same day and year aforesaid, then and there from the said plaintiff had notice. And whereas, also, the before named defendant afterwards, to wit, on the same day and year, and at the place aforesaid, was indebted unto the before named plaintiff in the further sum of two hundred dollars, of like lawful money, for so much money by the said plaintiff before that time paid, laid out and expended for the before named defendant and at his like special instance and request; And in the further sum of two hundred dollars of like lawful money, for so much money lent and advanced by the said plaintiff to the before named defendant and at his like request; And in the further sum of Two hundred dollars of like lawful money, for so much money by the said defendant before that time had and received to and for the use of the said plaintiff And being so indebted, the before named defendant in consideration thereof, afterwards, to wit, on the same day and year, and at the place aforesaid, undertook, and then and there faithfully promised the said plaintiff well and truly to pay the said plaintiff the said several sums of money last mentioned, when the before named defendant should be thereunto afterwards requested. And whereas the said plaintiff afterwards, to wit, on the same day and year, and at the place aforesaid, accounted together with the said defendant of and concerning divers sums of money, before that time due and owing from the said defendant to the said plaintiff and then and there being in arrear and unpaid, and upon that accounting the said defendant was then and there found to be in arrear and indebted to the said plaintiff in the sum of Two hundred dollars of like lawful money, and being so found in arrear and indebted to the said plaintiff the said defendant in consideration thereof, afterwards, to wit, on the same day and year, and at the place aforesaid, undertook and then and there promised the said plaintiff to pay to her the sum of money last mentioned when he the said defendant should be thereunto afterwards requested.—NEVERTHELESS, the before named defendant has not paid the several sums of money, or any part thereof to the said plaintiff (although often requested by the said plaintiff) but to pay the same to the said plaintiff the said defendant has hitherto altogether refused and still does refuse, to the damage of the said plaintiff of Two hundred dollars, and thereof she brings suit, &c.

Jno. Clarke plffs atty

COMMON COUNTS IN ASSUMPSIT.—Sold by Knowlton & Rice.

RETURN TO WRIT OF ERROR, 1838.

This writ directed the judges of the Jefferson County Court of Common Pleas to send the record of the case of Lucy Rich vs. Joseph Wager to the Supreme Court for review. The attached record of proceedings (first page shown here) summarizes the case in the lower court, where Lucy Rich won a judgment for money wages owed her for board, lodging, and washing. Wager lost the case and sought to have the Supreme Court reverse the judgment on grounds of "manifest error" in the proceedings. Women were rarely parties to actions, since they could not sue in their own behalf if they were married.

(Series J0031, Writs of Error [Utica].)

The attached record of a case in a court of common pleas generally includes the following documents: copy of the writ or bill of complaint by which the action was commenced; copies of the plaintiff's declaration and defendant's plea; minutes of the trial and verdict; occasionally a summary of the testimony; and any other documents that were part of the official case record. The record of civil or criminal proceedings before a justice of the peace takes the form of a narrative summary of the case, since his was not a court of record. Returns from a justice of the peace sometimes include copies of the summons or warrant by which the proceeding was commenced. The record of a criminal case returned by the clerk of a court of general sessions or a court of oyer and terminer usually includes the following documents: copy of the bill of indictment;

recognizance of bail; summary of testimony; and a copy of the trial minutes, including the verdict. Prior to around 1820, the returns to writs of *certiorari* often contain briefs by the attorneys for the opposing parties and their stipulations of points not in dispute. The entire bundle of documents attached to the writ is sometimes called an "error book."

The writs of *certiorari* filed in the clerk's offices upstate were originally arranged either chronologically by filing date or court term, or alphabetically by original defendant, or under the name of the justice who allowed the writs. Many writs are out of order, and often even the office of filing is now uncertain. The affidavits usually were bundled separately. The series contains relatively few documents dating prior to 1807. There is no index. Affirmances or reversals of judgments in lower courts are found in the minutes of the Supreme Court, JN531, J0128, J0129, J0130. Arguments on writs of *certiorari* were enumerated motions placed on the calendars, J0241, J1241, J2241. Judgments in cases removed to the Supreme Court by writ of *certiorari* from a lower courts are found in JN529, J0134, J0137, J0140 Judgment Rolls.

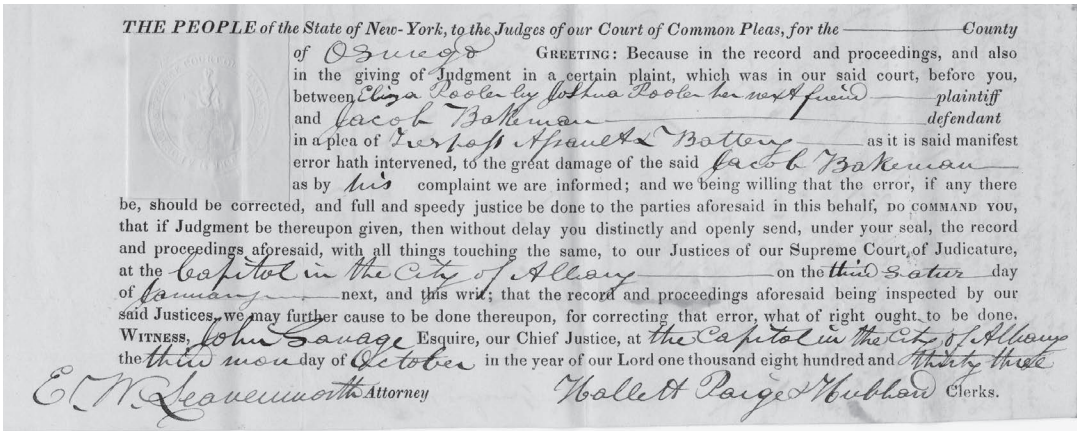
J0029 Writs of *Habeas Corpus* (Albany, Utica), 1807-29. 1.3 c.f.

A writ of *habeas corpus* sought a Supreme Court order commanding a judge, sheriff, or keeper of a prison or jail to deliver an individual legally or illegally detained, into the custody of the court, and to state the legal authority for his detention. The writ took several forms, the most frequent being the writ of *habeas corpus cum causa*. This writ was obtained by a defendant to transfer his case from a lower court to the Supreme Court. (The defendant might be either jailed or released on recognizance of bail.) In other cases the writ of *habeas corpus* did not transfer the record of case proceedings to the Supreme Court. Therefore, the proceedings in Supreme Court had to commence anew. Other forms of *habeas corpus* were employed to produce a person in custody of a court or a prison to testify in the trial of another defendant; to remove a prisoner from one county to another for trial or sentence; and to consider the legality of detention of an individual. Each writ of *habeas corpus* bears a note stating that it had been allowed by a Supreme Court justice or commissioner. There is also a certificate by a court clerk, sheriff, or other officer stating that the manner of execution of the writ appears on an annexed schedule. The writ of *habeas corpus* never states the purpose of the writ. The schedule states the reason for detention of the defendant or prisoner. It may cite or include a copy of the writ or other written authority ordering him to be detained. (In civil cases, this was the writ of *capias ad respondendum* or *capias ad satisfaciendum*; in criminal cases, the warrant of commitment or the indictment; and for convicted prisoners, the minutes of conviction and sentence.) The writs are bundled by years but are otherwise unarranged.

J0031 Writs of Error (Utica), 1807-47. 14.6 c.f.

A writ of error was obtained to remove the judgment of an inferior court of record to the Supreme Court of Judicature for review, when the proceedings showed "manifest error" in law. Most of the cases reviewed on writ of error came up from the courts of common pleas. (After 1824, some of these cases had first been appealed to a court of

common pleas from justices of the peace.) A few criminal cases were removed by writ of error from courts of general sessions and courts of oyer and terminer. The Supreme Court also reviewed civil judgments of the New York City Mayor's Court (starting in 1821 called the Court of Common Pleas for the City and County of New York), the superior courts in New York City and Buffalo, and the mayor's or recorder's courts of upstate cities. Errors of fact on the record of a judgment in the Supreme Court itself were reviewed in the circuit courts.



THE PEOPLE of the State of New-York, to the Judges of our Court of Common Pleas, for the ——— *County of* Oswego GREETING: Because in the record and proceedings, and also in the giving of Judgment in a certain plaint, which was in our said court, before you, between Eliza Pooler by Joshua Pooler her next friend ——— *plaintiff* and Jacob Bakeman ——— *defendant* in a plea of Trespass Assault & Battery ——— as it is said manifest error hath intervened, to the great damage of the said Jacob Bakeman as by his complaint we are informed; and we being willing that the error, if any there be, should be corrected, and full and speedy justice be done to the parties aforesaid in this behalf, DO COMMAND YOU, that if Judgment be thereupon given, then without delay you distinctly and openly send, under your seal, the record and proceedings aforesaid, with all things touching the same, to our Justices of our Supreme Court of Judicature, at the Capitol in the City of Albany ——— on the third Saturday of January ——— next, and this writ; that the record and proceedings aforesaid being inspected by our said Justices, we may further cause to be done thereupon, for correcting that error, what of right ought to be done. WITNESS, John Savage Esquire, our Chief Justice, at the Capitol in the City of Albany the third day of October in the year of our Lord one thousand eight hundred and Thirty three

E. M. Leavenworth Attorney — Hall & Paige & Hubbard Clerks.

WRIT OF ERROR, 1833.

Plaintiff, an under-age woman whose father sued in her name, obtained a judgment in the Oswego County Court of Common Pleas for $1,000 damages plus six cents costs. The jury believed plaintiff's complaint that defendant had committed assault and battery and false imprisonment against her three times. Defendant obtained a writ of error (shown here) to have the judgment reviewed by the Supreme Court, alleging in a bill of exceptions that trial testimony by the plaintiff's lead witness was inadmissible because she was a common prostitute. The case was never argued before the Supreme Court and was apparently dropped.

(Series J0031, Writs of Error [Utica].)

A typical file in this series always includes the writ of error and the "return" or answer of the lower court, and often includes the defendant's bill of exceptions placing additional information on the record. The writ of error was a sealed order of the Supreme Court (before 1815, the Court of Chancery) commanding a lower court to return the record of pleadings, proceedings, and judgment. Usually the original defendant was the plaintiff in error. (In rare cases the original plaintiff might obtain a writ of error if he thought the judgment award was too small.) The writ states the names of the parties, the type of common-law action or the criminal charge, and the time and place for return of the writ. On the verso are the names of the parties and the defendant's attorney, the filing date, and the signature of the justice or other officer who allowed the writ to be issued. In civil cases the certified record, or answer to the writ, consists of a copy of the judgment record. Occasionally the record is accompanied by a summary of testimony and rulings thereon, if the alleged error did not appear on the record. In criminal cases, the record includes copies of the bill of indictment, trial minutes, and verdict, and sometimes a summary of the testimony and other proceedings.

A bill of exceptions is included in many but not all of the files. The bill of exceptions is the appellant's statement setting forth legal objections to the lower court proceedings. It often summarizes the proceedings not stated on the judgment record, which were the ground for exceptions. The bill of exceptions was filed by the appellant's attorney and signed by the judges of the lower court. It was returned to the Supreme Court case as part of the record and bears two filing dates, one for the local court, the other for the Supreme Court.

Two other documents are found occasionally. One is the bond of the plaintiff in error and two sureties for payment of damages and costs if the case go against him on review. The bond had the effect of staying execution of judgment in the lower court and permitted removal of the case to the higher court. The other is the certificate of a Supreme Court commissioner stating that he has examined the record of proceedings and finds substantial error. A few files also contain the reply of the defendant in error. Finally, the series contains a few writs of error and attached records remitted, or sent back, to the Supreme Court from the Court for the Correction of Errors.

Affirmances or reversals of cases reviewed by the Supreme Court on writ of error are entered in the minute books. Arguments on writs of error were enumerated motions placed on the calendars. Judgments affirming or reversing judgments of lower courts are found in the judgment rolls. The documents in this series are arranged by year. There is no index, but the minute books and calendars may help locate particular cases.

J0021 Bills of Exceptions, ca. 1805-47. 0.9 c.f.

This fragmentary series consists of bills of exceptions submitted by attorneys for defendants in inferior courts (civil or criminal) who intended to apply for a writ of error. The bill summarizes the proceedings to which exception is taken and is certified and signed by the judge (or judges) of the lower court. The office of original filing is uncertain. Many more bills of exceptions are found in J0031 Writs of Error. The documents are unarranged and unindexed.

J8011 Assignments of Errors (Albany), 1837-39, 1844-47. 0.2 c.f.

This series consists of assignments of errors made by plaintiffs in error. The assignment of errors corresponds to the declaration in an ordinary civil action. The plaintiff in error states the "manifest error" found in the lower court judgment and asks that the higher court reverse and annul the judgment. The document was prepared and signed by the attorney for the plaintiff in error only if he had been ordered to assign errors on motion of the defendant in error. These documents are unarranged and unindexed.

J2026 Assignments of Errors (Geneva), 1829-42. 0.4 c.f.

The contents of this series are similar to J8011.

J4013 Writs of *Mandamus*, 1822, 1825-44. 0.4 c.f.

This series consists of writs of *mandamus* commanding a public officer or public corporation to show cause why he or it should not perform a duty (alternative *mandamus*) or to perform it (peremptory *mandamus*). The formal plaintiff in the case is the people of the State of New York "on the relation of" (ex *relatione,* or *ex rel.*) a private individual, who is known as the relators. When the relator is the People on its own behalf, the attorney for the plaintiff is the attorney general. In other cases private attorneys represent the relators. The defendants may be judges of a court of common pleas (the majority of cases in this series), sheriffs, town commissioners of highways, judges of a mayor's court, the canal commissioners or canal appraisers, a county board of supervisors, or any other public officer or body. One case (1845) involves a charge that the governor and secretary of state had not distributed surplus volumes of the *Natural History of the State of New York* as required by law. Most writs of *mandamus* served on courts of common pleas demanded that the judges perform or vacate a rule, set aside a verdict, or quash an appeal. The return to a writ of *mandamus* usually includes transcripts of court proceedings, affidavits of public officers, or other

documents relating to the action of the public officer or corporation under challenge. The writs of *mandamus* are unarranged and unindexed. The original office of filing is uncertain because the writs were found estrayed in several different series.

J1025	Writs of *Certiorari*, Error, *Habeas Corpus*, and *Mandamus* (Albany, Utica), 1800-47.	9.9 c.f.

These Albany and Utica writs have been removed from J0025 Writs of Execution (Geneva) because they were not filed in that office. Additional Utica writs are found in other series. For descriptions of these documents see J0147 Writs of *Certiorari*, J0031 Writs of Error, J4013 Writs of *Mandamus*, and J0029 Writs of *Habeas Corpus*.

J1001	Remittiturs from the Court for the Correction of Errors (Albany), 1814-43.	0.4 c.f.

Remittiturs are the documents returned to a trial court from an appellate court after an appeal is decided, so that execution of the appellate court's judgment can proceed. The documents include the writ of error returned from the Supreme Court to the Court for the Correction of Errors; a copy of the Supreme Court judgment roll, occasionally with a bill of exceptions or assignment of errors and joinder in error; and the record of proceedings and judgment in the Court for the Correction for Errors.

Insolvency Papers

Insolvency proceedings were of various types, authorized by many different statutes. They all resulted in the sale of the property of an insolvent or imprisoned debtor, or of an "absconding, concealed or non-resident debtor," for the benefit of creditors. In the most common type of insolvency proceeding, the debtor and creditors representing a certain proportion of his debts petitioned a court or judicial officer for the assignment of all of the debtor's property to trustees ("assignees"), their sale of the property to pay the creditors, and discharge of the debtor from his or her debts incurred prior to the assignment. In an involuntary assignment one or more creditors petitioned for the attachment and sale of property of an "absconding, concealed, or non-resident debtor" (residing out-of-state.) The debtor's property was seized ("attached") by the sheriff, and court-appointed trustees then sold it and paid the creditors with the proceeds of the sale. An insolvency proceeding could also be commenced by the petition of an imprisoned debtor, but few of the resulting records are in the State Archives. (The numerous state laws on insolvency proceedings of various types are listed and summarized in Appendix M, "Statutes Concerning Sale of Insolvent Debtors' Property for Benefit of Creditors.")

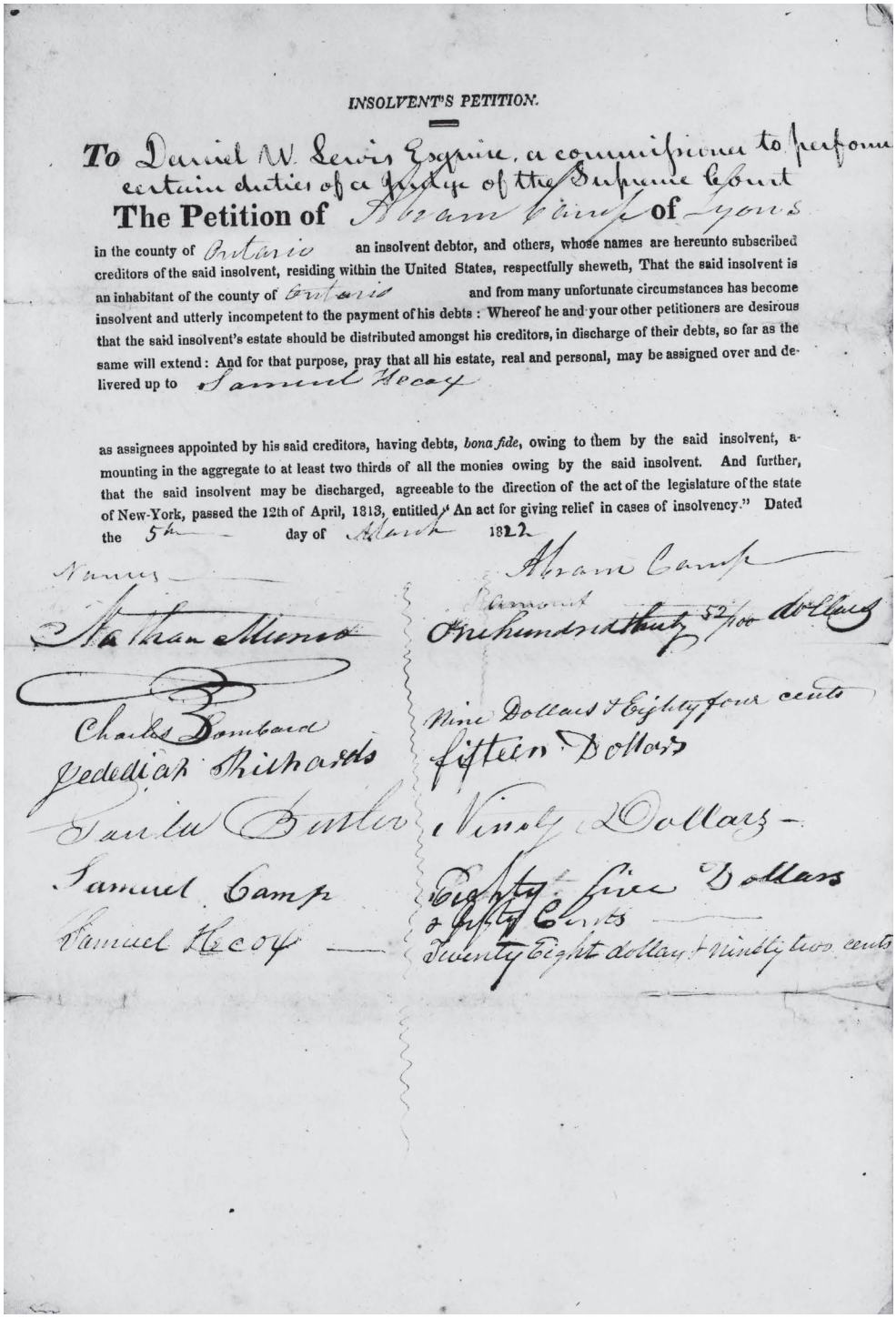
A typical file in a voluntary assignment contains the following documents: petition of the insolvent debtor and his creditors (representing three-fourths or, starting 1813, two-thirds of the total amount owed by him) requesting that the insolvent's property be assigned to one or more trustees for sale; affidavit of each petitioning creditor stating amount of his claim; account of debts of the insolvent debtor, with names of creditors and the amounts owed them; account of the real estate and inventory of the personal

property of the insolvent debtor; order to advertise the impending sale of the debtor's property, notifying other creditors to present their claims or show cause why the sale should not be made; affidavit of publication, including clipping of newspaper advertisement; order for assignment of the insolvent's property to trustees for sale for benefit of the creditors; certificate of assignment by trustees, stating that the property has been delivered to them; and affidavit or report of assignment, discharging the insolvent from further liability for debts incurred prior to the date of the assignment.

INSOLVENT'S PETITION, 1822.

Insolvent debtor Abram Camp of Lyons, Wayne County, and his creditors petition the Supreme Court for an order transferring his property to an assignee for sale. Proceeds of the sale were distributed to the creditors, who are named at the bottom of the petition. Insolvency proceedings were numerous; except for two brief periods, there were no federal bankruptcy laws prior to 1898.

(Series J0156, Insolvency Papers [Utica].)



INSOLVENT'S PETITION.

To Daniel N. Lewis Esquire, a commissioner to perform certain duties of a Judge of the Supreme Court

The Petition of Abram Camp of Lyons

in the county of Ontario an insolvent debtor, and others, whose names are hereunto subscribed creditors of the said insolvent, residing within the United States, respectfully sheweth, That the said insolvent is an inhabitant of the county of Ontario and from many unfortunate circumstances has become insolvent and utterly incompetent to the payment of his debts: Whereof he and your other petitioners are desirous that the said insolvent's estate should be distributed amongst his creditors, in discharge of their debts, so far as the same will extend: And for that purpose, pray that all his estate, real and personal, may be assigned over and delivered up to Samuel Hecox

as assignees appointed by his said creditors, having debts, *bona fide*, owing to them by the said insolvent, amounting in the aggregate to at least two thirds of all the monies owing by the said insolvent. And further, that the said insolvent may be discharged, agreeable to the direction of the act of the legislature of the state of New-York, passed the 12th of April, 1813, entitled "An act for giving relief in cases of insolvency." Dated the 5th day of March 1822

Abram Camp

Names — Amount

Nathan Munson — One hundred & thirty 52/100 dollars

Charles Bombard

Jedediah Richards — Nine Dollars & Eighty four cents

Sarila Butler — fifteen Dollars

Samuel Camp — Vinety 2 Dollars

Samuel Hecox — Eighty five Dollars & fifty Cents

Twenty Eight dollars & ninety two cents

A typical file relating to the assignment of the property of an absconding, concealed, or non-resident debtor includes the following documents: petition by one or more creditors for attachment of debtor's property, itemizing the debts owed to them; affidavits of other, disinterested individuals stating that the debtor has absconded or concealed himself or resides out-of-state; warrant to sheriff to attach the debtor's property; and appraisal of the real property and inventory of the personal property of the insolvent. Other documents in an involuntary assignment mostly correspond to those found for voluntary assignments: court order appointing assignees to sell debtor's property, order for and affidavit of publication of notice of sale, and final report of trustees' proceedings. There is no court discharge of the debtor from his debts.

J2000	Insolvency Papers (New York), 1784-1828 (bulk 1786-1815).	8.6 c.f.

Most of the papers relate to insolvency proceedings under the so-called "three-fourths" and "two-thirds" acts for voluntary assignments by insolvent debtors. Most petitions are directed to the recorder of the City and County of New York, a lesser number to a Supreme Court justice, and a very few to other judges. Most of the files are for insolvent debtors in New York City, a few from other parts of the state. The insolvency papers, arranged alphabetically, are for debtors with last names with initial letters from 'A' to 'T' only.

JN503	Assignments and Discharges of Insolvent Debtors (New York), 1830-1850.	2 microfilm rolls (1 full, 1 part)

Two volumes on microfilm contain petitions for assignment of insolvent debtors' property to trustees for the benefit of creditors. Most of the petitions were made by the debtor and creditors representing two-thirds of his total debts. The assignment consists of two parts: first, a summary of the petition for relief, the notice to creditors of the pending assignment, and the judge's order that an assignment be made; and second, the debtor's assignment of his real and personal property to trustees. Accompanying the assignment is the judge's order discharging the debtor from his debts. The series also contains some petitions, dating from the early 1830s, by insolvent debtors requesting assignment and sale of their property, and discharge from debtors' prison or from liability for imprisonment. All the petitions were directed to and discharges issued by the recorder of the City of New York or a judge of the Court of Common Pleas for the City and County of New York. The volumes were filed in the New York County Clerk's Office. They were microfilmed in 1955 and the originals then destroyed.

JN114	Docket of Insolvent Assignments (New York), 1754-1864 (bulk 1811-1864).	0.3 c.f., 1 microfilm roll (2 vols.)

Entries are alphabetical by first letter of insolvent debtor's surname, then chronological by year, or by year and date, of the assignment. Volumes are certified as copies of the "original docket of insolvent assignments," made pursuant to Laws of 1883, Chap. 57.

The first volume (entries for 1754-1839) is available in paper original. The second volume (entries for 1840-1864) is preserved only on microfilm. Most of the papers to which this docket evidently refers have been destroyed.

J0120	Index of Insolvent Assignments Filed in New York City, 1754-1855 (bulk 1784-1855).	0.2 c.f. (1 vol.)

This index lists names of insolvent debtors and the year or date and year of filing and discharge. Entries are alphabetical by first letter of surname, then chronological. The volume was published by the Commissioners of Records of the City and County of New York, with the title, *Indices of Insolvent Assignments Filed in the Office of the Clerk of the City and County of New-York, to December 31st, 1855* (New York: 1857). It was microfilmed by the Genealogical Society of Utah in 1967 (roll #509176). The volume probably includes insolvent assignments in both the Court of Common Pleas for the City and County of New York (known before 1821 as the "Mayor's Court"), the Recorder's Court of the City of New York, and the Supreme Court, because at the time of publication the county clerk was custodian of the records of those courts.

JN534	Petitions for Attachment of Property of Absconding, Concealed, and Non-Resident Debtors (New York), 1784-1852 (bulk 1798-1849).	3.0 c.f.

The petition submitted by creditors to a judge requested issuance of a warrant of attachment, ordering a sheriff to seize the real and personal property of a debtor for payment of his debts. The proceeding was available when a debtor could not be arrested, because he had absconded or concealed himself, or was not a resident of New York State. Accompanying the creditors' petition are affidavits of disinterested witnesses stating that the debtor had absconded or concealed himself, or was a non-resident; and a report by a judge stating that the warrant had been issued. Very infrequently there are other documents, such as an inventory of the debtor's property, proof of publication of notice of attachment, and pleadings if the case was litigated. Almost all documents relate to insolvency proceedings in New York City. Before July 1, 1847, most of the petitions were submitted to the recorder of the City of New York or to a judge of the Court of Common Pleas for the City and County of New York. A few were submitted to a justice of the Supreme Court of Judicature, all of them before January 1, 1830. After July 1, 1847, the petitions were submitted to a judge of the Court of Common Pleas for the City and County of New York, or to a justice of the Supreme Court in New York County. The documents are bundled by year. Series includes a few early insolvency papers that do not pertain to non-resident, concealed or absconding debtors.

JN934	Index of Absconding, Concealed, and Non-Resident Debtors (New York), 1800-1874 (bulk 1833-1849).	1 microfilm roll (part)

Each entry in the index states the date of the insolvent debtor's assignment of his property to trustees (assignees), name of debtor, names of trustees, and remarks concerning the trustees' performance of their duties (oaths, reports, etc.). Volume was

microfilmed in 1959 for the New York County Clerk's Office, and the original volume was then destroyed. Index is related to JN534 Petitions for Attachment of Property of Absconding, Concealed, and Non-Resident Debtors.

J0154	Insolvency Papers (Albany), 1785-1842.	40.0 c.f.; 17 microfilm rolls

Most of the papers in this and the following series concern voluntary assignments by insolvent debtors. The Albany insolvency papers are arranged alphabetically by name of debtor. The few files after 1829 all pertain to absconding, concealed, or non-resident debtors.

J0156	Insolvency Papers (Utica), 1806-47.	5.6 c.f.; 8 microfilm rolls

The Utica insolvency papers are arranged alphabetically by name of debtor. The few files after 1829 mostly pertain to absconding, concealed, or non-resident debtors. There are a few writs of attachment for other purposes.

Partition Papers

The following series consist of documents relating to the partition (court-supervised allotment or sale) of undivided lands held by joint tenants or tenants in common. (Joint tenants possessed real property by the same legal title; tenants in common possessed it by distinct, different titles.) Each file contains some or all of the following documents: petition to Supreme Court seeking a rule appointing commissioners to partition lands held jointly or in common; affidavit of publication of notice of petition, in cases where the identity or residence of some of the tenants was unknown; report of commissioners describing in detail (sometimes with a survey and map) the real property as partitioned and allotted by them; and copies of the court rule appointing the commissioners and of the oath sworn by them. There may also be a commissioner's report of sale of the property, giving date of sale, name of purchaser, and amount paid; and a copy of the court rule approving the sale and ordering distribution of the proceeds to the tenants.

Many of the cases involved minor heirs for whom the court appointed guardians. In such cases the file usually includes the petition and rule for appointment of a guardian *ad litem* for a tenant who was a minor; bond of guardian's sureties for the "faithful discharge" of the guardian's duties; report of court clerk approving sureties and setting the amount of their bond; and guardian's plea of confession consenting to partition. The series also contains a few petitions for appointment of guardians for minors who were involved in actions other than partition.

Judgments in partition cases are found in the regular series of judgment rolls. Final partition orders are entered in the minute books.

J0019	Reports of Commissioners Appointed to Partition Lands (Albany), 1802-1819, 1824, 1829.	1.7 c.f.

The files are arranged alphabetically by first letter of petitioner's name. The documents within each file are in a roughly chronological arrangement by filing date. Each file is numbered consecutively in red on the verso of one of the documents in the file, starting with "1" for each letter of the alphabet. Final orders are entered in J0130 Minute Books (Albany). Series J2130 Index to Minute Books (Albany) includes references to partition cases.

J9913	Reports of Commissioners Appointed to Partition Lands (Utica), 1825-30.	0.4 c.f.

The largest single file in this series relates to the partition of lands of Joseph Ellicott in the city of Buffalo. The documents in this series are unarranged and unindexed. Final orders are entered in J0128 Minute Books (Utica).

Naturalization Papers

These series consist of documents relating to the naturalization of non-citizens by the Supreme Court or by justices presiding at circuit courts. The documents include the declaration of intention, in which a non-citizen states his intention to renounce allegiance to a foreign ruler or state and to become a citizen of the United States; and the petition for naturalization, stating the country of origin and length of residence in the United States and requesting to be admitted to citizenship. The petition is usually accompanied by an affidavit made by persons acquainted with the non-citizen, stating that he is of good moral character and has been residing in the United States the required number of years, and by a copy of the oath of allegiance sworn by the non-citizen. Naturalization of a non-citizen could be performed in any court of record, as directed by acts of Congress passed on March 26, 1790, and April 14, 1802. Most naturalization proceedings in New York during the early nineteenth century took place in the county courts of common pleas and in New York City courts, whose records are maintained by the respective county clerks. Some naturalizations were performed by federal courts in New York, whose records are now held by the National Archives Branch in New York City.

J5011	Naturalization Papers (Albany), 1799-1812.	0.4 c.f.

The documents are arranged in alphabetical order by name of petitioner. Final naturalization orders are entered in J0130 Minute Books (Albany). The documents have been digitized and indexed by Ancestry.com and are available in the Ancestry New York portal on the State Archives' website.

J9013	Naturalization Papers (Utica), 1822, 1830-38.	0.4 c.f.

The documents are arranged in alphabetical order by name of petitioner. Final naturalization orders are entered in J0128 Minute Books (Utica). The documents have been digitized and indexed by Ancestry.com and are available in the Ancestry New York portal on the State Archives' website.

Note: There is no separate series of naturalization papers for the Supreme Court clerk's office in New York City. Some naturalization orders are entered in JN531 Minute Books and JN519 Circuit Court and "Sittings" Engrossed Minute Books.

Wills and Probates

JN540	Record of Wills Proved at New York, 1787-1829, 1847-1856.	1.0 c.f.; 1 microfilm roll.

This series consists of recorded wills and probates (proceedings to determine authenticity and validity of a will) in the Supreme Court of Judicature (1787-1830) and in the Supreme Court in New York County (1847-56). (An intervening volume is lost.) The record of probate proceedings includes notices to heirs and witnesses, proof of death of the testator, depositions of witnesses, and occasionally interrogatories to and depositions by individuals residing out-of-state. The record concludes with the court order determining the will to be authentic and valid and directing the executor to execute the provisions of the will, and the text of the will. The final volume (1847-56) contains probate proceedings for wills of decedents residing or dying out-of-state. Only the first volume (1787-1821) is indexed; the others are not indexed. JN531 Minute Books (New York) includes some entries concerning proof of wills before 1830.

Volumes were microfilmed by the Genealogical Society of Utah in 1967 (rolls #501136 [items 1-2] and #501137 [item 1]), and cataloged as "New York Surrogate's Court (New York County), Probate Records (New York City, New York)." State Archives holds a copy of roll #501136, formerly cataloged as series J2041. The images have been digitized by FamilySearch.

J1041	Petitions and Affidavits for Proof of Wills (Albany), 1801-28.	0.2 c.f.

Documents concern the proof of wills devising real property by the Supreme Court at Albany. Documents include the executor's petition for proof of a will, affidavits of witnesses as to the competency of the testator and the authenticity of his signature, and notices to next of kin of the proof of the will. Proved wills are recorded in J0041 Record of Wills Proved at Albany.

J0041	Record of Wills Proved at Albany, 1799-1829.	0.3 c.f. (1 vol.)

This volume contains a record of wills proved in the Supreme Court at Albany. For each case there is a copy of the will and the proof of the will. The proof consists of the following parts: either the interrogatories administered to the witnesses to the will concerning the identity of the testator and the authenticity of his will and of their signatures, with their answers, or summaries of testimony given in court by those witnesses (a will might be proved by either method); copy of notice of motion to prove the will; and copy of affidavit of service of the motion to the heirs. The entries in this volume are chronological by date of proof of will. There is a name index, and the wills are also indexed in Berthold Fernow, ed., *Calendar of Wills on File and Recorded in the Office of the Clerk of the Court of Appeals ... (New York: 1896).* Orders for proof and

recording of wills are entered in J0130 Minute Books (Albany) and indexed in J2130 Index (Partial) to Minute Books. Volume was microfilmed by the Genealogical Society of Utah in 1953 (roll #17414], and cataloged as "New York, Supreme Court, Wills." The images have been digitized by FamilySearch.

J0020 Record of Wills Proved at Utica, 1818-29. 0.2 c.f. (1 vol.)

This volume contains the same information as is found in J0041. There is no index in this volume, but the wills are indexed in Fernow, *Calendar of Wills.* Orders for proof and recording of wills are found in J0128 Minute Books (Utica). Volume was microfilmed by the Genealogical Society of Utah in 1953 (roll #17413], and cataloged as "New York, Supreme Court (Oneida County), Wills Tried [sic] Before Supreme Court at Utica." The images have been digitized by FamilySearch.

J1020 Wills and Petitions for Probate (Utica), 1820-29. 0.4 c.f.

Series contains original wills and documents relating to proof of the wills, including petitions for proof of a will, testimony or affidavits of witnesses attesting to the competency of the testator and the authenticity of his signature, notices to next of kin of the proceedings, and appointments of legal guardians for minor heirs.

Other Statutory Proceedings

J6011 Affidavits of War Service and Property by Revolutionary War Veterans (Albany), 1820. 0.4 c.f. (16 items.)

This small series consists of sworn declarations of military service and real and personal property made by Revolutionary War veterans who intended to apply for pensions under an act of Congress passed on March 18, 1818. Each affidavit includes the name of applicant, his age, present residence, former military rank, physical disability if any, and a statement of his war service. The declaration further states that the applicant is a citizen of the United States and has not sold or put in trust any property since passage of the act. There follows a schedule of his real and personal property. The signature or mark of the applicant is found at the end of the declaration. Appended to the document is the certificate of a Supreme Court clerk attesting to the value of the property listed on the schedule. The documents are arranged in alphabetical order. All but one of the applicants resided in Albany County.

J1014 Reports of Commissioners Appointed to Appraise Lands Taken for Street Openings in New York City and Brooklyn (Albany, Utica), 1817, 1830, 1837, 1845. 0.4 c.f.

This series consists of petitions for appointment of commissioners to appraise lands taken for street openings in the cities of New York and Brooklyn, also reports of the commissioners. The petition of the mayor, aldermen, and commonalty of an incorporated city describes the parcels of land to be taken for opening, extending,

or widening a street and asks the Supreme Court to appoint three commissioners to appraise the lands described. The commissioners' report again describes each parcel, gives the owner's name, and states the assessed value as determined and awarded by the commissioners. The documents relating to New York City streets date from 1817 and 1830; those relating to Brooklyn, from 1837 and 1845. The documents in this series are unarranged and unindexed. Orders appointing commissioners to assess property taken for streets in cities are filed in J0011 Motions and Declarations (Albany), and J0126 Motions (Utica). Commissioners' reports and final court orders are entered in J0130 Minute Books (Albany) and J0128 Minute Books (Utica).

Note: The New York County Clerk's Office, Division of Old Records, holds numerous records relating to appropriation of lands for streets on Manhattan Island. Laws of 1851, Chap. 156, authorized the clerk of the Court of Appeals to transfer all "records, documents and papers" relating to "opening, widening, altering, extending, or improving" streets, avenues, etc., in New York City to the clerk of the City and County of New York. Compliance with that law was evidently incomplete.

Clerks' Financial Records

JN507	Clerk's Register of Attorney Accounts (New York), 1795-1798.	0.3 c.f. (1 vol. [part])

Volume contains entries of fees for each document issued or filed by attorneys. Amounts are computed in pounds, shillings, and pence. All accounts end with the word "copied," maybe referring to a successor volume that does not survive. Entries are alphabetical by first letter of attorney's surname, then chronological.

JN537	Receipt Book for Satisfaction of Judgments (New York), 1826-28.	0.3 c.f. (1 vol.)

Volume contains attorneys' receipts for monies paid by judgment debtors in full or partial satisfaction of money judgments. Each entry contains the court name, case title, amount of payment, name of judgment creditor's attorney, and his signature. There are entries for cases in both the Supreme Court of Judicature and the Court of Common Pleas for the City and County of New York. Entries are chronological by date of receipt.

J0007	Clerks' Registers of Cases in Supreme Court of Judicature and Courts of Common Pleas, 1797-1836.	0.4 c.f. (4 vols.)

These volumes are registers of writs issued and returned, declarations and other documents received and filed, and other business transacted by clerks of the Supreme Court and courts of common pleas in several upstate New York counties. Cases for each attorney's account are identified by the names of the parties, the name of the court, the type of action or matter, and the amount of damages sought and awarded. The entries or memoranda for each case are usually dated and are heavily abbreviated. The cases are entered in roughly chronological order by date of first entry thereunder. These registers are not really account books, but they contain notes of fees charged by

the clerks. Some of the cases are marked "Settled." The common pleas registers marked on the paper covers "No. 1" and "No. 2" list cases heard in the courts of common pleas in Oneida, Herkimer, and Chenango counties. The bound register lists cases heard in the Supreme Court of Judicature and in the courts of common pleas in Monroe, Genesee, Ontario, and Niagara counties. Each register has an alphabetical index.

J1244 Ledgers of Accounts with Attorneys, ca. 1813-17, 1842-44. 0.4 c.f. (2 vols.)

These volumes contain accounts with attorneys practicing in the Supreme Court. The heading of each account is the name of the attorney. Though the volumes are termed "ledger," only debits (no credits) are entered. The debits are for filing documents, sealing writs, certifying copies, searching for unsatisfied judgments, and so on. The date and fees charged are stated for each entry. The early accounts in the first ledger (ca. 1812-17) are in roughly chronological order by date of first entry, but later accounts are inserted wherever there is room. The volume includes an attorney index. The accounts in the second ledger (1842-44) are roughly alphabetical by attorney, and include the letters 'M' through 'W' only. There is no index. The office where these ledgers were kept is uncertain.

J0214 Indexes and Abstracts of Attorneys' Accounts (Albany), 1839-47. 1.0 c.f. (5 vols.)

This series contains abstracts of attorneys' accounts with the clerk of the Supreme Court at Albany. The entries are alphabetical by initial letter of the attorney's last name. To the left of each name is a consecutive number referring to account books that are no longer extant. In columns to the right are entered balances due from the attorneys and occasionally entries of payments. There are also notes of accounts sent to the county treasurers for collection, pursuant to *Revised Statutes* of 1829, Part I, Chap. 12, Title 2, Art. 2, sect. 20.

J0230 Cash Book for Clerk's Fees (Albany), 1846-47. 0.2 c.f. (1 vol.)

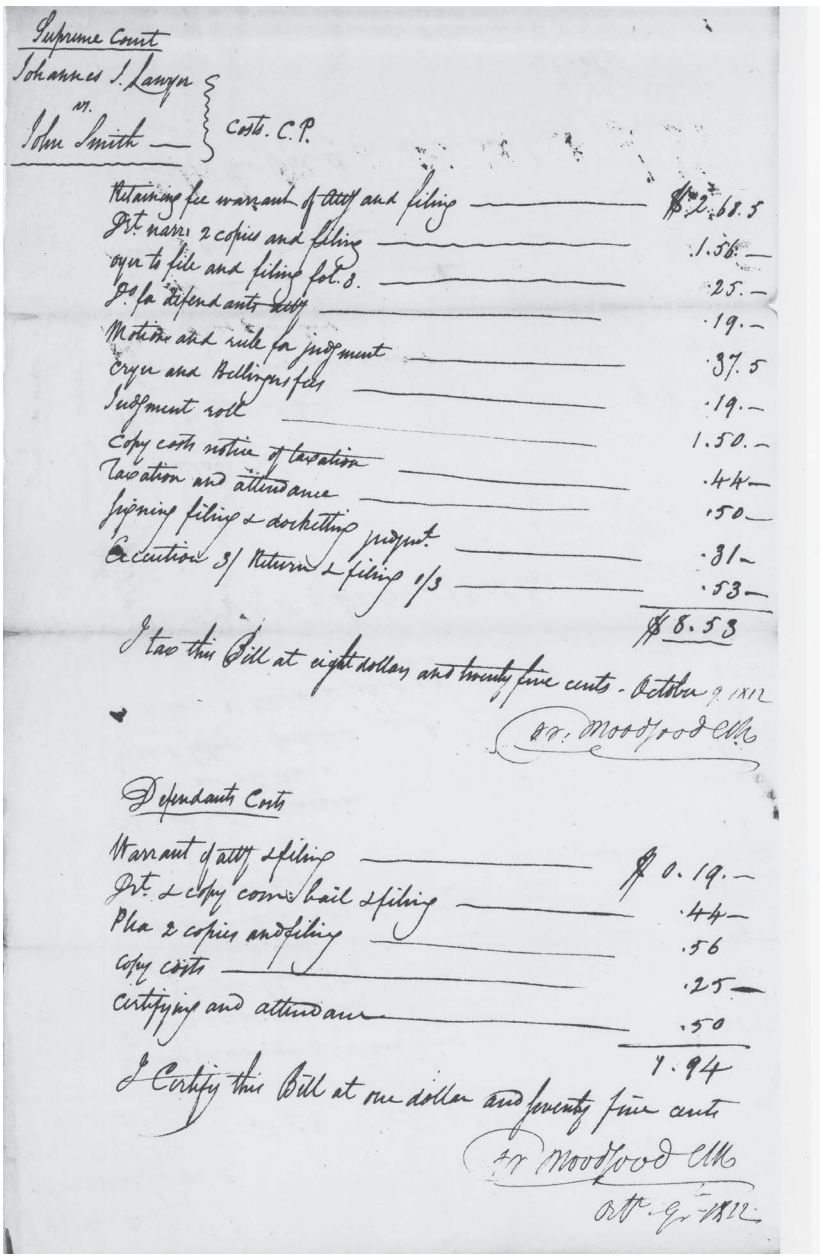
This account book contains a record of fees charged for filing declarations, judgments, satisfactions, motions, and other documents, and for performing searches for documents on file. Each entry gives the date of the fee, attorney's name, nature of fee charged, and amount of fee. The entries are alphabetical by first letter of attorney's last name, then chronological by date.

J0244 Day Book for Clerk's Fees (Geneva), 1839-47. 0.5 c.f. (1 vol.)

This volume contains accounts of fees charged by the clerk of the Supreme Court at Geneva. Each entry gives the date, name of attorney charged, nature of charge, and amount charged. The fees are for impressing seals, copying dockets, searching and copying documents, taking affidavits, and taxing costs. Occasionally residences of attorneys are indicated. This record was compiled pursuant to Laws of 1839, Chap. 388, which contained a new list of fees to be charged by clerks of the Supreme Court.

J7013 County Treasurers' Receipts for Fees, 1841-44. 0.2 c.f.

This small series consists of receipts from county treasurers for money collected from attorneys for fees due to the clerks of the Supreme Court. The county treasurers transmitted these monies pursuant to the *Revised Statutes* of 1829, Part I, Chap. 12, Title 2, Art. 2, sect. 20, which required them to receive and pay over all monies belonging to the state.



Supreme Court
Johannes I. Lansyn
vr.
John Smith — } Costs. C.P.

Retaining fee warrant of attyy and filing ——— $2.68.5
Dft. narr. 2 copies and filing ——— 1.56.—
oyer to file and filing fol. 3. ——— .25.—
Dft. fa defendants duty ——— .19.—
Motion and rule for judgment ——— .37.5
Cryer and Bellringers fees ——— .19.—
Judgment roll ——— 1.50.—
Copy costs notice of taxation ——— .44—
Taxation and attendance ——— .50—
Signing filing & docketing judgmt. ——— .31—
Execution & Return & filing 1/3 ——— .53—
$8.53

I tax this Bill at eight dollars and twenty five cents. October 9. 1812
Wm. Woodhood Clk

Defendants Costs

Warrant & atty & filing ——— $0.19.—
Dft. & copy comm. bail & filing ——— .44—
Plea 2 copies and filing ——— .56
Copy costs ——— .25—
Certifying and attendance ——— .50
7.94

I Certify this Bill at one dollar and seventy four cents
Wm Woodhood Clk
Oct. 9. 1812

BILL OF COSTS, 1812.

This bill of costs itemizes costs (including court fees) for plaintiff and defendant. Most of the charges are for copying and filing papers. The plaintiff also had to pay "cryer and bellringers fees."

(Series J1152, Bills of Costs [Albany].)

J1152 Bills of Costs (Albany), ca. 1802-12. 0.2 c.f.

This series contains bills of costs awarded to winning parties. Each bill contains a list of costs incurred in the progress of a civil action, from the initial retaining fee to filing of the writ of execution. The bill of the plaintiff's costs is totaled and signed by the clerk of

the Supreme Court at Albany or by the Albany city recorder. The bill of the defendant's costs is likewise certified and signed by the clerk or recorder. The title of the action and the total amount of costs taxed are found on the verso. The series is fragmentary and is unarranged and unindexed. Statute law specified the costs to be allowed to prevailing parties in actions in Supreme Court.

JN601	Bills of Costs Taxed by Court Officers (Albany and New York), 1813-1821.	0.2 c.f. (1 vol.)

Volume records bills of costs in civil court proceedings that were taxed (approved) by a judge or court clerk. Each entry includes the court name, case title, itemized costs of the proceeding as set by statute, total costs, name of defendant's attorney, and signature of the judge or court clerk with date. Most cases were determined in the Supreme Court of Judicature, the rest in the mayor's courts in the cities of New York and Albany, which functioned as the court of common pleas for New York County and Albany County, respectively. Entries are chronological by date of taxing costs. The volume was transferred to the State Archives from the New York County Clerk's Office, but the original office of filing is uncertain.

Lists of Attorneys, Attorneys' Agents, and Supreme Court Commissioners

Laws of 1788, 11th Sess., Chap. 28, required judicial officers (including attorneys) to sign two oaths: one renouncing allegiance to any foreign king, prince, or potentate and swearing allegiance to the State of New York; and another swearing to execute their office to the best of their ability. Laws of 1796, 19th Sess., Chap. 57, added an oath to uphold the United States Constitution, continued by Laws of 1801, Chap. 32. Laws of 1816, Chap. 1, added an anti-dueling oath, repealed by Laws of 1824, Chap. 41. The Constitution of 1821, Art 6, sect. 1, replaced all previous oaths with an oath to uphold the state and federal constitutions and to execute one's office to the best of one's ability. On the required oaths of Supreme Court attorneys and counselors, considered to be officers of the court, see Laws of 1801, Chap. 32; *Revised Laws* (1813), Chap. 48, sect. 4-5, vol. 1, pp. 416-17; and *Revised Statutes* (1829), Part I, Chap. 5, Title 6, sect. 24.3, and Part III, Chap. 3, Title 2, Art. 3, sect. 66.

JN541	Rolls of Attorneys and Counselors and of Solicitors in Chancery, 1754-1847 (bulk 1783-1847).	2.3 c.f.; 1 roll microfilm

Rolls contain names of attorneys and counselors admitted to practice in the Supreme Court of Judicature and of solicitors admitted to practice in the Court of Chancery. Each roll contains the signatures, or names written by the court clerk, of the individuals admitted to practice; and the date of admission. At the start of the roll is the text of the oath sworn by the subscribing individuals. All rolls post-date the American Revolution. The earliest roll includes names of individuals admitted to practice in the Province of New York who subscribed to the required loyalty oath under the new state government. All but one of the rolls are parchment sheets stitched together; one roll is on paper. An index volume contains a summary list of names and admission dates.

J0044 Oaths of Office of Attorneys, Solicitors, and Counselors, 1796-1847. 0.5 c.f.

This series consists of the signed oaths of office of attorneys of the Supreme Court of Judicature and of solicitors and counselors in Chancery. Each roll contains the text of one or more oaths with signatures and dates. Most rolls contain one oath pertaining to one office. A number of rolls, however, contain a number of different oaths or the same oath repeated for solicitors and counselors in Chancery. The oaths of attorneys of the Supreme Court of Judicature generally do not appear on the same roll with the oaths for solicitors and counselors. This series is arranged in rough chronological order and is unindexed.

J9011 Lists of Supreme Court Commissioners (Albany), 1788-1800. 0.1 c.f. (2 items)

This series consists of lists of commissioners appointed by the Supreme Court to take affidavits to be read in that court and in the Court of Exchequer. Each list has names of commissioners arranged by county and gives the dates of appointment. Some names are struck out. Rules appointing commissioners were entered in J0130 Minute Books (Albany).

J1150 Registers of Agents (Albany), 1799-1813. 0.2 c.f. (4 vols.)

Agents were empowered to act for attorneys in many matters, including being served papers, serving and filing papers, obtaining common rules, etc. An agent was an attorney residing in a city where there was a Supreme Court clerk's office. Agents were required to be appointed by court rules adopted in October Term 1772, January Term 1789, and January Term 1799. (See also relevant sections in later published editions of the Supreme Court rules.) Starting in 1840 the Supreme Court clerks acted as agents for out-of-town attorneys; see Laws of 1840, Chap. 386, sect. 7.

These four small books list names of attorneys, the names of their agents in Albany, and dates of the agents' appointments. The entries are alphabetical by first letter of last name of appointing attorney, then chronological by date of appointment. The books overlap in date and contents and contain many strikeouts. See also J0150 Appointments of Agents (Albany), 1826-40. Names of attorneys and their agents are published in *A List of the Attornies and Counsellors of the Supreme Court of the State of New York* ... (Albany: 1821) and in Edwin Williams, *The New-York Annual Register* ... (New York: 1831-37, 1840).

J0150 Notices of Appointment of Agents (Albany), 1826-40. 1.3 c.f.

These documents are brief notices of appointment of local agents at Albany by attorneys residing elsewhere. On the verso of each notice are found the names of the attorney and his local agent and the filing date. The Albany appointments are bundled by year, then arranged roughly alphabetically by name of appointing attorney. The series also contains some incoming correspondence, most of it concerning agents.

J1150 Notices of Appointment of Agents (Utica), 1809-41. 2.2 c.f.

The documents in this series are notices of appointment of agents at Utica by attorneys residing elsewhere. The Utica appointments are bundled or grouped by year but are otherwise unarranged.

Certificates of Clerkships

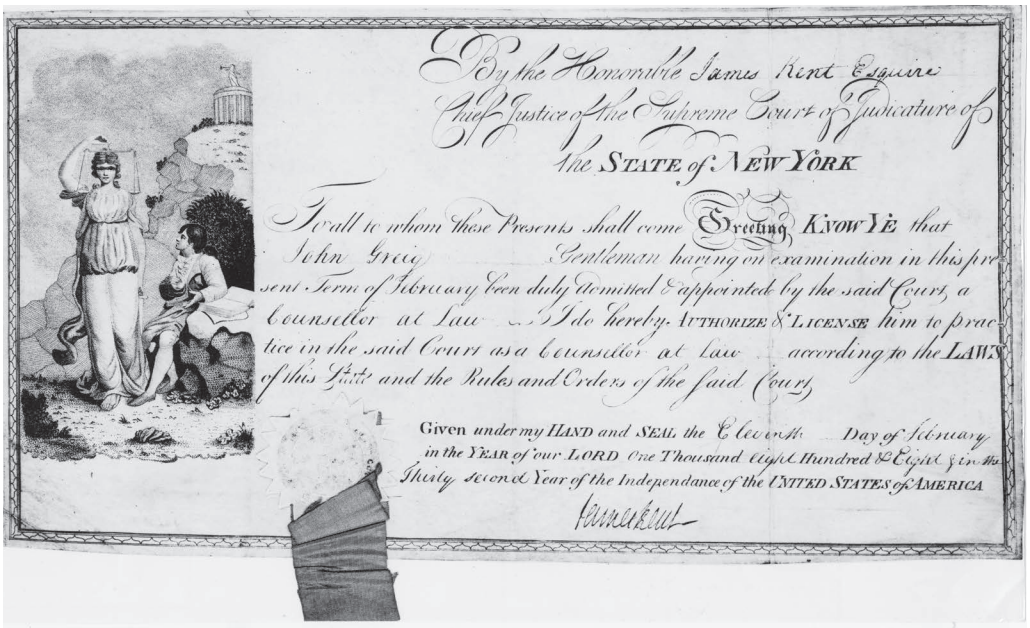
The series described below contain documents relating to clerkships served by individuals intending to seek admission as attorneys in the Supreme Court of Judicature. A typical file includes the following documents: certificate of attorney stating that a student commenced his clerkship on a certain date; certificate by a Supreme Court justice setting the term of clerkship and reducing it up to four years for time spent in classical studies; affidavit of applicant for clerkship, describing the course of study he offers in place of up to four years of clerkship, with allowance of time by a justice; certificate of instructor stating length of time the applicant was a student; certificate of attorney stating that the applicant has served his clerkship for a certain term of years and attesting to his good moral character. The affidavit describing the course of study often lists subjects taken or textbooks read and names the academy or college attended.

Found occasionally are appointments of examiners; certificates of examiners stating names of individuals who have been found qualified to be admitted to practice; reports of examiners on whether individual candidates passed; and calculations of fees and of months spent in classical studies. The papers are bundled roughly by year and court term and sometimes alphabetically by name of clerk. Many are out of order. The documents are not indexed. Rules regarding clerkships and admission to practice were adopted by the Supreme Court in October Term 1797, amended in 1803, and re-adopted in October Term 1829, October Term 1832, and January Term 1836.

LICENSE TO PRACTICE LAW, 1808.

This license, signed by Chief Justice Kent, admits John Grieg of Canandaigua to practice as a counselor at law in the Supreme Court of Judicature. The engraving at the left depicts Themis, goddess of justice, instructing a young attorney.

(Courtesy Manuscripts & Special Collections, New York State Library [accession no. 14974].)


By the Honorable James Kent Esquire
Chief Justice of the Supreme Court of Judicature of
the STATE of NEW YORK

To all to whom these Presents shall come Greeting KNOW YE that
John Grei Gentleman having on examination in this pre
sent Term of February been duly admitted & appointed by the said Court, a
Counseller at Law I do hereby AUTHORIZE & LICENSE him to prac
tice in the said Court as a Counseller at Law according to the LAWS
of this State and the Rules and Orders of the said Court

Given under my HAND and SEAL the Eleventh Day of February
in the YEAR of our LORD One Thousand Eight Hundred & Eight & in the
thirty second Year of the Independance of the UNITED STATES of AMERICA

JN504 Certificates of Clerkships and Other Attorney Admission Documents (New York), 1799-1859. 2.0 c.f.

Most documents in this series are certificates of clerkships served by applicants for admission as an attorney in the Supreme Court of Judicature (before July 1, 1847) and the Supreme Court in New York County (after that date). Other document types include reports of examiners of candidates for admission, copies of orders admitting attorneys to practice, attorney licenses (most on parchment), and certificates of education in a college or academy. There are a few affidavits of age, citizenship, residence and good character of candidates for admission, all filed after 1847. A few documents relate to admission to practice in the Court of Chancery and in county-level courts. Documents were assembled in the later 1990s from various locations in the New York County Clerk's Office. Documents are sorted by year but are not indexed. Orders admitting attorneys and counselors to practice in the Supreme Court are entered in JN531 Minute Books (New York).

J0104 Certificates of Clerkships (Albany), 1803-10, 1813-47. 8.6 c.f.

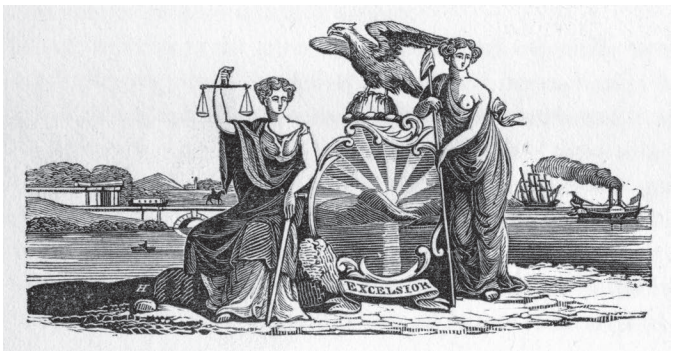
This series may include some clerkship papers originally filed at Utica and Geneva. Lists of attorneys and counselors admitted to practice in the Supreme Court are found in J0130 Minute Books (Albany).

J1104 Certificates of Clerkships (Utica), 1807-26, 1832-36. 1.3 c.f.

The location of clerkship papers for other years is uncertain. They may be found in J0104 Certificates of Clerkships (Albany). Lists of attorneys and counselors admitted to practice in the Supreme Court are found in J0128 Minute Books (Utica).

J2104 Certificates of Clerkships (Geneva), 1838, 1842, 1844. 1.3 c.f.

The location of Geneva clerkship papers for other years is uncertain. They may be found in J0104 Certificates of Clerkships (Albany). The documents in this series appear to have been filed at Utica, but they apply to the Geneva territory. Series J0129 Minute Books (Geneva) contains lists of candidates examined for admission as attorneys.



ARMS OF THE STATE OF NEW YORK.

From *Revised Statutes of the State of New-York* (Albany: 1829).

Appendix A

Forms of Action at Common Law

The forms of action employed in New York's common-law courts prior to 1848 were inherited from the English courts of King's Bench and Common Pleas.[Note 1] Proceedings in certain actions concerning real property were regulated by statutes passed in the 1780s. Proceedings in all forms of actions were outlined in the *Revised Statutes* of 1829, which also abolished several antiquated proceedings.[Note 2] This appendix lists and describes the forms of action employed in the Supreme Court of Judicature, some of them rarely.

The forms of action are arranged according to the conventional categories of "rea1," "mixed," and "personal." Personal actions are subdivided into those arising from contract *(ex contractu)* and from tort *(ex delicto)*. In some cases, the plaintiff could choose among two or more forms of action, though care had to be taken to ensure that the chosen action afforded a legally appropriate remedy.[Note 3]

Despite the abundant verbiage in court documents generated by common-law procedure, forms of action can be readily identified by looking for certain key phrases or formulas. In personal actions, which comprised the vast majority of the Supreme Court's cases, the form of action is stated in the plaintiff's declaration, in what was called the *commencement*. This part of the declaration comes next after the caption (name of court having jurisdiction), case title (plaintiff v. defendant), and venue (county in which the case is to be tried). If the defendant was required to obtain special bail (and before 1831 most were), the cause of action is stated in the writ of *capias ad respondendum* immediately after the *ac etiam* ("and also") clause.[Note 4] To identify the form of action in a judgment roll, one should likewise examine the commencement of the plaintiff's declaration, which is always included in the judgment. (The same advice applies to judgments of the county courts of common pleas and city courts reviewed by the Supreme Court by writ of error.) When printed forms for the most frequently used personal actions came into use, the form of action was often stated in the margin of the form.

A typical formula identifying the form of action, as stated in the plaintiff's declaration, is given for each of the personal actions discussed below.

Note 1: On the historical development of the forms of action in English law, see John H. Baker, *An Introduction to English Legal History,* 5th ed. (Oxford: 2019), pp. 60-77, 338-68, 386-402, 427-78; Theodore F.T. Plucknett, *A Concise History of the Common Law,* 5th ed. (Boston: 1956) pp. 353-78, 458-501; and Frederic W. Maitland, *The Forms of Action at Common Law* (Cambridge: 1936).

Note 2: For detailed discussions of the forms of action employed in New York's common-law courts, see Alexander M. Burrill, *A Treatise on the Practice of the Supreme Court of the State of New-York in Personal Actions* ... (New York: 1840), vol. 1, pp. 1-28; David Graham, Jr., *A Treatise on the Practice of the Supreme Court of the State of New York,* 2d ed. (New York: 1836), pp. 69ff.; and William Wyche, *Treatise on the Practice of the Supreme Court of Judicature of the State of New-York in Civil Actions* (New York: 1794), pp. 13-27, 233-336. An explanation of ejectment is found in "Hamilton's Practice Manual," in Julius Goebel, Jr., ed., *The Law Practice of Alexander Hamilton: Documents and Commentary,* vol. 1 (New York: 1964), pp. 128-35. A useful table of the forms of action is found in *Carmody-Forkosch New York Practice* (New York: l963), p. 7. Baker, *Introduction to English Legal History*, p. 77, Table A, "Principal types of original writ,"

categorizes actions according to the original writ by which they had been commenced. In most actions the original writ eventually was omitted, a subsequent, mesne writ being the actual first writ that commenced an action.

Note 3: On multiple remedies see Burrill, *Treatise on the Practice of the Supreme Court,* vol. 1, pp. 29-33, 71-73; and Wyche, *Treatise on the Practice of the Supreme Court of Judicature,* pp. 26-28.

Note 4: A trespass was alleged in every *capias ad respondendum,* the writ by which a defendant in a civil cause was arrested. In fact the trespass was fictitious. The true cause of action was stated in the writ of *capias* in the *ac etiam* ("and also") clause. This formula began with the words "and also to a bill of the said (name of plaintiff) to be exhibited against the said (name of defendant) for breach of covenant ....," or any other form of personal action. The formulas for the *ac etiam* clause were taken from the English form books, unless the action was authorized by a New York statute; in that case a phrase such as "according to the statute" was added. On the history and use of the writ of *capias* see Burrill, *Treatise on the Practice of the Supreme Court,* vol. 1, pp. 83-86; Baker, *Introduction to English Legal History,* pp. 49-54; and Goebel, ed., *Law Practice of Alexander Hamilton,* vol. 1, pp. 63-66.

Real Actions

Right

This action, also known as "pleas of land," was brought to recover title to land that a defendant had held by adverse possession (uncontested but unlawful tenancy) for up to sixty years (after 1800, forty years). After that period had elapsed, title by adverse possession was absolute. The plaintiff commenced the action by obtaining a writ of right from the chancellor. A writ of summons then ordered the sheriff to summon the defendant to appear in court and to proclaim the action at the door of a church in the town where the disputed land lay. If the defendant failed to appear, a writ of *grand cape* was issued to the sheriff ordering him to seize the disputed lands. The tenant's plea was to "put himself on the grand assize," a trial in which a jury of recognitors delivered a verdict awarding title to the land in dispute. The writ of right was seldom employed, because the usual action to determine title to real property was ejectment (see below). The writ of right and the assize of land were abolished by the *Revised Statutes* of 1829.

Entry

This action was employed by a rightful owner or tenant to recover possession of lands, to which the title was not in dispute. The plaintiff (called in this action the "demandant") was required to state the number of times (or *degrees*) the property had been lawfully devised (by will) or conveyed (by deed) since being "entered" unlawfully by a former tenant. A 1787 law allowed the number of degrees to be omitted from the writ of entry if the demandant could not ascertain it. The action was seldom employed in New York State courts and was abolished by the *Revised Statutes* of 1829.

Novel disseisin

The writ of *novel disseisin* was available to a person who had been disseised (dispossessed) of lands or particular rights in land (such as timber or pasture rights), or who was owed rent for tenements located in more than one county. The rights of the alleged disseisor were determined in an assize held before a Supreme Court justice. The proceedings in the assize of *novel disseisin* were regulated by a 1787 law, but this form of action was rarely used. The action of *novel disseisin* was abolished by the *Revised Statutes* of 1829.

Fine and recovery

The real action of fine and recovery dated back to the twelfth century. Its use in New York was regulated in detail by Laws of 1787, Chap. 43. The *fine* was essentially an action to enforce a covenant to convey real property. In fact the alleged failure to convey the land was always fictitious. A few cautious lawyers employed the action of fine and recovery because it forever quieted any claims on the property after proclamation and engrossment of the fine. See J1011 Fines and Chirographs for a detailed discussion. The action of fine and recovery was abolished by the *Revised Statutes* of 1829 and replaced with a statutory proceeding to compel the determination of claims to real property, to quiet the title.

Dower

Dower was a widow's legal right to a one-third interest in her husband's real property for the remainder of her life. The action of dower could be brought if the dower share were not assigned to her by the heir or his guardian within forty days of her husband's death. The writ of right of dower commenced the action in cases where she possessed part but not all of her portion. The writ of dower *unde nihil habet* ("from which she hath nothing") was used when the whole of her portion was withheld. See Laws of 1787, Chap. 4. These dower actions were abolished by the *Revised Statutes* of 1829. Thereafter the widow who was not assigned her dower right had three remedies available to her: an action of ejectment; a petition to the Supreme Court, a court of common pleas, or a surrogate, for admeasurement of dower; or a bill of complaint in the Court of Chancery for equitable relief. See J5013 Writs of Dower.

Partition

Partition is the dividing of real property and its apportionment or sale for the benefit of joint tenants (each holding an equal share under the same title) or tenants in common (each holding a distinct title to a share in undivided real property). Partition proceedings often involved minor heirs for whom special guardians were appointed during the proceedings. Originally a common-law action with its own writ, by the seventeenth century a partition proceeding was usually initiated by petition to a common-law court. The partition and distribution were made by court-appointed commissioners. See J0019, J9913 Reports of Commissioners to Partition Lands. Partition cases could also be brought in the Court of Chancery if an equitable distribution of property were sought.

Mixed Actions

Ejectment

The action of ejectment was the usual means of recovering possession of and determining the title to real property. The plaintiff in ejectment also demanded money damages. The action originated as an action by a current tenant to recover a leasehold by ejecting a prior tenant who had dispossessed him and to obtain an award of damages for losses suffered during the dispossession. The lessor, or rightful owner, who held the right of entry onto the land, had to take possession of the land now occupied by the prior tenant. This he accomplished by entering the premises and there executing a lease to a third party, the current tenant, who remained in possession of the land until he was again ousted by the prior tenant. This second ouster was the grounds for the current tenant's action of ejectment against the prior tenant (called the "casual ejector") for his leasehold and for

damages. In the action of ejectment the plaintiff (the current tenant) had to defend his case by showing title, lease, entry, and ouster.

From the seventeenth century onward the action was modified by a number of legal fictions. No actual lease, entry by the plaintiff, and ouster by the defendant occurred in cases where the property was in possession of a real tenant. All these steps were fictions alleged in order to determine the title. The fictitious current tenant was the plaintiff in the action and was usually named "James Jackson." The fictitious prior tenant was usually called "John Stiles." Judgment rolls for ejectment cases prior to 1830 are therefore filed either under "Stiles" (or another name for the fictitious prior tenant) or under the name of the actual defendant if the actual plaintiff won his case. If he lost, the judgment is filed under "Jackson" (or another name for the fictitious current tenant). The *Revised Statutes* of 1829 simplified these cumbersome proceedings. They abolished the fictions of lease, entry, and ouster, and henceforth required that the action be brought in the name of the person claiming title to the real property. The fictions had been devised to get around obstacles in English real property law, and they had no relevance in New York State, where most land was held in fee simple. The action of ejectment was frequently used to evict tenants for arrears of rent. The writ of execution in an ejectment action was the writ of possession *(habere facias possessionem)*, which ordered the sheriff to evict the unlawful tenant and put the rightful owner in possession. The statute of limitations on ejectment actions was twenty years. Prior to 1830, if that period had expired, a plaintiff could commence a real action, either writ of right or fine and recovery.

Nuisance

A private nuisance is any act that disturbs or injures another in the use or enjoyment of real property. (A public nuisance affects everyone in a locality.) The action of nuisance was brought to have a nuisance removed and to obtain money damages for injuries sustained by the plaintiff. Though regulated by the *Revised Statutes* of 1829, the action of nuisance was seldom employed. The action of trespass on the case was generally substituted.

Waste

Waste is the abuse or destruction of real property by one in rightful possession (such as a tenant). The action was commenced by a writ of summons. The preferred form of action for remedying waste was trespass on the case. Though regulated by the *Revised Statutes* of 1829, the action of waste was seldom employed.

Personal Actions (*ex contractu,* "arising from contract")

Account

The action of account was employed to compel someone who had received money on behalf of another to render an account of profits or money owed. It could be employed against business partners, tenants, guardians, or receivers. An action of account was usually commenced by a writ of summons. The action of account was seldom employed. The action of *assumpsit* was generally preferred because of its simplicity. The Court of Chancery had concurrent jurisdiction with the common-law courts in matters of accountings, when an equitable remedy was required. Formula in plaintiff's declaration: "Plea that (defendant) render to (plaintiff) a reasonable account."

Covenant

The action of covenant was employed to recover money damages for breach of a sealed contract or agreement. The sealed instrument had to be produced at the trial or there could be no award of damages. The action of covenant was further restricted to those contracts that did not specify a certain sum owed (in contrast to the action of debt, where the sum was certain.) Examples of covenants were insurance policies, indentures of apprenticeship, and certain articles of agreement and leases. Formula in plaintiff's declaration: "Plea of breach of covenant."

Debt

This action was brought to recover a certain, or liquidated, sum of money owed by one person to another. An action of debt was usually founded on a specialty, or sealed contract for payment of a specific amount of money. Examples of specialties were bonds, articles of agreement, leases, and mortgages. The action could also be based on a judicial record, such as a judgment roll or a recognizance of bail. Infrequently an action of debt concerned an unsealed contract for goods or services, such as a promissory note, a bill of exchange, or a banker's draft. Finally, the action of debt was the designated remedy for certain violations of statute. Formula in plaintiff's declaration: "Plea that (defendant) render unto (plaintiff) the sum of (dollars)."

Assumpsit

The action of *assumpsit* was an offshoot of the action of trespass on the case. *Assumpsit* was founded upon a breach of an express or implied contract or undertaking to pay money or perform an act for a valuable consideration. The promise might be written (but not a sealed contract or a judicial record) or oral. The action sought money damages for violation of the contract terms. Promissory notes, bills of exchange, insurance policies, and mutual promises (as to sell real property or to marry) are examples of contracts upon which an action of *assumpsit* could be brought. *Assumpsit* was the ordinary form of action to recover money due for goods or services, or to recover money loaned. Formula in plaintiff's declaration: "Plea of trespass on the case upon promises."

Personal Actions (*ex delicto,* "arising from tort")

Trespass

The action of trespass was based upon a direct, immediate injury to a person or to real or movable property through force, actual or implied in the act. There were three main varieties of trespass: 1) Trespass *vi et armis* ("by force and arms") included personal injuries suffered by assault, battery, mayhem, or false imprisonment. This form of trespass also was a remedy for physical injuries to a plaintiff's wife, child, or servant. 2) Trespass *quare clausum fregit* ("wherefore he broke into the enclosure," i.e. fenced land) included forcible injuries to real property, including buildings and growing crops. This form of action was considered one of the "mixed" actions if during pleading the title to real property came into dispute. 3) Trespass upon personal property was a legal remedy for forcible injury to goods or chattels, that is when they were damaged, destroyed, or carried away. (In the last situation the action was called trespass *de bonis asportatis,* "for goods carried away.") Formula in plaintiff's declaration: "Plea of trespass (variety specified)."

Trespass on the case

This form of action, usually known as "case," was the general remedy when no other action fit the circumstances of injury to a plaintiff. Case involved a nonforcible, indirect injury to the plaintiff's character, health, quiet, or safety; to personal rights; or to movable property. While breach of contract was not grounds for an action of trespass on the case, the action could be based on injuries indirectly resulting from performance or non-performance of a contract. Many types of legal wrongs were covered by case. Injuries to character or reputation included slander and libel. An injury to safety included malicious prosecution, either civil or criminal. Injuries to health and quiet were embraced by the concept of nuisance, for which there was also a little-used mixed action. Injuries to personal rights were the most nebulous of all. They embraced any act not immediately but consequently injurious to a person's rights. Examples were negligence in performing the terms of a contract, seduction of one's wife or daughter, deceitful sale of damaged property or pretended services, and so on. An action of trespass on the case was also a statutory remedy. Whenever no specific penalty was prescribed for violating an act of the Legislature, trespass on the case was the appropriate form of action to recover money damages. The distinction between trespass (immediate, forcible injury) and trespass on the case (consequential, nonforcible injury) remained subtle. *The Revised Statutes* of 1829 permitted plaintiffs to employ trespass on the case instead of trespass, if they chose. Formula in plaintiff's declaration: "Plea of trespass on the case."

Detinue

This form of action was similar to debt except that it was brought to recover movable property (or its value) detained unlawfully by one who had obtained temporary, lawful possession of it by some contract. The plaintiff also demanded damages for the detention. Replevin was the action more commonly used to recover moveable property (chattels). Detinue was abolished by the *Revised Statutes* of 1829. Formula in plaintiff's declaration: "Plea that (defendant) render to (plaintiff) certain goods and chattels to the value of (sum in dollars) which he unjustly detains from him."

Replevin

This form of action was originally employed to recover possession of movable property that had been seized (distrained) by another person as a pledge for performance of an obligation (such as payment of rent). Money damages were also demanded. The action was commenced either by writ of replevin or by what was termed a *plaint* (complaint). (The plaint was abolished by the *Revised Statutes* of 1829.) The writ commanded the sheriff to seize the property and return it to the plaintiff, and also to summon the defendant to appear in court and answer the plaintiff's demand. After detinue was abolished, replevin was extended to all cases formerly covered by that action, i.e. wrongful detention of movable property. See J0030 Writs of Replevin. Formula in plaintiff's declaration: "Plea wherefore (defendant) took certain goods" (or "unjustly detains").

Trover

The action of trover was a variety of trespass on the case. The plaintiff sought money damages for the value of movable property alleged to have been found by the defendant and unlawfully converted to his use. The "finding" of the goods was a fiction and the real grounds for the action was the wrongful conversion. Formula in plaintiff's declaration: "Plea of trespass on the case ..." (The declaration goes on to state that the plaintiff "casually lost" certain movable property, which "came into the possession (of the defendant) by finding.")

Appendix B

Suggestions for Locating Judgment Rolls

Judgment rolls are the best preserved, best organized, most accessible, and most informative filed papers of the Supreme Court of Judicature. The judgment rolls are practically complete for the period 1797 through 1847. Back to the 1760s a considerable number of judgments have been preserved. Most of the earlier judgment rolls no longer survive. The judgment roll (or "record") was originally a parchment roll, as it was in England. Starting in 1798 the judgment record took the form of a tri-folded paper document. The judgment roll contains the record of the court's award of a money judgment to the prevailing party in a common-law action. The roll identifies the plaintiff and defendant and their attorneys, as well as the bail for the defendant (if bail was required). It summarizes the pleadings and other proceedings, indicates postponements of the case and whether a trial was held, and states the amount of the money judgment—debt and/or damages and court costs. Many actions commenced in the Supreme Court of Judicature did not result in a final judgment, because the plaintiff failed to prosecute the action, or because the parties settled out of court.

After the establishment of multiple Supreme Court clerk's offices, starting in 1797, a judgment could be filed and docketed in any one of the clerk's offices and still be enforced anywhere in the state. (Transcripts of the judgment dockets were filed in each of the other clerk's offices, where they were available for public inspection.) Usually, judgment rolls were filed in the clerk's office nearest the filing attorney's place of business. However, judgments could be, and occasionally were, filed in a Supreme Court clerk's office in another city, particularly if a judgment was perfected during a court term held there.

Locating the judgment roll for a case involving a particular plaintiff or defendant is easy, if the judgment was docketed in New York City, or difficult, if it was docketed in Albany, Utica, or Geneva. Starting in 1799 the judgment rolls filed in New York City were filed by year, then under the surname of the defendant. Almost all judgment rolls and other documents of the Supreme Court of Judicature that were filed in the court clerk's office in New York City and survived to the early twentieth century are indexed on cards (by plaintiff) and in electronic spreadsheets (searchable by plaintiff and defendant), which contain selected data from the card indexes. Judgment rolls filed in the clerk's offices in Albany, Utica, and Geneva were filed by year, then under the surname of the judgment debtor (usually the defendant, occasionally the plaintiff). The judgment rolls and other documents filed in the clerks' offices upstate are not indexed. However, the dockets of judgments may serve as indexes to money judgments filed in each of the four clerk's offices. Entries in the judgment dockets are chronological under the first letter of the judgment debtors' surnames. The arrangement of the dockets is complex. The Albany dockets were compiled for each court term or for several years together. The dockets kept by the clerk in New York City were kept by court term (1785-1794) or by year or groups of years thereafter. The transcripts of dockets in the Utica and Geneva offices were compiled each court term or (starting 1830) semimonthly. For the period from 1785 to 1847, there are over two thousand separate alphabetical dockets of money judgments filed by the Supreme Court clerks. The only cumulative, statewide listing of judgment debtors (usually defendants), for all four court clerk's offices, is series J0142 Index to Dockets of Judgments, 1829-35.

There are ways of identifying a judgment when one has some information about a case but not the year and place of filing and docketing. The first step is to search the card indexes or electronic spreadsheets for judgments filed and docketed in New York City. If the case of interest is not there, then search the dockets or transcripts of dockets for the Supreme Court offices in Albany, Utica, and Geneva. In searching the dockets, one must know the name of the probable judgment debtor (usually the defendant) and the approximate year of a case. One may also search for the name of a defendant or judgment debtor in the filed judgment rolls for a particular year or years, which is laborious. Another way of identifying judgments, equally laborious, is to search circuit court minutes. Court minute books in counties outside of New York City and County may be held by the clerk of the county where the trial was held. Minutes of circuit courts and "sittings" held in New York City and County are in the State Archives, but they are incomplete. If one finds the trial minutes, the filing and docketing of the final judgment would have occurred a few days or weeks afterward. However, most cases will not appear in the minute books because they never went to trial. Instead, judgment was awarded after a defendant's confession or default, or after a nonsuit by the plaintiff.

The records of the Supreme Court of Judicature contain information about many cases that were included in published reports and digests of legally significant court decisions. Official law reporting in New York State commenced in 1804, although some unofficial reports were published back to 1794. Between 1803 and 1847 the official reports of the Supreme Court and the Court for the Correction of Errors occupy seventy volumes. The reports contain information on attorneys' arguments and judges' opinions in many calendar cases (enumerated motions) and in some non-enumerated cases decided by the Supreme Court or circuit judges. The preface to the first volume of *Cowen's Reports* (1824) states that the reporter had to reduce greatly in length the attorneys' arguments, though he tried to include enough information so that it would not appear that a case had "passed without discussion." Many reported cases include minimal information about the facts of the case, which may be found in a judgment roll or other documents in the State Archives. Besides the official reports, there were also several published volumes of unofficial reports of cases in the Supreme Court, the Court for Correction of Errors, and the circuit courts (the latter are called *nisi prius* reports). Several digests of reports also appeared in the early nineteenth century, summarizing reported cases under legal topics. All of these publications are cited in the Bibliography. *Abbott New York Digest* (1929-43 ed.) summarizes all reported cases from New York State courts back to 1794. That work and later digests are convenient sources for identifying reported Supreme Court cases on particular legal topics.

Appendix C

Inferior Courts of Law

Much of the business of the Supreme Court of Judicature involved the review of proceedings and judgments of courts having limited jurisdiction. Those courts were divided into civil and criminal branches, though on each level the officers were generally the same. (For example, county judges tried both civil and criminal cases.) Following is a summary of the jurisdiction and organization of the town, county, and city courts during the period from passage of the Judicature Act on May 6, 1691, to the judicial reorganization under the Constitution of 1846, which took effect July 1, 1847. Circuit courts and courts of oyer and terminer are discussed briefly because their trial jurisdiction largely overlapped that of the county courts. (See "Diagram of New York State Court System, 1691-1847," page 189.) The Bibliography lists general histories of the courts in New York State and City.)

Town Courts

Justices of the peace were the foundation of the local judicial system in both England and early New York. Justices of the peace were county officers appointed and commissioned by the royal governor before 1777, or by the state governor under the Constitution of 1777. Under the Constitution of 1821 they were appointed by the county board of supervisors, between 1822 and 1826, and starting in 1827 they were elected at annual town meetings. Each justice was empowered to hold a court for smaller suits in which the plaintiff's demand was less than forty shillings, an amount changed to £5 in 1754, £100 in 1780, £10 in 1782, $25 in 1801, $50 in 1818, and $100 in 1840. Civil actions involving greater amounts of money, and all actions concerning title to land or seeking damages for slander or assault and battery could not be determined in a justice's court; such actions had to be brought in the Supreme Court or the county court of common pleas. An Assembly act of 1732 authorized three justices of the peace, sitting together as a court of special sessions of the peace, to try misdemeanor cases, without a jury, when the defendant could not obtain bail for his appearance at the next county court of general sessions. This system was continued by state laws in the early nineteenth century. The courts held by justices of the peace were not courts of record, because they had no seal or clerk. For that reason, few records of justices' courts survive. Starting in 1801 records of convictions in justices' courts were filed with the county clerk. A town constable served summonses and warrants issued by a justice of the peace, and he also levied executions (sales of property to satisfy a money judgment). Either the county sheriff or a town constable could execute a judgment of a court of special sessions.

County Courts

New York was divided into counties by an Assembly act of 1683, and each county had a court of sessions. County courts were continued by the Judicature Act of 1691, specifically a court of common pleas for civil cases and a court of general sessions of the peace for criminal proceedings. The bench of a court of common pleas consisted of one first judge and usually two assistant judges (in 1818 the number was fixed at four). In the court of general sessions, one or both of the assistants might be justices of the peace. A court of common pleas had jurisdiction over all civil actions, arising inside or outside the county, involving any amount of debt or damages or title to real property. The civil jurisdiction of

county courts of common pleas therefore overlapped that of the Supreme Court. During the colonial period the court of general sessions adjudicated lesser crimes (such as petit larceny); felony offenses were tried by the Supreme Court in New York City, or in courts of oyer and terminer held in each county outside the city. Under the first and second state constitutions the court of general sessions had jurisdiction over all felonies except those punishable by death or life imprisonment, which were reserved to the courts of oyer and terminer. The county sheriff or a deputy served the writs and executed the judgments (civil and criminal) of the county courts. Proceedings in a county court might be removed to the Supreme Court by writ of *certiorari,* or its judgment reviewed by writ of error. The county clerk was custodian of the records of the court of common pleas and court of general sessions in his county. The surrogate's court, established in each county by a 1787 statute, had probate jurisdiction. In most counties, the county judge served as surrogate. Appeals from the surrogate's courts went to the Court of Probates (until 1823) or the Court of Chancery (1823-1847).

New York City Courts

The New York City government, including the courts, was established by charters of 1686 and 1730. The Mayor's Court functioned as the court of common pleas for the City and County of New York, which were a single jurisdiction. The mayor, recorder, and aldermen, or any three of them, comprised the bench of the court. An 1821 law renamed the Mayor's Court the "Court of Common Pleas of the City and County of New York" and provided for appointment of a first judge who, with at least one other magistrate, comprised the bench. An 1828 law established a New York City Superior Court, which had three appointed justices. That court had original jurisdiction over all civil actions, but its primary business was complex commercial cases and deciding appeals from lower civil courts. Minor civil cases were heard and determined by city magistrates, or, starting 1787, by assistant justices. A separate Marine Court was established in 1819, whose jurisdiction included contract and tort actions involving seamen and ship owners or captains. The New York City charters of 1686 and 1730 and early state laws designated the mayor, recorder, and aldermen as justices of the peace. As magistrates, the mayor or recorder and any other three of them presided over courts of general sessions (called "quarter sessions" in the city). Starting in 1732 a court of special sessions tried misdemeanors and lesser offenses. The recorder usually presided over the courts of general and special sessions, assisted by other magistrates. Starting in 1798 "special justices" handled arraignments, commitments, and bail, in what was called the "Police Office." Records of the New York City mayor's court and court of common pleas are held by the New York County Clerk's Office—Division of Old Records. Records of the New York County court of general sessions are split between that office and the New York City Municipal Archives. Records of the New York City "Police Office," police courts, and the successor magistrates' courts are in the Municipal Archives.

Other City Courts

Courts in the county and city of Albany were established by the city's charter of 1686. The mayor, recorder, and aldermen of the city served as judges of the Albany County courts of common pleas and general sessions until 1787, when separate county courts were established. All other city courts were established by legislative acts. Certain cities had

mayor's or recorder's courts whose jurisdiction was equivalent to that of a county court of common pleas. The mayor's or recorder's court in a city possessed civil jurisdiction equivalent to that of a county court of common pleas, for causes of action arising within the city boundary. (The recorder was a city officer with administrative and judicial duties.) Such courts were established by statute in the cities of Hudson, 1785; Troy, 1816; Brooklyn and Rochester, 1834; Buffalo, 1839; and Utica, 1844. The Albany, Utica, Rochester, and Buffalo city courts eventually received criminal jurisdiction, equivalent to a county court of general sessions.

Circuit Courts; Courts of Oyer and Terminier

Before 1823, Supreme Court justices presided over circuit courts in each county to try civil cases initiated in the Supreme Court. Starting that year, the governor appointed (with Senate approval) a circuit judge in each of the eight senatorial districts of the state. Circuit courts continued to be held in each county at least twice a year to try Supreme Court cases. The circuit judge also received a commission from the governor to preside over courts of oyer and terminer, which were in effect the criminal branch of the circuit court. Assisting him on the bench of the court of oyer and terminer were two of the county judges. (In New York City the two associate judges of the court of oyer and terminer could be drawn from the mayor, recorder, aldermen, and after 1821, the first judge of common pleas.) Courts of oyer and terminer had the power to inquire by a grand jury into all felonies and misdemeanors in the county, to try indictments returned in that court and the court of general sessions, and to "deliver the jail" of the prisoners who had been taken into custody. (The court was sometimes called the court of oyer and terminer and general gaol delivery.) The court of oyer and terminer had exclusive jurisdiction over all trials of defendants charged with crimes punishable with death or life imprisonment.

Appendix C

Diagram of New York Court System, 1691-1847

Court for the Trial of Impeachments and Correction of Errors*

1777-1847

President of Senate, Senators, Chancellor, and Supreme Court Justices*

Final Appellate and Impeachment Jurisdiction

Supreme Court

1691-present

3-5 Supreme Court Justices (1691-1847)
General Jurisdiction
Intermediate Appellate Jurisdiction

Supreme Court Justices

(1691-1823)

8 Circuit Judges (1823-1847)

- Circuit Court — Civil Jurisdiction
- Court of Oyer and Terminer — Criminal Jurisdiction
- Court of Exchequer (1777-1830) — 1 Justice, Fines and Penalties

Court of Chancery*

1683-1847
1 Chancellor
8 Judges, Courts of Equity (1823-1829)
8 Vice-Chancellors (1830-1847)

Equity Jurisdiction
Appellate Jurisdiction over Surrogates (1823-1847)

Courts of Common Pleas

1691-1847

1-5 Judges in Each County

Limited Civil Jurisdiction
Appellate Jurisdiction (1824-1847)

Courts of General Sessions

1 Judge in Each County
2 Justices of Peace
Criminal Jurisdiction

Court of Probates*

1778-1823

1 Judge

Specialized Probate Jurisdiction (absorbed by Surrogate's Court)

Surrogate's Court

1787-present

1 Surrogate in Each County

Probate Jurisdiction

Justices' Courts

1 Justice of the Peace

Limited Civil Jurisdiction

Courts of Special Sessions

3 Justices of the Peace

Limited Criminal Jurisdiction

City Courts

Limited Civil and Criminal Jurisdictions

* Note: Prior to 1777 the Royal Governor and Council comprised the Court of Chancery. They also determined cases transferred from and reviewed final judgments of common-law courts. The Governor was judge of the Perogative Court of Probates.

Diagram of New York State Court System, 1691-1847. Adapted from a chart prepared for the WPA Historical Records Survey but never published. (Series A4192 Maps, Charts and Illustrations Prepared by HRS Staff, New York State Archives.)

Appendix D

Supreme Court Justices (1691-1847) and Circuit Judges (1823-1847)

New York Province (1691-1776)

Chief Justices	*Date of Commission*
Joseph Dudley	May 15, 1691
William Smith	November 11, 1692
Stephen Van Cortlandt*	October 30, 1700
William Smith*	November 25, 1700
Abraham De Peyster	January 21, 1701
William Atwood	August 5, 1701
William Smith	June 9, 1702
John Bridges	April 5, 1703
Roger Mompesson	July 15, 1704
Lewis Morris	March 13, 1715
James DeLancey	August 21, 1733
Benjamin Pratt	November 11, 1761
Daniel Horsmanden	March 16, 1763
Daniel Horsmanden	December 29, 1772

* Though commissioned, he did not preside over a court term.

Associate Justices	*Date of Commission*	*Succeeded*
Thomas Johnson [2]	May 15, 1691	
William Smith [3]	May 15, 1691	
Stephen Van Cortlandt [4]	May 15, 1691	
William Pinhorne	May 15, 1691	
William Pinhorne [2]	April 3, 1693	Johnson
Chidley Brooke	April 3, 1693	
John Lawrence	April 3, 1693	
John Guest [2]	June 1698	Pinhorne
Abraham De Peyster	October 4, 1698	
Robert Walters [3]	August 5, 1701	Smith
John Bridges [2]	June 14, 1702	Guest
Robert Milward [2]	April 5, 1703	Bridges
Thomas Wenham [3]	April 5, 1703	Walters
James DeLancey [2]	June 24, 1731	Milward
Frederick Philipse [3]	June 24, 1731	Wenham
Frederick Philipse [2]	August 21, 1733	DeLancey
Daniel Horsmanden[3]	January 24, 1736	Philipse
John Chambers [2]	July 30, 1751	Philipse
Daniel Horsmanden [3]	July 28, 1753	Chambers
David Jones [4]	November 21, 1758	
David Jones [4]	October 14, 1761	
John Chambers [2]	October 14, 1761	
Daniel Horsmanden [3]	October 14, 1761	

Associate Justices	*Date of Commission*	*Succeeded*
Daniel Horsmanden [2]	March 26, 1762	Chambers
David Jones [3]	March 31, 1762	Horsmanden
David Jones [2]	March 16, 1763	Horsmanden
William Smith, Sr. [3]	March 16, 1763	Jones
Robert R. Livingston [4]	March 16, 1763	
George D. Ludlow	December 14, 1769	
Thomas Jones	September 29, 1773	
Whitehead Hicks	February 14, 1776	Livingston

Note: Bracketed numbers indicate designation of second, third, and fourth justices, when so indicated in surviving summary records of colonial commissions.

New York State (1777-1847)

Chief Justices	*Date of Appointment*
John Jay	May 8, 1777
Richard Morris	October 23, 1779
Robert Yates	September 28, 1790
John Lansing, Jr.	February 15, 1798
Morgan Lewis	October 28, 1801
James Kent	July 2, 1804
Smith Thompson	February 3, 1814
Ambrose Spencer	February 28, 1819
John Savage	January 29, 1823
Samuel Nelson	August 31, 1836
Greene C. Bronson	March 5, 1845

Associate Justices	*Date of Appointment*	*Succeeded*
Robert Yates	May 8, 1777	
John Sloss Hobart	May 8, 1777	
John Lansing, Jr.	September 28, 1790	Yates
Morgan Lewis	December 24, 1792	
Egbert Benson	January 29, 1794	
James Kent	February 6, 1798	Lansing
John Cozine	August 9, 1798	Hobart
Jacob Radcliff	December 27, 1798	Cozine
Brockholst Livingston	January 8, 1802	Lewis
Smith Thompson	January 8, 1802	Benson
Ambrose Spencer	February 3, 1804	Radcliff
Daniel D. Tompkins	July 2, 1804	Kent
William W. Van Ness	June 9, 1807	Tompkins

Appendix D

New York State (1777-1847) *(continued)*

Associate Justices	*Date of Appointment*	*Succeeded*
Joseph C. Yates	February 8, 1808	Livingston
Jonas Platt	February 23, 1814	Thompson
John Woodworth	March 27, 1819	Spencer
Jacob Sutherland	January 29, 1823	Yates
William W. Marcy	January 21, 1829	Woodworth
Samuel Nelson	February 1, 1831	Marcy
Greene C. Bronson	January 6, 1836	Sutherland
Esek Cowen	August 31, 1836	Nelson
Samuel Beardsley	February 20, 1844	Cowen
Freeborn G. Jewett	March 5, 1845	Bronson
Frederick Whittlesey	June 30, 1847	Jewett
Thomas McKissock	July 1, 1847	Beardsley

Note: The number of justices, including the chief justice and the associate or puisne justices, varied over time. Between 1777 and 1792 the number was three. That was increased to four in 1792 and five in 1794, and back to three in 1823, which was the number of justices until the court reorganization of 1847.

Circuit Judges	*Date of Appointment*
First Circuit	
Ogden Edwards	April 21, 1823
William Kent	August 17, 1841
John W. Edmonds	February 18, 1845
Second Circuit	
Samuel R. Betts	April 21, 1823
James Emott	February 21, 1827
Charles H. Ruggles	March 9, 1831
Selah B. Strong	March 27, 1846
Seward Barculo	April 4, 1846
Third Circuit	
William A. Duer	April 21, 1823
James Vanderpoel	January 12, 1830
John P. Cushman	February 9, 1838
Amasa J. Parker	March 6, 1844
Fourth Circuit	
Reuben H. Walworth	April 21, 1823
Esek Cowen	April 22, 1828
John Willard	September 3, 1836

Fifth Circuit

Nathan Williams	April 21, 1823
Samuel Beardsley	April 12, 1834
Hiram Denio	March 7, 1834
Isaac H. Bronson	April 18, 1838
Philo Gridley	July 17, 1838

Sixth Circuit

Samuel Nelson	April 21, 1823
Robert Monell	February 11, 1831
Hiram Gray	January 13, 1846

Seventh Circuit

Enos T. Throop	April 21, 1823
Daniel Moseley	January 16, 1829
Bowen Whiting	May 1, 1844

Eighth Circuit

William B. Rochester	April 21, 1823
Albert H. Tracy	March 29, 1826
John Birdsall	April 18, 1826
Addison Gardiner	September 29, 1829
John B. Skinner	February 9, 1838
Nathan Dayton	February 23, 1838

Sources: Hamlin and Baker, eds., *Supreme Court of Judicature,* vol. 1, pp. 90-93; *New York Civil List;* series B1631 Abstracts of Commissions; series A1848 Secretary of State Abstracts of Civil Appointments.

Appendix E

Supreme Court Clerks (1691-1847)

*New York Province**	*Years of Service*
Matthew Clarkson	1691-1702
Daniel Honan	1702-1703
George Clarke	1703-1738
George Clarke, Jr.	1738-1745
John Catherwood	1745-1746
George Clarke, Jr.	1746-1775

*Also served as secretary of the province. Deputy clerks performed the duties of the clerk.

New York State	*Years of Service*
New York City Office‡	
John McKesson	1777-1795
James Fairlie	1795-1830
William Paxson Hallett	1830-1847

‡ Office was located in Albany until 1784.

Albany Office	
Francis Bloodgood	1797-1823
John Keyes Paige	1823-1843
Charles Humphrey	1843-1847

Utica Office	
Arthur Breese	1807-1825
Thomas H. Hubbard	1825-1837
John Savage	1837-1840
Hiram Denio	1840-1845
James L. Beardsley	1845-1847

New York State (cont'd)	*Years of Service*
Geneva Office	
John A. Coffin (deputy)	1829-1830
William M. Oliver	1830-1834
Nathan Williams	1834-1835
John A. Coffin (acting)	1835
Jacob Sutherland	1835-1844
Orrin Curtis (deputy)	1844-1845
Robert Monell	1845-1847
Thomas Maxwell (deputy)	1847

Clerk of the Circuit Courts and Courts of Oyer and Terminer (statewide)	
John McKesson	1778-1787
James Fairlie	1787-1796

Note: Starting 1796, the county clerk served as clerk of the circuit courts and courts of oyer and terminer in counties outside New York City and County. See Appendix F, "Clerks of the Circuit Courts, 'Sittings,' and Courts of Oyer and Terminer."

Sources: Hamlin and Baker, eds., *Supreme Court of Judicature,* vol. 1, pp. 136-38; *New York Civil List;* Series B1631, Abstracts of commissions; Series A1845, Minutes of Council of Appointment; Supreme Court minute books, and dockets and transcripts of dockets of judgments (signed by the clerks).

Clerks of the Circuit Courts, "Sittings," and Courts of Oyer and Terminer (1778-1847)

LEGAL AUTHORITY	Circuit Court (New York City and County)	Court for Trial of Issues, later called "Sittings" (New York City and County)	Court of Oyer and Terminer (New York City and County)	Circuit Court; Court of Oyer and Terminer (other counties)
Constitution of 1777, Art. 27	statewide clerk*		statewide clerk*	
L. 1784, 7th Sess., Ch. 41	[no change]	statewide clerk*	[no change]	
L. 1796, 19th Sess., Ch. 10	county clerk*			
L. 1797, 20th Sess., Ch. 8	[no change]	Supreme Court clerk in NYC†	[no change]	
L. 1800, 23rd Sess., Ch. 22; L. 1801, 24th Sess., Ch. 8	clerk*			[no change]
L. 1808, 31st Sess., Ch. 39	[no change]		Court of General Sessions clerk*	[no change]
Revised Laws (1813)	[no change]		[no change]	[no change]
Constitution of 1821 (eff. 1823); L. 1823, Ch. 182, 269	Supreme Court clerk in NYC†		Court of General Sessions clerk†	county clerk‡
Revised Statutes (1829)	[no change]		[no change]	[no change]

* Appointed by governor with the advice and consent of the Council of Appointment.
† Appointed by the court
‡ Elective position under Constitution of 1821

Appendix G

Attorneys General (1691-1847)

Royal Government	*Date of Appointment*
Thomas Newton	March 23, 1691
James Graham	September 12, 1692
Sampson S. Broughton	August 5, 1701
May Bickley (acting)	March 3, 1705
John Rayner	March 24, 1709
May Bickley (acting)	July 7, 1709
David Jamison (acting)	June 10, 1712
David Jamison	January 22, 1720
James Alexander	July 26, 1721
Richard Bradley	March 11, 1722
William Smith	August 20, 1751
William Kempe	November 4, 1752
John Tabor Kempe	July 30, 1759
John Tabor Kempe	October 30, 1761

State Constitutions	*Date of Appointment*
Egbert Benson	May 8, 1777
Richard Varick	May 14, 1788
Aaron Burr	September 29, 1789
Morgan Lewis	November 8, 1791
Nathaniel Lawrence	December 24, 1792
Josiah Ogden Hoffman	November 13, 1795
Ambrose Spencer	February 3, 1802
John Woodworth	February 3, 1804
Matthias B. Hildreth	March 18, 1808
Abraham Van Vechten	February 2, 1810
Matthias B. Hildreth	February 1, 1811
Thomas A. Emmett	August 12, 1812
Abraham Van Vechten	February 13, 1813
Martin Van Buren	February 17, 1815
Thomas J. Oakley	July 8, 1819
Samuel A. Talcott	February 12, 1821
Greene C. Bronson	January 27, 1829
Samuel Beardsley	January 12, 1836
Willis Hall	February 4, 1839
George P. Barker	February 7, 1842
John Van Buren	February 3, 1845

Note: Declarations, pleadings, and motions in actions brought by the State of New York were filed under the name of the attorney general. Many cases prosecuted by the attorney general may be identified by consulting Series B0606, Attorney General's Case Registers, 1813-1831, 1841-1883.

Sources: *New York Civil List;* Hamlin and Baker, *Supreme Court of Judicature,* vol. 1, p. 126; series A1848 Secretary of State Abstracts of Civil Appointments.

Supreme Court Terms (1777-1847)

Years	Location	Terms
1777	Kingston	September
1778	Albany	October
1779-1784	Albany	January, April, July, October
1785	New York	January
	Albany	April, July, October
1786-1796	New York	January, April
	Albany	July, October
1797	New York	January, July, October
	Albany	April
1798-1802	Albany	January, April
	New York	July, October
1803	Albany	January, August
	New York	May, November
1804-1811	Albany	February, August
	New York	May, November
1812-1819	Albany	January, August
	New York	May, October
1820	Albany	January, August
	New York	May
	Utica	October
1821-1829	Albany	February, October
	New York	May
	Utica	August
1830-1840	Albany	January, October
	New York	May
	Utica	July
1841-July 1, 1847	Albany	January
	New York	May
	Utica	July
	Rochester	October

Sources: Session laws; Supreme Court minute books.

Appendix I

Judicial Circuits (1823-1847)

The state's eight judicial circuits were established in 1823, pursuant to the Constitution of 1821. Each circuit corresponded to one of the eight multi-county senatorial districts. In 1826, 1836, 1837, and 1846 the Legislature adjusted the boundaries of several of the senatorial districts and judicial circuits, as indicated in the lists below. Each circuit had an appointed circuit judge who in most cases also served as judge of a court of equity in that circuit (1823-1829) and subsequently as a vice-chancellor (1830-1847) in that circuit.

Rule 80 of the Supreme Court of Judicature, adopted in 1832, required that decisions of circuit judges were to be filed, and their rules entered, in specific clerk's offices, as follows: first and second circuits, clerk's office at New York City; third and fourth circuits, clerk's office at Albany; fifth and sixth circuits, clerk's office at Utica; seventh and eighth circuits, clerk's office at Geneva.

Under the Constitution of 1846 the eight circuits were succeeded in 1847 by eight judicial districts of the reorganized Supreme Court. Since 1896 the judicial districts, now thirteen in number, have been grouped in the four judicial departments of the Appellate Division of the New York Supreme Court.

First Circuit

Kings
(transferred to Second Circuit 1846)
New York
Queens
(transferred to Second Circuit 1836)
Richmond
Suffolk
(transferred to Second Circuit 1836)

Second Circuit

Delaware
(transferred from Sixth Circuit 1826; transferred to Third Circuit 1836)
Dutchess
Kings
(transferred from First Circuit 1846)
Orange
Putnam
Queens
(transferred from First Circuit 1836)
Rockland
Suffolk
(transferred from First Circuit 1836)
Sullivan
Ulster
(transferred to Third Circuit 1846)
Westchester

Third Circuit

Albany
Columbia
Delaware
(transferred from Second Circuit 1836)
Greene
Rensselaer
Schenectady
(transferred to Fourth Circuit 1846)
Schoharie
Ulster
(transferred from Second Circuit 1846)

Fourth Circuit

Clinton
Essex
Franklin
Fulton *(formed 1838)*
Hamilton
Herkimer
(transferred from Fifth Circuit 1836)
Montgomery
St. Lawrence
Saratoga
Schenectady
(transferred from Third Circuit 1846)
Warren
Washington

Fifth Circuit

Herkimer
(transferred to Fourth Circuit 1836)

Jefferson

Lewis

Madison

Oneida

Oswego

Otsego
(transferred from Sixth Circuit 1836)

Sixth Circuit

Allegany
(transferred from Eighth Circuit 1836)

Broome

Cattaraugus
(transferred from Eighth Circuit 1836)

Chemung *(formed 1836)*

Chenango

Cortland
(transferred to Seventh Circuit 1836)

Delaware
(transferred to Second Circuit 1826)

Livingston
(transferred from Eighth Circuit 1836, back to Eighth Circuit 1837, back from Eighth Circuit 1846)

Otsego
(transferred to Fifth Circuit 1836)

Steuben
(transferred from Eighth Circuit 1836)

Tioga

Tompkins

Seventh Circuit

Cayuga

Cortland
(transferred from Sixth Circuit 1836)

Onondaga

Ontario

Seneca

Wayne *(formed 1823)*

Yates *(formed 1823)*

Eighth Circuit

Allegany
(transferred to Sixth Circuit 1836)

Cattaraugus
(transferred to Sixth Circuit 1836)

Chautauqua

Erie

Genesee

Livingston
(formed 1823) (transferred to Sixth Circuit 1836, back to Eighth Circuit 1837, back to Sixth Circuit 1846)

Monroe

Niagara

Orleans *(formed 1824)*

Steuben
(transferred to Sixth Circuit 1836)

Wyoming *(formed 1841)*

Sources: *New York Civil List;* Laws of 1823, Chap. 182; Laws of 1826, Chap. 289; Laws of 1836, Chap. 436; Laws of 1837, Chap. 154; Laws of 1846, Chap. 328.

Appendix J

Offices for Filing Supreme Court Writs (1820-1847)

Clerk's Office at New York City (1820-1847)

Dutchess
Kings
New York
Orange
Putnam
Queens
Richmond
Rockland
Suffolk
Sullivan
Westchester

Clerk's Office at Albany (1820-1847)

Albany
Clinton
Columbia
Delaware
Essex
Franklin
Fulton *(formed 1838)*
Greene
Hamilton
Montgomery
Otsego
Rensselaer
Saratoga
Schenectady
Schoharie
Ulster
Warren
Washington

Clerk's Office at Utica (1820-1847, with changes noted)

Allegany†
Broome
Cattaraugus†
Cayuga†
Chautauqua†
Chenango
Cortland
Erie *(formed 1821)*†
Genesee†
Herkimer
Jefferson
Lewis
Livingston *(formed 1821)*†
Monroe *(formed 1821)*†
Montgomery
Niagara†
Oneida
Onondaga
Ontario†
Orleans *(formed 1824)*†
Oswego
St. Lawrence
Seneca†
Steuben†
Tioga*
Tompkins*
Wayne *(formed 1823)*†
Yates *(formed 1823)*

† filing in Canandaigua office starting 1829, moved to Geneva 1830
** filing in Geneva office starting 1830*

Note: Laws of 1820, Chap. 216, effective September 1, 1820, required that process issued to sheriffs and coroners in designated counties be returned to and filed in particular clerk's offices. "Process" meant court writs (sealed orders) commencing an action or executing a judgment. (Writs of *habeas corpus* and writs of attachment were excluded from these general filing requirements.)

Clerk's Office at Canandaigua (1829-1830) and Geneva (1830-1847)

Allegany
Cattaraugus
Cayuga
Chautauqua
Erie
Genesee
Livingston
Monroe
Niagara
Ontario
Orleans
Seneca
Steuben
Tioga**
Tompkins**
Wayne
Wyoming *(formed 1841)*
Yates

*** transferred from Utica office 1830*

Note: Laws of 1829, Chap. 42, effective September 1, 1829, established a Supreme Court clerk's office at Canandaigua. Laws of 1830, Chap. 104, effective April 10, 1830, removed the office to Geneva. Those acts specified the counties whose sheriffs were to file writs at Canandaigua and Geneva, respectively.

Appendix K

Documents and Filings in Action of Debt (ca. 1810)

The following outlines indicate the sequence of documents and filings in typical proceedings in personal actions in the Supreme Court. The first example is an action of debt in which the plaintiff obtains a judgment after the defendant fails to plead (defaults). The second example is an action of debt in which the defendant pleads the "general issue," the case goes to trial, and the plaintiff obtains a judgment after a jury verdict in his favor. Accompanying both examples is a list of the components of the judgment record.

Action of debt – judgment for plaintiff by default

1. Writ of *capias ad respondendum* – tested last day of January Term, returnable first Monday in May Term
2. Service of writ on defendant – April 1
3. Bail bond – given April 1 for appearance of defendant first Monday in May term; bond given to sheriff
4. *Cepi corpus* – sheriff's return of arrest of defendant ("I took the body") to clerk's office and entry by clerk
5. Special bail – put in by defendant within twenty days after end of May Term and service of notice to plaintiff
6. *Narratio* – plaintiff's declaration is drawn June 7 and filed in clerk's office
7. Rule to plead – defendant is ordered to plead to the declaration within twenty days of entry of rule in common rule book in clerk's office
8. Notice of rule to plead – posted in courthouse or served on defendant
9. Affidavit of service of notice of rule to plead – filed in clerk's office June 20
10. Entry of default – entered in common rule book June 29
11. Motion and rule for judgment – made and entered on fourth day of August Term or any subsequent day in term
12. Judgment roll – signed, filed, and docketed and costs taxed August 15
13. Execution – writ of *fieri facias* issued to sheriff August 16, tested last day of August Term, returnable in November Term to attach upon the lands of which the defendant was seized the day when the costs were taxed

Contents of the judgment record:

A. *Placita*

B. Warrant of attorney

C. Memorandum

D. Declaration by plaintiff

E. Imparlance

F. Default by defendant

G. Judgment

Action of debt – defendant pleads general issue, trial held, judgment for plaintiff

[Proceedings are the same as in judgment by default through 9.]

10. Defendant's plea – plea of *non debet* ("he does not owe")
11. *Nisi prius* record sealed and filed in clerk's office
12. Notice of trial given to sheriff, writs of *venire* and *subpoena* issued to sheriff to summon jurors and witnesses for trial
13. Trial in circuit court and verdict for plaintiff
14. *Postea* returned by plaintiff's attorney and filed in clerk's office
15. Judgment roll – as in judgment by default
16. Execution – as in judgment by default

Contents of the judgment record:

A. *Placita*

B. Warrant of attorney

C. Memorandum

D. Declaration by plaintiff

E. Imparlance

F. Plea by defendant

G. Issue

H. Award of writ of *venire* with *nisi prius* clause

I. *Postea*

J. Judgment

Source: Adapted from tables in an anonymous practice notebook in the Oliver Phelps Papers, Misc. Vol. 72, SC10440, New York State Library–Manuscripts and Special Collections. The notebook is undated but was probably compiled ca. 1810.

Appendix L

Common and Special Rules and Judges' Orders in Personal Actions

Note: Motions by plaintiff are indicated by [P]. Motions by defendant are indicated by [D]. Motions by either plaintiff or defendant are indicated by [P, D].

Common Rules

Common rules were entered by the court clerk, after a written application by the attorney for a party to an action, without a formal motion before the court, or by consent of the parties to the action. Before 1796 common rules were entered in the minute books. Starting 1796 they were entered in common rule books. Starting in 1840 the Supreme Court was authorized to abolish superfluous common rules granted as a matter of course.

For a common rule ...

that sheriff put in special bail [P]

for defendant to appear [P]

to defendant to plead [P] (abolished 1840)

to discontinue the action [P]

for leave to pay money into the court [D]

for default by plaintiff in not declaring [D]

for default by defendant in not pleading [P]

for default by plaintiff in not replying [D]

for default by defendant in not rejoining [P]

for default by plaintiff not surrejoining [D]

for default in not joining in demurrer [P, D]

for interlocutory judgment and assessment of damages [P]

for interlocutory judgment and writ of inquiry [P]

for judgment on filing clerk's report of damages [P]

for judgment on filing writ of inquiry and inquisition [P]

for judgment on *cognovit* [P]

for judgment on *relicta* [P]

for judgment on *non prosequitur* [D]

for judgment on discontinuance and *nolle prosequi* [D]

for judgment on nonsuit by plaintiff [D]

for judgment after inquest [P]

for judgment after jury verdict [P, D]

for judgment after defendant's confession [P]

for confirmation of referees' report and judgment [P]

Special Rules

Special rules were obtained on motion to the court and written notice to the opposing party. All motions for special rules concerned the legal merits of a case, and they were supported by affidavits. Enumerated motions were placed on the court calendar. The court ruled after argument during term, or alternatively upon written submissions to the court. Starting 1832 certain enumerated motions were decided by circuit judges. Non-enumerated motions concerned proceedings in a case that did not involve the legal merits. Like enumerated motions, they were founded on an affidavit with notice to the opposing party. Starting in 1830 non-enumerated motions were argued and decided in "special terms" held most months in Albany. In 1841 another special term was established in New York City. (Certain categories of non-enumerated business were reserved for the full court in its "general terms.") Special rules were entered in the minute books.

Enumerated Motions

For a special rule ...

in arrest of judgment [D]

for judgment *non obstante veredicto* [P]

on a special verdict* [P, D]

on a bill of exceptions* [P, D]

on case reserved at trial* [P, D]

on case agreed by the parties without trial [P, D]

on demurrer to evidence* [P, D]

on demurrer to pleadings [P, D]

on writ of error [P, D]

on writ in nature of writ of error, including writ of *mandamus* [P, D]

to set aside a nonsuit [P]

to set aside a jury verdict and for a new trial on the merits [P, D]

to set aside an inquisition [P, D]

to set aside a report of damages [P, D]

* Motions usually decided by circuit judges, starting 1832.

Non-Enumerated Motions

For a special rule ...

to strike out counts in plaintiff's declaration [D]

to consolidate actions [D]

to change the venue [D]

for leave to amend pleadings [P, D]

to strike out a plea [P]

to set aside a default [D]

to set aside a clerk's report of damages [D]

to set aside an inquisition for irregularity [D]

for reference to referees [P, D]

for a commission to examine witness [P, D]

for a special jury [P, D]

for a foreign jury [P, D]

for a repleader [P, D]

to stay proceedings on payment of debt and costs [D]

for costs on circuit [D]

for judgment as in case of nonsuit [D]

to set aside an inquest [D]

to set aside a nonsuit [P]

to set aside a jury verdict and for a new trial on ground of irregularity [P, D]

to set aside a report of referees [P, D]

to set aside a judgment or execution for irregularity [P, D]

for leave to amend proceedings [P, D]

for *exoneretur* of bail [D]

Non-enumerated motions still decided in the Supreme Court's general terms after 1830:

Motions ...

in criminal cases

on attachments

in real actions

for judgment against corporations

calling persons bound by recognizance

to correct the calendar

Judges' Orders

Orders could be granted at any time by a Supreme Court justice, either during a court term or out of term, when the court was "in vacation." Orders were procedural in nature, and they never concerned the merits of the case. An attorney applied for an order by submitting an affidavit to a Supreme Court justice or circuit judge, or to a Supreme Court commissioner, county judge, or city recorder (the latter officers could not grant certain types of orders). A copy of the proposed order was served on the opposing party, and no prior notice was necessary. In some cases an order could also be obtained by motion to the court for a rule.

For an order ...

to hold defendant to bail [P]

to discharge defendant on common bail, or to mitigate bail [D]

for allowance of special bail [D]

for *exoneretur* of bail or *supersedeas* [D]

to extend the time for putting in special bail [D]

to extend the time for justifying special bail [D]

to file security for court costs [D]

for particulars of plaintiff's demand [D]

for particulars of set-off [D]

for time to declare [P]

for further time to plead, reply, rejoin, etc. [P, D]

for examination of a witness *de bene esse* [P, D]

to compel discovery of books, papers, etc. [P, D]

for allowance of a writ of *habeas corpus* [P, D]

to put off trial [P, D]

to stay proceedings for the purposes of motion [P, D]

to discharge a prisoner on *supersedeas* [D]

Sources: Alexander M. Burrill, *A Treatise on the Practice of the Supreme Court of the State of New-York in Personal Actions* (New York: 1840), vol. 1, pp. 323-40, 348-50, 439, 467-71; *Rules and Orders of the Supreme Court of the State of New-York* (Albany: 1837), rules 47-60.

Appendix M

Statutes Concerning Sale of Insolvent Debtors' Property for Benefit of Creditors (1784-1831)

ABBREVIATIONS:

amend. - amended by
cont. - continued by
eff. - effective date
mtg. - meeting
repeal. - repealed by

Major Statutes	Petitioners for assignment and sale of debtor's property	Judges or courts empowered to grant petition and assign debtor s property to trustees for benefit of creditors	Filing or recording specified by statute NYSA series containing documents for this case type (some in very small numbers)
L. 1784, 7th Sess., Ch. 34 (amend. L. 1784, 8th Sess., Ch. 14; repeal. L. 1801, Ch. 193)	imprisoned debtor (arrest or execution); all debts discharged	Supreme Court justice; common pleas judge; justice of peace*	[J2000]
L. 1786, 9th Sess., Ch. 24 (amend. L. 1787, 10th Sess., Ch. 54, 67; repeal. L. 1801, Ch. 193)	creditors of absconding or absent debtor (debts >£40)	Supreme Court justice; common pleas judge; NYC mayor or recorder*	Supreme Court clerk or county clerk to record in minutes a report of proceedings [J0154, JN534]
L. 1786, 9th Sess., Ch. 34 (amend. L. 1787, Ch. 67; repeal. L. 1788, Ch. 29)	insolvent debtor with creditors representing 3/4 total value of debts; all debts discharged	Supreme Court or justice; common pleas court or judge*	[J2000]
L. 1788, 11th Sess., Ch. 92 (amend. L. 1791, 14th Sess., Ch. 29; repeal. L. 1801, Ch. 193)	insolvent debtor with creditors representing 3/4 total value of debts; all debts discharged†	Supreme Court justice; common pleas judge; chancellor	[J0130, J0154, J2000]
L. 1789, 12th Sess., Ch. 24‡ (eff. Feb. 1790; amend. L. 1790, 13th Sess., Ch. 40; L. 1791, 14th Sess., Ch. 29; L. 1799, 22nd Sess., Ch. 85; repeal. L. 1828, 2nd mtg., Ch. 21)	imprisoned judgment debtor with one or more creditors (debts <£200; <£1000 starting 1791 if imprisoned 3+ months; <$2500 starting 1799)	court that issued writ of execution	Supreme Court clerk to keep record of any hearing held in a circuit court by writ of *habeas corpus* [J0130, J2000, JN531]
L. 1801, Ch. 49‡ (amend. L. 1822, Ch. 226; repeal. L. 1828, 2nd mtg., Ch. 21)	one or more creditors of absconding or absent debtor (debts >$100)	Supreme Court justice; common pleas first judge; NYC mayor or recorder*	appointment of trustees may be recorded by court clerk or by Secretary of State; a Supreme Court clerk or county clerk to file affidavits of creditors and accounts of trustees and to enter report of proceedings in minutes [J0130, J2000, JN531, JN534]

Major Statutes	Petitioners for assignment and sale of debtor's property	Judges or courts empowered to grant petition and assign debtor s property to trustees for benefit of creditors	Filing or recording specified by statute NYSA series containing documents for this case type (some in very small numbers)
L. 1801, Ch. 66 (amend. L. 1808, Ch. 163, §§7-8; L. 1809, Ch. 151; repeal. L. 1811, Ch. 123, and L. 1813, Ch. 202)	imprisoned judgment debtor (judgment debt <$500; if imprisoned 3+ months, debt <$2500; starting 1808 any amount)	court that issued writ of execution: Supreme Court or court of common pleas (starting 1808 first judge)	[J0130, JN531]
L. 1801, Ch. 131 (amend. L. 1808, Ch. 163, §§1-6; repeal. L. 1811, Ch. 123)	insolvent debtor with creditors representing 3/4 total value of debts; all debts discharged†	Supreme Court justice; common pleas judge; chancellor*	papers to be delivered or transmitted to a Supreme Court clerk or county clerk (specified by 1808 amendment) [J0154, J0156, J2000, JN531, JN534]
L. 1811, Ch. 123 (amend. L. 1811, Ch. 248, §3; repeal. L. 1812, Ch. 8)	insolvent debtor (or imprisoned debtor, contract cases only); all debts discharged	Supreme Court commissioner; any city recorder*	county clerk to file all papers and to record debtor's final discharge [J2000]
Revised Laws (1813), Ch. 49, v. 1, pp. 157-65‡ (repeal. L. 1828, 2nd mtg., Ch. 21)	one or more creditors of absconding or absent debtor (debts >$100)	Supreme Court justice; common pleas first judge; NYC mayor or recorder*	appointment of trustees may be recorded by county clerk or by Secretary of State; report of proceedings to be entered in court minutes by county clerk or a Supreme Court clerk; affidavits of creditors to be filed by same officer [J0154, J0156, JN531, JN534]
Revised Laws (1813), Ch. 81, §§4-10, 13, v. 1, pp. 348-54‡ (amend. L. 1823, Ch. 117; repeal. L. 1828, 2nd mtg., Ch. 21)	imprisoned judgment debtor (debts <$500; if imprisoned 3+ months, >$500); or any creditor of any imprisoned judgment debtor	court that issued writ of execution	[J0154, J0156]
Revised Laws (1813), Ch. 98, v. 1, pp. 460-72‡ (amend. L. 1817, Ch. 55; L. 1818, Ch. 26; L. 1823, Ch. 117; repeal. L. 1828, 2nd mtg., Ch. 21, and cont. *R.S.* (1829), Pt. II, Ch. 5, Tit. 1, Art. 3)	insolvent debtor with creditors representing 2/3 total value of debts; all debts discharged†	Supreme Court justice or commissioner; common pleas first judge; chancellor*	all papers to be filed by county clerk or a Supreme Court clerk [J0154, J0156, JN503]

Appendix M

Major Statutes	Petitioners for assignment and sale of debtor's property	Judges or courts empowered to grant petition and assign debtor s property to trustees for benefit of creditors	Filing or recording specified by statute NYSA series containing documents for this case type (some in very small numbers)
L. 1819, Ch. 101‡ (amend. L. 1823, Ch. 117; repeal. L. 1828, 2nd mtg., Ch. 21)	any insolvent debtor	Supreme Court justice; common pleas first judge; city judge; chancellor*	"all proceedings" to be filed by county clerk [J0154, J0156]
Revised Statutes (1829), Pt. II, Ch. 5, Tit. 1, Art. 1 (eff. Jan. 1, 1830; repeal. L. 1880, Ch. 245)	one or more creditors of absconding, concealed, or non-resident (out-of-state) debtor (debts >$100)	circuit judge; Supreme Court commissioner; county court judge; any city recorder* NOTE: Supreme Court assumed jurisdiction after trustee appointed.	county clerk to record appointment of trustees; Supreme Court clerk to file warrant to sheriff, affidavits of creditors, and trustees' report of proceedings [J0126, J0154, J0156, J1126, JN534]
Revised Statutes (1829), Pt. II, Ch. 5, Tit. 1, Art. 3 (eff. Jan. 1, 1830; repeal. L. 1880, Ch. 245)	insolvent debtor with creditors representing 2/3 total value of debts; all debts discharged	circuit judge; Supreme Court commissioner; county court judge; any city recorder*	county clerk to record debtor's assignment to trustees and his final discharge; county clerk to file record of "all proceedings"; trustees' accounting to be filed by county clerk or a Supreme Court clerk [JN503]
Revised Statutes (1829), Pt. II, Ch. 5, Tit. 1, Art. 4 (eff. Jan. 1, 1830; repeal. L. 1880, Ch. 245)**	any creditor (debt >$25) of imprisoned judgment debtor; all debts discharged	circuit judge; Supreme Court commissioner; county court judge; any city recorder*	[same as for Art. 3]
Revised Statutes (1829), Pt. II, Ch. 5, Tit. 1, Art. 5 (eff. Jan. 1, 1830; repeal. L. 1880, Ch. 245)**	insolvent debtor (including imprisoned debtor)	circuit judge; Supreme Court commissioner; county court judge; any city recorder*	[same as for Art. 3] [JN503]
Revised Statutes (1829), Pt. II, Ch. 5, Tit. 1, Art. 6 (eff. Jan. 1, 1830; repeal. L. 1880, Ch. 245)**	imprisoned judgment debtor (judgment debt <$500)	Supreme Court; court of common pleas*	county clerk to file record of "all proceedings"

* Law required newspaper notice of insolvency proceeding.

† Law provided for compulsory assignment of property of imprisoned judgment debtor, at request of creditors representing 2/3 of total value of the debtor's debts, if the property was in danger of waste or embezzlement. See also *Revised Statutes* (1829), Pt. II, Ch. 5, Tit. 1, Art. 4.

‡ Repealed by L. 1828, 2nd mtg., Ch. 21, eff. Dec. 31, 1829.

** L. 1831, Ch. 300, abolished imprisonment for debt in most cases except debtor fraud, eff. March 1, 1832.

The 1848 Code of Procedure

The Code of Procedure enacted in 1848 (known as the "Field Code," from its principal author, David Dudley Field) will be outlined here in order to show how radically it changed procedure in the Supreme Court and the lower civil courts.[Note 1] The discussion will help orient researchers familiar with modern civil procedure to earlier common-law forms and procedure. The 1848 version of the code is the basis for the following discussion. However, it must be noted that in subsequent years the Legislature extensively amended the code and vastly expanded its bulk. This process began in 1849 and continued unabated until the code was repealed and replaced with a new "Code of Civil Procedure" (the so-called "Throop Code," named for Montgomery Throop, chairman of the commission which drafted it) in 1876-77.[Note 2] In general, the statutory amendments, along with judicial interpretations of the code, tended to reintroduce many of the complexities and technicalities that had previously characterized common-law practice and pleading.[Note 3]

The 1848 code declared that the "distinction between actions at law and suits in equity, and the forms of all such actions and suits, heretofore existing, are abolished." It substituted for them "one form of action for the enforcement or protection of private rights and the redress of private wrongs, which shall be denominated a civil action." The old common-law forms of action (such as debt, *assumpsit,* trespass, and case), were abandoned. Under the code, a plaintiff commenced a civil action by serving a summons on the defendant instead of serving him with a declaration or having him arrested by writ of *capias*. The summons had previously been used in the justices' courts. It resembled the old writ of summons used in common-law actions against corporations, but it was unsealed and did not have to state the grounds for the plaintiff's demand, only the amount of judgment sought. Anyone could serve a summons, not just the sheriff or his deputy, as was the case with the writ of *capias ad respondendum.* The 1848 code limited use of arrest in civil actions to defendants who were out-of-state residents; were about to move from the state; or were accused of embezzlement, fraud, assault, slander, or injuring, "taking, detaining, or converting property." An arrested defendant could either give bail or deposit with the court a sufficient sum to pay the judgment levy. The code abolished the former distinction between bail to the sheriff for appearance in court and bail for satisfaction of judgment (special bail).

The Code of Procedure abolished all of the traditional pleadings and replaced them with just three: the plaintiff's complaint, the defendant's answer or demurrer, and the plaintiff's reply. It swept away all the intricacies of special pleading. The plaintiff's complaint corresponded to the old declaration, but the code attempted to make it as brief and clear as possible. The complaint was to make "a plain and concise statement of the facts constituting a cause of action without unnecessary repetition." The code required all pleading to be "liberally construed, with a view to substantial justice between parties," and any "irrelevant or redundant matter" in a pleading could be deleted on motion by the opposing party. Amendments to pleading were to be allowed whenever they did not affect the merits of a case. (Prior to 1848 the courts had seldom allowed amendments, with the result that inordinate attention had to be paid to correct wording of pleas.)

Judgment was obtained in the same general ways as before, but many details were simplified. A court granted judgment to a plaintiff when the defendant failed to answer the complaint or after hearing arguments on a demurrer to the complaint, the answer, or the reply. The

defendant's confession (formerly called the *cognovit*) of the debt or damages demanded in the complaint resulted in a judgment against him. Judgments were also given after trial of an issue of fact by a jury; after trial by a judge, if jury trial was waived by mutual consent of the parties (not allowed prior to 1848); or after trial by referees (formerly this was accomplished by referring a case to a court clerk or to a sheriff's jury of inquisition). Major changes occurred in the manner in which judgments were recorded. Under the old civil practice, the prevailing party's attorney prepared the judgment roll and filed it with the Supreme Court clerk. After 1848 the county clerk filed the summons, complaint, the reply or demurrer if any, proofs of service of these papers, the jury's verdict or referees' report, the award of judgment, and any other papers submitted to the court, such as motions and bills of exception. All these filed documents together comprised the judgment roll for purposes of appeal, though it was no longer "enrolled" in the old way. The code of 1848 required each county clerk to keep a "judgment book," a kind of record that was new to the courts of law but that resembled the register of enrolled decrees kept by the Court of Chancery prior to 1847. In the judgment book the clerk entered for each case the judgment of the court and the "relief granted, or other determination of the action."

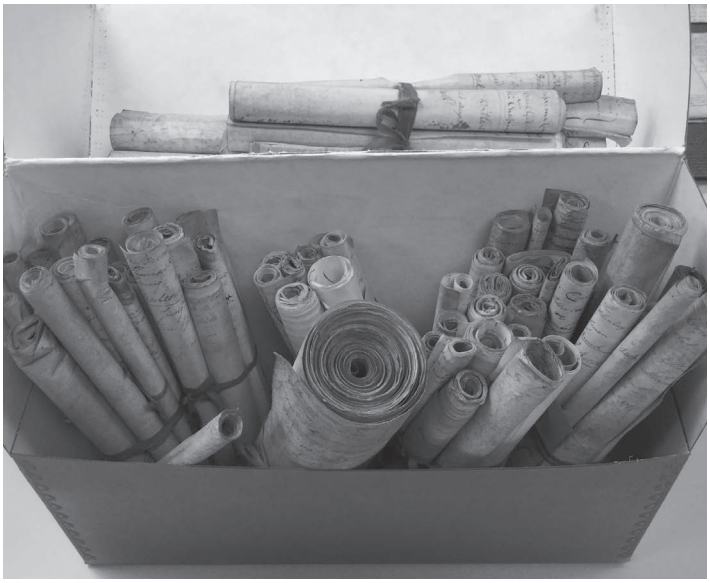
Execution of judgments was also simplified. The old writs of *fieri facias* and *capias ad satisfaciendum* were replaced by a simple execution against the personal or real property of the judgment debtor. An execution might also deliver possession of disputed real or personal property to the winning party. The 1848 code abolished the old bill of costs in which the fees due to court officers (including attorneys) were specified in minute and costly detail according to fee schedules established by statute. The code allowed certain court costs to the prevailing party and to the court clerk, but otherwise compensation was to be "left to the agreement, express or implied, of the parties."

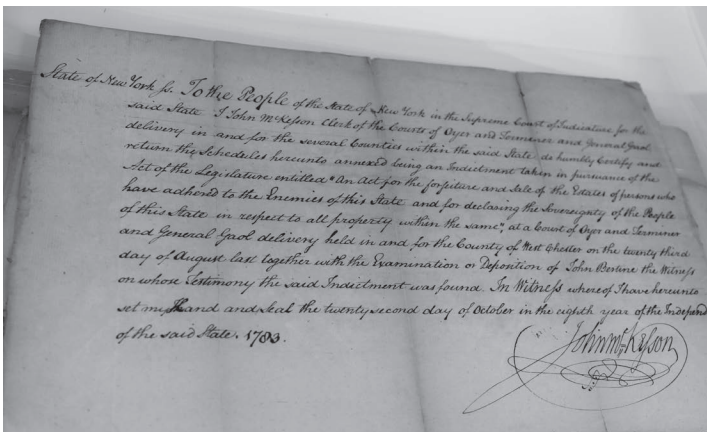
Finally, the Code of Procedure abolished the ancient writ of error and substituted the appeal. The appeal had been used to review decisions of the former Court of Chancery and was now extended to all civil actions appealed from inferior courts to the Supreme Court or from that court to the new Court of Appeals, the successor to the old Court for the Correction of Errors. The clerk of the lower court sent the judgment record or court order being appealed to the Supreme Court after the appellant had served notice of the appeal upon the respondent and the clerk. The judgment on appeal (affirming or reversing the judgment) was remitted to the clerk of the court where the judgment roll had originally been filed. Execution of the judgment thus proceeded out of the court of original jurisdiction, not out of the Supreme Court, as had been the practice before 1848. The codifiers left intact the use of *mandamus* to review and correct actions of public officers.

Note 1: The Code of Procedure was enacted as Laws of 1848, Chap. 379, and extensively amended by Laws of 1849, Chap. 438.

Note 2: The Code of Remedial Justice was enacted by Laws of 1876, Chaps. 448 and 449, and extensively revised by Laws of 1877, Chaps. 416 and 422.

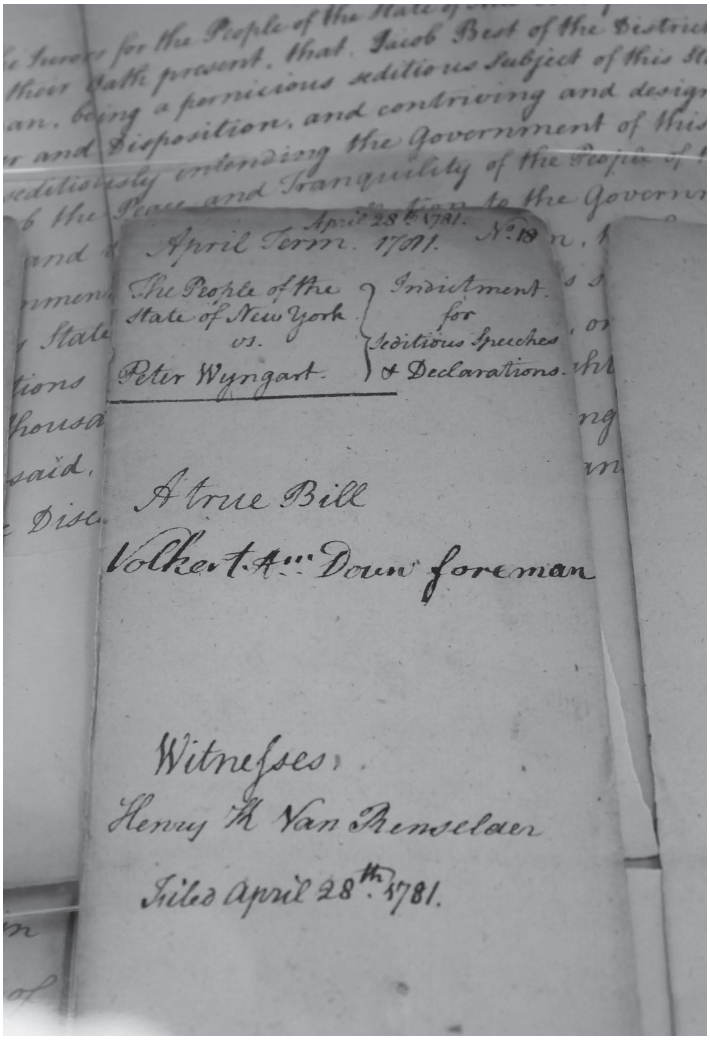
Note 3: On the history of the 1848 code and its amendments, see the works cited in the Bibliography—Reform of Practice and Pleadings.





State of New York ss. To the People of the State of New York in the Supreme Court of Judicature for the said State. I John McKesson Clerk of the Courts of Oyer and Terminer and General Goal delivery in and for the several Counties within the said State do humbly Certify and return the Schedules hereunto annexed being an Indictment taken in pursuance of the Act of the Legislature entitled "An Act for the forfeiture and sale of the Estates of persons who have adhered to the Enemies of this State and for declaring the Sovereignty of the People of this State in respect to all property within the same" at a Court of Oyer and Terminer and General Goal delivery held in and for the County of Westchester on the twenty third day of August last together with the Examination or Deposition of John Bostwick the Witness on whose Testimony the said Indictment was found. In Witness whereof I have hereunto set my Hand and Seal the twenty second day of October in the eighth year of the Independence of the said State. 1783.

John McKesson



April Term. 1781. No 19

The People of the State of New York vs. Peter Wyngart. } Indictment for seditious Speeches & Declarations.

A true Bill

Volkert A.ⁿ Douw foreman

Witnesses.

Henry I. Van Rensselaer

Filed April 28th. 1781.

FROM PARCHMENT TO PAPER

Common-law courts in England and early New York used parchment for formal documents like writs and rolls. Upper left—Parchment judgment rolls filed at Albany in 1798; after that year paper was permitted. Below—Parchment attorney roll from New York County Clerk's Office, used for attorney oaths until the mid-nineteenth century.

Paper documents became more prevalent during the Revolutionary War and soon replaced parchment entirely. Upper right—Indictment for seditious speech, 1781. Middle—Certified return of indictments in court of oyer and terminer, 1783. During the war John McKesson served as clerk of the Supreme Court and of all of the county-level circuit courts and courts of oyer and terminer.

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Reform of Practice and Pleading

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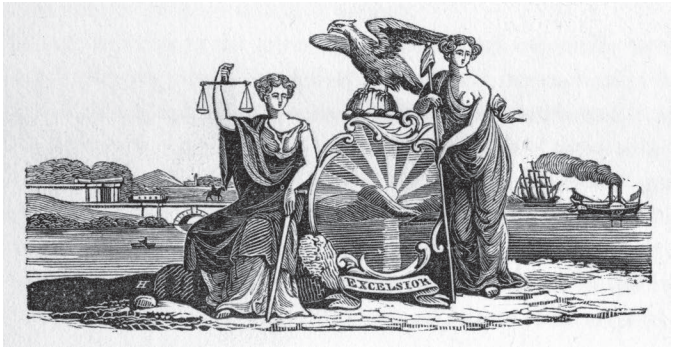
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