"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

A Joint Publication of the New York State Court of Appeals and the New York State Archives and Records Administration

"Duely & Constantly Kept"

This history commemorates the 300th birthday and the uninterrupted continuance of an extraordinary judicial institution — the Supreme Court of the State of New York. When this court was created by our colonial forebears, few could have imagined it was the beginning of a magnificent State court system which has proudly served the people of the colony and State of New York for 300 years.

There will be many celebrations of this important historical and societal event, but this permanent book recapturing the record of achievement is a singular tribute to all who have served, all who have been served, and all who had the vision to create this gift which we hold in trust for many generations to come.

I applaud the State Archivist and his staff and especially Dr. James Folts, for sharing our pride in the premier trial court in the nation, the Supreme Court of the State of New York.

Sol Wachtler
Chief Judge of New York State

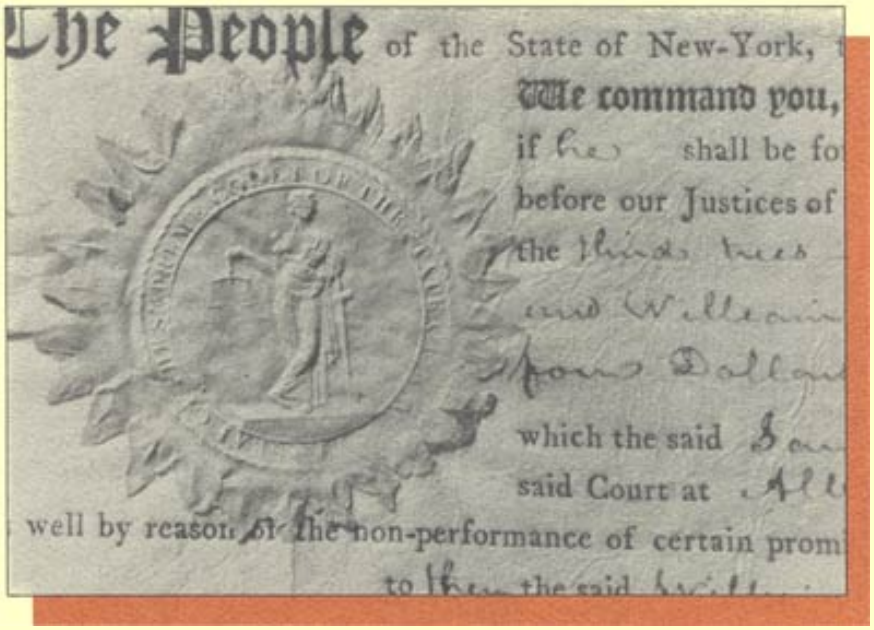
Cover illustration:
Justices Court in the Backwoods
by Thmpkins Harrison Matteson 1850.
See page 21

Title page illustration:
Seal of the Supreme Court of the State of New York
The seal depicts Justice blindfolded and holding a sword and scales. From a writ of *capias ad satisfaciendum* dated l800. (Series J0024 Writs of Arrest and Execution [Albany].)

The Historical Society of the Courts of the State of New York

On-Line Book

"Duely & Constantly Kept"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The New York State Archives and Records Administration.

Albany, New York 1991

"Duely & Constantly Kept"

In honor of the 300th Anniversary
of the Supreme Court of the State of New York

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"Duely & Constantly Kept"

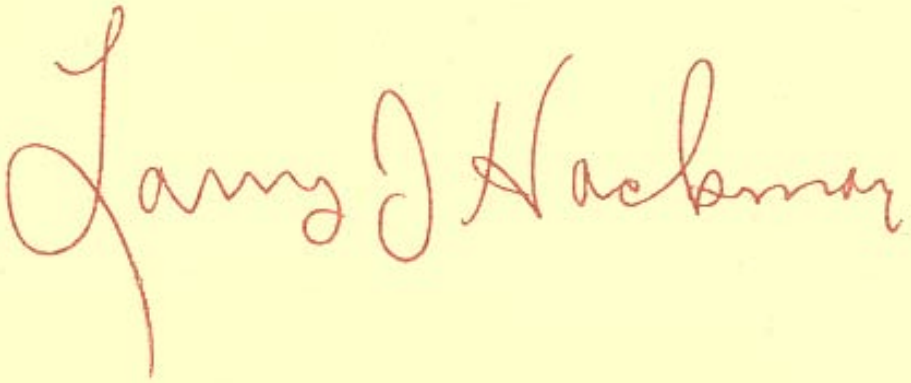
Foreward

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. Three hundred years later, after a political revolution, 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. Since the reorganization of the Supreme Court in 1847, the county clerks have maintained the court's trial records. (The four departments of the Appellate Division have their own clerks, and their archival records are designated for transfer to the State Archives.) Upon its establishment in 1847 the new Court of Appeals assumed custody of the pre-1847 Supreme Court records from the upstate clerk's offices (Albany, Utica, Geneva). The New York County clerk's office maintains the records of the Supreme Court of Judicature that were filed in New York City. in 1982 the Court of Appeals transferred to the State Archives in Albany several million Supreme Court documents, dating from 1797 to 1847, along with other pre-1847 records of New York's higher civil courts. The latter include 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 the procedure and operation of New York's judicial system and on economic and social relations among New York's citizens. 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. Through the efforts of Dt James D. Folts and other State Archives staff, the records for the upstate districts were organized and described and physical deterioration was halted. While some documents have received conservation treatment and duplication through microfilm, much remains to be done to insure their preservation. This history of the Supreme Court and the inventory of its records in the State Archives are published jointly by the Court of Appeals and the State Archives and Records Administration to help commemorate the Supreme Court's three hundredth anniversary and to makes its documentary heritage more accessible to the legal community, academic scholars, educators, and interested citizens.

In addition to the work of the staff of the State Archives and Records Administration, the actions of several individuals were crucial to survival of the records described in this publication. John H. Gary, former Motion Clerk for the Court of Appeals,was a longtime advocate for adequate care for the pre-l847 records and he watched over their administration. Dr. Leo Hershkowitz, Professor of History, and Professor Matthew J. Simon, Chief Librarian, 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 l97Os when, for much of the period, there was no State Archives to administer them. Court of Appeals Judge Joseph Bellacosa, then Clerk of the Court, and Donald Sheraw, then Deputy Clerk and now Clerk of the Court of Appeals, provided strong support for the transfer of the records to the State Archives in 1982, and their interest and support have continued. Researchers in legal history and in many other fields are indebted to these individuals who also have my thanks.



Larry J. Hackman
Archivist of the State of New York

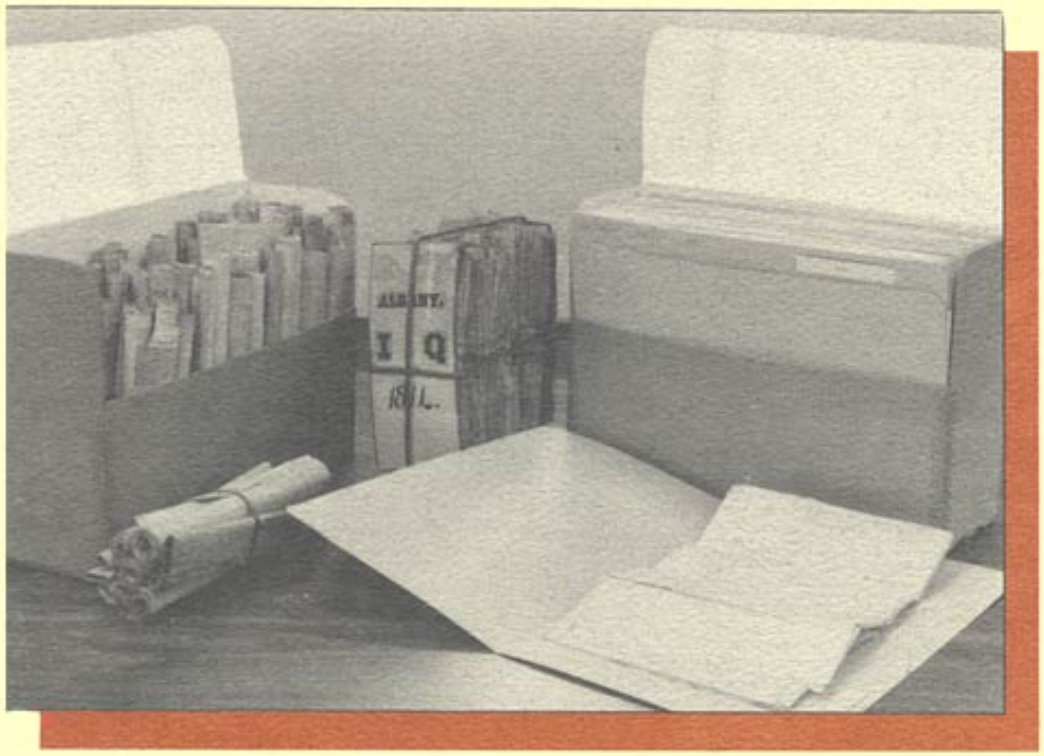
"Duely & Constantly Kept"

Preface

The New York State Archives and Records Administration (SARA), a unit of the Office of Cultural Education in the State Education Department, regulates the disposal and selective preservation of State and local government records, provides guidance and services to help governments better manage their records, and promotes and supports public and private historical records programs statewide. One of SARA's specific legal responsibilities is to identify, acquire, preserve, and make available for research the archival records of the three branches of State government. Archival records are those that have enduring administrative, legal, historical, or other research value. Since 1978, SARA has operated a storage and research facility and administered professional archival programs to support this mission. As of January 1990, the State Archives' collections comprised nearly 45,000 cubic feet of records, or more than 100 million documents, with additional records acquired every month. The records cover the period from seventeenth century Dutch colonial settlement to the l98Os, and include parchments, standard paper files, oversize maps and drawings, photographs, sound recordings, films, videotapes, microforms, and computer tapes. Located in the Cultural Education Center in Albany's Empire State Plaza, the State Archives is open to the public Monday through Friday, except State holidays, from 9:00 am to 5:00 pm.

The State Archives' first major acquisition of judicial records occurred in 1982, when the New York State Court of Appeals transferred nearly 3,000 cubic feet of pre-l847 court records.

Supreme Court Writs and Judgment Rolls. This photograph shows (left) examples of parchment



judgment rolls and writs filed with the clerk of the Supreme Court of Judicature at Albany, and (right) writs of error filed at Utica, after archival processing.

This transfer included records of the Supreme Court of Judicature, the Court of Chancery, the Court of Probates, and the Court for the Correction of Errors, all of which were abolished as part of a reorganization of the judiciary carried out pursuant to the third State Constitution of 1846. An 1847 law required that records from the four defunct courts, except records from the New York City office of the Supreme Court of Judicature, be transferred to the State's newly established highest court, the Court of Appeals.

Court of Appeals Clerks supervised the protection of these pre-l847 records for 135 years. From 1973 to 1982, because of space limitations in Court of Appeals Hall, the records were stored at the Historical Documents Collection at Queens College of the City University of New York. When the judges of the court ordered the records deposited in the State Archives, staff of the court, the college, and the State Archives worked together to transport the records to Albany. Archives staff then began the laborious process of putting in order hundreds of volumes and thousands of bundles of documents; assessing preservation needs and beginning treatment; and preparing finding aids so that researchers can make better use of the rich source material for understanding and interpreting the State's history. Publication of this volume represents a significant milestone in this work.

This history and inventory were written by one person, but the work would have been impossible without a cooperative effort by State Archives staff. Several colleagues participated in the project, during the summer of 1982, to move the records back to Albany and to prepare an initial list of all the records. Immediately after the move, Alan S. Kowlowitz and Henry Bell were primarily responsible for unpacking, arranging, and shelving the great mass of records. Subsequently, many Archives staff have contributed to the ongoing work as resources allow and priorities dictate to further arrange, describe, catalog, and preserve these records and to advise and assist researchers in using them. Bernice Waidman, Justine Bouchey, and Amy Shear patiently word-processed the several drafts of this work. Thomas E. Mills and Alan S. Kowlowitz read and commented on the work at several stages. In addition, the section on the history of the Supreme Court of Judicature benefited from comments made by Dr. Paul Finkelman of Brooklyn Law School. The late Dr. Bernard S. McLane of Dartmouth College provided

advice on the history of the common law. Bruce Abrams of the New York County Clerk's Office furnished data on Supreme Court records in that repository. The author remains responsible for the factual content of this publication.

James D. Folts
Archivist III
New York State Archives and Records Administration

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Introduction

The Supreme Court of Judicature was established in 1691 and was continued little changed by the first state Constitution of 1777. The court was succeeded by the present Supreme Court in 1847. The Supreme Court of Judicature was vested with unlimited original jurisdiction over all civil and criminal cases. However, the court rarely heard criminal cases after the Revolution, and it normally decided only the more important civil cases. (Small suits were discouraged because the Supreme Court awarded full costs—statutory attorney and court fees—to a plain- tiff only when the award exceeded twenty pounds; after 1801, $250.) The Supreme Court also possessed appellate jurisdiction over civil and criminal cases originating in the county, city, and town courts. Among the justices of the Supreme Court of Judicature were such eminent figures as John Jay, James Kent, and Daniel D. Tompkins. Attorneys practicing before the court included Alexander Hamilton, Aaron Burr, Martin Van Buren, and William H. Seward. The Court heard some cases that became famous in American legal history: the trial of John Peter Zenger in 1735, the criminal contempt trial of Samuel S. Frear in 1803, the Livingston steamboat cases, and the libel suits brought by James Fenimore Cooper against Thurlow Weed and others. These cases were of course unusual; the great majority of the Supreme Court's business was ordinary litigation involving the citizens of New York.

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

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 Albany (1797-1847), Utica (1807-1847), and Geneva (1829-1847). In all there are 129 series of Supreme Court records in the Archives, occupying about 1800 cubic feet of shelf space. The New York County Clerk's office holds the records of the state Supreme Court that were filed by the clerk at New York City, as well as almost all the surviving records of the colonial Supreme Court.

The administrative history and record series inventory serve two purposes. The first purpose is to explain the history, organization, jurisdiction, and procedure of the New York Supreme Court of Judicature and to describe its records. The section on procedure tells how cases proceeded through the Supreme Court, referring to documents now in the Archives. The inventory gives information on dates, quantity, content, arrangement, and indexing of each Supreme Court record series. Series relating to arrest or summons, bail, pleading, trial, judgment, execution, and satisfaction are described first. Subsequent entries describe motion papers, court rule and minute books, records of appealed cases, and files relating to special proceedings (such as insolvent assignments). Finally, the inventory describes the court's financial records and records relating to attorneys.

The second purpose of this history and inventory is to assist researchers in understanding all pre-l847 common law court records in New York. Civil procedure in both the statewide Supreme Court and the county-level courts of common pleas closely followed English procedure as modified for local needs. The forms of documents were very similar in both courts. Therefore the information on Supreme Court practice and records is pertinent to lower courts of record as well The surviving records of the courts of common pleas (predecessor to the present county courts, established in 1847) are in custody of the county clerks. Appendix C briefly outlines the organization and jurisdiction of the lower civil an criminal courts.

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

The Supreme Court records are an important source of information for legal history. Basic information on the substance of a case is found in the judgment roll, which includes the plaintiff's initial plea (his "declaration") the defendant's reply, and any subsequent pleadings. Additional information on a case may be found in the filed pleadings and motions and in the common rule and minute books. Neither the trial minutes of the circuit courts nor the judgment rolls of the Supreme Court include summaries of testimony. Testimony is sometimes found in the records of lower court cases appealed to the Supreme Court by writ of error or writ of *certiorari*. In addition, there are small series of testimony taken in circuit court trials in the l82O's, and of depositions taken from out-of-state witnesses.

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. How many defendants did the sheriffs actually find and arrest for appearance in court? How many judgments were actually satisfied? It appears that many of them never were paid, and this fact raises the interesting question of why plaintiffs sued at all, given the high cost of litigation. A lawsuit may have been an opportunity to harass one's enemy as well as the last recourse in trying to collect a debt.

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

The records of the New York Supreme Court are a rich source of information for economic history. The great majority of the court's cases involved debts, and the case documents throw tight on the financial careers of individuals and businesses during the early nineteenth century. Who was suing whom? How often did plaintiffs win their judgment awards? Did litigants usually reside in the same community or in different parts of the state? These questions can be answered by studying the Supreme Court judgment rolls and docket books. Bail documents furnish evidence of personal or commercial associations. When someone was sued for a debt, who were his friends, relatives, or business associates who would undertake to pay judgment levy if he did not do so?

Other research possibilities are numerous. For example, historians of crime should not overlook civil court records, since victims could bring civil actions seeking damages for assault and battery or theft. Title searchers will find numerous land partition and ejectment proceedings. Genealogists will be interested in naturalization papers and affidavits of Revolutionary War service. (However most such documents were filed with the county clerks, not with the clerks of the Supreme Court.) In sum, the records of the several hundred thousand cases filed in the upstate offices of the Supreme Court of Judicature between 1797 and 1847 are an invaluable resource for the history of early New York. In the past, the inaccessibility and complexity of the court's records meant they were seldom used by researchers. The transfer of the Supreme Court records to the State Archives makes them more accessible. The publication of this administrative history and record series inventory makes the records more intelligible. These are significant steps in the continuing effort to preserve and make available New York's archival records.

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

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History of the Supreme Court of Judicature

1691-1847

Supreme Court in the Colonial Period

On May 6, 1691, the New York Assembly passed an act establishing a Supreme Court of Judicature. The bench of the Supreme Court consisted of a chief justice and two (after 1758, three) associate or *puisne* justices who were appointed by the governor. The Supreme Court of Judicature, or Supreme Court, was the colony's highest court of common law, with both original and appellate jurisdiction. The court exercised origiinal jurisdiction over major criminal cases, over civil actions in which the amount deanded was more than twenty pounds, and over all actions concerning title to real property. The Supreme Court did not, however have exclusive jurisdiction over these types of cases; all could also be tried in the county courts.[1] The Supreme Court's appellate jurisdiction emraced all the lower courts. Proceedings were transferred to the Supreme Court by writs of error, *habeas corpus*, and *certiorari*, and by warrant. Apeals from the Supreme Court were allowed in civil cases involving more than 100 pounds (after 1753 the amount was 300 pounds). These appeals were made to the royal governor and his council sitting as a court for the correction of errors and appeals. The court of last resort was the Privy Council, which met in london and reviewed only cases involving a demand for more than 300 pounds sterling (after 1753, 500 pounds).[2]

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

After 1704 the Supreme Court held four terms a year in New York City. A few civil cases of great difficulty and most major criminal cases were tried by the Supreme Court during its regular sittings (terms). Most civil cases were tried in the counties, pursuant to a 1693 act that authorized the justices to hold circuit courts at least once a year in each county for trials of civil and criminal cases.[3] A justice holding a circuit court was also empowered to hold a court of oyer and terminer, a criminal court with jurisdiction over felonies. All judgments in civil cases tried either in the circuit courts or the Supreme Court terms were signed and filed by the clerk of the Supreme Court in New York City.[4] Today, most of the extant records of the colonial Supreme Court of Judicature are in the custody of the New York County Clerk, who is also clerk of the modern State Supreme Court.[5]

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

The 1691 judicature act gave the Supreme Court 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."[6] The New York Supreme Court, therefore, combined the jurisdictions of three English courts. 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" that is, criminal cases. The Court of Kings

The English common law

Bench also tried ordinary civil actions to recover debts and personal property. These actions were, in earlier times, brought exclusively in the Court of Common Pleas. During the sixteenth century the Court of Kings Bench acquired jurisdiction over civil actions through use of a writ ordering the arrest of a defendant on a fictitious criminal charge. The Supreme Court derived its jurisdiction over the quasi-criminal actions of trespass and its various offshoots from this source, (These 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 lower courts of record were removed to the higher court for review. The Supreme Court similarly employed the writ of *certiorari* to review criminal convictions in courts held by justices of the peace.

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

The New York Supreme Court took some of its jurisdiction from the English Court of Common Pleas, which was a court of civil jurisdiction. This jurisdiction included the *real* actions, concerning title to or possession of real property, and the *mixed* actions, bought to recover damages for injury to or dispossession of real property. From the English Court of Exchequer the Supreme Court took its jurisdiction over cases in law or equity involving debts to the crown, which could be either real debts or fictitious grounds for private suits. The colonial Supreme Court only infrequently sat as a Court of Exchequer.[7]

The source of the Supreme Court's authority was disputed. New Yorkers claimed that acts of their Assembly and the common law of England defined the jurisdiction and procedure of the court. The judicature act of 1691 was in fact renewed by the Assembly for a year or two at a time through 1699. Thereafter the royal governors denied that the Assembly had any authority over the jurisdiction and structure of the major courts. Instead, the governor and his council promulgated ordinances, the first dating from 1704, to establish and regulate the Supreme Court. Acts of the Assembly dealt only with local justices of the peace and with procedural matters. The English common law became part of New York's legal system despite the objections of the royal governors. Common-law procedure and forms of documents, modified and simplified to fit local needs, came into general use in New York during the early decades of the eighteenth century. The provincial bench and bar cited English cases as though they were part of New York's law. Tn fact, no colony followed common law procedure more closely. This profoundly influenced New York's courts, and court records, until the middle of the nineteenth century.[8]

Note 1: 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); 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; and 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. A review of New York's colonial courts is found in William Smith, Jr., *The History of the Province of New-York*, ed. Michael Kammen (Cambridge, Mass.: 1972), vol. 1, pp. 259-72. See Appendix C for a discussion of the lower courts during the early nineteenth century.

Note 2: 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.424-38. Julius Goebel and T. Raymond Naughton, *Law Enforcement in Colonial New York: A Study in Criminal Procedure* (New

York: 1944), pp. 238-84.

Note 3: 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 always did, saving jurors, witnesses, and attorneys a long journey.

Note 4: Hamlin and Baker, *Supreme Court of Judicature*, vol. 1. On court procedure see Herbert A. Johnson, "Civil Procedure in John Jay's New York," *American Journal of Legal History*, 11(1967), 69-80, reprinted in Johnson, *Essays*, pp. 159-70. A discussion of the colonial Supreme Court's business in the l69Os 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 Douglas Greenberg, *Crime and Law Enforcement in the Colony of New York, 1691-1776* (Ithaca: 1976).

Note 5: See Bibliography for list of Supreme Court of Judicature records in New York City repositories. Greenberg, *Crime and Law Enforcement*, pp. 236-38, lists locations of superior criminal court records from the colonial period.

Note 6: *The Colonial Laws of New York from the Year 1664 to the Revolution* (Albany: 1894), vol. 1, pp. 226-31. On the jurisdiction of the English common law courts, see John H. Baker, *An Introduction to English Legal History*, 2d ed. (London: 1979); and Theodore F T. Plucknett, *Concise History of the Common Law*, 5th ed. (Boston: 1956).

Note 7: On the Supreme Court's jurisdiction see Hamlin and Baker, *Supreme Court of Judicature*, vol. 1, pp. 67-77; Goebel and Naughton, *Law Enforcement in Colonial New York*, pp. 1-222; and David Graham, *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. On the court's exchequer jurisdiction (the subject of a major political wrangle in the 1730s) see Stanley N. Kat; *Newcastle's New York: Anglo-American Politics, 1732-1753* (Cambridge, Mass.: 1968), pp. 64-68.

Note 8: 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, *The Law Practice of Alexander Hamilton: Documents and Commentary*, vol. 1 (New York: 1964). pp. 8-9.

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Supreme Court under the Constitutions of 1777 and 1821

Article 35 of New York's first Constitution, adapted in 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.

This article continued the colonial system of courts and practice largely unchanged. Under statehood, until the judicial reorganization of 1847, the Supreme Court of Judicature was the State's highest court of law possessing original jurisdiction.

Other articles in the constitution of 1777 and subsequent legislative acts did institute 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." Thus the name of King George III disappeared from the court writs. Article 41 guaranteed right to trial by jury and forbade

Old Capitol, Albany, ca. 1875.
Built in 1806-08, the Capitol was the seat of the Albany terms of the Supreme Cort of Judicature until the court was abolished in 1847. In this later photograph the new Capitol is

seen under construction in the background.

(Photograph from negative no. 8002, Series A0421, Division of Visual Instruction Lanern Slides, State Education Department, New York State Archives.)

the Legislature from establishing any new court that did not "proceed according to the course of the common law," that is, employ juries. Some American revolutionaries believed that juries and the common law helped protect liberty, which explains their prominence in the new constitution. Article 32 set up a Court for the Trial of impeachments and Correction of Errors, composed of the president of the Senate (the lieutenant governor), the senators, the chancellor, and the justices of the Supreme Court. This court reviewed cases brought up by writ of error from the Supreme Court and by appeal from the Court of Chancery. The Court of Errors thus heard appeals that in colonial times had gone to the royal governor and ultimately to the Privy Council. This new court of last resort was also empowered to try government officials who had been impeached by the Assembly.[1]

During the first four decades of statehood, the organization of the Supreme Court remained the same as it had been during the colonial period. The court had five justices, including the chief justice. The justices were appointed by the Council of Appointment, a board consisting of the governor and one senator from each of the four senatorial districts. The Supreme Court justices continued to travel on circuit individually to preside over jury trials in the county seats. As in colonial times, civil cases initiated in the Supreme Court were sent to the circuit courts for trial. Major criminal cases were tried in the courts of oyer and terminer, at which a Supreme Court justice presided. The circuit courts and courts of oyer and terminer were, in effect, the "trial terms" of the Supreme Court. (Almost no trials were now held in the Supreme Court itself.) In addition to presiding over trial courts, the justices sat together in two terms each year The court held its terms in Albany until 1783, when, following the British evacuation, its seat was moved back to New York City. A 1785 law directed that four terms of the court be held, two in New York City and two in Albany. 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 G.)[2]

Oneida County Courthouse and Academy, Utica. Constucted 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.)

The principal business during the court's terms was hearing arguments and ruling on points of law raised during pleading in Supreme Court or during circuit court trial proceedings. The Supreme Court also reviewed numerous cases appealed from the county-level civil and criminal courts by writs of error, and from courts of justices of the peace by writs of *certiorari*. All these cases were entered on the court calendar and were termed "enumerated business" because each case was numbered. "Nonenumerated" business, not placed on the calendar, consisted of motions seeking procedural rulings not involving the merits of a case: for change of venue, for commissions to obtain testimony out of state, and for other special rules. In 1830, new special terms for hearing most nonenumerated motions were authorized to be held monthly at Albany, except in the months when there was a regular term. The special terms removed the bulk of nonenumerated 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*.[3]

The Constitution of 1822 changed the organization of the Supreme Court.

The Constitution of 1822 changed the organization of the Supreme Court. The number of justices was reduced from five to three. The Governor now appointed the justices, with Senate approval. The state was divided into eight judicial circuits, each presided over by an appointive circuit judge. These circuit judges presided over civil trials in the circuit courts and criminal trials in the courts of oyer and terminer. They held the same powers as a Supreme Court justice to hear and rule on nonenumerated motions.[4] After a jury verdict in the circuit court the pleadings and a copy of the trial minutes were returned to a Supreme Court clerk's office, where the final judgment was signed, docketed, and filed.[5]

An 1832 act 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 referred to the Supreme Court in its regular terms. After the separate circuit court system was established and the powers of circuit judges enlarged, the Supreme Court justices were principally occupied with hearing and deciding appeals from circuit judge rulings and reviewing cases brought up from lower courts by writs of *certiorari* or error. However, the Supreme Court justices were still empowered to preside over a circuit court or a court of oyer and terminer if required to do so by the press of business. In addition, as members of the Court of Errors they also heard cases brought to that court from the Supreme Court or the Court of Chancery. Starting in 1805 the routine responsibilities of Supreme Court justices were further reduced by appointment of Supreme Court commissioners in most counties. The commissioners exercised most of the same powers as justices out of court, such as granting orders, signing judgments, and assessing court fees.[6]

[Chapter continued next page.]

Note 1: 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).
Note 2: On the organization of the Supreme Court of Judicature see Laws of 1797, Chaps. 8, 13; Laws of 1801, Chaps. 8, 75; *Revised Laws* (1813), vol. 1, pp. 313-22, 335-41; *Revised Statutes* (1829), Part 111, Chap. 1, Title 3. Other acts on court terms are Laws of 1785, Chap. 61; 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.
Note 3: Laws of 1830, Chap. 185.
Note 4: N.Y. Constitution (1822), Art. 5. The circuit court judges also presided over courts of equity, which were branches of the Court of Chancery. The courts of equity were abolished in 1829 and thereafter the circuit judges served as vice chancellors of the Court of Chancery. (In the first circuit, and starting in 1838, the eighth circuit, there were separate vice chancellors.)
Note 5: Criminal papers (mainly indictments) were filed with the county clerk, who served as clerk of the court of oyer and terminer.
Note 6: Laws of 1832, Chap. 128. A detailed discussion of the jurisdiction of the Supreme Court and the circuit courts is found in Graham, *Organization and Jurisdiction of the Courts*, pp. 156-339. On Supreme Court commissioners see *Revised Statutes* (1829) Part III, Chap. 3, Title 2, Art. 2, Sections 18-30, which derived from Laws of 1805, Chap. 134, and Laws of 1788, Chap. 46.

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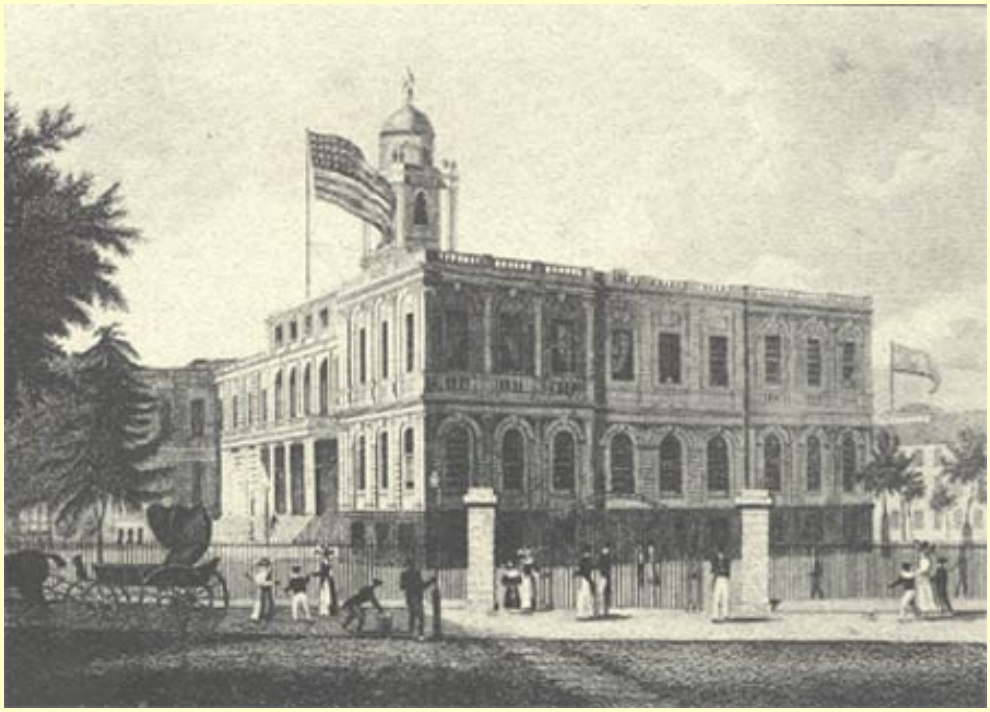
Supreme Court under the Constitutions of 1777 and 1821 [Cont.]

Records of court business were maintained by official clerks, 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, when the city was occupied by British troops). 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. Each of the four clerks had a duplicate seal by which writs issued out of the office were authenticated. Clerks were responsible for filing papers, entering minutes and common rules, collecting court fees, searching records, certifying copies, signing and docketing judgments, and forwarding transcripts of the judgment dockets to the other clerks.[1]

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.)

The Supreme Court clerks were usually prominent attorneys, and several were former or future Supreme Court justices. It is likely that deputy clerks and assistants were responsible for the day-to-day work of entering rules and filing papers. 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.[2]



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.. (Engraving courtesy Manuscripts & Special Collections Unit, New York State Library no. 3896.)

Criticism of court operations was not confined to records 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 system. The first court reforms, occurring in the 1780s, abolished or regulated some of the more complex or antiquated common law actions and outlined the use of writs of *certiorari*, *habeas corpus*, and *mandamus*. Procedures for jury trials were outlined in an act of 1786, and the duties and powers of sheriffs were specified in a law of 1787. The Legislature also attempted to prevent attorneys from delaying suits by dilatory pleadings or from overturning judgments on mere technicalities such as crossouts, additions, or slightly irregular wording in writs and pleadings. The first New York statute of limitations was passed in 1788.[3] That same year an act declared that "none of the statutes of England or Great Britain shall be considered laws of this state."[4] However, for a generation after passage of these acts virtually nothing more was done to codify or reform civil procedure.

Prior to the reforms of 1847-48, there were occasional efforts to reform New York's modified English legal system.

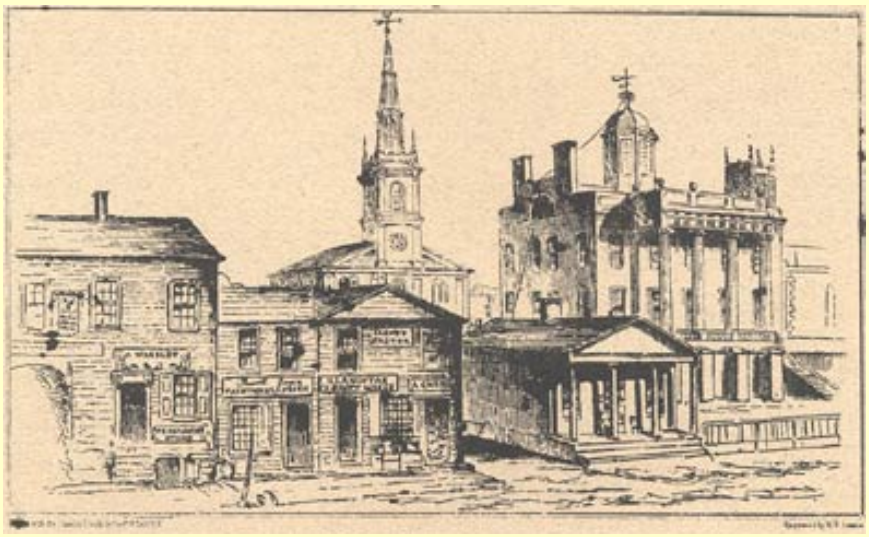
The failure of the 1821 Constitutional Convention to reform the complicated structure of common law practice and pleading prompted Henry D. Sedgwick to publish his critique of the Supreme Court of Judicature. Sedgwick argued that

> 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 court proceedings. He also offered examples of simpler forms that would embody an American, not English, practice.[5] 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

Despite the cumbersome procedure of the Supreme Court, its caseload increased dramatically during the 1820s and 1830s.

of common pleas much less competent than the Supreme Court bench, and because attorneys preferred the higher court costs awarded by the Supreme Court.[6]



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, Forth Etchings, from Sketches made with a Camera Lucida in North America in 1827 and 1828 [London: 1830], plate X, courtesy Manuscripts & Special Collections, New York State Library.)

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 contained many new provisions affecting court procedure, particularly arrest, bail, and pleading. Proceedings through final judgment and execution were described in considerable detail. The *Revised Statutes* outlined the organization and jurisdiction of all the courts. The *Revised Statutes* also regulated the removal of cases to the Supreme Court by writ of *certiorai* prior to judgment, and the review of cases by writ of error after a judgment in a lower court of record. Trials of issues of fact in the circuit courts were carefully outlined.[7]

The Revised Statutes *of 1829 contained many new provisions affecting court procedure.*

The commissioners appointed by the Legislature to revise the statutes recognized the need for further court 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," to simplify and shorten writs and pleadings, and to reduce court costs. Although the Supreme Court published a new edition of its rules in 1830, most of the old common-law procedure, whether traditional or embodied in statute, remained in place.[8]

The Constitution of 1846 reorganized the state's court system. The Supreme Court of Judicature was replaced by a new Supreme Court.

The Constitution of 1846 reorganized the state's court system. The Supreme Court of Judicature was replaced by a new Supreme Court, which completed adjudication of cases pending in the old court. The old Court of Chancery was abolished and its equity jurisdiction transferred to the new Supreme Court, which thus became the state's highest court of original, unlimited jurisdiction in both law and equity. The separate circuit courts and circuit judges were abolished, and elective Supreme Court justices held the circuit courts in each county. The county clerks became clerks of the new Supreme Court, and the Supreme Court of Judicature clerk's offices in New York, Albany, Utica, and Geneva were closed. Appeals from the trial terms of the Supreme Court and from lower civil courts were decided in general terms of the Supreme Court held in each of eight judicial districts. (The general terms were the predecessor of the present-day 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. (In New York City the court of general sessions continued as the major criminal court until 1962.) 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.[9]

A new code of procedure became law in 1848.

Finally, the 1846 constitution 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 adopted, but a new code of procedure became law in 1848. 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.[10]

Note 1: Laws of 1797, Chap. 31; Laws of 1807, Chap. 133; Laws of 1829, Chap. 42; Laws of 1830, Chap. 104. Revised Statutes (1829), Part 1, Chap. 5, Title 1, Section 1; Part III, Chap. 1, Title 3, Sections 13-15.

Note 2: See Appendix E for names of Supreme Court clerks. 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.

Note 3: Laws of 1786 Chap. 5 (abolish wager of law), Chap. 7 (regulate writ of right), Chap. 41 (trials of issues and jurors). Laws of 1787, Chap. 4 (action of dower), Chap. 32 (duties of sheriffs), Chap. 39 (*habeas corpus*), Chaps. 43, 50 (real actions). Laws of 1788, Chap. 2 (*certiorari*). Chap. 5 (action of replevin), Chap. 11 (*mandamus*), Chap. 32 (technical errors such as crossouts, etc.), Chap. 43 (statute of limitations), Chap. 46 (action of account; dilatory pleading). These acts were often little more than reenactments of English statutes.

Note 4: Elizabeth G. Brown, *British Statutes in American Law, 1776-1836* (Ann Arbor: 1964), pp. 69-75, 357-59. Laws of 1788, Chap. 46.

Note 5: Sedgwick, *English Practice*, p. 12.

Note 6: Graham, *Organization and Jurisdiction of the Courts*, pp. 78-79. Anonymous, "Source Notes on Congestion in the Courts, 1825-1841," typescript, 1954, New York State Library.

Note 7: Charles M. Cook, *The American Codification Movement: A Study of Ante-Bellum Legal Reform* (Westport, Conn.: 1981), pp. 131-53. *Revised Statutes* (1829), Part III, Chap. 1, Title 3 (jurisdiction of Supreme Court), Title 4 (circuit courts and courts of oyer and terminer); Chaps. 3-7 (forms of action, arrest, bail, process, pleading, judgments, executions, etc.); Chap. 9 (special writs).

Note 8: *Rules and Orders of the Supreme Court of the State of New-York* (Albany: 1830). *Revised Statutes* (1829), Part III, Chap. 1, Title 3, Section 28.

Note 9: Lincoln, *Constitutional History*, vol 2, pp. 140-164.

Note 10: Cook, *American Codification Movement*, pp. 185-98. Mildred V Coe and Lewis W. Morse, "Chronology of the Development of the David Dudley Field Code," *Cornell Law Quarterly*, 27 (1942), 238-45.

John T. Fitzpatrick, "Procedural Codes of the State of New York," *Law Library Journal*, 17 (1924), 12-21. Alison Reppy, ed., *David Dudley Field: Centenary Essays* (New York: 1949). Arphaxed Loomis, *Historic Sketch of the New York System of Law Refonn in Practice and Pleading* (Little Falls: 1879). Charles M. Hepburn, *The Historical Development of Code Pleading in America and England* (Cincinnati: 1891). See Appendix H for a discussion of the 1848 Code.

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Preservation of Supreme Court of Judicature Records

Most extant records of the Supreme Court of Judicature are not preserved in two repositories: the New York State ARchives and the Archives of the New York County Clerk's Office. The State Archives holds the records of the upstate (Albany, Utica, and Geneva) offices of the court. The New York County Clerk's Archives holds the records that were filed in the Supreme Court of Judicature clerk's office in New York City. These records include most surviving records of the colonial Supreme Court. (The New York Historical Society holds the Supreme Court minute books for 1693 through 1704.) Circuit court minute books and court of oyer and terminer minute books and indictment papers remain in custody of the county clerks.

Prior to 1847, many records of the Supreme Court of Judicature were destroyed. 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, I776.[1] This law must account for the disappearance of the great bulk of the civil and criminal case papers of the colonial Supreme Court. For the most part only the parchment judgment rolls and the minute books survive. After 1800 several court orders and one statute authorized the destruction of specific types of Supreme Court papers. These instructions were not perfectly carried out, and there are many extant Supreme Court records that had once been scheduled to be periodically destroyed.[2]

Court of Appeals Hall, Albany, 1917. 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 1847. The State Hall became the

home of the Court of Appeals in 1916. Records of the pre-l847 superior civil courts (including the Supreme Court) were stored in the basement until 1973. (Photograph torn negative no 3194 Series A0471, untitled series State Education Department. New York State Archives.)

The records of the upstate offices of the Supreme Court of Judicature survived several moves. The 1847 law establishing the Court of Appeals gave the clerk of that court custody of the records of the Albany, Utica, and Geneva offices of the old Supreme Court of Judicature. In 1858 the Legislature appropriated $300 for "arranging the papers of the late Court of Chancery and Supreme Court."[3] The Court of Appeals was first located in the old state capitol and in 1884 moved to the new capitol. The records presumably moved with the court. In 1916 the Court of Appeals moved into the "State Hail" on Eagle Street, and the records of the pre-l847 courts were stored in metal cases in the basement. In 1973 the court ordered that the records be deposited in the library of Queens College of the City University of New York. For ten years they were part of the Queens College Historical Documents Collection. In 1982 the Court of Appeals ordered that the records be transferred to the New York State Archives, where they are now preserved.

Note 1: Laws of 1799, Chap. 5.

Note 2: Laws of 1807, Chap. 133. *Revised Statutes* (1829), Part III, Chap. 1, title 3, Section 17. Court rules authorizing destruction of papers are found in Series 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, and July 1836.

Note 3: Laws of 1847, Chap. 133. Laws of 1858, Chap. 328.

Supreme Court Jurisdiction and Procedure

Attorneys practicing before the Supreme Court in the early nineteenth century relied on the published treatises and practice books of Wyche (1794), Caines (1808), Dunlap (1821-23) Paine and Duer (1830), Graham (1834) and Burrill (1840) as guides through the intricacies of common law and statutory procedure. These works (listed in the Bibliography) describe Supreme Court procedure prior to the abolition of common law pleading in 1848. The following outline of ordinary civil proceedings in the court during the period from 1797 to 1847 relies heavily on them. The discussion is also based on research in statutes, court rules, and reported cases and on a familiarity with the court's records.

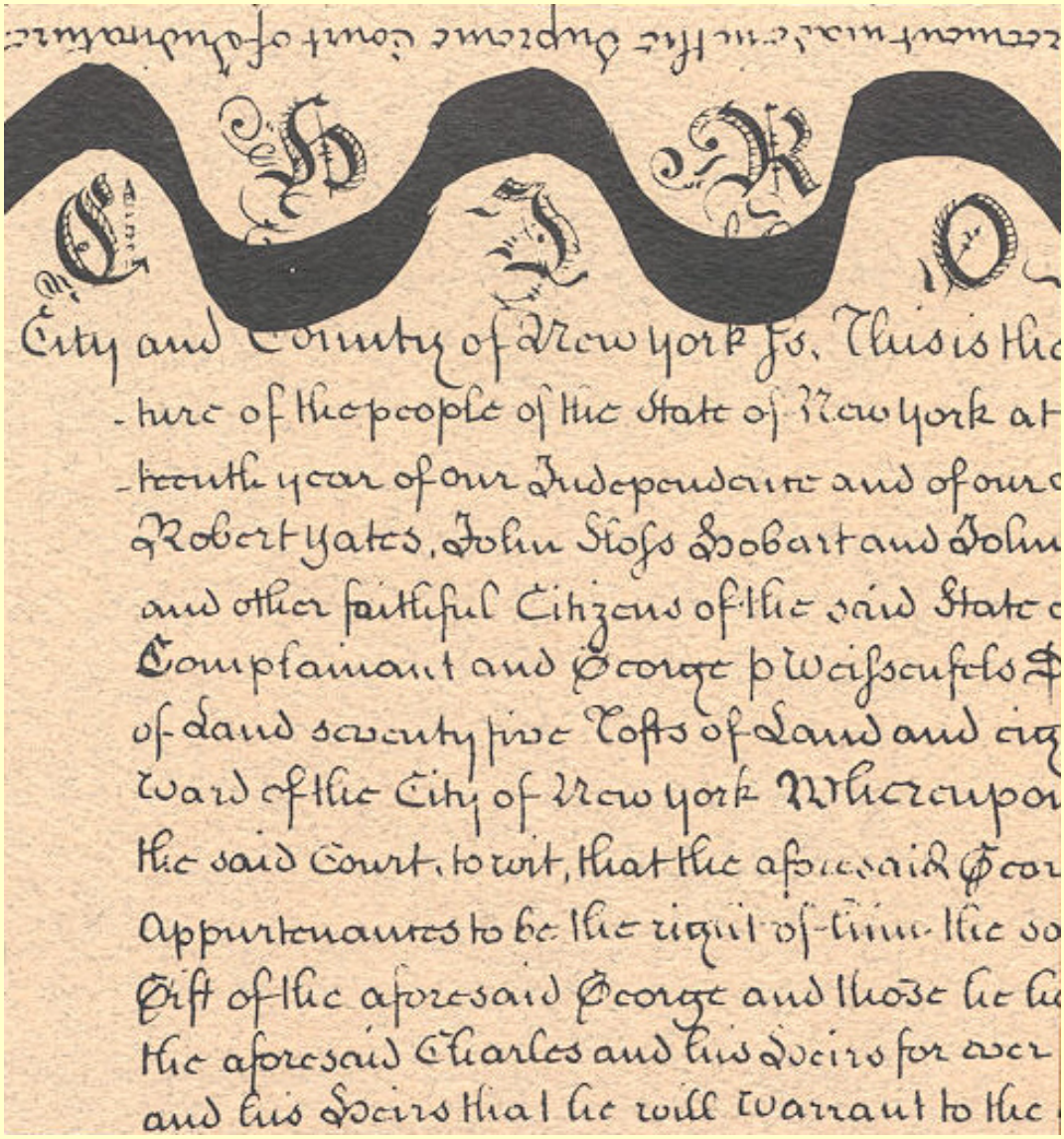
Original Jurisdiction: Forms of Action

Most of the Supreme Court's business arose from its original jurisdiction over the common law actions, which developed in England's royal courts between the twelfth and seventeenth centuries. Some of these actions came to be regulated and modified by New York statute law, but the common law forms of writs and pleadings continued in use, largely unchanged, until 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 injured by an act either committed or omitted by another person. 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. In English common law procedure, each form of action once had its own original writ, a demand to the defendant that he do justice to the plaintiff. Service of the original writ began the case. In both England and New York this original writ was, by the nineteenth century, almost always omitted, and the case began instead with an intermediate (*mesne*) writ ordering the sheriff to arrest the defendant for appearance in court. The writ stated the form of action, and the wording of pleadings by plaintiff and defendant had to fit the chosen form of action.[1]

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 fell into three categories: *real*, *personal*, and *mixed*. Real actions were brought to recover real property. Real actions included right, entry, *novel disseisin*, fine and recovery, dower, and partition. The real actions were the oldest forms of action and because of their complexity were seldom used (except for partition). Mixed actions likewise concerned real property. They were brought to recover money damages and (in certain cases) possession of real property. The mixed actions were waste, nuisance, and ejectment. Only the last was frequently employed. Personal actions were brought to compel payment of a debt, to obtain money damages for nonperformance of a contract, or for injury (tort) to property or to a person. The personal actions employed in early New York law courts were numerous. Thoose concerning contracts or other obligations were account, covenant, debt, and *assumpsit*. Those seeking compensation for torts (civil wrongs) of various kinds were replevin, trover, trespass, and trespass on the case. The forms of action are discussed in detail in Appendix A.[2]


City and County of New York ss. This is the
-ture of the people of the State of New York at
-fourth year of our Independance and of our
Robert Yates, John Sloss Hobart and John
and other faithful Citizens of the said State
Complainant and George p Waisscufels
of land seventy five Lots of Land and eig
ward of the City of New York Whereupo
the said Court, to wit, that the aforesaid Geo
Appurtenances to be the right of-time the so
Gift of the aforesaid George and those he h
the aforesaid Charles and his Heirs for ever
and his Heirs that he will warrant to the

Chirograph, 1793.
Detail. See page 44.

Note 1: On forms of action see note to Appendix A.

Note 2: The classification of the forms of action varies somewhat from author to author. For a useful chart of the forms of action, see Francis X. Carmody, *Carmody-Forkosch New York Practice with Forms*, 8th ed. (New York: 1963), p. 7.

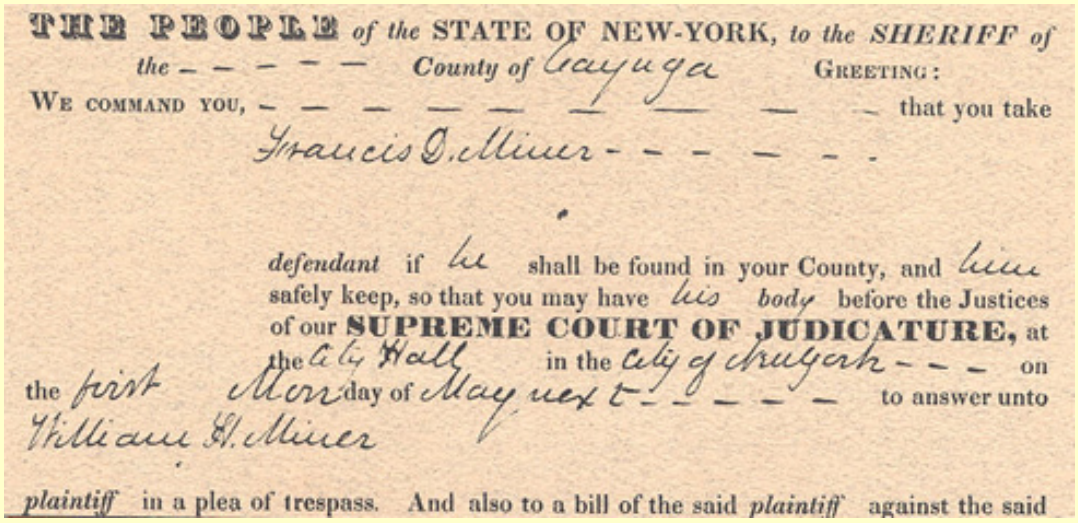
"Duely & Constantly Kept"

Supreme Court Jurisdiction and Procedure [cont.]

Arrest, Appearance, 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. This writ, obtained from the Chancery, directed 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 real actions such as fine and recovery and dower. These real actions were abolished in New York by the *Revised Statutes* of 1829, but the original writ continued to be employed in corporation cases until 1848.

In most cases the first writ issued was the *capias ad respondendum* (abbreviated as *capias*). This was technically a *mesne* or intermediate, not an original, writ. It was therefore issued by the court to which it was to be returned — the Supreme Court — not by the Court of Chancery. The writ was issued in the name of the chief justice and sealed by the court clerk. Attorneys usually purchased printed blank writs from law stationers, filled out the forms, and took them to the court clerk's office for sealing. Until 1815 common law required that all writs be written or printed upon parchment. In that year a statute was passed allowing use of paper and stamping of the seal, instead of affixing a sealed wafer.[1]



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 Auburn – – – on the first Monday of May next – – – – – – to answer unto William H. Miner

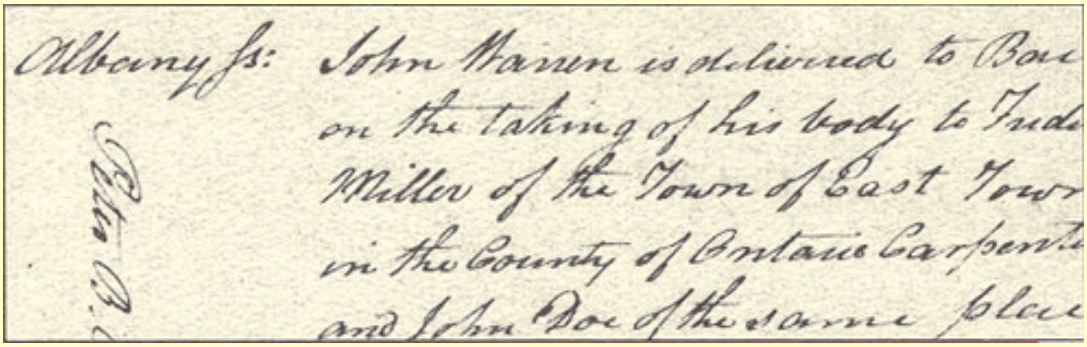
plaintiff in a plea of trespass. And also to a bill of the said *plaintiff* against the said

Writ of *Capias ad Respondendum*, 1840.
Detail. See page 25

The writ of *capias* commanded the sheriff or other officer to arrest the defendant for appearance in court. The arrest might be 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 sheriff was required to return the writ to the Supreme Court clerk's office during the next court term. The returned writ bore a note from the sheriff stating either that the defendant had been taken into custody (*cepi corpus*, meaning "I took the body"), or that the defendant was not found (*non est inventus*, meaning "he was not found"). The laws establishing the four clerks' offices required that writs from sheriffs of particular counties be returned to a designated office. (See map, p. 22.)

Before 1831, most actions and most defendants in civil cases were bailable

Before 1831, most actions and most defendants in civil cases were bailable. Persons exempted by New York statute from arrest and bail were members of the Legislature during its sessions; attorneys, judicial officers, jurors, and witnesses during actual court sessions; voters at elections; corporations (i.e., fictitious persons); females in actions upon contracts; infants and lunatics; and the heirs, executors, administrators, assignees, or trustees of a defendant. Bail was required in most actions arising from contract; in most actions to recover movable property or its value; and, with a judge's order, in actions of trespass on the case and trespass for injuries to persons. After 1831, special bail was required only when the defendant was a nonresident of the state, in a few specific types of contract cases, and in cases involving movable property. Special bail was still available by a judge's order in cases of trespass on the case and trespass for injury to persons.[2]


Albany ss: John Warren is delivered to Bail
on the taking of his body to Jude
Miller of the Town of East Town
in the County of Ontario Carpenter
and John Doe of the same place

Special Bail Piece, 1798. Detail. See page 26.

When the writ of capias was served, the defendant in bailable cases had to give a bail bond (including names of two sureties) to the sheriff or else go to jail. The bail bond was a promise to pay to the sheriff the amount demanded by the plaintiff on the writ, unless the defendant put in special bail within twenty days for satisfaction of the judgment. The putting in of special bail constituted the defendant's "appearance" in court and placed him within its jurisdiction. The defendant's attorney put in special bail in the form of a bail piece. This document was a formal memorandum of the delivery of the defendant to his bail. It was filed with the Supreme Court clerk who had filed the returned writ of *capias*. The common law required two persons to become bail, but one was usually fictitious (i.e., John Doe). The bail was responsible for paying the court award of debt or damages and costs if the action went against the defendant and he failed to satisfy the judgment. The amount of special bail was set at double the debt or damages sought from the defendant; therefore, the bail was required to own real or personal property worth at least the amount of special bail. A common bail piece was filed in all cases where 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.) Instead of finding bail, the defendant endorsed upon the writ a promise to appear. (The common bail piece was not actually prepared until the winning party's attorney included it in the judgment roll.)

Note 1: Laws of 1815, Chap. 38. During the colonial period the "bill of Albany" and "bill of New York" were used in those counties as substitutes for the writ of *capias*. The writ of *latitat* or writ of *alias capias ad respondendum* was employed if the sheriff could not locate the defendant on the initial writ of *capias* or bill of New York or Albany. See Goebel, *Law Practice of Alexander Hamilton*, vol. 1, pp. 64-66; George Caines, *Practical Forms of the Supreme Court* ... (New York: 1808), pp. 10-19; and William Wyche, *Treatise on the Practice of the Supreme Court of Judicature* ... (New York: 1794), pp. 41-46.
Note 2: Laws of 1831, Chap. 300.

"Duely & Constantly Kept"

Supreme Court Jurisdiction and Procedure [cont.]

Pleading

The opposing parties in a civil action stated their respective legal claims and defenses in pleadings. The initial pleading was the plaintiff's declaration (in Latin *narratio*, abbreviated to *narr*.). The plaintiff could file a declaration after the sheriff returned the writ to the court clerk and either before or after the defendant's appearance. If before, the declaration was made provisionally (the technical term was *de bene esse*). If the defendant failed to appear, the plaintiff had to withdraw his declaration de bene esse but could still bring an action against either the sheriff or the persons named in the special bail piece for the debt or damages.

The opposing parties in a civil action stated their respective legal claims and defenses in pleadings.

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 from 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 had to be laid in the county where the cause of action arose; in transitory actions the venue might be laid anywhere in the state. All real actions affecting title to or possession of real property were local and had to be tried in the county where the property was located. Actions of trespass on the case for nuisance, or for slander or libel (except in statewide publications), and certain other personal actions were also local. Generally speaking, however, personal actions, including the common ones of debt, *assumpsit*, and covenant, were transitory and could be tried in any county chosen by the plaintiff. The venue could be changed by court rule on motion of a defendant who argued that a fair and impartial trial was impossible in the county where the venue was laid, or that a local action arose in a county other than that stated by the plaintiffs declaration.

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.

The statement of the cause of action was the recital, in one or more "counts," of the grounds for the plaintiff's demand for money or property to be recovered. The declaration did not describe in detail the circumstances in which a contract was breached or injuries incurred but simply stated the plaintiff's legal right to payment, damages, or restitution of property. Each common law action had a standard form of declaration which the plaintiffs attorney copied verbatim from works such as *Clerk's Assistant* or from English pleading books. Form books in manuscript were also commonly used.[1] The declaration never cited statutes or common law doctrines because these were assumed to be known to 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 became indebted to the plaintiff or inflicted injury to the plaintiff or his property. Finally, the declaration stated the plaintiff's demand for judgment.

The Revised Statutes *of 1829 permitted a plaintiff to initiate an action merely by filing a declaration.*

The *Revised Statutes* of 1829 permitted a plaintiff to initiate an action merely by filing a declaration, bypassing the writ of *capias ad respondendum*. A plaintiff who wished to have the defendant arrested and held to bail could still employ the writ of *capias*. The *Revised Statutes* also abolished the seldom-used original writ as a mode of commencing an action against a real person (though it continued to be used against fictitious persons, i.e., corporations).[2]

After a plaintiff filed the initial plea (the declaration), a common rule entered initiate an action 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. 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.

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.*

The defendant's attorney usually filed a plea either confessing or denying the allegation made in the plaintiffs declaration. A plea of confession was rare because the easier, cheaper means of admitting liability for debt or damages was simply default. The defendant might also give to the plaintiff, either before or after filing and service of the declaration, a *cognovit*, which, although not a plea, "confessed the action" and the amount due to the plaintiff. On the other hand, the defendant could enter a plea denying all or part of the declaration. The defendant's denial took one of two forms either pleading the general issue or special pleading. In either form of 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 plaintiffs 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 special names for them.[3] All of the filed pleadings were enrolled on the record of proceedings sent to circuit court for trial of an issue of fact, and they also appeared In the final judgment record filed in the Supreme Court clerk's office.

A party to an action might choose not to plead to the issue 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 general term of the Supreme Court. 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 in general 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.

A demurrer *was a plea which admitted that the facts alleged in the previous plea were true but denied they were sufficient in law to maintain the action.*

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 was interlocutory, not final, because the amount of debt or damages still had to be determined. If the action were brought upon a written contract for payment of money or delivery of specific articles, the court ordered the Supreme Court clerk or (after 1829) the county clerk where the venue was laid to assess the damages to be awarded to the winning party. The clerk usually calculated the damages readily from the facts stated in the declaration, but he did have the right to take testimony from witnesses, The clerk's report stated the amount to be awarded to the plaintiff in the final judgment. If the exact amount could not be determined at the time of interlocutory judgment, a writ of inquiry was 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 subpoena witnesses to prove the amount of damages. After the jury's inquisition was returned to the Supreme Court for filing, the plaintiffs attorney obtained a rule for final judgment. This was entered in the clerk's common rule book.

When the defendant failed to plead to the declaration, the plaintiff obtained judgment by default.

Note 1: *The Clerk's Assistant. Revised and Greatly Improved, by a Gentleman of the Bar* (Poughkeepsie: 1814). Similar works, all essentially American editions 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.

Note 2: Revised Statutes (1829).

Note 3: On pleading in New York courts see David Graham, Jr., *Treatise on the Practice of the Supreme Court*, 2d ed., pp. 190-261; 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. 114-200; and John Van Ness Yates, *A Collection of Pleading and Practical Precedents* ... (Albany: 1837). A general work on the subject is James Gould, *A Treatise on the Principles of Pleading in Civil Actions*, 2d ed. (New York: 1836).

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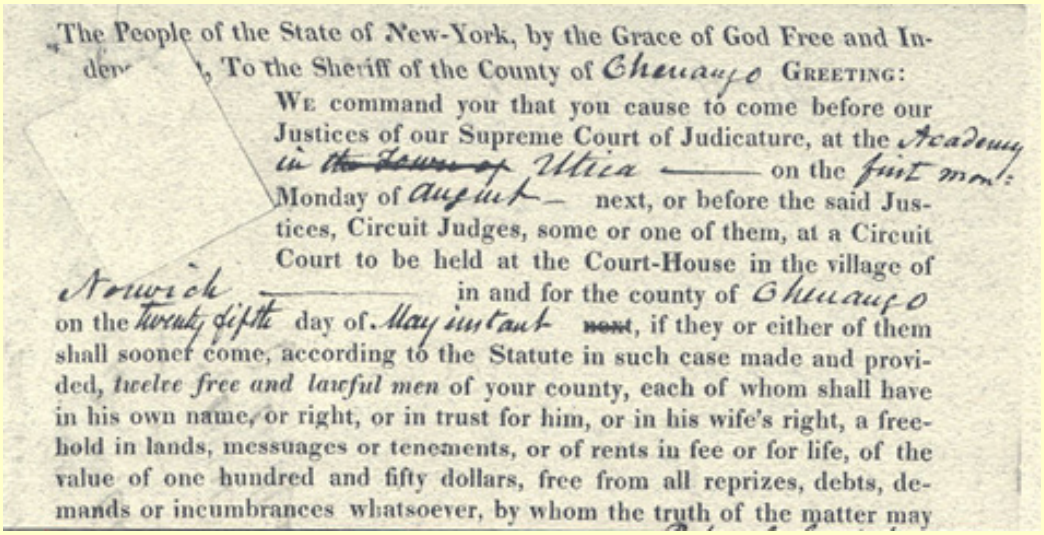
Supreme Court Jurisdiction and Procedure [cont.]

Trial and Verdict

Only in a minority of cases was an issue of fact joined so that a case proceeded to trial. The plaintiff's attorney prepared a *nisi prius* roll for use during the trial. 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*. This writ ordered the sheriff to summon jurors to appear at the next general term of the Supreme Court "unless before" (*nisi prius*) a circuit court should sit in the county. 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 and the *nisi prius* clause. Waiver of jury trial by agreement of the parties was not allowed. (However, a case involving complex financial accounts could be submitted to a referee on motion of one of the parties.) If a case was extremely difficult, trial could be held before the Supreme Court in term. After the turn of the nineteenth century, however, virtually all trials were held in the circuit courts.[1]

Only in a minority of cases was an issue of fact joined so that a case proceeded to trial.



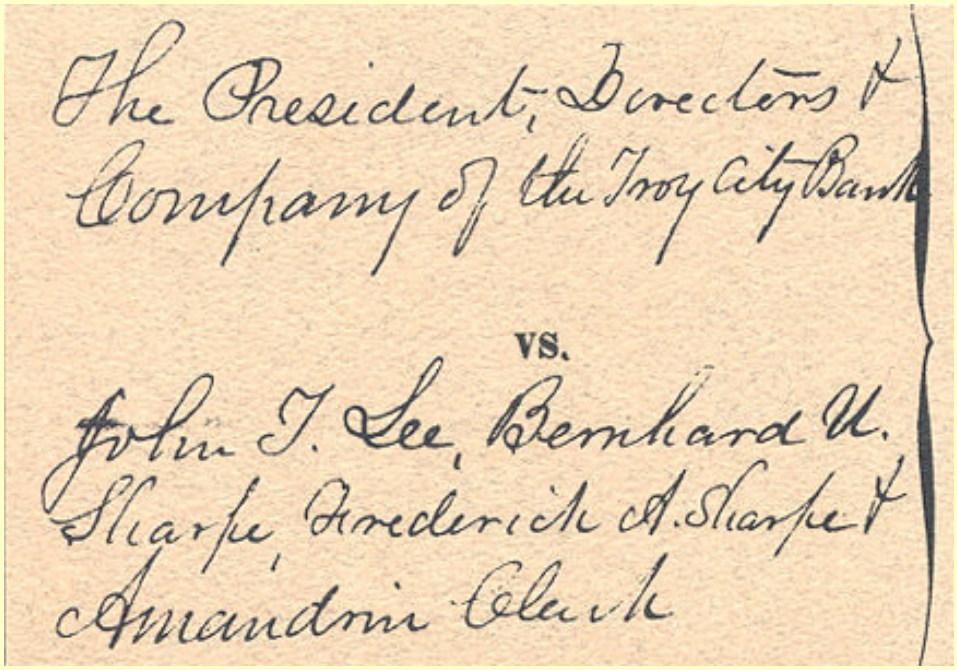
The People of the State of New-York, by the Grace of God Free and Independent, To the Sheriff of the County of Chenango GREETING:
WE command you that you cause to come before our Justices of our Supreme Court of Judicature, at the Academy in the Town of Utica —— on the first mon: Monday of August — next, 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

Writ of *Venire Facias Juratores*, 1829. Detail. See page 29.

The *nisi prius* record or circuit roll was sent to the county clerk, who after 1796 was clerk of the circuit court as well as of the county courts. Upon receipt of a note of issue from the plaintiff's attorney, giving notice of a suit, the clerk made up the trial calendar. After trial and verdict, the circuit court proceedings were summarized in what was called the *postea* (the Latin word for "afterward"), which the winning party's attorney added to the *nisi prius* record. (After 1830 the *postea* was omitted.) Attached to the record was a certified copy of the minutes of the trial, the verdict, and the judgment. The county clerk retained the original trial minutes. The winning party's attorney returned the entire record to the Supreme Court clerk for filing and obtained a rule for final judgment. This will be discussed in the next section.[2]

The county sheriffs summoned jurors for circuit court trials. White male citizens between the ages of twenty-one and fifty-nine years who possessed freehold property worth 60 pounds (after 1801, $ 150) were eligible for jury duty. (In certain northern and western counties, after 1829, those who held contracts for the purchase of real property worth $150 were also eligible to serve.) Certain categories of persons were exempted, including incompetents such as idiots and lunatics; employees of iron, glass, or textile factories; certain canal employees; ministers and priests; and public officials, physicians, and teachers during actual performance of their duties. Either party in a case had the right to challenge jurors individually, on grounds of a prospective juror's legal disqualification or bias toward one of the parties or interest in the action.

The county sheriffs summoned jurors for circuit court trials.


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

Trial Minutes, 1842. Detail. See page 29.

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* ("after the last continuance," referring to the 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). Likewise, at any time after joinder of issue but before final verdict, the plaintiff who believed 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 plaintiffs 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, but was not the same as, 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 difficult point of law. (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 ordered the case to be retried at another circuit court term.

If the case did proceed to trial, the jury might find a special verdict, *in which they decided the facts but left it to the court to determine a difficult point of law.*

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 found for only one or two of several counts in the declaration. If judgment were awarded to the defendant, the award was for court costs only.

[Chapter continued next page.]

Note 1: *Revised Statutes* (1829), Part III, Chap. 7, Title 4, Art. 1, Sections 5-6, 9. In a case involved complex financial accounts, it might be submitted to a referee on motion of either party. See Laws of 1788, Chap. 46, *Revised Laws* (1813), vol. 1, p. 516, *Revised Statutes*, Part III, Chap. 6, Title 6, Art. 4, Sects. 39-53.
Note 2: Laws of 1796, Chap. 10. Up to this time there had been a traveling clerk of the circuit courts and courts of oyer and terminer. On jury procedure 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. Trial calendars were required by a rule of the Supreme Court adopted in 1763. See Hamlin and Baker, *Supreme Court of Judicature*, vol. 2, p. 384.

"Duely & Constantly Kept"

Supreme Court Jurisdiction and Procedure [cont.]

Trial and Verdict [cont.]

Legal issues sometimes arose during circuit court trials. Depending on the circumstances, 1) a party might demur to evidence; 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 general terms. Starting in 1832, the circuit judges themselves were authorized to hear and decide on these matters. Appeals from circuit judges' rulings were taken to the general term of the Supreme Court.[1]

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). The demurrer to evidence was not commonly 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 tendered a bill of exceptions.

The special verdict has been discussed above. The verdict appeared on the *nisi prius* record or circuit roll.

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 special case. 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 turned into a special verdict (see below). Both parties then appeared before the Supreme Court in general term or (after 1832) circuit court 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 in 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, upon which a writ of error could be founded.

Sometimes the parties agreed that the jury should find a general verdict subject to the court's opinion on a special case.

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 of law. A court rule of 1829 required that either the jury find the facts or that the parties agree to them.[4]

A party objecting to irregular proceedings during the trial had recourse to a bill of exceptions or to a motion for a new trial. The bill of exceptions put on the record for review by the Supreme Court all circuit court proceedings and rulings alleged to be grounds for error. A defendant (or in rare cases a plaintiff might except to proceedings in the circuit court, 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. A bill of exceptions could be taken if the judge failed to instruct the jury concerning the credibility of evidence, but not if statements by the judge were deemed to be unfriendly to the losing party. A bill of exceptions could allege that the circuit court admitted improper or rejected proper testimony or evidence; or refused the plaintiff's request for a nonsuit. The party excepting was required to do so in writing at the time of the alleged error, allowing time for the circuit court to make a correction. The party later prepared the formal bill of exceptions, which was certified, signed, and sealed by the presiding judge. The sealed bill of exceptions was filed with the circuit court clerk (i.e., the clerk of the county) and forwarded to the Supreme Court clerk for a second filing. Judgment and execution proceeded as usual while the Supreme Court justices in general term or, after 1832, a circuit judge decided the case. If a writ of error was eventually obtained to prosecute a bill of exceptions in the Court of Errors, execution of the judgment was stayed until the Court of Errors reviewed the case. (Appealing a case by writ of error did not require the tendering of a bill of exceptions if the alleged error appeared on the face of the judgment record itself. The bill of exceptions simply placed additional information on the record, when the error occurred in proceedings off the record.)

A party objecting to irregular proceedings during the trial could file a bill of exceptions or move for a new trial.

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 winning 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 tried before the Supreme Court in general term (after 1832 usually before a circuit judge). A motion on grounds of irregularity was nonenumerated.

Note 1: Laws of 1832, Chap. 28.
Note 2: *Rules and Orders of the Supreme Court* (Albany: 1837), Rules 36, 37.

"Duely & Constantly Kept"

Supreme Court Jurisdiction and Procedure [cont.]

Judgment and Execution

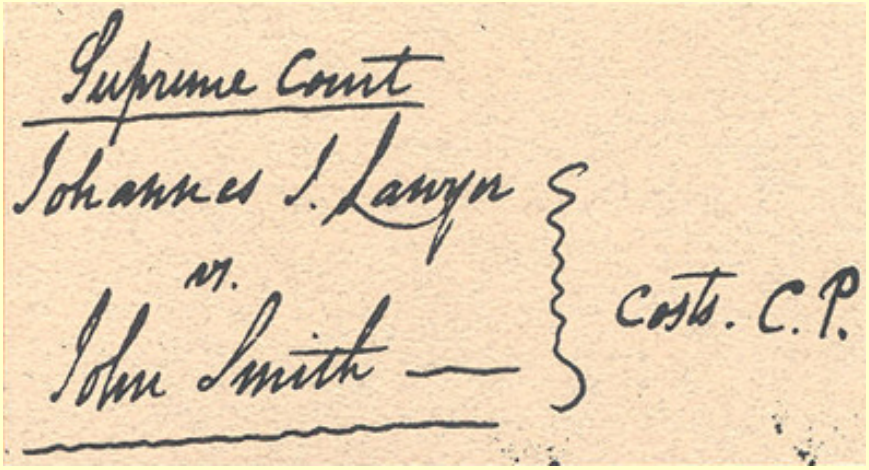
Judgments, whether obtained by jury verdict or otherwise, were normally given after the winning party had the Supreme Court clerk enter a rule for judgment in the common rule book during the current or next court term. The court granted this common rule automatically upon request. judgment given on a special verdict, a special case, or a demurrer to evidence was granted upon motion after the case was argued and decided. the judgment became final four days after entry of the rule, unless the other party moved to set it aside.

Court costs were strictly regulated by statute, and they were high.

Upon final judgment, the winning party's costs (i.e., court and attorney fees) were taxed by a justice or clerk of the Supreme Court, a circuit judge, or a Supreme Court commissioner. (Costs were strictly regulated, and they were high.)

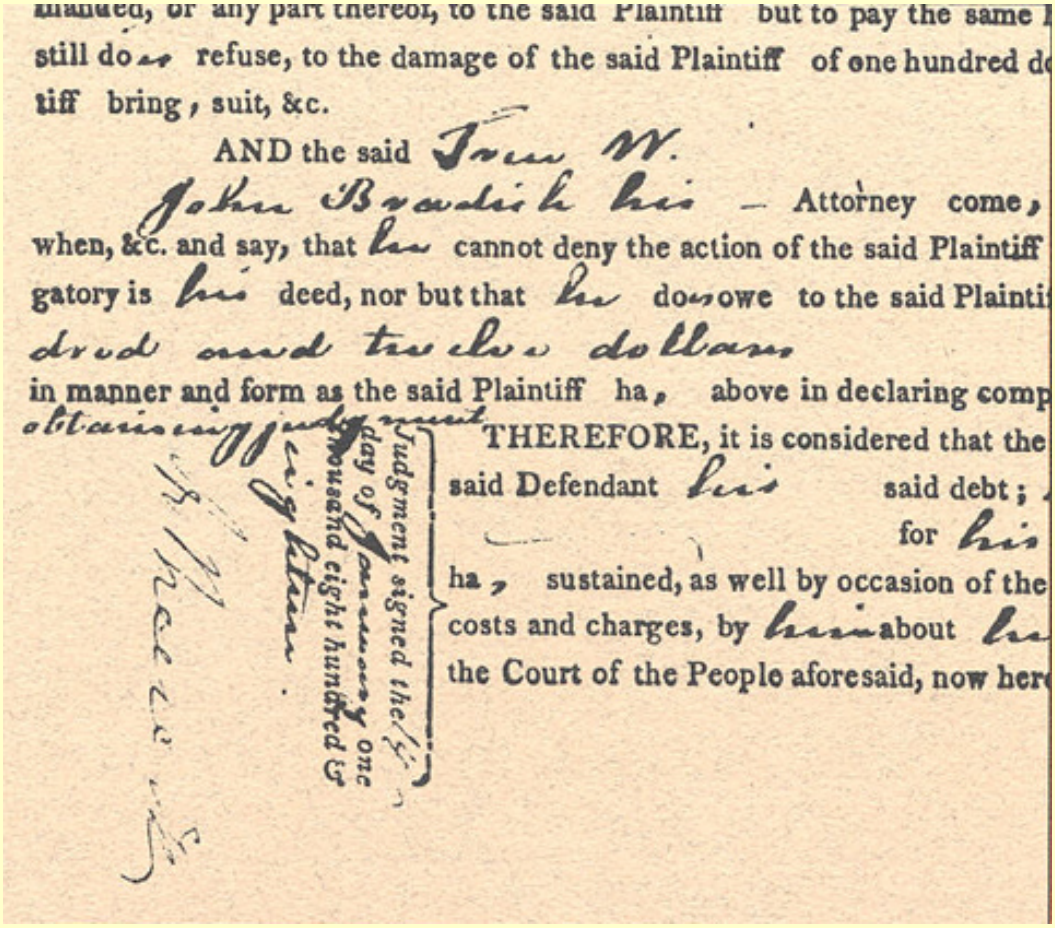
Upon final judgment, the winning party's costs (i.e., court and attorney fees) were taxed by a justice or clerk of the Supreme Court, a circuit judge, or a Supreme Court commissioner. (Costs were strictly regulated by statute, and they were high.) After the costs had been determined, the attorney prepared the judgment roll. This document contained the complete case record of pleadings and proceedings, including the judgment award. The roll was signed and dated in the margin of the last page, usually by a Supreme Court clerk, occasionally by one of the justices, a circuit judge, or a Supreme Court commissioner. After signing, the judgment roll was sent to one of the Supreme Court clerk's offices. The clerk filed the judgment; docketed the judgment in a docket book; and, twice a month, sent a transcript of the docket to each of the other clerks. After 1813, docketing of the judgment created a lien upon the judgment debtor's real property (though any mortgage executed before docketing took precedence). The judgment lien expired after ten years for purchasers of the property; however, it continued in force against the judgment debtor himself or any grantee who did not give valuable consideration (that is, pay more than a nominal sum) for the property encumbered by the lien. If the losing party obtained a review of the case upon a writ of error, the ten-year period did not commence until the Court of Errors had affirmed the lower court judgment.[1]

The judgment roll contained the complete case record of pleadings and proceedings, including the judgment award.


Supreme Court
Johannes I. Lawyn
vs.
John Smith
Costs. C.P.

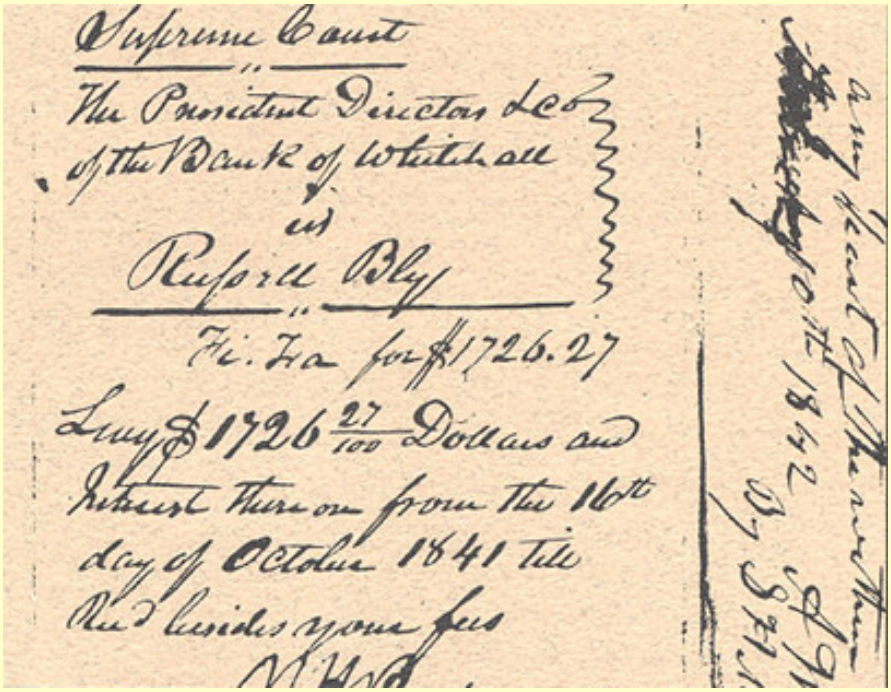
Bill of Costs, 1812. Detail. See page 46

Unless a debtor satisfied the judgment at once, the judgment creditor in a personal action obtained a writ of execution in order to get the debtor to pay the debt, damages, and/or costs awarded by the court. The writ of execution was either a writ of *fieri facias* (*ft. 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 (after 1829, two years) from the date a judgment was docketed. The writ of *fieri facias* commanded the sheriff to make a levy on and 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 the debtor's real property.


manded, or any part thereof, to the said Plaintiff but to pay the same
still do refuse, to the damage of the said Plaintiff of one hundred d
tiff bring, suit, &c.
AND the said John W.
John Bradish his Attorney come,
when, &c. and say, that he cannot deny the action of the said Plaintiff
gatory is his deed, nor but that he doth owe to the said Plainti
dred and twelve dollars
in manner and form as the said Plaintiff ha, above in declaring comp
obtaining judgment
THEREFORE, it is considered that the
said Defendant his said debt;
for his
ha, sustained, as well by occasion of the
costs and charges, by him about he
the Court of the People aforesaid, now her
Judgment signed the 6th day of January one thousand eight hundred &

Judgment Roll, 1818. Detail. See page 31

Before 1830, the first writ of *fi.fa.* 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 issue a writ of *testacum 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. Second and third writs directed to the same sheriff were called *alias* and *pluries fi. fa.* The writ of *capias ad satisfaciendum* 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 An 1809 act exempted from imprisonment judgment debtors owing small sums. Imprisonment of judgment debtors was effectively abolished in 1831, when the Legislature limited the types of cases in which special bail was required.[2]


Supreme Court
The President Directors &c
of the Bank of Wethersfield
vs
Russell Bly
Fi. Fa for $1726.27
Levy $1726 27/100 Dollars and
Interest thereon from the 16th
day of October 1841 Tele
Red besides your fees
M Ward

Writ of *Fieri Facias*, 1842.
Detail. See page 33

If a judgment was satisfied either by voluntary payment or by execution, the judgment creditor filed a satisfaction piece with the court clerk. When the satisfaction was entered in the court docket, the case was closed. If satisfaction was not obtained within the time limit for issuing a writ of execution, the judgment creditor's only recourse was to obtain a writ of *scire facias*. 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.

Note 1: Laws of 1787, Chap. 56; *Revised Laws* (1813), vol. 1, p. 500; *Revised Statutes* (1829), Part III, Chap. 6, Title 4 Art. 1, Sections 3-6. Waters *et al.* v. Stewart, 1 Caines 47 (1804). Judgment dockets were first required to be kept by Laws of 1774, Chap. 15. See Appendix B for a discussion of filing requirements.

Note 2: Stefan A. Riesenfeld, "Collection of Money Judgments in American Law—A Historical Inventory and a Prospectus," *Iowa Law Review*, 42 (1957), 155-81. Peter J. Coleman, *Debtors and Creditors in America: Insolvency, Imprisonment for Debt and Bankruptcy, 1607-1900* (Madison, Wisc.: 1974), pp. 105-29. Before 1813 judgments themselves did not exert a lien upon lands of the judgment debtor; the issuance of the writ of execution created the lien. Laws of 1813, Chap. 50, made civil judgments liens upon real property. See Robert W. Millar, *Civil Procedure of the Trial Courts in Historical Perspective* (New York: 1952), pp. 429-32. Starting

in 1830 a judgment debtor could redeem lands sold on execution within one year after sale. See *Revised Statutes* (1829), Part III, Chap. 6, Title 5, Art. 2.

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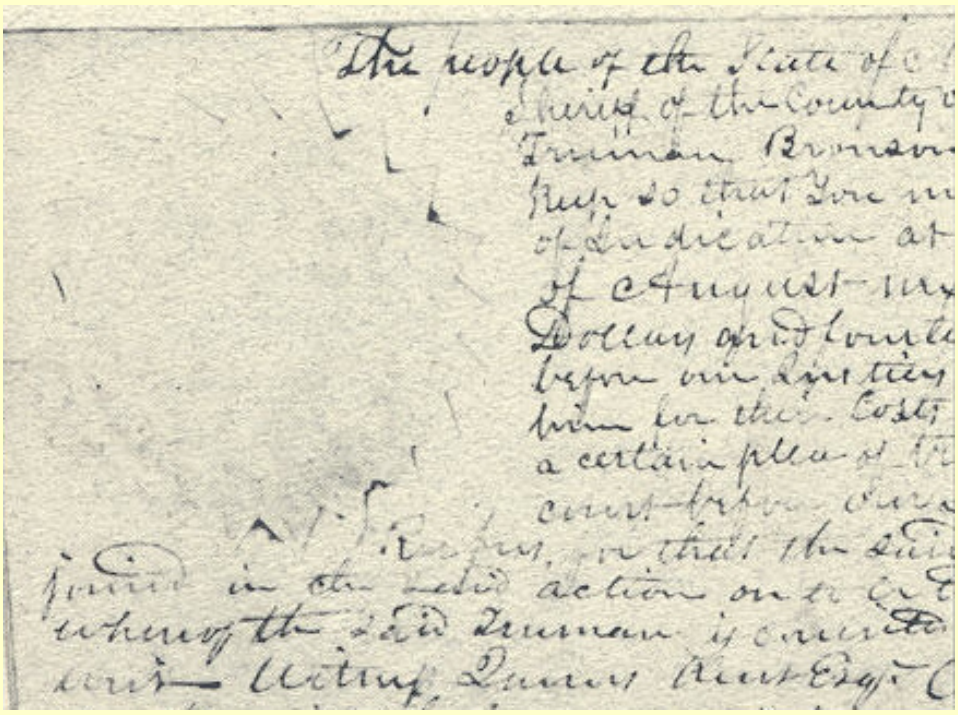
Supreme Court Jurisdiction and Procedure [cont.]

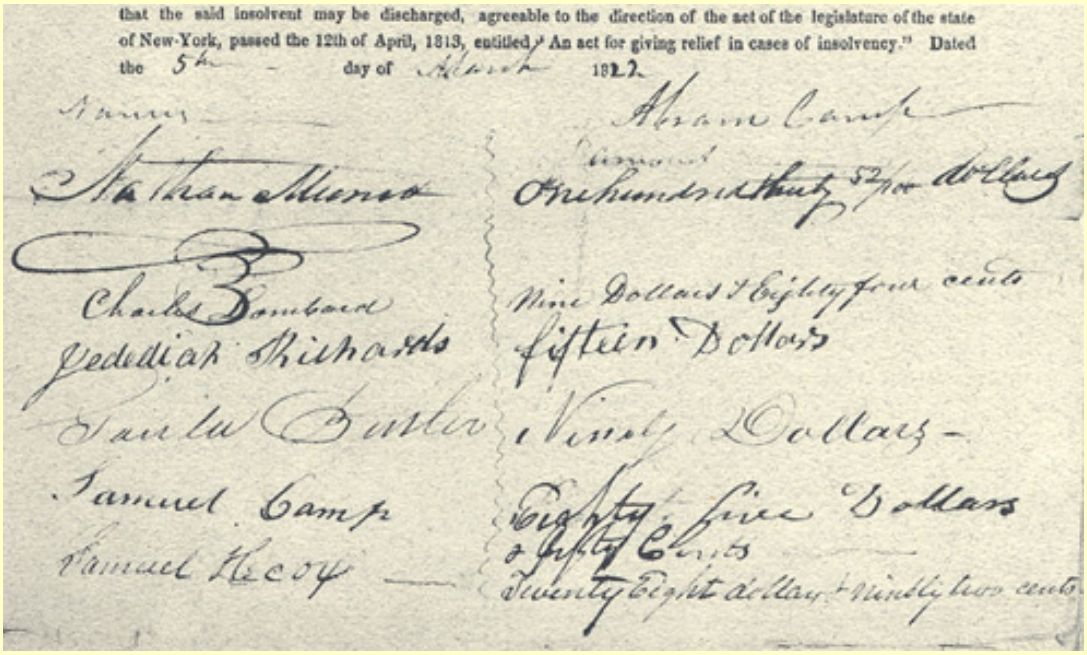
Statutory and Summary Jurisdiction

Common law actions comprised the great majority of the court's cases. However, statute law vested the Supreme Court of Judicature with certain other areas of original jurisdiction. Acts of 1786, 1788, and 1838 authorized the Supreme Court to appoint trustees or assignees for the property of insolvent debtors, including "absconding, concealed, or non-resident debtors," and to discharge the insolvent from his debts after sale of his property.[1] Pursuant to a New York act of 1801, the Supreme Court had the power to record wills and the proofs thereof in cases requiring immediate probate.[2] Acts of 1813, 1816, 1833, and 1834, authorized the court to appoint commissioners to assess and award damages for lands condemned for street openings or widening in New York City and Brooklyn.[3]



Writ of Capias ad Satisfaciendum, 1812. Detail. See page 32

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 and to record the final naturalization orders. Also pursuant to federal law, the court filed affidavits of Revolutionary War service by pension applicants. (Most documents relating to Revolutionary War pensions and naturalizations are found in records of lower civil courts.) [4] Starting in 1815 the Supreme Court of Judicature 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.[5]


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 1812.

Nathan Allen — Abram Camp — One hundred & fifty 52/100 dollars
Charles Lombard — Nine Dollars & Eighty four cents
Jedediah Richards — fifteen Dollars
Daniel Butler — Ninety Dollars
Samuel Camp — Eighty five Dollars & fifty Cents
Samuel Hecox — Twenty Eight dollars & Ninety two cents

Insolvent's Petition, 1812. Detail. See page 41

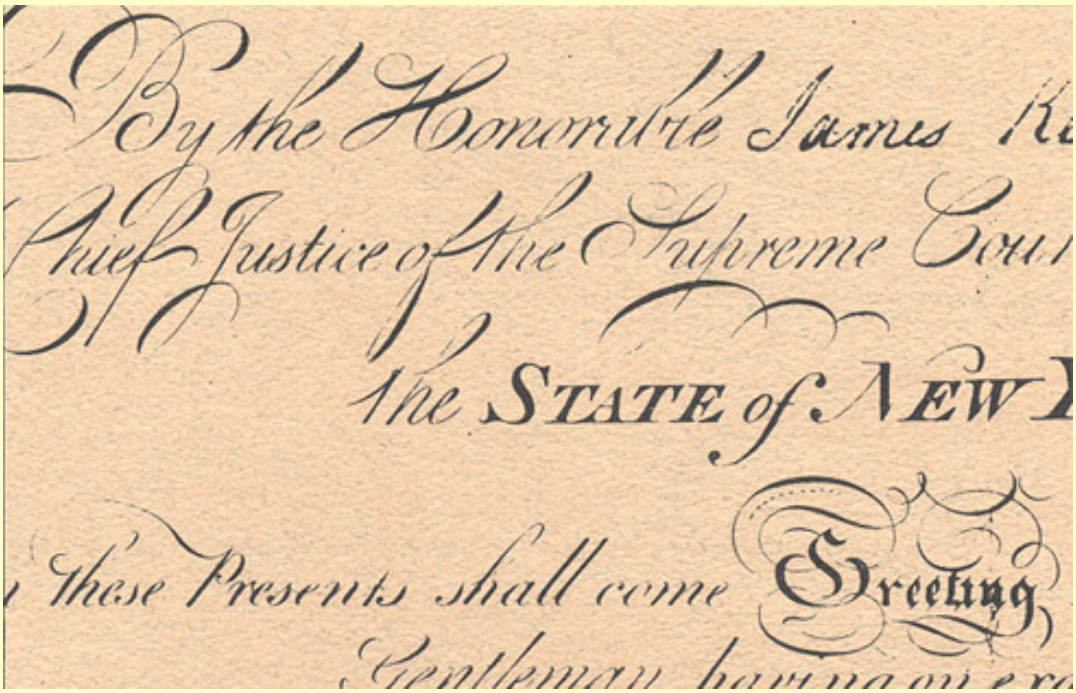
The Supreme Court also possessed original jurisdiction, infrequently exercised, in certain types of cases relating to public officers, corporations, and real property.[6]

The Supreme Court possessed summary jurisdiction to regulate its own proceedings, to admit attorneys to practice, and to proceed against persons in contempt of court.

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. In order to regulate its proceedings, the Supreme Court adopted general rules concerning motions, rules, pleading, demurrers, defaults, contempt, trials, attorneys, notices, costs, and other subjects. These court rules were entered in the minute books and periodically published. The court established by rule the qualifications for admission of attorneys and counselors to practice at the bar, and the clerk entered in the minute books lists of persons admitted to practice.[7] The general and special terms of the Supreme Court of Judicature were established by statute, but after 1801 terms of the circuit courts were set by court rule, not by statute. Finally, the Supreme Court could rule that attachments issue against officers who had failed to obey a writ and who had thereby fallen into contempt. The most common example was a sheriff's failure to return a writ on time. Rules for attachment were numerous, but completed attachments were rare.[8]

The Supreme Court of Judicature did not possess equity jurisdiction, which was vested in the Court of Chancery. Equity jurisdiction embraced a wide variety of proceedings for which there was no action or remedy available in a court of law. Following is a brief review of chancery jurisdiction in New York during the early nineteenth century. The most common types of equity proceedings involved mortgaged property, marital relations, and the property of corporations and classes of persons 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 legal separations, annulments, and divorces; and supervised the management and sale of property by religious corporations. The Court of Chancery had wide powers to safeguard the property of insolvent or mismanaged business corporations. The court also appointed receivers for insolvent banks. Some portions of chancery jurisdiction were carried over from the English court of the same name, while the rest were added by various New York statutes.

Equity jurisdiction was vested in the Court of Chancery.



License to Practice Law, 1808. Detail. See page 48.

Another area of equity jurisdiction was the power to "assist" the Supreme Court and other courts of law in ensuring that justice was done and judgments were enforced. The Court of Chancery could compel the appearance of a witness or production of evidence by a writ of subpoena; grant an injunction ordering a party to refrain from committing wrongs before trial; and issue an order of specific performance to enforce a judgment that had an equitable component. Finally, equity jurisdiction embraced certain types of cases that would normally be brought in a court of law but could be initiated in the Court of Chancery because an equitable procedure or remedy was required. Such cases usually involved fraud, accident, accounting for profits or money received, women's dower rights, or partition of real property.[9]

Note 1: Laws of 1786, Chap. 24; Laws of 1788, Chap. 92; Laws of 1801, Chap. 163; Laws of 1813, chap. 98; *Revised Statutes* (1829), Part II, Chap. 5, Title 1, Art. 3. Coleman, *Debtors and Creditors in America*, pp. lO-29.
Note 2: Laws of 1801, Chap. 9.
Note 3: Laws of 1813, Chap. 86; Laws of 1816, Chaps. 81, 160; Laws of 1833, Chap. 319; 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, Feries, and Other Lands and Franchises in the City of New York* (New York: 1873), pp. 97, 132.
Note 4: 1 Stat. 103 (1790), 414 (1795); 2 Stat. 153 (1802) (naturalization); 3 Stat. 410 (1818) (pensions).
Note 5: 3 Stat. 244 (1815).
Note 6: *See* Graham, *Organization and Jurisdiction of the Courts of Law and Equity*, pp. 198-231. The Supreme Court had jurisdiction over proceedings "in the nature of a *quo warranto*" (This was named for the English writ of *quo warranto*, but it did not employ the writ of that name.) This proceeding was brought by the attorney general, in cases where an individual had illegally usurped a privilege of government office (civil or military) or an office in a corporation created by the state, or a corporation had violated its charter, or persons were acting as a corporation without having received a charter. Other areas of original jurisdiction were annulment by writ of *scire facias* of letters patent or charters of incorporation obtained by mistake or fraud, or violated by the patentee, a proceeding brought by the attorney general; prosecution of sheriffs who were liable for escaped prisoners or who were guilty of official misconduct; proceedings to attach (seize) the property of out-of-state corporations against which an action for debt or damages had been brought; determining conflicting claims to real property that could not be settled by an action of ejectment (this particular proceeding replaced the action of fine and recovery to settle claims to land, abolished in 1829); and finally, awarding custody of children to one of their separated parents on a writ of *habeas corpus*. (Statute law also authorized a similar proceeding to award custody of children detained in a Shaker community to a parent outside the community.)
Note 7: On admission of attorneys and counselors to practice in New York courts see Anton-Hermann Chroust, *The Rise of the Legal Profession in America* (Norman, Okl.: 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 three years. 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.
Note 8: *Revised Statutes* (1829), Part III, Chap. 8, Title 13.
Note 9: See the unpublished administrative history of the Court of Chancery by Alan S. Kowlowitz. The Supreme Court did exercise equity jurisdiction when it sat as a court of exchequer. See Stanley N. Katz, *Newcastle's New York: Anglo-American Politics, 1732-1753* (Cambridge, Mass.: 1968), pp. 64-68. The New York State Archives holds extensive records of the Court of Chancery, spanning the period 1701-1847. A list of record series is available.

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Supreme Court Jurisdiction and Procedure [cont.]

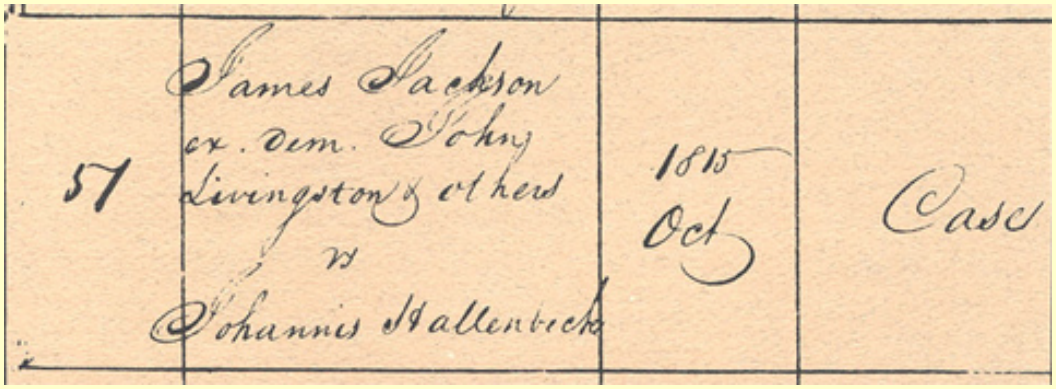
Appellate Jurisdiction

The Supreme Court possessed appellate jurisdiction, which was divided into two general areas. The first, already discussed, was deciding issues of law arising during Supreme Court pleading and circuit court trials. The second area was reviewing cases from the lower civil and criminal courts. Judgments of lower courts of record were brought up to the Supreme Court for review by writ of error The court also decided cases transferred by writ of *certiorari* from lower courts of record prior to final judgment. Before about 1830, the Supreme Court reviewed justice court proceedings by writ of *certiorari*. In addition, the Supreme Court could employ special writs to review the acts and decisions of lower courts, quasi judicial bodies, and public officers.[1]

The Supreme Court had the common-law power to review by writ of error final judgments and determinations of lower courts of record.

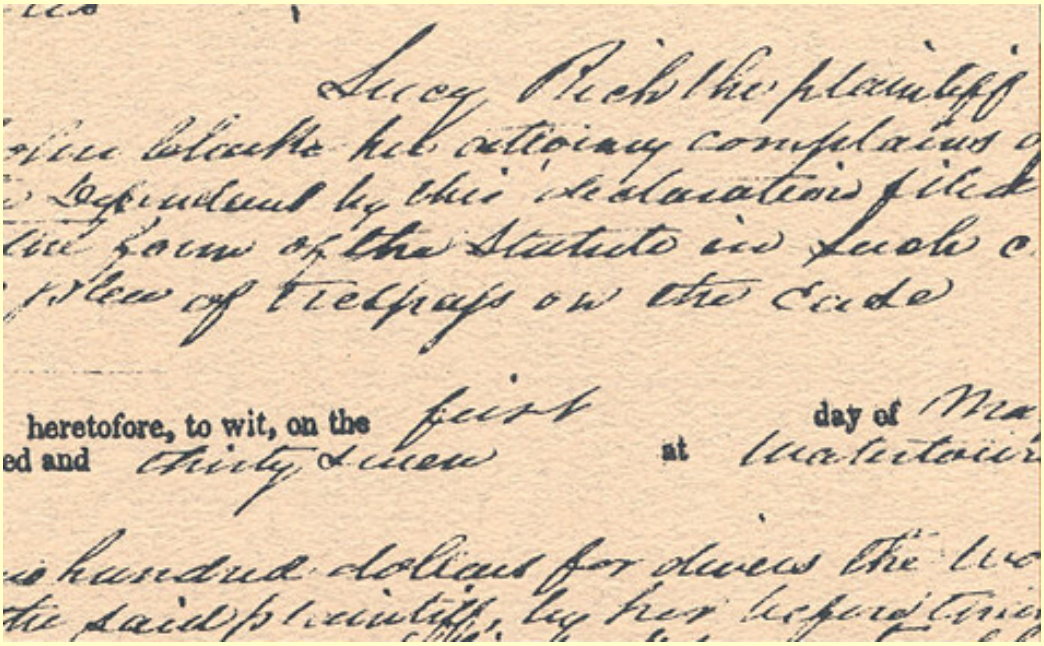
The Supreme Court had the common-law power to review by writ of error final judgments and determinations of lower courts of record (those courts having a seal and a clerk). The return to the writ of error was the record of pleadings and proceedings in the lower court (i.e., the judgment roll) plus any additional information made part of the record by filing a bill of exceptions. In effect, the Supreme Court "tried the record" of the case being appealed.[2] Only the facts proved in court needed to be stated, not the evidence for those facts.

A civil judgment could be removed by writ of error directly to the Supreme Court from a county court of common pleas, from a mayor's or recorder's court, and (by statute) from the Superior Court of New York City, which after 1828 heard all appeals from the city court of common pleas (formerly mayor's court). A writ of error had to be allowed by a Supreme Court justice, clerk, or commissioner. The first ground for the writ was substantial error in law upon the face of the record (including erroneous judgment on demurrer). A second ground for a writ of error was error in law occurring in the trial of an issue of fact. The error was stated on the bill of exceptions, which was signed and seated 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 non-suit, 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 upon the record of 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*) were taken to the circuit court on writ of error. Errors in law in Supreme Court judgments could be taken to the Court of Errors by writ of error, if the writ were allowed by the chancellor, or by a Supreme Court justice, clerk, or commissioner. [3]



Calendar of Enumerated Motions, January Term, 1816. Detail. See page 38

The writ of error was also available in criminal cases. The writ of error in civil cases was a writ that the court (before 1815 the Court of Chancery, after 1815 the Supreme Court), was bound to issue once it was allowed by the appropriate officer.[4] The plaintiff in error was required to obtain sureties for the appeal. However, prior to 1830 a writ of error to review the judgment of a criminal court could not in practice be obtained without the permission of the attorney general. Moreover, errors in proceedings in a criminal trial could be reviewed on a bill of exceptions only with the consent of the prosecuting district attorney. These provisions discouraged criminal appeals. The *Revised Statutes* of 1829 provided that a writ of error in a criminal case could be issued without obtaining permission from the attorney general. However, a Supreme Court justice or circuit judge had to 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 higher court. (In cases where capital punishment was mandated, a writ of error could be obtained only after being allowed by the chancellor or, after 1829, a Supreme Court justice, or a circuit judge, with notice to the attorney general or the prosecuting district attorney.)[5]



Return to Writ of Error, 1812. Detail. See page 40

In civil cases a defendant in error had the right to demand an assignment of errors from the plaintiff in error. This document corresponded to a plaintiff's declaration in that it set forth the grounds for the case in erroL 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 record lacked legally necessary information. The opposing party could 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, and the pleading in error. The attorney filed the error book with the Supreme Court clerk and sent a copy to the defendant in error. Argument of a case in error was an enumerated motion placed on the calendar of the general term of the Supreme Court. After hearing arguments by attorneys for both parties, 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*, ordering the sheriff to summon another jury. (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.)

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.

[Chapter continued next page.]

Note 1: On the history of appellate procedure see Roscoe Pound, *Appellate Procedure in Civil Cases* (Boston: 1941), and Julius Goebel, *History of the Supreme Court of the United States*: Vol. 1, 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.

Note 2: The "record" of a final judgment on which a writ of error could be brought was defined in *Clason vs. Shotwell*, 12 Johns. 31 (1814).

Note 3: Graham, *Treatise on the Organization and Jurisdiction of the Courts of Law and Equity*, pp. 232-89. On writs of error in the nature of *coram nobis*, brought for errors in fact in Supreme Court proceedings, see *Smith vs. Kingsley*, 19 Wendell 620 (1838).

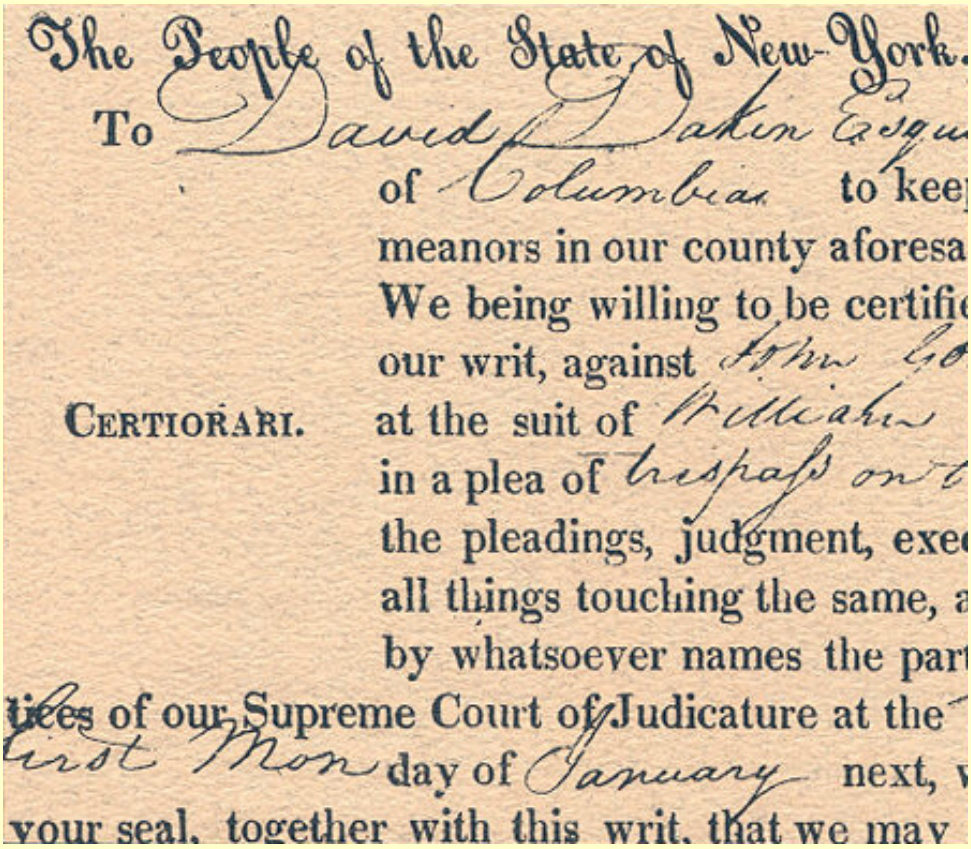
Note 4: Laws of 1801, Chap. 25; *Revised Laws* (1813), vol. 1, p. 143; Laws of 1815, Chap. 38.

Note 5: Oliver L. Barbour, *The Magistrate's Criminal Law* (New York: 1841), pp. 337-49. Laws of 1801, Chap. 25. On the legal availability of the writ of error in criminal cases prior to 1830, see *Lavett v. People*; *Eggleston v. People*, 7 Cowen 339 (1827). The provisions on the writ of error in criminal cases were codified in *Revised Statutes* (1829), Part IV, Chap. 2, Title 6, Art. 2. On bills of exceptions in criminal cases, see Title 5, Sects. 21-25.

Supreme Court Jurisdiction and Procedure [cont.]

Appellate Jurisdiction [cont.]

The Supreme Court also reviewed errors in law in the appellate decisions of lower courts. The courts of common pleas and the mayors' courts of certain upstate cities were authorized in 1824 to review errors in law *or* fact in cases transferred from justices' courts by writ of *certiorari*. The Superior Court of New York City, established in 1828, exercised similar jurisdiction over the court of common pleas, the assistant justices' Courts, and Marine Court, Such a case, originating in a justice's court, might subsequently be appealed on writ of error to the Supreme Court. however that court reviewed only substantial error on the legal merits of the case, 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.[1]



The People of the State of New-York.

To David Parkin Esqu

of Columbia to kee

meanors in our county aforesa

We being willing to be certifi

our writ, against John Go

CERTIORARI. at the suit of Williams

in a plea of trespass on t

the pleadings, judgment, exe

all things touching the same, a

by whatsoever names the part

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*, 1816. Detail. See page 40

The writ of *certiorari* was another means by which the Supreme Court exercised appellate or transfer jurisdiction over lower courts. The writ ordered a court or quasi-judicial tribunal to certify and return to the Supreme Court for review a copy of proceedings in a particular 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 prior to final judgment; or when the judgment or determination to be reviewed occurred in a court not of record not employing juries (for example, courts of justices of the peace), or in an administrative body exercising quasi-judicial functions. Most uses of the writ of *certiorari* were authorized by statute. Acts of the colonial Assembly and state Legislature authorized use of the writ of *certiorari* to remove a certified transcript of civil proceedings in a court of common pleas) prior to final judgment. This in effect transferred the case to the Supreme Court, which then rendered judgment. Legislation curbed the overuse of writs of *certiorari* to transfer minor cases to the Supreme Court. A 1787 law forbade use of the writ of *certiorari* to remove cases from a court of common pleas to the Supreme Court when the amount in controversy was under 100 pounds, later changed to $250 (subsequently $500 in New York City). This limitation did not apply to cases to which New York State or an incorporated city was a party or cases that involved real property, assault and battery, slander, replevin, or false imprisonment. A 1788 law required that a Supreme Court justice approve and sign any writ of *certiorari* (civil or criminal). Statute law also authorized use of writ of *certiorari* to transfer a pending criminal indictment in a court of oyer and terminer or (until 1830) court of general sessions to the Supreme Court, but only with permission of a Supreme Court justice. The case was then to be tried in a circuit court.[2]

The writ of certiorari could be employed only when a writ of error was not available. It was used to remove judgments in justices' civil courts directly to the Supreme Court for review.

The writ of *certiorari* was also used to remove judgments in justices' civil courts directly to the Supreme Court for review (bypassing the courts of common pleas and the mayors' courts). Acts of 1765, 1787, and 1788 governed this use of a writ of *certiorari*. A party seeking review by *certiorari* was required to submit an affidavit stating the grounds for the writ. Based on the affidavit, the Supreme Court justice could allow the writ upon reasonable cause, "either for error therein or some unfair practice of the justice." These *certiorari* cases became very numerous in the early nineteenth century; by 1814 the number was nearly two hundred a year. Many of these cases involved small amounts of money. An 1824 law attempted to stop the flow of appeals of minor civil cases to the Supreme Court. The law directed that justice court civil judgments be reviewed 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. Finally, statute law authorized the Supreme Court to review by writ of *certiorari* criminal convictions in courts of justices of the peace. Once the conviction was affirmed or reversed, the Supreme Court remitted the judgment to the appropriate court of general sessions for execution. There were few, if any, appeals of civil or criminal cases from justices' courts to the Supreme Court by writ of *certiorari* after 1830.[3]

Besides these statutory uses of the writ of *certiorari*, New York common law allowed its use to review a quasi-judicial administrative determination of an executive officer or body, when the determination affected a person's rights or property. The Supreme Court exercised appellate jurisdiction by writ of *certiorari* over 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. A writ of *certiorari* to review was issued at the discretion of the court[4]

"Justice's Court in the Backwoods"
Tompkins Harrison Matteson, oil painting, 1850. Matteson lived and did much of his work in Cayuga and Chenango Counties. Prior to 1830 cases decided by justices of the peace could be appealed directly to the Supreme Court by writ of *certiorari*. (Courtesy New York State Historical Association.)

The writ of *habeas corpus* was employed on rare occasions to direct a sheriff or other law officer to deliver a prisoner for trial and to state the reason for detaining the prisoner The writ was more commonly used to produce an arrested person to testify in another's trial, or to appear in an action to which he was a party in the Supreme Court. The writ was also occasionally employed to transfer a case from the court of common pleas to the Supreme Court.[5]

Writs of prohibition and *mandamus* were sterner remedies by which the Supreme Court could supervise 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 frequent use. The writ was issued to compel a lower court to exercise its functions, or an executive officer of state or local government to perform a legally mandated, nondiscretionary act. The writ was used where no other remedy (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

civil 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 mandamus cases involving county boards of supervisors, county clerks, town supervisors and commissioners of highways, canal commissioners, canal appraisers, and the governor.[6]

License to Practice Law, 1808. Detail. See page 48.

Note 1: On appellate jurisdiction of the lower courts see Graham, *Orgainzation and Jurisdiction of the Courts*, pp. 72-132.

Note 2: Laws of 1787, Chap. 72; Laws of 1801, Chap. 13; *Revised Laws* (1813), vol. 1, pp. 140-42; *Revised Statutes* (1829), Part III, Chap. 7, Title 2. On use of *certiorari* to remove indictments to the Supreme Court from a court of oyer and terminer or court of general sessions, see Laws of 1788, Chap. 2; Laws of 1801, Chap. 13; *Revised Laws* (1813), vol. 1, p. 141; *Revised Statutes* (1829), Part IV, Chap. 2, Title 4, Art. 3. On the situations in which a writ of *certiorari* could be employed to review court proceedings and judgments, see *Harwood vs. French*, 4 Cowen 501 (1825); and *People ex rd. Onderdonk vs. Queens County*, 1 Hill 195 (1841). A judge's signature was required on the writ of *certiorari*, after the party seeking the writ had shown good cause for its issuance. *Munro vs. Baker*, 6 Cowen 396 (1836). On statutory *certiorari* generally see Graham, *Organization and Jurisdiction of the Courts*, pp. 328-39. The writ of *habeas corpus* could serve a similar function of transferring a case to the Supreme Court. However, that writ transferred only custody of the defendant, not the record of proceedings, meaning that the case had to commence anew.

Note 3: On use of *certiorari* to review civil judgments in justice's courts, see Laws of 1765, Chap. 1279; Laws of 1787, Chap. 89; Laws of 1799, Chap. 92; Laws of 1801, Chap. 165; *Revised Laws* (1813), vol. 1, pp. 396-97. Supreme Court review of civil cases from justice's courts was abolished by Laws of 1824, Chap. 238. That act and *Revised Statutes* (1829), Part III, Chap. 2, Title 4, Arts. 10-11 governed review of inferior court judgments by writs of *certiorari* and appeals to the courts of common pleas and mayor's courts. On use of *certiorari* to review convictions in justice's courts see Laws of 1788, Chap. 2; Laws of 1801, Chap. 13; Laws of 1824, Chap. 238; *Revised Statutes*, Part IV, Chap. 2, Title 3, Art. 4.

Note 4: Harold Weintraub, "Mandamus and Certiorari in New York from the Revolution to 1880," *Fordham Law Review*, 32 (1964), 717-48. A leading case on common law *certiorari* was *Lawton vs. Commissioners of Highways of the Town of Cambridge*, 2 Caines 179 (1804).

Note 5: On the writ of *habeas corpus* to produce persons in court, whether legally or illegally detained, see laws of 1801, Chap. 65. On the use of *habeas corpus* and *certiorari* to remove cases to the Supreme Court, see Laws of 1801, Chap. 13. The statutory provisions on *habeas corpus* were consolidated in *Revised Statutes* (1819), Part III, Chap. 9, title 1. See note 2.

Note 6: Weintraub, "Mandamus and Certiorari in New York," pp. 683-717. Laws of 1788, Chap. 11. *Revised Statutes* (1829), Part III, Chap. 9, Title 2, Art. 3. A significant case outlining the narrow scope of the writ of *mandamus* was *Judges of the Oneida Common Pleas v. People ex rel. Savage*, 18 Wendell 79 (1837).

"Duely & Constantly Kept"

Inventory of Record Series

Supreme Court of Judicature
(Albany, Utica, Geneva Offices)
1797-1847

Introduction

The New York State Archives preserves an preserves an estimated three million Supreme Court documents which occupy nearly 1,800 cubic feet of storage space. The records are arranged in 129 series. Each series is an aggregate group of documents created or filed at one of the court's offices. The documents in a particular series have the same form or deal with the same subject or activity or are arranged serially.

The inventory begins with 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, judgment, execution, and satisfaction. Next are series documenting motions and rules; cases appealed 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 series was filed or created, Following the summary list are detailed record series descriptions. In addition to the series title, dates, and quantity, the detailed descriptions contain information about the function, content, arrangement, and indexing (if any) of each record series. Because the same or very similar series usually existed at each of the Supreme Court clerk's offices, most entries begin with a general discussion of the common characteristics of several related series. There follows a description of the distinguishing features of each individual series.

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—both in terms of quantity of records (almost 665 cubic feet) and the completeness of information about cases—are the judgment rolls. The judgment roll always contains a summary of the pleadings and proceedings in the case, including, of course, the trial verdict (if any) and the award of judgment. Copies of certain case documents, such as the declaration, bail piece, pleadings, and satisfaction piece, are included in the judgment roll.

Research access to Supreme Court of Judicature cases may be difficult because most filed papers are arranged chronologically by year and thereunder either alphabetically by name of judgment debtor (usually the defendant) or alphabetically by name of filing attorney. The judgment rolls, for example, are arranged chronologically by year, thereunder alphabetically by first letter of the last name of the losing party, and thereunder chronologically by filing date. The only court-produced indexes to cases are dockets and transcripts of dockets of judgment. The dockets and transcripts were produced periodically (usually after each court term) and listed judgment debtors in alphabetical order. Over the fifty-year period for which the State Archives holds records of the Supreme Court of Judicature, there are nearly two thousand of these alphabetical indexes. The only cumulative index is an index to judgment debtors covering all four court offices for the years 1829 to 1835. See Appendix B Suggestions for Locating Case Papers.

Map of Supreme Court Clerk's Offices.
Inset map indicates the Supreme Court clerk's offices to which sheriffs returned writs of arrest and execution. The New York State Archives holds the writs, pleadings, motions, judgment rolls, and other documents that were filed at Albany, Utica, and Geneva. Documents filed at New York City are now in custody of the New York County Clerk's Office. (*Map of State of New York*. [London: 1831]. Courtesy Manuscripts & Special Collections of New York State Library.)

For most series described in the inventory there are unpublished finding aids, which are usually volume or container lists giving span dates of individual books or boxes of filed documents. Existing court-produced indexes are mentioned in the inventory descriptions found below. The State Archives plans to produce topical and name indexes to selected series, starting with J0031 Writs of Error (Utica) and continuing with other series documenting cases appealed to the Supreme Court from lower courts. As time permits, Archives staff will unfold, clean, and rebox documents. This process will cause the series quantities (in cubic feet) stated in the inventory to increase considerably.

Series Identification Numbers

The State Archives' series identification numbers for the Supreme Court of Judicature records in its custody consist of an alphanumeric code (for example, J0154). The letter "J" denotes records from the judicial branch of government. The final three digits correspond to series numbers assigned by the WPA Historical Records Survey (HRS) during the l93Os. The HRS published an *Inventory, Records Preserved, Court of Appeals* (Albany: ca. 1939). 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 and separated out. They are indicated by sequential digits (starting with "I") occupying the second space of the code. For example, series JlOll 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.

"Duely & Constantly Kept"

Inventory of Record Series [cont.]

List of Record Series

Series No.	Series Title and Dates	Quantity
	Writs of Summons and Arrest (see also Writs of Execution below)	
J0168	Precipes and Original Writs (Albany or Utica), 1815-25	8 c.f.
J1026	Precipes and Original Writs of Summons (Geneva), 1831-42	8 c.f.
J5013	Writs of Dower (Utica), 1824-29	.4 c.f.
J0028	Writs of *Capias ad Respondendum* (Geneva), 1829-47	9.9 c.f.
J0030	Writs of Replevin (Geneva), 1838-47	.8 c.f.
	Special Bail Pieces	
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), 1799-1801 1807-1827	1 item, 2 vols.
J2202	Special Bail Books (Utica), 1807-26	5 vols.
J3202	Special Bail Books (Geneva), 1829-43	1 vol.
	Recognizance Rolls	
J0002	Recognizance Rolls (Albany), 1797-1834	2.6 c.f.
J0003	Recognizance Rolls (Utica), 1807-34	1.3 c.f.
J1003	Recognizance Rolls (Geneva), 1829-47	.4 c.f.
	Committiturs and Orders for Exoneration of Bail	
J0143	Committiturs and Orders for Exoneration of Bail (Albany), 1797-1834	2.2 c.f.
J0144	Committiturs and Orders for Exoneration of Bail (Utica), 1807-37	2.2 c.f.
	Affidavits of Justification of Special Bail	

J1098	Affidavits of Justification of Special Bail (Utica), 1807-1847	.4 c.f.
J3026	Affidavits of Justification of Special Bail (Geneva), 1839-47	.4 c.f.

Declarations and Pleadings (includes some Motion Papers)

J0015	Declarations (Albany), 1838-47	126.0 c.f.
J0009	Declarations (Utica), 1831-42	61.5 c.f.
J0017	Declarations (Geveva), 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.
J1031	Writs of *Scire Facias* (Utica), 1843-45	.2 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

J0027	Writs of Inquiry and Inquisitions (Albany, Utica, Geneva), 1823-1847	12.5 c.f.
J0006	Reports of Referees (Geneva), 1830-47	.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	.4 c.f.

Depositions and Summaries of Testimony

J0170	Writs of Commission (Albany and Utica), 1802-1843	1.3 c.f.
J0014	Writs of Commission (New York), ca. 1802-62	.8 c.f.
J0151	Testimony Taken Conditionally (Utica?), 1833-46	.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

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.

Dockets of Judgments

J0131	Docket of Judgments (New York), 1797-1810	4 vols
J0132	Transcripts of Docket of Judgments (New York), 1809-47	11 vols
J0141	Docket of Judgments (Albany), 1797-1847	28 vols
J1141	Transcripts of Docket of Judgments (Albany), 1808, 1810-11	4 items
J0135	Transcripts of Docket of Judgments (Utica), 1807-47	14 vols
J0138	Transcripts of Docket of Judgments (Geneva), 1829-47	9 vols
J0142	Index to Dockets of Judgments (Albany, Utica, Geneva,New York), 1829-35	3 vols
J6013	Transcripts of Judgments in U.S. District and Circuit Courts (Albany, Utica, Geneva), 1831-36	.2 c.f.
J0222	Transcripts Docket of Judgments in U.S. District and Circuit Courts, 1830-36	1 vol.
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 (Abany), 1797-1847	79.1 c.f.
J0013	Writs of Arrest and Execution (Utica), 1807-47	64.5 c.f.
J0025	Writs of Execution (Geneva), 1797-1847	29.7 c.f.
J4026	Writs of Possession (Geneva), 1840-43	.4 c.f.
J7026	Precepts and Precipes (Geneva), 1829-47	.4 c.f.

Minutes and Registers of Return of Writs

J3130	Minutes of Return of Writs by Sheriffs (Abany), 1797-99	1 vol.
J0153	Registers of Returns of Writs (Albany), 1818-25	2 vols.
J1153	Registers of Returns of Writs of Execution (Albany), 1837-54	4 vols
J0226	Registers of Returns of Writs (by County), 1815-47	6 vols.
J0210	Index to Returns of Writs and Executions (New York), 1814-17, 1826-58	7 vols.

Satisfaction Pieces

J0139	Satisfaction Pieces (Abany), 1832-39	1.4 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

J1165	Common Rule Books (Abany), 1797-49	101 vols.
J2165	Common Rule Books (Utica), 1807-49	90 vols.
J0167	Common Rule Books (Geneva), 1829-47	79 vols.
J1167	Common Rule Books for Returns of Writs of *Capias* (Geneva), 1829-39	10 vols.
J2167	Common Rule Books for Judgments on Default (Geneva), 1837-47	9 vols.

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Inventory of Record Series [cont.]

List of Record Series [cont.]

Series No.	Series Title and Dates	Quantity
	General and Special Term Minute Books	
J0130	General and Special Term Minute Books (Albany), 1797-1847	29 vols.
J1130	Rough Minute Books (Albany), 1797-1807	2 vols.
J0079	Minute Books for the Trial of Issues (Albany), 1798-1800	3 vols.
J2130	Index (Partial) to Minute Books (Albany), 1797-1847	1 vol.
J0128	General Term Minute Books (Utica), 1820-46	13 vols.
J0129	Special Term Minute Books (Geneva), 1841-46	2 vols.
	Calendars of Enumerated Motions	
J0241	Calendars of Enumerated Motions (Albany), 1806-47	68 vols.
J1241	Calendars of Enumerated Motions (Utica), 1820-47	28 vols.
J2241	Calendars of Enumerated Motions (Geneva), 1841-47	6 vols.
	Motion Papers (see also Declarations and Pleadings above)	
J7011	Briefs, Draft Rules, and Motions (Albany), 1812-27 1807-1827	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	.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	.4 c.f.
J8026	Orders of Circuit Judges on Motions for New Trials (Geneva), 1833-47	.4 c.f.
J6026	Orders for Commissions (Geneva), 1829-47	.4 c.f.
J5026	Orders for Appointment of Guardian or Next Friend (Geneva), 1829-47	.4 c.f.
J0005	Stipulations (Geneva), 1844	8 items
	Writs for Transfer or Review of Cases from Lower Courts	

J0147	Writs of *Certiorari* ca. 1796-1847	45.6 c.f.
J0029	Writs of *Habeas Corpus* (Utica), 1807-29	1.3 c.f.
J0031	Writs of Error (Utica), 1807-47	14.6 c.f.
J0021	Bills of Exceptions ca. 1805-47	.9 c.f.
J8011	Assignments of Errors (Albany), 1837-39, 1844-47	.2 c.f.
J2026	Assignments of Errors (Gevena), 1829-24	.4 c.f.
J4013	Writs of *Mandamus*, 1822, 1825-44	.4 c.f.
J1025	Writs of *Certiorari*, Error, *Habeas Corpus*, and *Mandamus* (Albany, Utica), 1800-47	9.9 c.f.
J8013	Writs of Attachment (Utica), 1825-43	.4 c.f.

Insolvency Papers

J0154	Insolvency Papers (Albany), 1795-1842	40.0 c.f.
J0156	Insolvency Papers (Utica), 1806-47	5.6 c.f.
J2000	Insolvency Papers (New York), 1784-1828	8.6 c.f.

Partition Papers

J0019	Reports of Commissioners to Partition Lands (Albany), 1802-19, 1824, 1829	1.7 c.f.
J9913	Reports of Commissioners to Partition Lands (Utica), 1825-30	.4 c.f.

Naturalization Papers

J5011	Naturalization Papers (Albany), 1799-1812	.2 c.f.
J9013	Naturalization Papers (Utica), 1822, 1838-39	.2 c.f.

Other Records

J4011	Lists of Freeholders Qualified to Serve as Jurors (Albany), 1798-1821	1.3 c.f.
J2011	Criminal Case Documents (Albany), 1797-1808	.4 c.f.
J1011	Fines and Chirographs (Albany), ca. 1793-1829	1.0 c.f.
J6011	Affidavits of War Service and Property by Revolutionary War Veterans (Albany), 1820	.4 c.f.
J0152	Bonds of Plaintiffs and Appellants (Albany), 1808-48	1.7 c.f.
J1041	Petitions and Affidavits for Proof of Wills (Albany), ca. 1801-1828	.2 c.f.
J0041	Record of Wills Proved at Albany, 1799-1829	1 vol.
J0020	Record of Wills Proved at Utica, 1818-1829	1 vol.
J1020	Wills and Petitions for Probate (Utica), 1820-29	.4 cu.ft.
J1014	Reports of Commissioners Appointed at Appraise Lands Taken for Street Openings in New York and Brooklyn (New York), 1817, 1830, 1837, 1845	.4 c.f.
J0012	Miscellaneous Filed Documents (Geneva), 1829-1844	.8 c.f.
J9813	Miscellaneous Unfiled Documents (Geneva), ca. 1839-1844	.2 c.f.
J1000	Estrayed Documents to be Refiled, ca. 1797-1847	appx. 11.5 c.f.

Clerk's Financial Records

J0007	Clerk's Registers of Cases in Supreme Court of Judicature and Courts of Common Pleas, 1797-1836	4 vols.
J1244	Ledgers of Accounts with Attorneys (Albany, Utica, Geneva), ca. 1813-17, 1842-1844	2 vols.
J0214	Indexes and Abstracts of Attorneys' Accounts (Albany), 1839-47	5 vols.
J0230	Cash Book for Clerk's Fees (Albany), 1846-47	1 vol.
J0244	Day Book for Clerk's Fees (Geneva), 1839-47	1 vol.
J7013	County Treasurer's Receipts for Fees, 1841-44	.2 c.f.
J1152	Bills of Costs (Albany), 1801-12	.2 c.f.

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

J0044	Oaths of Office of Attorneys, Solicitors, and Counselors, 1796-1847	.5 c.f.
J9011	Lists of Supreme Court Commissioners (Albany), 1788-1800	2 items
J1150	Registers of Agents (Albany), 1799-1813	4 vols.
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

J0104	Certificates of Clerkships (Albany), 1803-10, 1813-47	8.6 c.f.
J1104	Certificates of Clerkships (Utica), 1807-36	1.3 c.f.
J2104	Certificates of Clerkships (Geneva), 1838-44	1.3 c.f.

Documents Received from New York State Library

A0178	Books of Entries of Writs Sealed, 1757-62	1 vol.
B0138	Precepts for Circuit Courts and Courts of Oyer and Terminer, Queens County, 1788-94	9 items
A0262	Miscellaneous Writs and Bail Pieces, 1763, 1785-1824	.5 c.f.

"Duely & Constantly Kept"

Inventory of Record Series [cont.]

Description of Record Series

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

Writs of arrest (*capias ad respondendum* or *capias*) were the usual means of commencing an action, by bringing a defendant into the jurisdiction of the Supreme Court. For a discussion of these writs, see J0028 Writs of *Capias* (Geneva) below. 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 described on p. 33 ff.

Original writs were employed to initiate certain actions involving title to real property or in actions where the defendant was a corporation (i.e. a fictitious person which could not be physically arrested on 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, replevin, dower, etc., the original writ 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. Use of the writ of attachment (except for contempt of court) was abolished in 1817.

J0168 Precipes and Original Writs (Albany or Utica), 1815-25. .8 cu. ft.

Original writs 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 dorso 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 (plaintiffs 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 following banks are represented: Manhattan Company, City Bank of New York, Ontario Bank, Bank of Chenango, and the Mechanics' Bank in the City of New York. 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. .8 cu. ft.

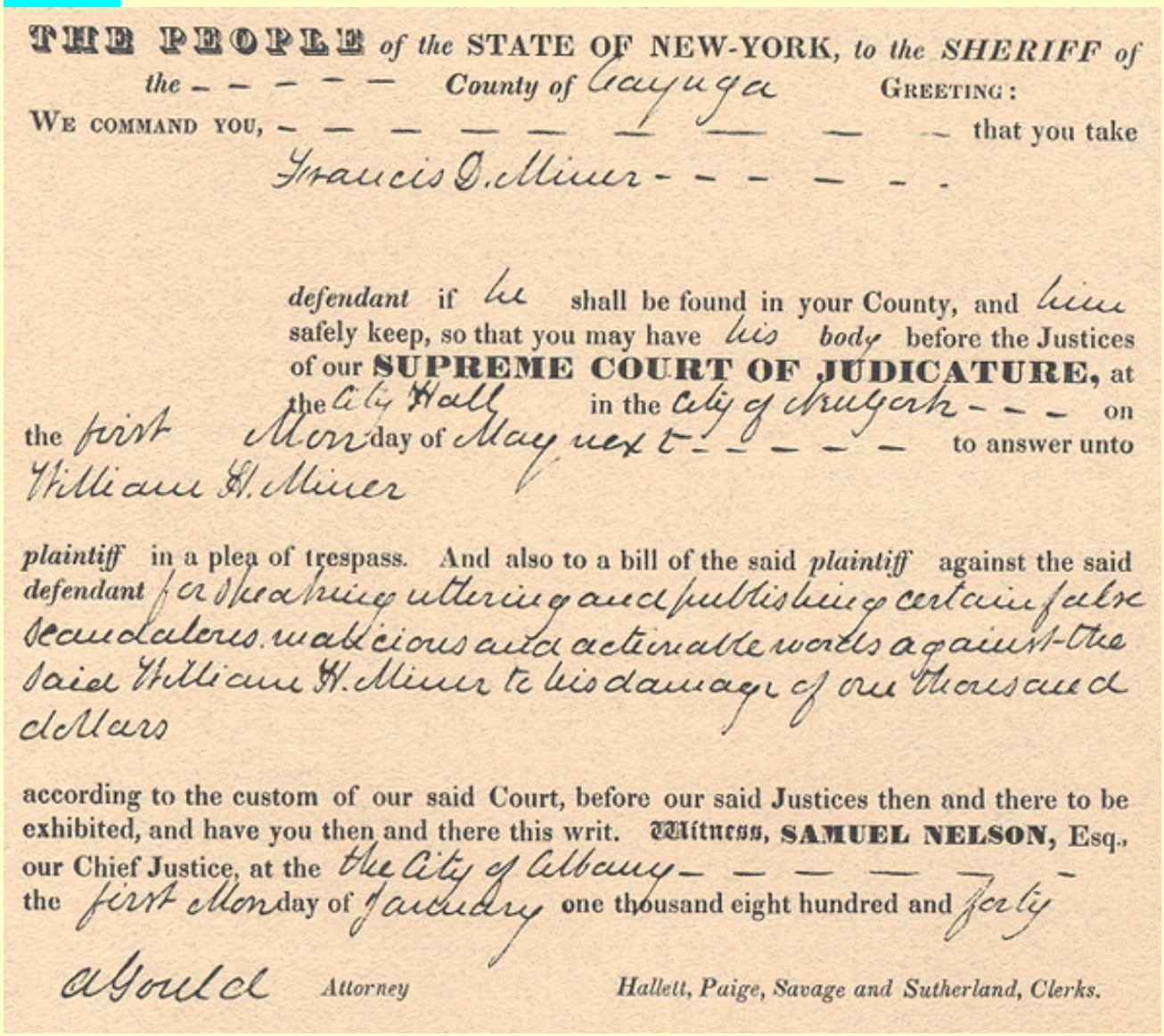
This series consists of original writs ordering a sheriff to summon a defendant to appear in court. The plaintiff's demand is stated and the sheriff's certificate of service appears on the dorso. Also found are precipes for the writs of summons. Many of the actions involve promissory notes given by banking 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.

J5013 Writs of Dower (Utica), 1824-29. .4 cu. ft.

A writ of dower ordered a sheriff to command the tenant of real estate to render unto the widow of its previous owner the dower right due to her (the income from one third of her husband's property) and to summon the tenant to appear before the court if he refuse to do so. On the dorso of the writ is the sheriffs certificate of service upon the tenant and of proclamation of the summons at the door of the church nearest to the disputed property. The names of the two summoners are stated. The writ is usually a writ of dower *unde nil habet*, "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 seldom-used writ of right of dower commanded a tenant to deliver the remainder of the dower, part having been delivered. Besides these writs, this series includes one example each of a writ of *grand cape* ordering a sheriff to seize the dower share that the tenant has refused to yield up; and of 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), 1829-1847. 9.9 cu. ft.

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 declaration. The writ states the name of the defendant; the court term when he was required to appear; the name of the plaintiff; the form of action (in non-bailable cases this was a fictitious trespass); and the names of the justice, clerk, and plaintiff's attorney. The writ does not contain a statement



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 Rutgers - - - 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 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

Gould Attorney

Hallett, Paige, Savage and Sutherland, Clerks.

Writ of *Capias ad Respondendum*, 1840. This writ orders the Cayuga County sheriff to arrest the defendant, Francis D. Miner, for appearances 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.)

of the plaintiff's clam. On the dorso of the writ is the sheriff's certificate of service (*cepi corpus*, "I seized the body") or nonservice (*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* or *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 J0226 Registers of Returns of Writs (by County). See also J1167 Common Rule Books for Returns of Writs of *Capias* (Geneva).

J0030 Writs of Replevin (Geneva), 1838-47. .8 cu. ft.

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 plaintiffs 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 dorso.

Accompanying the writ and affidavit is the bond of the plaintiff and two sureties made out to the sheriff, promising to pay the judgment if it be 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 but are unarranged beyond that. There is no index.

"Duely & Constantly Kept"

Inventory of Record Series [cont.]

Description of Record Series [cont.]

Special Bail Pieces

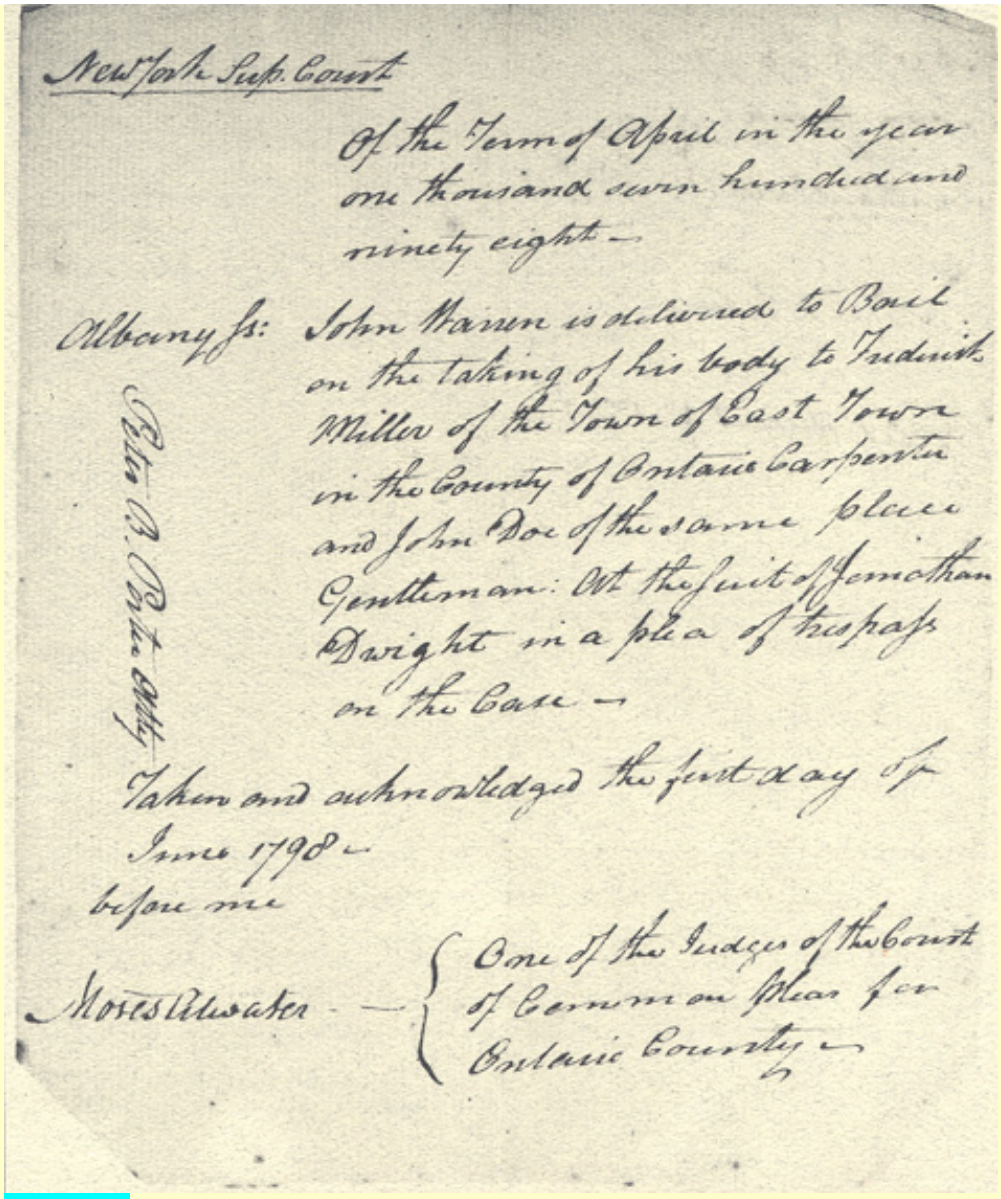
Before 1831 most defendants in civil actions in which an exact amount of debt or damages was demanded were required to obtain special bail, or sureties for satisfaction of a judgment. The special bail piece is a memorandum filed with the court stating that the defendant has been delivered to special 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 type of common-law action. The bail piece is signed by the bail and acknowledged before a judge or other court officer The amount of the special bail bond is not stated. A few bail pieces have exceptions by the plaintiff objecting to the bail. Before the l83Os, 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.

J0096 Special Bail Pieces (Albany), 1797-1847. 16.3 cu. ft.

The Albany bail pieces have several different 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 cu. ft.

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 1828 are docketed in J2202 Special Bail Books (Utica). See also J1098 Affidavits of Justification of Special Bail (Utica).



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 Judah 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 —

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, "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.)

J0099 Special Bail Pieces (Geneva), 1829-47. 2.6 cu. ft.

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).

"Duely & Constantly Kept"

Inventory of Record Series [cont.]

Description of Record Series [cont.]

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. Usually one of the bail is a fictitious person, i.e., "John Doe" or "Richard Roe." 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. 2 vols., 1 item

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), 1807-26. 5 vols.

These volumes serve as indexes to J0098 Special Bail Pieces (Utica). The volume for 1827-32 (letters A-L) is missing.

J3202 Special Bail Book (Geneva), 1829-43. 1 vol.

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

Recognizance Rolls

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 plaintiffs 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.

J0002 Recognizance Rolls (Albany), 1797-1834. 2.6 cu ft.

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

J0002 Recognizance Rolls (Utica), 1807-34. 1.3 cu. ft.

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. .4 cu. ft.

The Geneva recognizance rolls are unarranged.

Committituras 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 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. Laws governing surrender of defendant and exoneration of bail were Laws of 1787, Chap. 26, and *Revised Statutes* of 1829, Part III, Chap. 6, Title 6, Art 3, Sections 21-30.

J0143 Committituras and Orders for Exoneration of Bail (Albany), 1797-1829. 2.2 cu ft.

J0144 Committituras and Orders for Exoneration of Bail (Utica), 1807-1837. 2.2 cu ft.

Affidavits of Justification of Special Bail

Affidavits of special bail state that the special bail is 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 by the bail and acknowledged before a judge of other court officer.

J1098 Affidavits of Justification of Special Bail (Utica), 1807-47. .4 cu ft.

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. .4 cu. ft.

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 substanticase oneon the merits," that is, in law. The affidavits are procedural documents not governed by court rule or statute. This series is unarranged and unindexed. See also J0099 Special Bail Pieces (Geneva).

"Duely & Constantly Kept"

Inventory of Record Series [cont.]

Description of Record Series [cont.]

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 by a writ of *capias ad respondendum*. (After 1829 the writ of *capias* was optional in most types of actions.) 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 plaintiffs 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). 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 might contain several separate *counts*, each stating the plaintiff's title to the thing demanded, whether it be performance of a contract, recovery of real or personal property, or compensation 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 is 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 dorso 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. (After 1837 the notice was required only in cases commenced by service of the declaration.) The sheriffs affidavit of service or nonservice 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 on p. 39 ff.) 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 plaintiffs 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. 29 ff.)

The various series of declarations also contain many cognovits and demurrers. The *cognovit* is the defendant's confession of the facts alleged in the plaintiffs declaration. The demurrer is one party's formal objection to the sufficiency in law of the opposing party's pleading, 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. Other documents commonly filed with the declarations are court clerks' reports of damages to be awarded to plaintiffs, and reports of referees appointed to determine the amount of debtor damages due 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 Cognovits (Geneva); J0027 Writs of Inquiry and Inquisitions (Geneva); and J0006 Reports of Referees (Geneva).

J0015 Declarations (Albany), 1838-47. 126 cu.ft.

The Albany declarations are arranged alphabetically by first letter of last name of the plaintiffs 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 cu. ft.

The Utica declarations are arranged alphabetically by the first letter of the last name of the plaintiffs 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 (container lists are available). The few extant Utica declarations prior to 1830 are found in J00l0 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 cu. ft.

The Geneva declarations are arranged chronologically by filing date. There is no index to this series, but J0167 Common Rule Books (Geneva) contain rules to plea entered under names of plaintiffs' attorneys.

J0011 Motions and Declarations (Albany), 1796-1847. 187.9 cu ft.

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 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. Motions were made for a great variety of purposes: to change a venue; to stay proceedings; to quash a demurrer; to submit a case to referees; to enter judgment as in the case of nonsuit; to amend a judgment record; to issue a writ of execution; to stay an execution, to set aside a judgment or an inquisition, to attach the property of a judgment debtor, or to obtain a writ of *certiorari*, error, or *mandamus*. Motions might also 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 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).

The series also contains a few briefs, demurrer books, and error books that state legal arguments in some detail. The series is arranged chronologically by year, then alphabetically by name of attorney for the plaintiff (declarations), or attorney for defendant or plaintiff (motions). 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, J00l5 Declarations (Albany).

The great bulk of the documents were filed after 1815. This series has many gaps, and at least some of the missing documents are found in the "Miscellaneous Motions," J0001. 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. The series includes numerous documents introduced in support of enumerated motions placed on the court calendar. See 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 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 cu. ft.

This series contains declarations, writs of inquiry and inquisitions, motion papers, cognovits, stipulations, exceptions, demurrers, and other miscellaneous documents. The series is fragmentary. Documents have been 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 documents, see JOOll Motions and Declarations (Albany). For pleadings and motions filed at Utica after 1829, see J0009 Declarations (Utica) and J0126 Motions (Utica).

J1013 Declarations and Motions (Utica), 1841-47. 41.3 cu. ft.

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 which 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 plaintiffs 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. Utica declarations prior to 1841 are found in J00l0 Declarations and Motions before 1830 (Utica) and J0009 Declarations (Utica). Most of the Utica motions are in J0126 Motions (Utica) and J1126 Miscellaneous Motions (Utica). 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.

J1012 Pleas and Demurrers (Geneva), 1837-47. 1.3 cu ft.

This series contains defendant's and plaintiffs pleadings made subsequent to the plaintiffs initial declaration. Most of the documents are simple pleas in which a defendant's attorney denies the facts set forth in the plaintiffs 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 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 pleas are found in J0012 Miscellaneous Filed Documents.

J0004 Cognovits (Geneva), 1829-47. 5.2 cu ft.

The *relicta et cognovit*, or cognovit, is a defendant's confession of liability for the debt or other damages demanded in the plaintiffs 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 of damages claimed. It is signed by the plaintiff or his attorney. The cognovits are endorsed with the names of the parties and the plaintiffs attorney and the filing date, The records are arranged by filing date and are not indexed. Cognovits for Albany and Utica are found in the judgment rolls, J0140 and J0134.

Description of Record Series [cont.]

Reports of Judgment Awards

J0027 Writs of Inquiry and Inquisitions (Geneva), 1823-47. 12.5 cu.ft.

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 plaintiffs 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 failure to plead, by ruling on demurrer, or by confession (cognovit). Execution of the writ was made by an inquest of 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 JOOll Motions and Declarations (Albany). The earliest statute concerning writs of inquiry was Laws of 1813, Chap. 56. Section 7 of that act provided that inquisitions might be held before a jury summoned by the sheriff or before a circuit court. The *Revised Statutes* of 1829, Part III, Chap. 6, Title 6, Art. 3, Section 7, provided for use of a writ of inquiry to empanel a jury to assess damages but required no writ, only a circuit roll, if the assessment were to be made by a circuit court. Orders for issuance of writs of inquiry were entered in J1165, J2165, J0167 Common Rule Books.

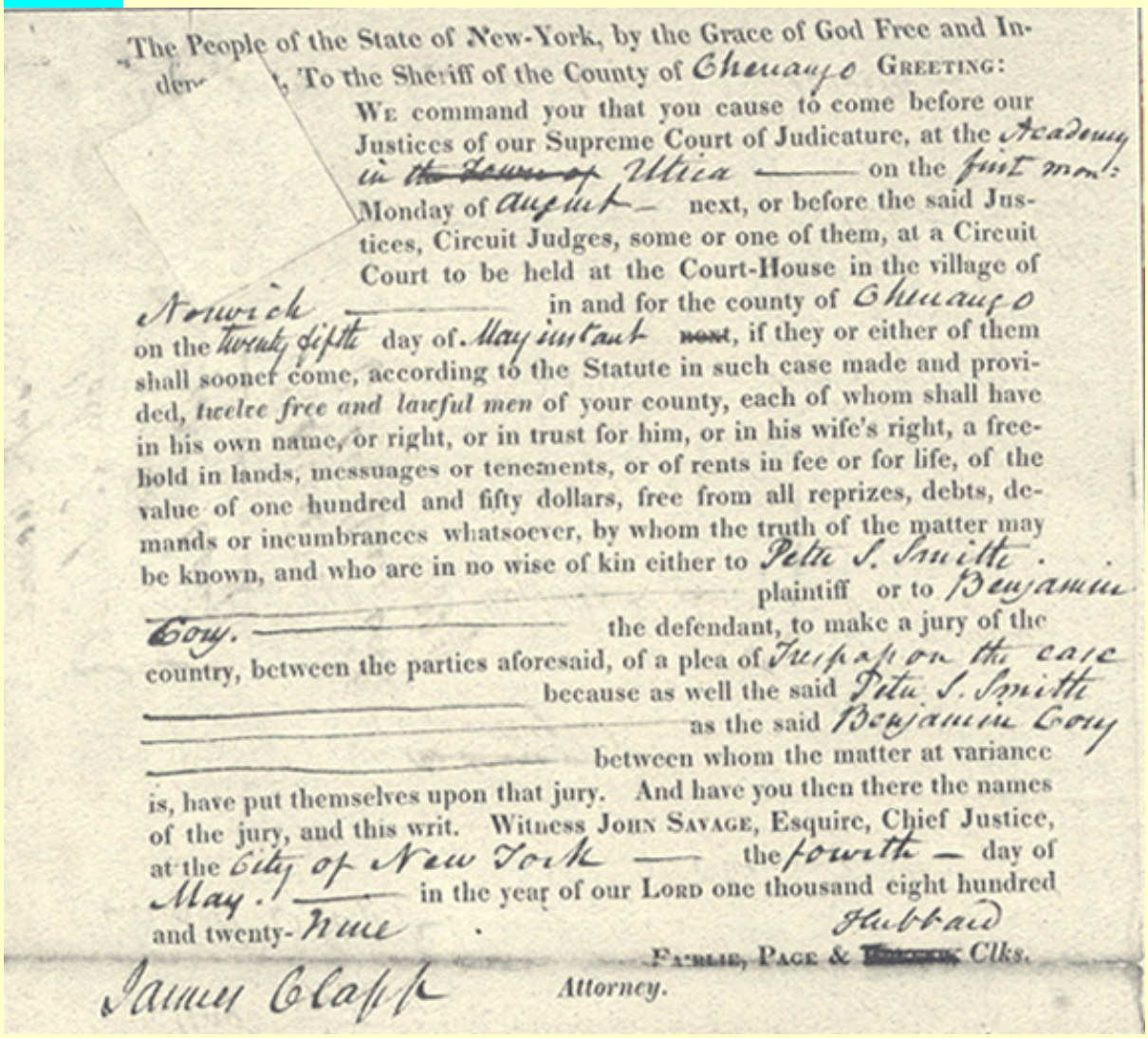
J0006 Reports of Referees (Geneva), 1830-47. .4 cu. ft.

This series consists of reports of referees who were appointed to report the amount of damages (if any) 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. Rules of the court to refer a case were entered in J1165, J2165, J0167 Common Rule Books. Referral of complex questions of money accounts was authorized by Laws of 1781, Chap. 25. Referral of causes was subsequently authorized by the Revised Statutes of 1829, Part III, Chap. 6, Title 6, Art. 4.

Copies of Pleadings Furnished to Trial Courts

The first three of the four series listed below contain records of the pleadings, issue, trial, and verdict in civil cases tried in the circuit courts. Laws of 1786, Chap. 41, provided that a transcript of the record of a case with an ward of jury process should be sent under seal of the Supreme Court to the justice holding circuit court in the county where the issue was to be tried. This transcript, or *nisi prius* record, was prepared by the plaintiff's attorney. Laws of 1796, 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 justices, court clerk, and attorneys); *memorandum* (this starts with the phrase "Be it remembered" and summarizes the plaintiffs 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 facits juratores*); and the continuances, or postponements, if any, in the case. 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 dorso 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.



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 Gray. —— 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 Gray —— 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

PARDEE, PAGE & [illegible] Clks.

James Clarke Attorney.

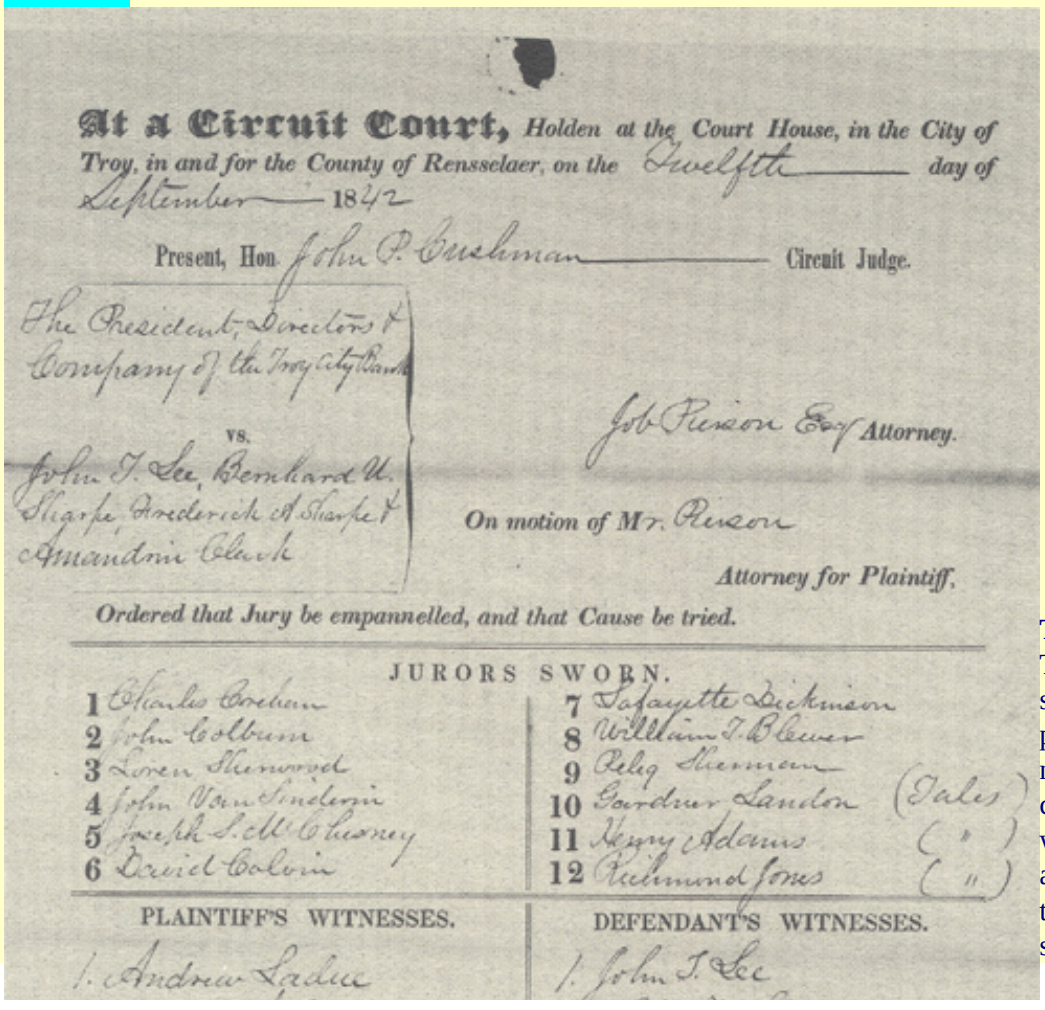
Writ of *Venire Facias Juratores*, 1829. This writ orders the Chenango County sheriff to summon jurors for a circuit court trial to be held at the courthouse in Norwich May 25, 1829. Jurors were needed constantly for circuit court trials and for inquisitions to determine judgment awards due to plaintiffs. (Series J0023 Copies of Pleadings Furnished to Circuit Courts [Utica].)

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 damages and costs. The copy of the minutes is signed by the clerk of the circuit court. There are no summaries of testimony in these trial minutes. 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. Laws of 1840, Chap 386, 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.

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

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, but there is no index to the present series.



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.

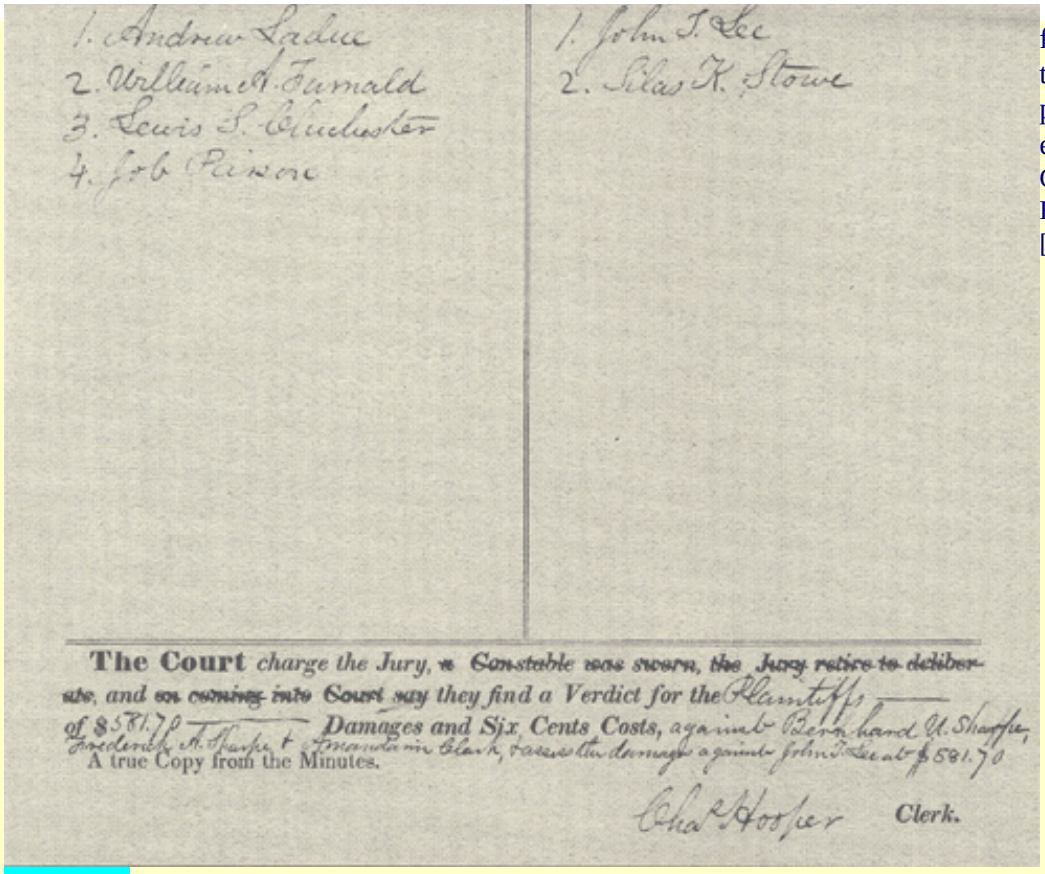
Ordered that Jury be empannelled, and that Cause be tried.

JURORS SWORN.

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

PLAINTIFF'S WITNESSES.	DEFENDANT'S WITNESSES.
1. Andrew Ladue	1. John T. Lee

Trial Miniutes, 1842. These typical trial minutes state only 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


1. Andrew Ladue
2. William A. Turnald
3. Lewis S. Winchester
4. Job Pierce

1. John S. Lee
2. Silas K. Stowe

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 A. Shaffer, Frederick A. Harper & Amanda M. Clark, Jr. as to the damages against John S. Lee at $581.70

A true Copy from the Minutes.

Chas. Hosfer Clerk.

from bystanders around the courthouse after the panel of jurors had been exhausted. (Series J0022 Copies of Pleadings Furnished to Circuit Courts [Albany].)

J0023 Copies of Pleadings Furnished to Circuit Courts ("Nisi Prius Records," "Circuit Rolls") (Utica), 1828-47. 21.1 cu. ft.

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.

J0146 Copies of Pleadings Furnished to Circuit Courts ("Nisi Prius Records," "Circuit Rolls") (Geneva), 1838-48. 7.3 cu. ft.

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 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. .4 cu. ft.

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 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 Laws of 1818, Chap. 259, 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.

"Duely & Constantly Kept"

Inventory of Record Series [cont.]

Description of Record Series [cont.]

Depositions and Summaries of Testimony

The first two of the four series listed below consist of writs of commission issued by the Supreme Court. Writs of commission directed commissioners appointed by the writ to take depositions from material witnesses residing in other states or countries. 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. They are unarranged and unindexed.

The *Revised Statutes* of 1829, Part III, Chap. 7, Title 3, Arts. 2 and 3, specified in detail the manner in which commissioners were to execute and make return to the writ of commission.

J0170 Writs of Commission (Albany and Utica), 1802-43. 1.3 cu. ft.

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

J0014 Writs of Commission (New York), 1802-62. .8 cu. ft.

These documents were originally filed or kept in the office 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. The documents are unarranged and unindexed.

J0151 Testimony Taken Conditionally, 1833-46. .4 cu. ft.

Testimony was taken conditionally (*de bene esse*) from a material 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 plaintiffs 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 the 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. Taking of testimony *de bene esse* was governed by the *Revised Statutes* of 1829, Part III, Chap. 7, Title 3, Art. 5.

J3011 Summaries of Testimony Given in Circuit Courts and Courts of Oyer and Terminer, 1823-28. 2.6 cu. ft.

This fragmentary series consists of summaries of testimony and proceedings in the circuit courts and courts of oyer and terminer. At the head of each document is written the name of the court, the venue, the date, and the names of the presiding justices. 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 fragmentary and there are no similar records or other counties and years.

"Duely & Constantly Kept"

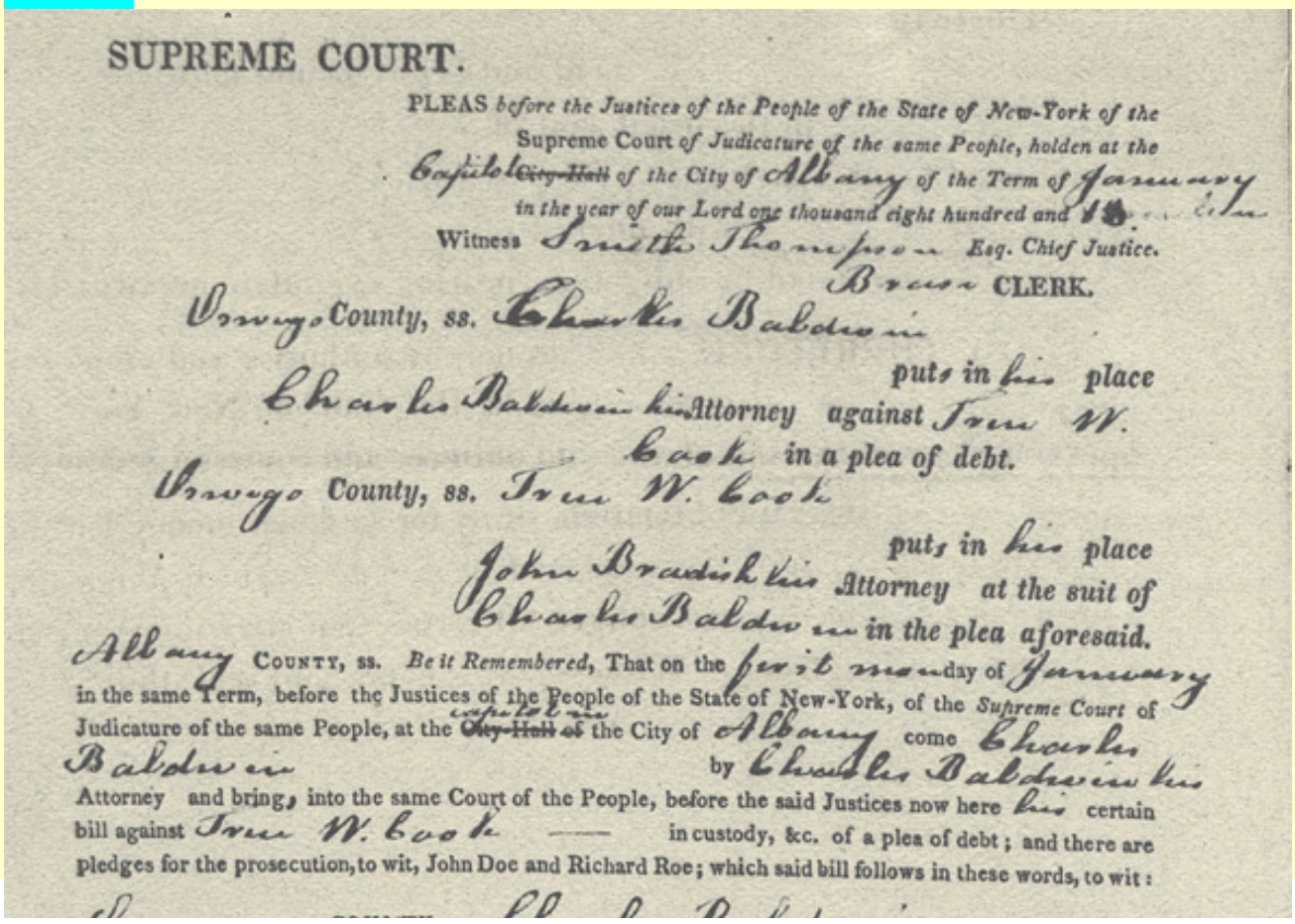
Inventory of Record Series [cont.]

Description of Record Series [cont.]

Judgment Rolls

These series consist of judgment rolls that have been signed, 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 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*); plaintiffs 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 were, of course, omitted and others were substituted. When the defendant admitted the



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

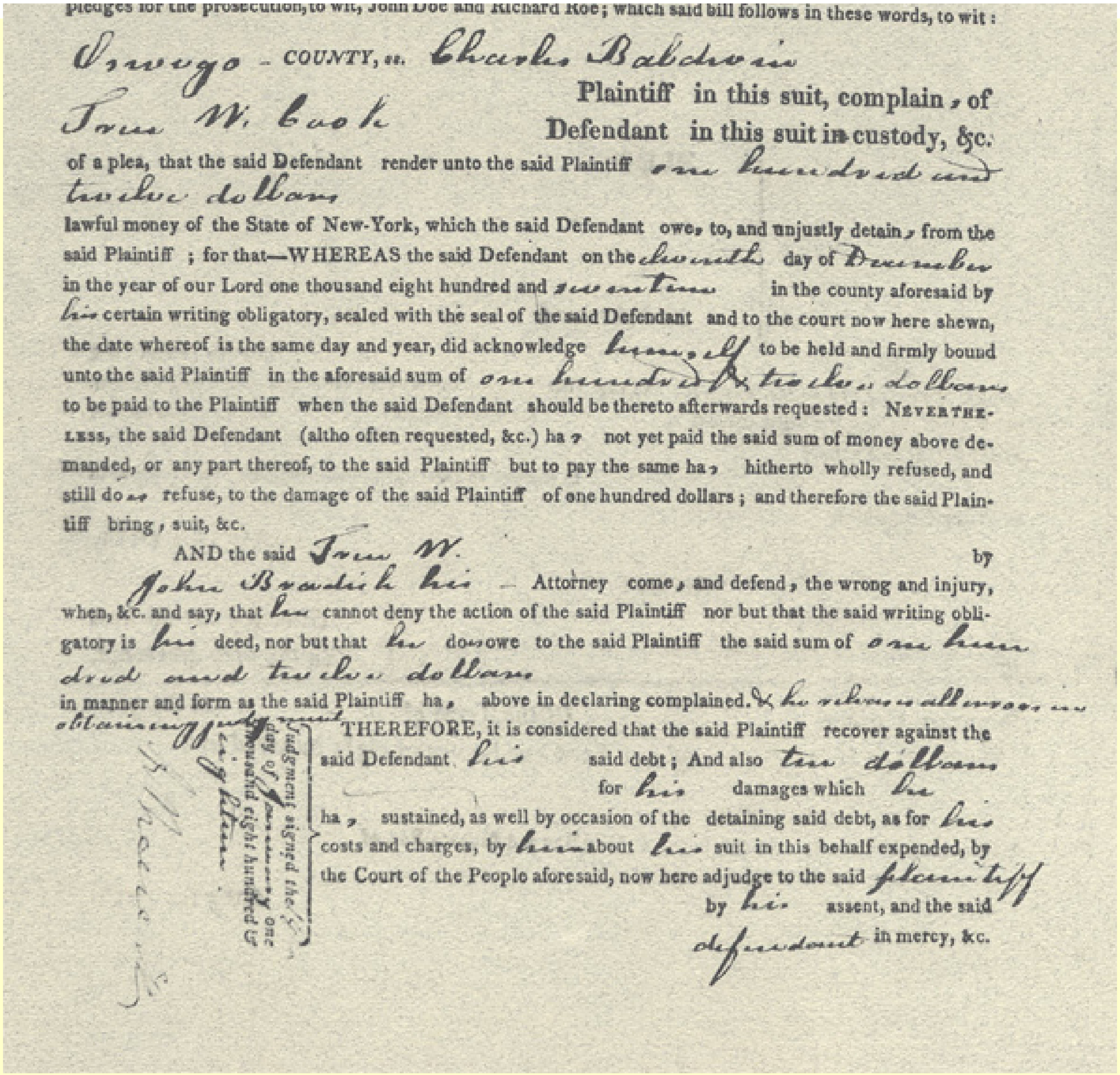
Witness Smith Thompson Esq. Chief Justice.

Brasa CLERK.

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

Onwego County, ss. Isaac 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~~ 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 Isaac 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:



pledges for the prosecution, to wit, John Doe and Richard Roe; which said bill follows in these words, to wit:

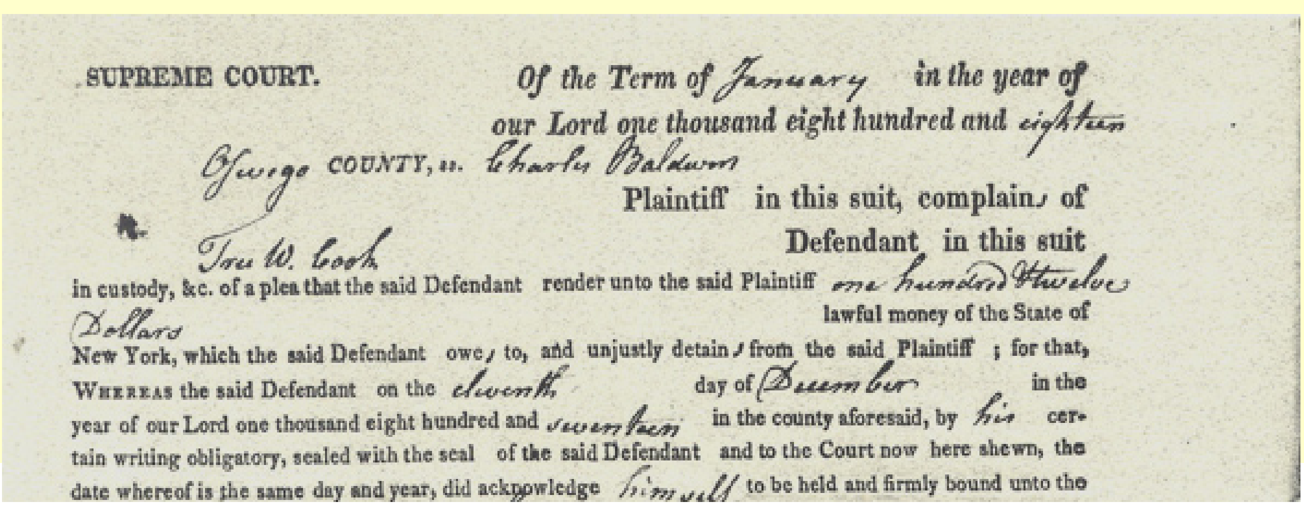
Oswego – COUNTY, ss. Charles Baldwin Plaintiff in this suit, complains of True W. Cook Defendant in this suit in custody, &c. of a plea, that the said Defendant render unto the said Plaintiff one hundred and twelve dollars lawful money of the State of New-York, which the said Defendant owes to, and unjustly detains from the said Plaintiff; for that—WHEREAS the said Defendant on the 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 & 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 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 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

Judgment signed the [illegible] day of January one thousand eight hundred & eighteen

THEREFORE, it is considered that the said Plaintiff recover against the said Defendant his said debt; And also ten 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 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 on the upper side of the sheet. The plaintiff's declaration and defendant's plea are found on the lower 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. 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

tain 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 relieves all errors in obtaining judgment

J. W. 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. W. Bradish

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. Reports of referees or court clerks as to the amount of a judgment award likewise became part of the judgment record.

The plaintiffs 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 dorso 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.

Accompanying the judgment proper are copies of certain other case documents. These are 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. Until February 5, 1798, all judgments were required to be enrolled on parchment; Laws of 1798, Chap. 8, permitted use of paper after that date.

The three series of judgment rolls also include judgments affirming or reversing judgments of lower courts. Those judgments were removed to 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 (Utica) for a detailed discussion of these writs. Occasionally, but not always, the dorso of the judgment roll notes that the judgment was rendered on reversal or affirmance of a lower court's judgment. The judgment dockets, described later, give no indication of whether a judgment was awarded on a writ of error or certiorari or in an original proceeding.

The judgment rolls 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.) 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 won the judgment, it is always filed under the name of the fictional plaintiff "James Jackson." If the actual plaintiff won the judgment, the judgment roll may be filed either under the name of the fictional defendant "John Stiles" or under the name of the actual defendant. Starting in 1830 all judgment rolls in ejectment actions are filed under the name of the actual losing party. See Appendix A for further discussion of ejectment actions. The first general statute concerning the recording of judgments was Laws of 1813, Chap 50. The *Revised Statutes* of 1829, Part III, Chap. 6, Title 4, Art. 1, contains "general provisions concerning judgments."

J0140 Judgment Rolls (Albany), 1797-1847. 326.4 cu. ft.

The rolled parchments for 1797 and 1798 have been rearranged alphabetically by name of plaintiff. J0141 Docket of Judgments provides the only 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 cu. ft.

J0l35 Transcripts of Docket of Judgments provides the only access to the complete series of 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 J0l37 Judgment Rolls (Geneva).

J0137 Judgment Rolls (Geneva), 1827-47. 110.5 cu. ft.

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).

"Duely & Constantly Kept"

Inventory of Record Series [cont.]

Description of Record Series [cont.]

Dockets of Judgments

These series are dockets and transcripts of dockets of judgments that had been filed by the clerks of the Supreme Court at New York City, Albany, Utica, and Geneva. 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, then chronological by date (and sometimes hour) of filing. The clerk prepared a docket for each term. The transcripts of dockets were compiled either each term or semimonthly and the transcripts were forwarded to the other clerks. The transcripts now in the State Archives are evidently those received by the Supreme Court clerk at Albany. The only index to the dockets and transcripts of dockets is J0l42 "Docket Index," 1829-35. The transcripts were made and their contents certified as to accuracy by the clerk of the court, pursuant to Laws of 1798, Chap. 108. This act required that the transcripts be compiled back to April 22, 1797.

J0131 Docket of Judgments (New York), 1797-1810. 4 vols.

J0132 Transcripts of Docket of Judgments (New York), 1809-47. 11 vols.

Through 1829 the transcripts were compiled each term. Starting in 1830 they were compiled semimonthly. The New York County Clerk's Office has a card index to judgments, arranged by plaintiff, for the years 1799 to 1847. That office also has the original docket of judgments kept by the clerk of the Supreme Court of Judicature at New York City.

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

The Albany dockets were compiled for several years at a time; there is a volume list available.

J1141 Transcripts of Dockets of Judgments (Albany), 1808, 1810-1811. 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 Dockets of Judgments (Utica), 1807-47. 14 vols.

Through 1829 the transcripts were compiled for each term; starting in 1830 they were compiled semimonthly. 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 Dockets of Judgments (Geneva), 1807-47. 9 vols.

The Geneva transcripts were compiled semimonthly. 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. 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 J0l41 Docket of Judgments (Albany), and J0l32, J0135, and J0l38 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.

J6013 Transcripts of Judgments in U.S. District and Circuit Courts (Albany, Utica, Geneva), 1831-36. .2 cu. ft.

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 clark 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. These transcripts were made and submitted pursuant to the *Revised Statutes* of 1829, Part III, Chap. 8, Title 17, Sections 38-42.

Writ of *Capias ad Satisfaciendum*, 1813. The 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].)

J0222 Transcripts of Dockets of Judgments in U.S. District and Circuit Courts, 1830-36. 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; 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 cu. ft.

This series consists of transcripts of decrees 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. Winning 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, Sections 94-95.

"Duely & Constantly Kept"

Inventory of Record Series [cont.]

Description of Record Series [cont.]

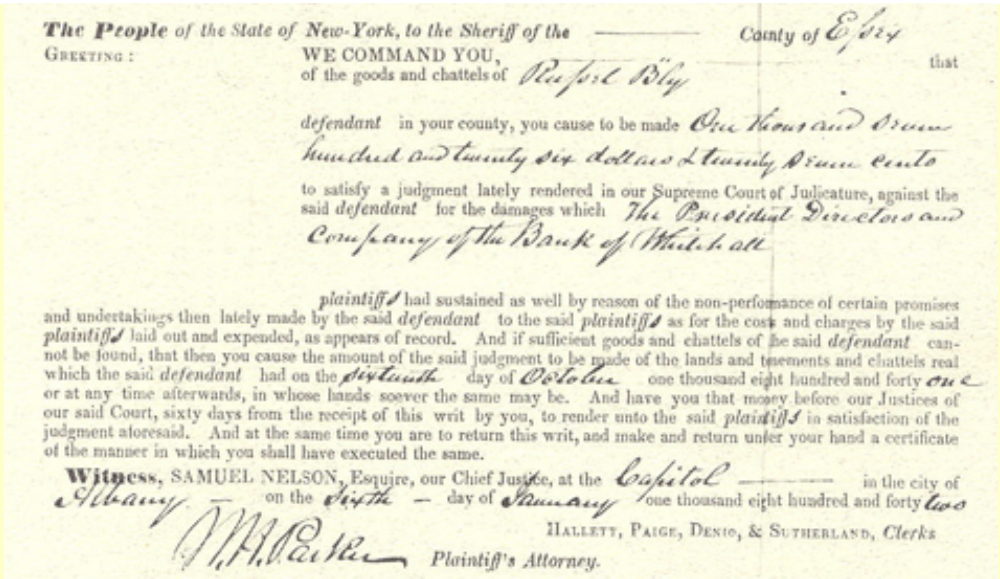
Writs of Execution (includes some Writs of Arrest)

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.*) is a writ commanding 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 dorso of the writ are found the names of the parties and the plaintiffs 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," a writ of *testatum fieri facias* might be issued to the sheriff of another county where the debtor was believed to be located.

The writ of *capias ad satisfaciendum* (*ca. sa.*) commands a sheriff to take custody of a judgment debtor and imprison him until the judgment was 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 sheriffs action is stated on the dorso. 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 in 1831, 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

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



The People of the State of New-York, to the Sheriff of the ——— County of Erie
GREETING:
WE COMMAND YOU,
of the goods and chattels of Rufus 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 cost 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
Plaintiff's Attorney.

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].)

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 dorso, along with the sheriff's statement of how the writ was executed.

J0024 Writs of Arrest and Execution (Albany), 1797-1847. 79.1 cu. ft.

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. Return 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 J0l53 and J1153 Registers of Returns of Writs. Additional access to the present series may be had through J0226 Registers of Returns of Writs (by County).

J0013 Writs of Arrest and Execution (Utica), 1807-47. 64.5 cu. ft.

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). The only access to the present series is through J0226 Registers of Returns of Writs (by County).

J0025 Writs of Execution (Geneva), 1829-47. 29.7 cu.ft.

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 J0226 Registers of Returns of Writs (by County).

J4026 Writs of Possession (Geneva), 1840-43. .4 cu. ft.

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 sheriffs certificate of execution of the writ is found on the dorso 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. .4 cu. ft.

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.

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Inventory of Record Series [cont.]

Description of Record Series [cont.]

Minutes and Registers of Return of Writs

J3130 Minutes of Return of Writs by Sheriffs (Albany), 1797-99. 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* (*fi. fa.*) and *capias ad satisfaciendum* (*ca. sa.*) A few entries are found for the writ of *scire facias*, ordering a party to show cause, usually as to why a judgment should not be 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).

J0153 Registers of Returns of Writs (Albany), 1815-25. 2 vols.

These registers list writs returned by sheriffs. The returns are for writs of *capias ad respondendum* by which defendants were arrested and held for appearance in court; writs of *habeas corpus* by which defendants, witnesses, or other persons were held for the same purpose; and the various writs of execution issued subsequent to a final judgment. Each entry gives the date of filing of the returned writ; names of the plaintiff and defendant; and remarks on the type of writ and whether or how it was returned by the sheriff. For writs of *capias ad respondendum* (*caps.*) and *habeas corpus* the return is either "defendant taken" or "not found." The returns to writs of *fieri facias* (*fi. fa.*) usually state that nulla bona or "no goods," were found on which a judgment could be levied, occasionally that a specified amount was collected, or that the total judgment was satisfied. The writ of *capias ad satisfaciendum* (*ca. sa.*) might be returned with the notation that the judgment was satisfied; otherwise the judgment debtor was stated either to be "taken," i.e., arrested, or "not found." The writ of *scire facias*, an order to a defendant or his heirs to show cause why an action should not proceed or a judgment not be levied, was returned by the sheriff stating that notice had been given The register entries are chronological by filing date of the returned writ and are grouped together under the name of the attorney who obtained the writs. The names of attorneys are entered under the first letters of their last names. These registers serve as indexes to J0024 Writs of Arrest and Execution (Albany) for the years given. Returns of writs of execution for Albany for the period 1837 through 1854 are found in J1153 Registers of Returns of Executions

J1153 Registers of Returns of Writs of Execution (Albany), 1837-54. 4 vols.

These registers list returns of writs of execution by sheriffs in counties served by the Albany office of the Supreme Court. The returns are mostly writs of *fieri facias* (fi. fa.) and *capias ad satisfaciendum* (*ca. sa.*), but there are a few for writs of *habere facere possessionem* (*hab. fa.*) and *scire facias* (*sci. fa.*). The entries in these registers contain the following information: names of judgment debtor (usually the defendant) and judgment creditor (usually the plaintiff); type of writ (abbreviated as above); 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 on judgments given by 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. 6 vols.

This fragmentary series consists of registers of returns of writs issued by the court and returned by sheriffs. 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 the various writs of execution issued subsequent to a final 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 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. For other registers of writs, some of which overlap with these volumes, see J0153 and Jl153, described above.

J0210 Index to Returns of Writs and Executions (New York), 1814-17, 1826-58. 7 vols.

This series consists of indexes to writs returned by sheriffs and other court officers to the clerk of the Supreme Court at New York City. The first three volumes (1814-17, 1826-35) contain entries under attorneys' names, arranged chronologically. Each entry gives the date of return of the writ, names of plaintiff and defendant, and type of writ and how it was returned. The writs indexed are mostly writs of *capias ad respondendum* (*cap.* or *caps.*), *fieri facias* (*fi. fa.*), and *capias ad satisfaciendum* (*ca. sa.*) There are also occasional entries for writs of summons, replevin, *scire facias*, and attachment. Some of the entries state that the writs were countermanded by rule of the court.

The last four volumes (1836-53, 1856-58) are in a different format. In each volume the entries are alphabetical by initial letter of plaintiffs last name, then chronological by return date. Each entry gives the date of return, names of plaintiff and defendant, and the return made. (Names of attorneys and types of writs are not given.) No writs of *capias ad respondendum* are entered, but until 1847 writs of summons are included. Most of the entries are for writs of execution (*fi. fa.* and *ca. sa.*) and for simple executions (issued after the old writs of execution were abolished in 1848). The entries in the volume for 1847 through 1853 may be returns of executions for judgments signed prior to the judicial reorganization of 1847. However, those in the volume for 1856 through 1858 are apparently returns of executions to the clerk of the new Supreme Court for the city and county of New

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Inventory of Record Series [cont.]

Description of Record Series [cont.]

Satisfaction Pieces

The satisfaction piece is an acknowledgment by a winning party that a judgment has been satisfied The acknowledgment is signed by the winning 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 are bundled by year (or years) but are not arranged beyond that. Satisfaction pieces for later years are often found on printed forms as part of the judgment rolls. Laws of 1811, Chap. 196; and *Revised Statutes* of 1829, Part III, Chap. 6, Title 4, Art. 2, Sections 23-26, specify the procedure for acknowledging a satisfaction of judgment.

J0139 Satisfaction Pieces (Albany), 1832-39. 1.3 cu. ft.

Satisfactions are entered in J0141 Docket of Judgments but are not indexed.

J0133 Satisfaction Pieces (Utica), 1808-45. 3.4 cu. ft.

Satisfactions are entered in J0135 Transcripts of Docket of Judgments but are not indexed.

J0136 Satisfaction Pieces (Geneva), 1829-42. 1.7 cu. ft.

Satisfactions are entered in J0138 Transcripts of Docket of Judgments but are not indexed.

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Inventory of Record Series [cont.]

Description of Record Series [cont.]

Common Rule Books

Common rule books contain a record of common rules (or orders) by the court, entered by the clerk on notice given or on filing of a judgment by an attorney for the winning party. Common rules were granted as a matter of course. 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 concerning change of venue or to commissions for the taking of testimony from material witnesses were technically special rules based on nonenumerated motions. These rules are more often found entered in the minute books.

Each entry in the common rule books contains the title of the cause, 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"). The entries are alphabetical by the initial letters of the attorneys' names, then chronological. Each volume contains two sections, back-to-back, with different initial letters on the two covers. The common rule books are not indexed. The clerks of the Supreme Court of Judicature were directed to keep common rule books by order of the court in April term, 1796. Rule 64, adopted in 1829, continued this requirement.

J1165 Common Rule Books (Albany), 1797-1849. 101 vols.

J2165 Common Rule Books (Utica), 1804-49. 90 vols.

J0167 Common Rule Books (Geneva), 1829-47. 79 vols.

The clerk at Geneva also kept subsidiary common rule books for judgments obtained by plaintiffs on default during the years 1829 through 1839, series J2167, and for return of writs of capias ad respondendum for the years 1839 through 1847, series J1167.

J1167 Common Rule Books for Returns of Writs of *Capias* (Geneva), 1829-39. 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 enters the 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 plaintiffs attorney obtained a common rule directing the sheriff to arrest the defendant again.

Each entry in these books gives the case title, the rule entering the defendant's appearance or directing the sheriff to make a second arrest, the sheriff's fee in each case, and the name of the plaintiffs 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, J0167. The writs of *capias ad respondendum* are found in J0028.

J2167 Common Rule Books for Judgments on Default (Geneva), 1837-47. 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 plaintiffs 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 or debt 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 gives 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 the Geneva common rule books, J0167.

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Inventory of Record Series [cont.]

Description of Record Series [cont.]

General and Special Term Minute Books

The Supreme Court minute books contain special rules, or orders, granted after arguments on motions; orders in certain real property actions and condemnation proceedings; and orders regarding court practice and the admission of attorneys. The minute books include rules on both enumerated and nonenumerated motions. Enumerated motions were those placed on the court calendar for argument during the general term. Until 1830, nonenumerated motions were argued during the term but were not calendar cases. Beginning in 1830, nonenumerated motions were argued during special terms held in Albany monthly (except in January, May, and July). In 1841 an additional special term, to be held in October, was established at Rochester. Starting in 1832 certain enumerated motions were normally argued before circuit judges. For a discussion of the various types of motions (enumerated and nonenumerated), see "Motion Papers."

The minute books contain many orders issued in partition cases or other real property actions and proceedings. The rules in partition actions were obtained to appoint a guardian to represent a minor defendant; to require tenants to appear and show title; to appoint commissioners to make a partition; and to confirm and certify a partition of lands. Prior to 1830 the minute books also 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 to lands. There are also 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. See J1Ol1 Fines and Chirographs. 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. These orders, found in both the Albany and Utica minute books, were made pursuant to Laws of 1813, Chap. 86, and Laws of 1816, Chaps. 81 and 160. The orders include copies of the commissioners' reports, which contain detailed descriptions of the property taken.

Other entries in the minute books relate to 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 oath; orders striking from the roll names of attorneys and counsellors who had been convicted of crimes or who had committed irregularities; and orders appointing commissioners to take affidavits to be read in Supreme Court. General rules of procedure adopted by the court are entered in the minute books. (These rules are also available in published form; see the Bibliography.) Finally, the Albany and Utica minutes contain a few orders for proof of the will of a person who left no heirs resident in New York State, and for recording of the will by the clerk of a local court of record.

The orders sometimes include the text of the will proved.

J0130 General and Special Term Minute Books (Albany), 1797-1847. 29 vols.

The minutes for each court term open with a list of the proclamations made: opening the court, calling of sheriffs to return writs or precepts, and directing mayors, justices, coroners, and other public officers to bring into court any recognizances of bail. The date of each daily session and the names of the justices present are then entered. For each case the minute, or entry, states the names of the parties and of the attorney moving the court for a rule The motion is summarized and the rule of the court is entered. Beginning in 1830 the minutes of the Albany special terms are found in these volumes, along with minutes of the general terms. Starting with February term, 1824, each of the Albany minute books is indexed individually. Starting in 1831 the indexes are by year, not term The indexes consist of alphabetical lists of parties making a motion or submitting a petition. See also J2130 Index (Partial) to Minute Books (Albany).

The Albany minute books for the years 1797 through 1800 contain proceedings of grand juries and criminal trial minutes. The grand jury proceedings list names of persons indicted, the charges against them, and their pleas. Following are minutes of the trials of indicted persons who pleaded not guilty. These minutes list the names of jurors and witnesses and state the verdicts found by the juries. There are also minutes of sentencing of criminal defendants who were convicted or who pleaded guilty. The early Albany minutes also contain a few orders for the naturalization of aliens (these are unindexed). See J501l Naturalization Papers.

J1130 Rough Minute Books (Albany), 1797-1807. 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 J0130. these rough minutes sometimes contain less information than the engrossed minutes, especially in April term, 1797.

J0079 Minute Books for the Trial of Issues (Albany), 1798-1800. 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 that were not tried on circuit. All the cases are civil actions. The trial minutes 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 by town who were fined for nonappearance. These minutes are unindexed. Laws of 1786, Chap 41, stated that trial of issues at the bar of the Supreme Court of Judicature "shall only be done in cases of great difficulty, or which require great examination."

J2130 Index (Partial) to Minute Books (Albany), 1797-1847. 1 vol.

This volume is a partial index to minutes of the Supreme Court terms at Albany. The index was compiled in the later nineteenth or early twentieth century. Only selected cases are included, and the exact criteria for selection are unknown. The entries are alphabetical by first letter of plaintiffs 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 (including counselors) are entered under the letter "A," but names of individual attorneys 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. Actions *In re* ("In the matter of") are indexed under the letter "I." (Most of these are petitions for partition and for proof of wills of persons leaving no heirs in New York

State.) 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. 13 vols.

The minutes for each court term open with a list of proclamations made. The date of each daily session and the names of the justices present are then entered. For each case the minute, or entry, states the names of the parties and the attorney moving the court for a rule and gives a summary of the motion and the rule, if any were granted. The Utica minute books contain for each court term lists of major decisions by the justices (particularly affirmances or reversals of judgments of lower courts). Each of the books is indexed by name of party making a motion or a petition. Until 1820 the Supreme Court held its regular 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 through 1835 are missing.

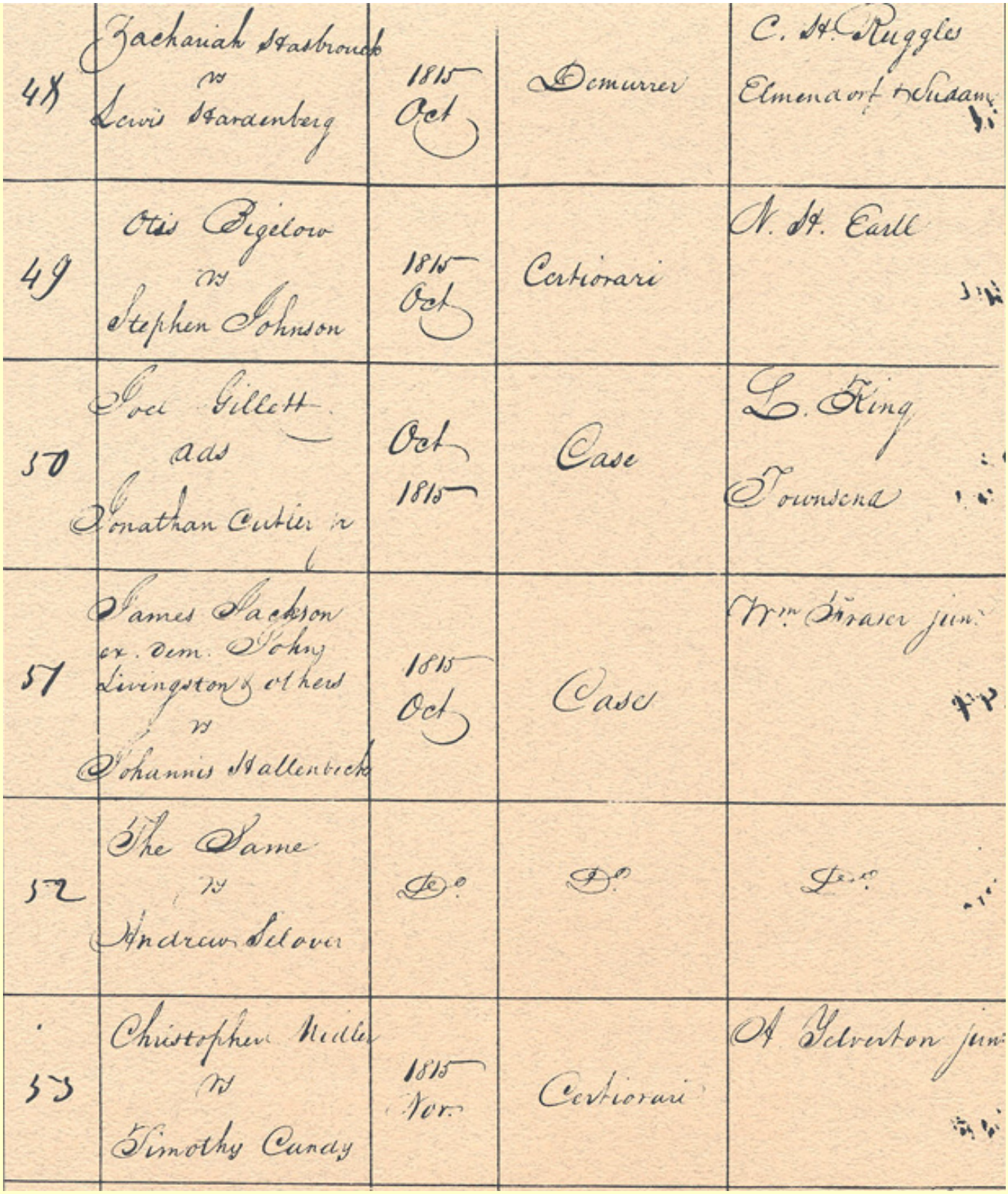
J0129 Special Term Minute Books (Geneva), 1841-46. 2 vols.

These two volumes contain minutes of orders entered during the special terms of the Supreme Court held at Rochester each October between 1841 and 1846, pursuant to Laws of 1841, Chap. 157. (Previously the October special 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 given to enter the default of a sheriff for failure to return a writ; 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 (nos. 103, 104, adopted November 7, 1845); and other miscellaneous rules. The entries are chronological by court term and daily session. The volumes are not indexed.

Description of Record Series [cont.]

Calendars of Enumerated Motions

Calendars list enumerated motions argued before the Supreme Court of Judicature in the general 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 Harambery	1815 Oct	Demurrer	C. H. Ruggles Elmendorf & Sedam
49	Otis Bigelow vs Stephen Johnson	1815 Oct	Certiorari	N. H. Earll
50	Joel Gillett ads Jonathan Cutler	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 Riddle vs Timothy Canady	1815 Nov.	Certiorari	A Selverton 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. 68 vols.

Motions 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. 28 vols.

Motions filed at Utica are found in J0126 Motions (Term Papers) and J1126 Miscellaneous Motions.

J2241 Calendars of Enumerated Motions (Geneva), 1841-47. 6 vols.

This series consists of calendars of enumerated motions argued before the Supreme Court in the special term held at Rochester starting in 1841. Motions filed at Geneva are found in J0125 Motions (Term Papers) and J0001 Miscellaneous Motions.

Description of Record Series [cont.]

Motion 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 in forms 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 dorso The affidavit may bear rough notes summarizing the argument of the attorney making the motion, with appropriate citations to published case reports. On the outside of the affidavit is usually found a note stating whether the motion was granted or denied, and 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 *nonenumerated motions*. Enumented 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, writ of *certiorari*, or similar writ, 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 fill Supreme Court. After 1832 these motions were normally argued before a circuit judge. Motions and decisions thereon by circuit judges were required to be filed in specific clerk's offices, according to Rule 80 of the Supreme Court. (See Appendix B.)

Before 1830, nonenumerated motions were argued before one of the Supreme Court justices when the full court was holding a term. Starting in 1830 special terms were held monthly in Albany (when a general term was not in session) for argument of nonenumerated motions. An additional special term was held in Rochester starting in 1841. Nonenumerated motions were procedural in nature and did not affect the merits of a case. Nonenumerated motions were made to change a venue, to amend pleadings, to send a complex case to a referee to decide, 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 get a new trial on account of irregularity. Nonenumerated motions also included those made to set aside an inquest, a nonsuit, a verdict, a referee's report, a judgment, or an execution. After 1830 a few types of nonenumerated motions—for example, motions in real property cases—continued to be argued during the general terms, although they were not placed on the calendar.

J7011 Briefs, Draft Rules, and Motions (Albany), 1812-27. 1.3 cu. ft.

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, 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 J0001.

J0001 Miscellaneous Motions (Albany, Geneva), ca. 1806-47. 6 cu. ft.

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*, 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 cu. ft.

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 absconding debtors. Documents found occasionally are draft rules, stipulations, petitions for the appointment of next friends and guardians, 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. See J1241 Calendars of Enumerated Motions. Rules granted on both enumerated and nonenumerated motions are entered in J0128 General Term Minute Books.

The documents in this series are bundled by term and are then arranged by attorney's name. Many are out of order. One box contains lists of cases decided each term at Utica during the years 1822-46. The lists give 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 l83Os.

J1126 Miscellaneous Motions (Utica), 1832, 1837. 1.3 cu. ft.

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 of *certiorari*, error, and *mandamus*, and so on. Other documents found in this series are petitions for attachment of the property of absconding debtors; plaintiffs 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' J0126.

J0175 Orders of Circuit Judges on Motions for New Trials or for Commissions (Utica), 1834-47. .4 cu. ft.

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), 1841-47. 1.4 cu. ft.

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 should be 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. .4 cu. ft.

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 found are petitions for partition of real estate, 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 calendar, J2241, and special rules granted are entered in the minute books, J0129.

J8026 Orders of Circuit Judges on Motions for New Trials (Geneva), 1833-47. .4 cu. ft.

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.

J6026 Orders for Commissions (Geneva), 1829-47. .4 cu. ft.

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.

J5026 Orders for Appointment of Guardian or Next Friend (Geneva), 1829-47. .4 cu. ft.

This series consists of petitions to a Supreme Court justice, 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 guardians or next friends was governed by the *Revised Statutes* of 1829, Part III, Chap. 8, Title 2.

Description of Record Series [cont.]

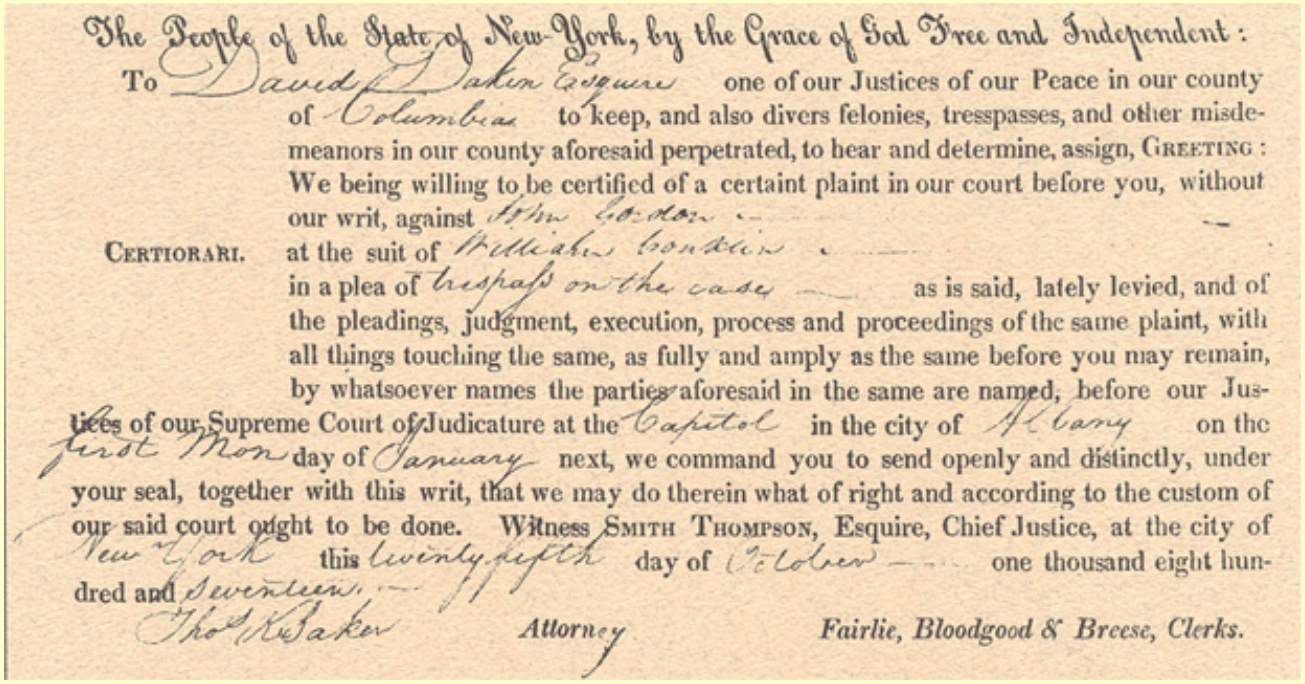
Writs for Transfer or Review of Cases from Lower Courts

Described below are series of writs by which cases in lower courts were transferred to or 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 justices of the peace); and to review quasi-judicial decisions of public officers. Also described are small series of writs of *habeas corpus* and *mandamus*. The office of filing of these various series of writs is sometimes uncertain. However, J0134, J0137, J0140 Judgment Rolls include the money judgments awarded on writs of *certiorari* and error and filed in the upstate offices of the Supreme Court. The judgment record in such cases contains a copy of the writ and the return thereto.

J0147 Writs of *Certiorari* ca. 1796-1847. 45.6 cu. ft.

Until the l820s most of the cases brought into the Supreme Court by writ of *certiorari* were judgments of courts of justices of the peace, which were not courts of record. Laws of 1824, Chap. 238, effectively ended this use of writ of *certiorari* in civil cases. The writ of *certiorari* could be used to review a criminal case from a justice's court of special sessions only if the writ were allowed by a Supreme Court justice. A writ of *certiorari* could also be employed to transfer a case from a lower court of record (court of common pleas or 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. The writ of *certiorari* was applied for in an affidavit, in which the applicant specified the type of civil action or criminal charge and described the proceedings thus far, 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 dorso 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.



The People of the State of New-York, by the Grace of God Free and Independent:
To David Baker Esquire one of our Justices of our Peace in our county of Columbia to keep, and also divers felonies, tresspasses, and other misdemeanors in our county aforesaid perpetrated, to hear and determine, assign, GREETING:
We being willing to be certified of a certaint plaint in our court before you, without our writ, against John Gordon
CERTIORARI. at the suit of William Gordon
in a plea of trespass on the case as is said, lately levied, and of the pleadings, judgment, execution, process and proceedings of the same plaint, with all things touching the same, as fully and amply as the same before you may remain, by whatsoever names the parties aforesaid in the same are named, before our Justices of our Supreme Court of Judicature at the Capitol in the city of Albany on the first Mon day of January next, we command you to send openly and distinctly, under your seal, together with this writ, that we may do therein what of right and according to the custom of our said court ought to be done. Witness SMITH THOMPSON, Esquire, Chief Justice, at the city of New York this twenty fifth day of October one thousand eight hundred and Seventeen.
Thos K Baker Attorney
Fairlie, Bloodgood & Breese, Clerks.

Writ of *Certiorari*, 1817. 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 [Albany].)

The 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 plaintiffs 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 warrant or summons by which the action 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; defendant's recognizance of bail; summary of testimony; and a copy of the trial minutes, including the verdict. Prior to around 1820, the returns to writ 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* 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 uncertain. The affidavits prior to around 1816 were bundled separately. The series contains relatively few documents dating prior to 1807. There is an index. Affirmances or reversals of judgments in lower courts are found in the minutes of the Supreme Court, 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 J0134, J0137, J0l40 Judgment Rolls.

J0029 Writs of *Habeas Corpus* (Utica), 1807-29. 1.3 cu. ft.

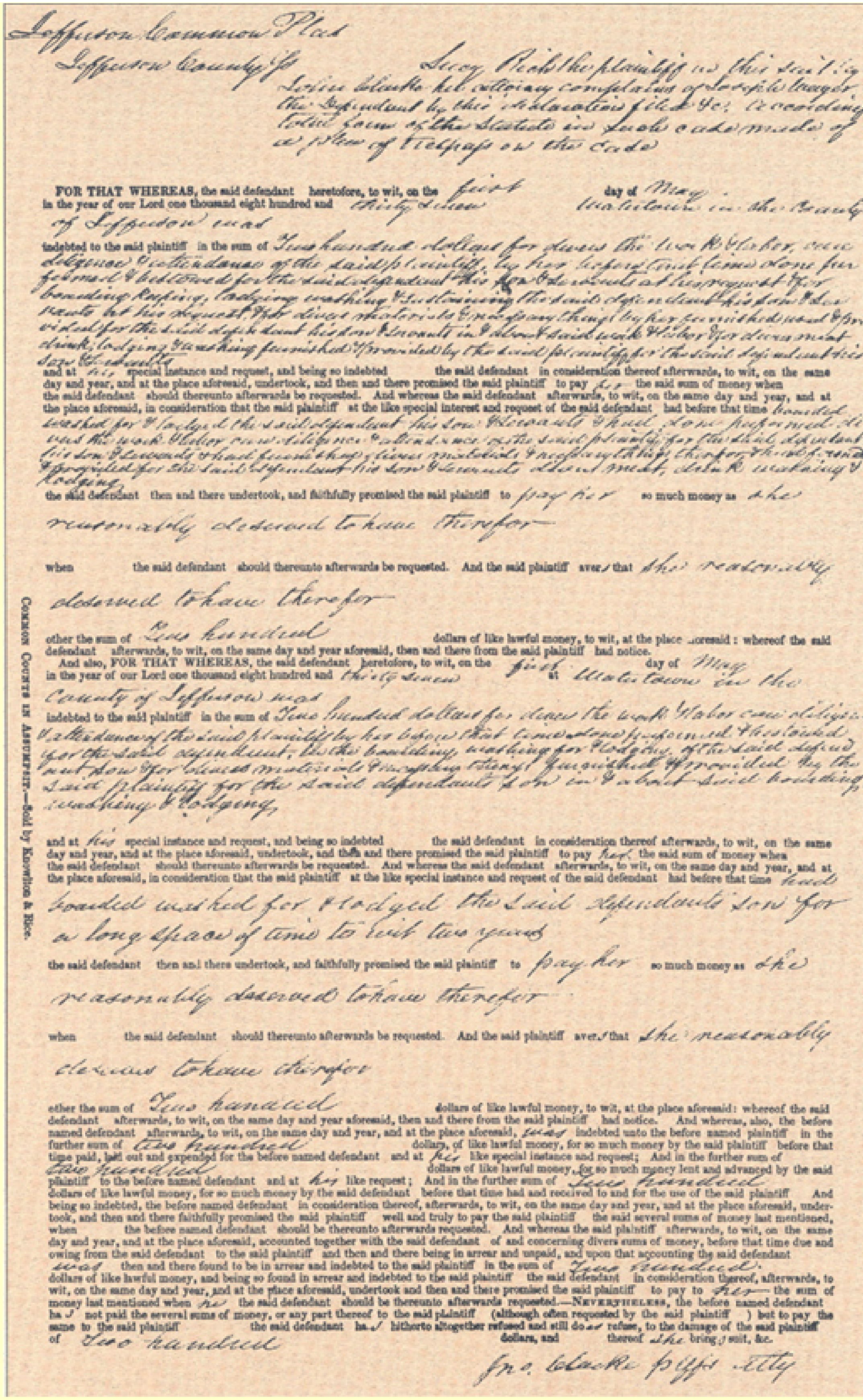
A writ of habeas corpus was a Supreme Court order commanding a judge, sheriff, or keeper of a prison or jail to deliver an individual into the custody of the court, and to state the legal authority for his detention The writ took several forms, the most common being the writ of *habeas corpus cum causa*. This writ was obtained by a defendant to transfer a case from a lower court to the Supreme Court. (The defendant might be either imprisoned or released on recognizance of bail.) Unlike the writ of *certiorari*, the writ of *habeas corpus cum causa* usually did not transfer the record of case proceedings to the Supreme Court. Therefore, the proceedings in Supreme Court had to commence anew. The writ of *habeas corpus* was also employed to produce a person in custody of a court or a prison to testify in the trial of another defendant; or to remove a prisoner from one county to another for trial or sentence; or to produce for trial a prisoner who had been illegally detained (No examples of this last and most famous usage of the writ have been noticed in the present series) Each writ of *habeas corpus* bears a note stating that it had been allowed by a Supreme Court Justice or a counselor 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 schedule states the reason for detention of the defendant or prisoner. It may cite or include a copy of process or other written authority ordering him to be taken into custody. (In civil cases, this was the writ of *capias ad respondendum*; 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. Laws of 1787, Chap. 72, provided for issuance of writs of *habeas corpus* to remove civil causes from inferior courts into the Supreme Court of Judicature; it specified that the writ would be issued only in cases where the sum in dispute exceeded 100 pounds. Laws of 1801, Chap. 13, changed the minimum amount to $250 and required the signature of a Supreme Court justice for a writ to be issued. Laws of 1787, Chap. 39, and Laws of 1801, Chap. 65, provided for the speedy execution and return of the writ of *habeas corpus* in criminal cases, Use of the writ of *habeas corpus* in both civil and criminal cases was codified in the *Revised Statutes* of 1829, Part III, Chap. 9, Title 1, Arts. 1-3.

J0031 Writs of Error (Utica), 1807-47. 14.6 cu. ft.

A writ of error was obtained by a defendant 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 county-level court of common pleas. (Some of these cases had been appealed to common pleas from courts of 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 (later called the court of common pleas), 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.

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. 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


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 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 and 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 & was 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 Pltffs Atty
COMMON COUNTS IN ASSUMPSIT.—Sold by Knowlton & Rice.

Return to Writ of Error, 1838. The 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].)

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 civil action or criminal charge, and the time and place for return of the writ. On the dorso 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 ott 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 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 defendant'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 counselor 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 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. Statutes governing writs of error were Laws of 1801, Chap. 25, Laws of 1817, Chap. 179, and the *Revised Statutes* of 1829, Part III, Chap. 9, Title 3, Art. 1.

J0021 Bills of Exceptions, ca. 1805-47. .9 cu. ft.

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. .2 cu. ft.

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. .4 cu. ft.

The contents of this series are similar to J8011.

J4013 Writs of *Mandamus*, 1822, 1825-44. .4 cu. ft.

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 *relator*. 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 relator. 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. The issuance of a writ of *mandamus* and the proceedings thereon followed the provisions of the *Revised Statutes* of 1829, Part III, Chap. 9, Title 2, Art. 3.

J1025 Writs of *Certiorari*, Error, *Habeas Corpus*, and *Mandamus* (Albany, Utica), 1800-47. 9.9 cu. ft.

These Albany and Utica writs have been removed from J0025 Geneva Writs. 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.

J8013 Writs of Attachment (Utica), 1825-43. .4 cu. ft.

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* ("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 clerk at Utica. Statutory provisions relating to attachment proceedings for contempts are first found in the *Revised Statutes* of 1829, Part III, Chap. 8, Title 13.

"Duely & Constantly Kept"

Inventory of Record Series [cont.]

Description of Record Series [cont.]

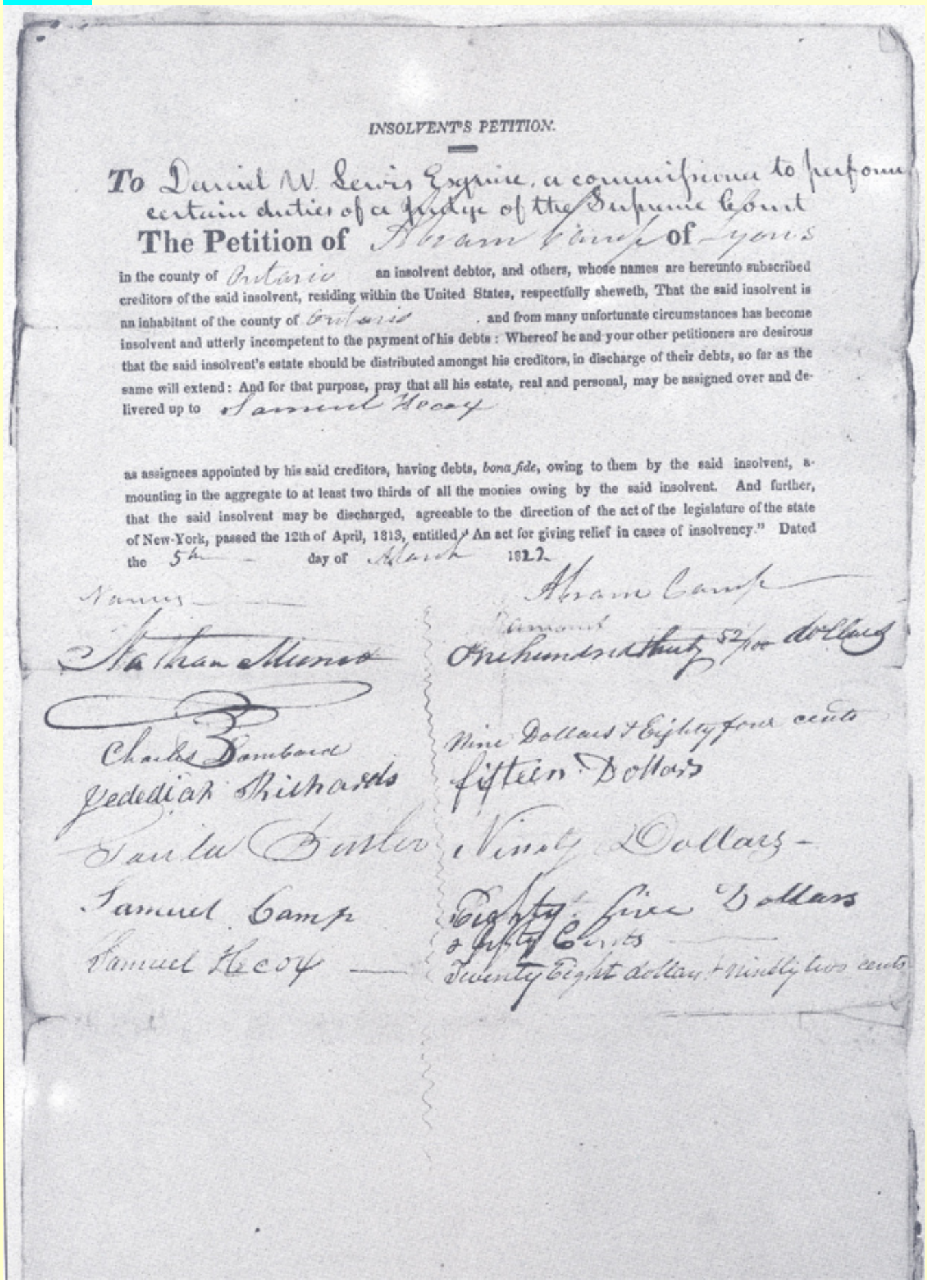
Insolvency Papers

Insolvency papers document the assignment and sale of property of insolvent debtors and their discharge from liability for debts incurred prior to the insolvency petition. In a voluntary assignment the debtor and a certain proportion of his creditors petitioned for the assignment and sale. In an involuntary assignment one or more creditors petitioned for the attachment and sale of property of an "absconding, concealed, or nonresident debtor." (Nonresident debtors were those residing out of state.) A typical file in a voluntary assignment contains the following documents: petition of the insolvent debtor and his creditors (representing three-fourths or, after 1813, two-thirds of the total amount owed by him) requesting that the insolvent's property be assigned to a trustee for sale; affidavit of each petitioning creditor stating amount of debt; account of debts of the insolvent debtor, with names of debtors and the amounts owed them; account of the real estate and inventory of the personal estate of the insolvent debtor; order to advertise the impending sale of this property, notifying other creditors to 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 (assignees), 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 his petition.

The statutes governing voluntary assignment of an insolvent's property were Laws of 1786, Chap. 24, and Laws of 1788, Chap. 92. This latter act and subsequent acts, Laws of 1801, Chap. 163, and Laws of 1813, Chap. 98, empowered any justice of the Supreme Court or a court of common pleas, or the chancellor, to receive the petition, make the assignment, and discharge the debtor. Papers in insolvency cases were required to be filed with a Supreme Court clerk, except when a county judge granted the assignment order; in those cases the papers were to be filed with the county clerk. Laws of 1811, Chap. 123 gave Supreme Court commissioners and the recorders of the cities of New York, Hudson, and Albany the same powers in cases of insolvency, as those exercised by Supreme Court justices. Laws of 1817, Chap. 55, and Laws of 1818, Chap. 26, permitted creditors of an imprisoned debtor to petition a court for an assignment, if the debtor agreed to it. (This provision was repealed in 1828.) The *Revised Statutes* of 1829, Part II, Chap. 5, Title 1, Art. 3, supplanted all previous acts concerning insolvent assignments and required that all voluntary assignment proceedings be brought in a county-level court. Therefore, the Supreme Court clerks did not file any voluntary assignment papers after 1829.

A typical file relating to an "absconding, concealed, or nonresident debtor" includes the following documents: petition by creditors for attachment of debtor's property, itemizing his debts; affidavits of other persons stating that the debtor has absconded or concealed himself; warrant to sheriff to attach the debtor's property; and an appraisal of the real property and inventory of the personal property of the insolvent. Other documents in an involuntary assignment correspond to those found for voluntary assignments: court order appointing trustees to dispose of property, order for and affidavit of publication of notice of sale, and final report of attachment proceedings. The proceedings in involuntary assignments were governed successively by Laws of 1786, Chap. 24; Laws of 1801, Chap. 49; and *Revised Statutes* of 1829, Part II, Chap. 5, Title 1, Art. 1. Before 1830

case papers in assignment proceedings for "absent and absconding debtors" were filed with the clerk of the court where the proceeding commenced: either the Supreme Court, a county court



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

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.

Names	Amount
Nathan Munro	One hundred and fifty 52/100 dollars
Charles Bombard	Nine Dollars & Eighty four cents
Jedediah Richards	fifteen Dollars
Daniel Baxter	Ninety Dollars
Samuel Camp	Eighty five Dollars & fifty Cents
Samuel Hecox	Twenty Eight dollars & Ninety two cents

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].)

of common pleas, or the mayor's court in New York City. Starting in 1830 all papers in involuntary assignments were filed with a Supreme Court clerk. however, the proceeding commenced with a petition to a circuit judge, a common pleas judge, a Supreme Court commissioner or counselor, or any city recorder.

J0154 Insolvency Papers (Albany), 1795-1842. 40.0 cu. ft.

The Albany insolvency papers are arranged alphabetically by name of debtor. There are few files after 1829, and all pertain to "absconding, concealed, or non-resident" debtors.

J0156 Insolvency Papers (Utica), 1806-47. 5.6 cu. ft.

The Utica insolvency papers are arranged alphabetically by name of debtor. There are few files after 1829, and all pertain to "absconding, concealed, or non-resident" debtors.

J2000 Insolvency Papers (New York), 1784-1828 (bulk 1786-1815). 8.6 cu. ft.

The New York insolvency papers are for debtors with last names with initial letters from "A" to "T" only.

Description of Record Series [cont.]

Partition Papers

These series consist of documents relating to the partition (court-approved sale) of 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 or all 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 for a tenant who is 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.

Partition cases were brought in the Supreme Court pursuant to Laws of 1785, Chap. 39, and Laws of 1788, Chap. 8. These acts were consolidated in Laws of 1801, Chap. 176. The *Revised Laws* of 1813, vol. 1, p. 507, and the *Revised Statutes* of 1829, Part III, Chap. 5, Title 3, Sections 1-102, again outlined the procedure in partition cases, which after 1813 could be brought in the Supreme Court, a court of common pleas, or the Court of Chancery. Judgments in partition cases are found in the regular series of judgment rolls. Final partition orders are found in the minute books.

J0019 Reports of Commissioners to Partition Lands (Albany), 1802-19, 1824, 1829. 1.7 cu. ft.

The files are arranged alphabetically by first letter of petitioners name. The documents within each file are in a roughly chronological arrangement by filing date. Each file is numbered consecutively in red on the dorso 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). J2130 Index to Minute Books (Albany) includes references to partition cases.

J9913 Reports of Commissioners to Partition Lands (Utica), 1825-30. .4 cu. ft.

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).

"Duely & Constantly Kept"

Inventory of Record Series [cont.]

Description of Record Series [cont.]

Naturalization Papers

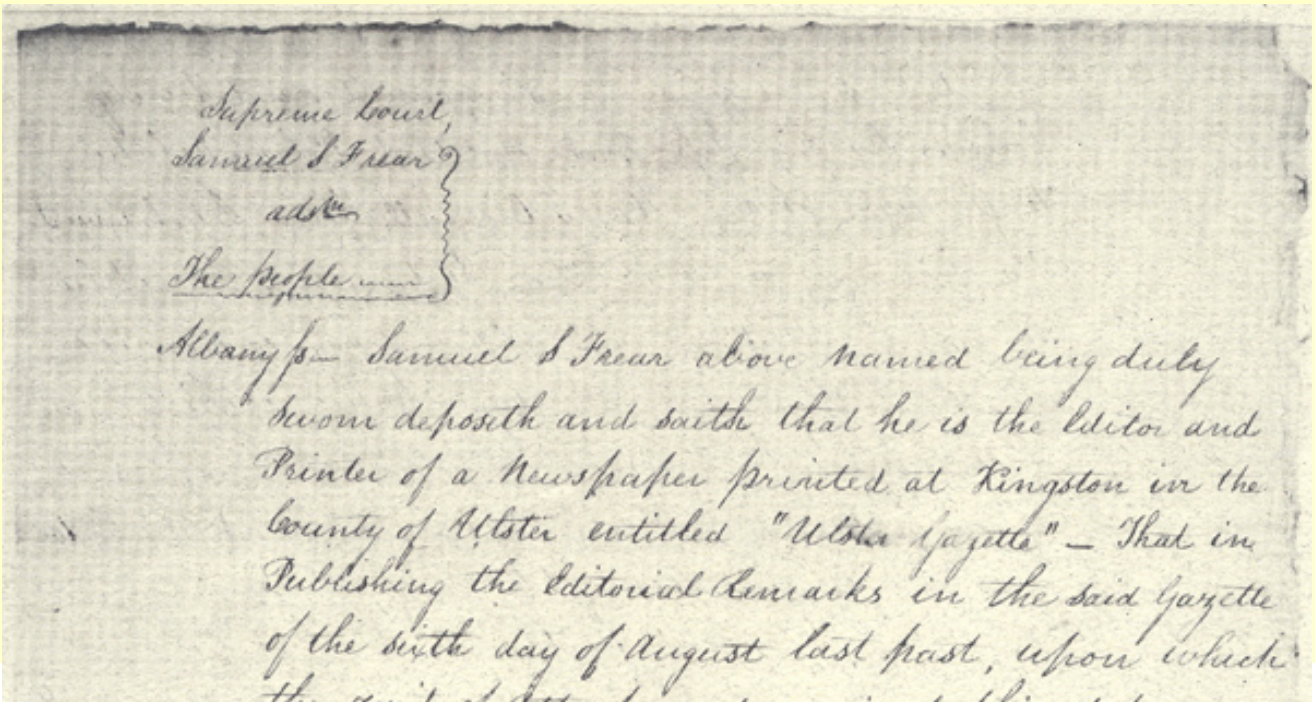
These series consist of documents relating to the naturalization of aliens by the Supreme Court or by justices presiding at circuit courts. The documents include the declaration of intention, in which an alien states his intention to renounce allegiance to a foreign ruler or state and to become a citizen 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 alien, 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 alien. Naturalization of an alien 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 old court of common pleas, whose records are maintained by the county clerks.

J5011 Naturalization Papers (Albany), 1799-1812. .4 cu. ft.

The documents are arranged in alphabetical order by name of petitioner. Final naturalization orders are entered in J0l30 Minute Books (Albany).

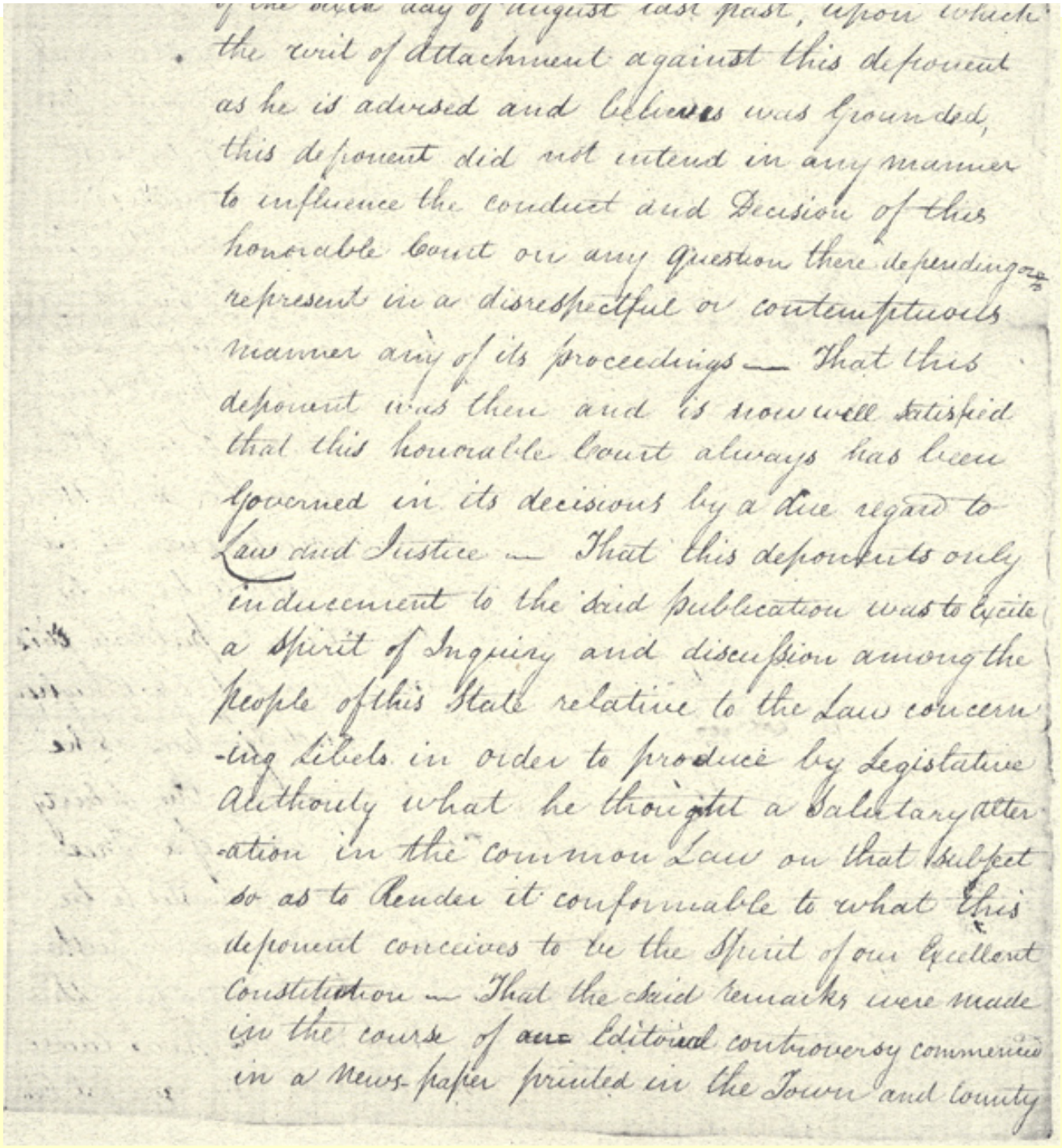
J9013 Naturalization Papers (Utica), 1822, 1830-38. .4 cu. ft.

The documents are arranged in alphabetical order by name of petitioner. Final naturalization orders are entered in J0128 Minute Books (Utica).



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



of the 22d 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

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*. (Crosswell, 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 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].)

"Duely & Constantly Kept"

Inventory of Record Series [cont.]

Description of Record Series [cont.]

Other Records

J4011 Lists of Freeholders Qualified to Serve as Jurors (Albany), 1789-1821. 1.3 cu. ft.

This fragmentary 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. Laws of 1786, 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, 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." The lists of freeholders for struck juries in this series include the names of the parties in the cause to be tried. Sometimes 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.

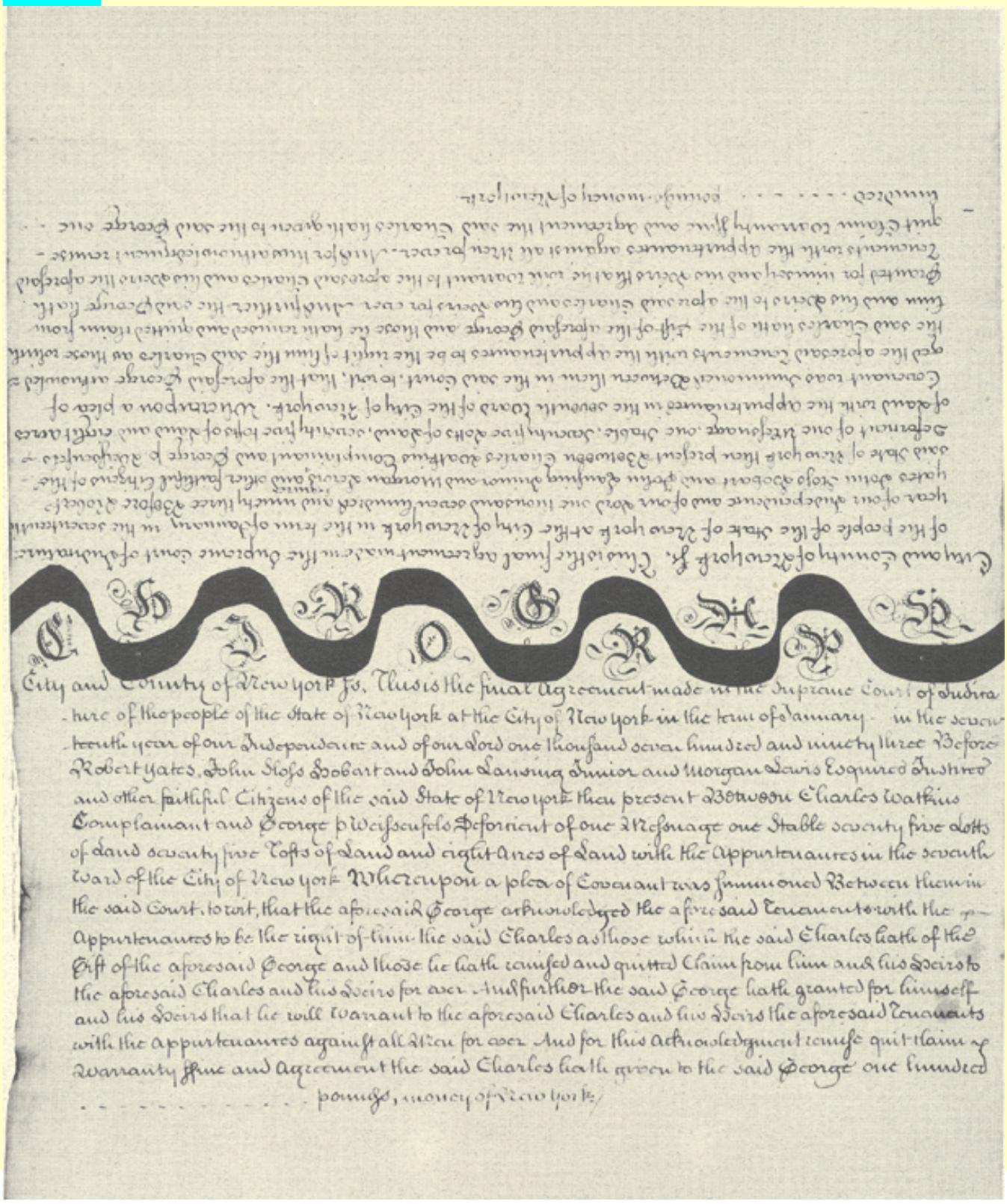
Note: Freeholders were defined by statute (Laws of 1786, Chap. 41) as persons possessing real property worth at least 60 pounds, above all mortgages and other encumbrances thereon. Property held by leasehold did not qualify. Residents of incorporated cities might qualify if the value of their personal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

J2011 Criminal Case Documents (Albany), 1797-1808. .4 cu. ft.

This series consists of documents filed in criminal cases heard and decided by the justices of the Supreme Court of Judicature in their capacity as judges of the court of oyer and terminer in Albany County. Documents include writs of *venire facias juratores* commanding the sheriff to empanel a jury; bills of indictment by the grand jury; recognizances of bail 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 Albany Supreme Court minutes, J0l30, 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 unidexed.

J1011 Fines and Chirographs (Albany), ca. 1793-1829. .9 cu. ft.

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 normally 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.



City and County of New York ss. This is the final Agreement made in the Supreme Court of Judicature of the People of the State of New York at the City of New York in the Term of January in the seventeenth year of our Independance and of our Lord one thousand seven hundred and ninety three Before Robert Yates, John Sloss Hobart and John Lansing Junior and Morgan Lewis Esquires Justices and other faithful Citizens of the said State of New York then present Between Charles Watkins Complainant and George P Weissenfels Deforcient of one Messuage one Stable seventy five foots of Land seventy five foots of Land and eight Acres of Land with the Appurtenances in the seventh Ward of the City of New York Whereupon a plea of Covenant was summoned Between them in the said Court, to wit, that the aforesaid George acknowledged the aforesaid Tenements with the Appurtenances to be the right of him the said Charles as those which the said Charles hath of the Gift of the aforesaid George and those he hath remised and quitted Claim from him and his Heirs to the aforesaid Charles and his Heirs for ever And further the said George hath granted for himself and his Heirs that he will warrant to the aforesaid Charles and his Heirs the aforesaid Tenements with the appurtenances against all Men for ever And for this Acknowledgment remise quit-claim & Warranty fine and Agreement the said Charles hath given to the said George one hundred pounds, money of New York

Chirograph, 1793. Shown here are the top and bottom halves of a chirograph, a conveyance of property in the seventh ward of New York City. the letters of the CHIROGRAPH were written on the interlocking teeth of the indenture. (The plaintiff-grantee 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. The procedure for levying a fine was carefully outlined in Laws of 1787, Chap. 43, but in all essentials it dated back to the twelfth century. The 1787 act required that fines be recorded in the clerk's office in the county where the property conveyed was located. The proceeding of *fine and recovery* was abolished by the *Revised Statutes* of 1829, Part II, Chap. 5, Title 7, Section 24.

[Other Records
continued next page.]

"Duely & Constantly Kept"

Inventory of Record Series [cont.]

Description of Record Series [cont.]

Other Records [cont.]

J6011 Affidavits of War Service and Property by Revolutionary War Veterans (Albany), 1820. 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 gives 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.

J0152 Bonds of Plaintiffs and Appellants (Albany), 1808-48. 1.7 cu. ft.

The series consists of bonds of plaintiffs (in cases heard by the Supreme Court) or of plaintiffs in error (in cases from lower courts reviewed by the Supreme Court or the Court for the Correction of Errors) and their sureties for payment of damages and costs. 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. Bonds could also be required of nonresident or insolvent plaintiffs or trustees for minor plaintiffs, by a rule of the court on motion by the defendant. A plaintiff in error in Supreme Court or the Court of Errors was required to give bond by the *Revised Statutes* of 1829, Part III, Chap. 9, Title 3, Art. 1, Sections 26-28.

J1041 Petitions and Affidavits for Proof of Wills (Albany), ca. 1801-1828. .2 cu. ft.

This small series contains documents relating to the proof of wills in the Supreme Court at Albany. Documents include the executor's petition for proof of a will in Supreme Court, 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. Only one actual will is found. The wills are recorded in J0041 Record of Wills Proved at Albany. Wills could be proved in the Supreme Court, instead of in the surrogate's court, when the decedent resided out of state, when heirs resided in several different counties, or when the will had to be proved immediately because the estate was in danger of loss. Laws of 1801, Chap. 9, provided for proof of wills in the Supreme Court in such cases and required the clerk of that court to record the will and the proofs taken in court.

J0041 Record of Wills Proved at Albany, 1799-1829. 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 found in J0130 Minute Books (Albany).

J0020 Record of Wills Proved at Utica, 1818-29. 1 vol.

This volume contains the same information as 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).

J1014 Reports of Commissioners Appointed at Appraise Lands Taken for Street Openings in New York and Brooklyn (New York), 1817, 1830, 1837, 1845. .4 cu. ft.

This fragmentary 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 acts relating to New York City street openings were Laws of 1813, Chap. 86, and Laws of 1816, Chaps. 81 and 160. Acts relating to Brooklyn street openings were Laws of 1833, Chap. 319, and Laws of 1834, Chap. 92. 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).

J0012 Miscellaneous Filed Documents (Geneva), 1829-1844. .8 cu. ft.

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 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.

J9813 Miscellaneous Unfiled Documents (Geneva), ca. 1839-1844. .2 cu. ft.

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.

"Duely & Constantly Kept"

Inventory of Record Series [cont.]

Description of Record Series [cont.]

Clerks' Financial Records

J0007 Clerk's Registers of Cases in Supreme Court of Judicature and Courts of Common Pleas, 1797-1836. 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 to cases.

J1244 Ledgers of Accounts with Attorneys (Albany, Utica, Geneva), ca. 1813-17, 1842-1844. 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. 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, Section 20.

J0230 Cash Book for Clerk's Fees (Albany), 1846-47. 1 vol.

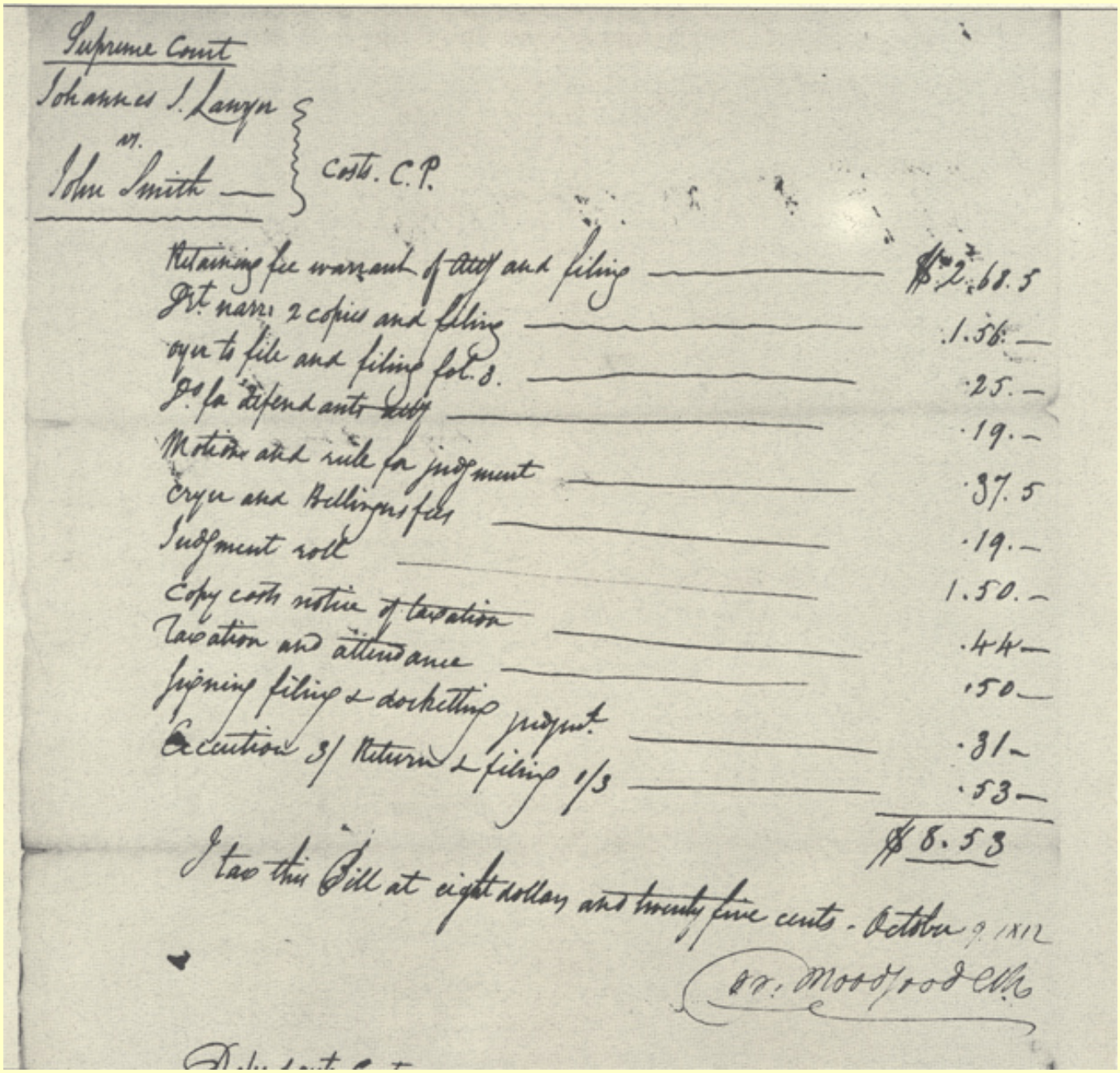
This account book contains a record of fees charged for filing declarations, judgments, satisfactions, motions, and other documents, and for performing searches for documents on file. Each entry gives the date of the fee, attorney's name, nature of fee charged, and amount of fee. The entries are alphabetical by first letter of attorney's last name, then chronological by date.

J0244 Day Book for Clerk's Fees (Geneva), 1839-47. 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 Treasurer's Receipts for Fees, 1841-44. .2 cu. ft.

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, Section 20, which required them to receive and pay over all monies belonging to the state.



Supreme Court

Johannes I. Lansyn
vs.
John Smith — } Costs. C.P.

Retaining fee warrant of Atty and filing	$2.68.5
Dft. nam: 2 copies and filing	1.56.—
oyer to file and filing fol. 8.	.25.—
Js fa defendants duty	.19.—
Motion and rule for judgment	.37.5
Cryer and Bellringers fee	.19.—
Judgment roll	1.50.—
Copy costs notice of taxation	.44—
Taxation and attendance	.50—
Signing filing & docketing judgmt.	.31—
Execution 3/ Return & filing 1/3	.53—
	$8.53

I tax this Bill at eight dollars and twenty five cents - October 9 1812

Wm. Woodford Clk

Bill of Costs, 1812. This bill of costs (iincludingcourt 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), 1801-12. .2 cu. ft.

This series contains bills of court 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 dorso. The series is fragmentary and is unarranged and unindexed. Statute law specified the costs to be allowed in actions in Supreme Court.

"Duely & Constantly Kept"

Inventory of Record Series [cont.]

Description of Record Series [cont.]

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

J0044 Oaths of Office of Attorneys, Solicitors, and Counselors, 1796-1847. .5 cu. ft.

This series consists of the signed oaths of office of attorneys of the Supreme Court of Judicature and of solicitors and counsellors in chancery. Laws of 1788, Chap. 28, required judicial officers (construed to include 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, Chap 57, added an oath to uphold the United States Constitution, and Laws of 1816, Chap. 1, added an antidueling oath. The Constitution of 1822 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. The requirement for an antidueling oath was replaced by Laws of 1824, Chap. 41. 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. 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. Appointment of Supreme Court commissioners was authorized by Laws of 1788, Chap. 46. Rules appointing commissioners were entered in J0130 Minute Books (Albany).

J1150 Registers of Agents (Albany), 1799-1813. 4 vols.

Agents were empowered to act for attorneys in all matters, including filing papers, obtaining rules, arguing motions, etc. 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. Agents were required to be appointed by court rules adopted in January term, 1799, and August term, 1809. See also J0150 Appointments of Agents (Albany), 1826-40. Names of attorneys and their agents in 1821 are published in *A List of the Attornies and Counsellors of the Supreme Court of the State of New York* ... (Albany: 1821).

J0150 Notices of Appointment of Agents (Albany), 1826-40. 1.3 cu. ft.

These documents are brief notices of appointment of local agents at Albany by attorneys residing elsewhere. On the dorso 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.

J0149 Notices of Appointment of Agents (Utica), 1809-41. 2.2 cu. ft.

The documents in this series are notices of appointment of local agents at Utica by attorneys residing elsewhere. The Utica appointments are bundled by year but are otherwise unarranged.

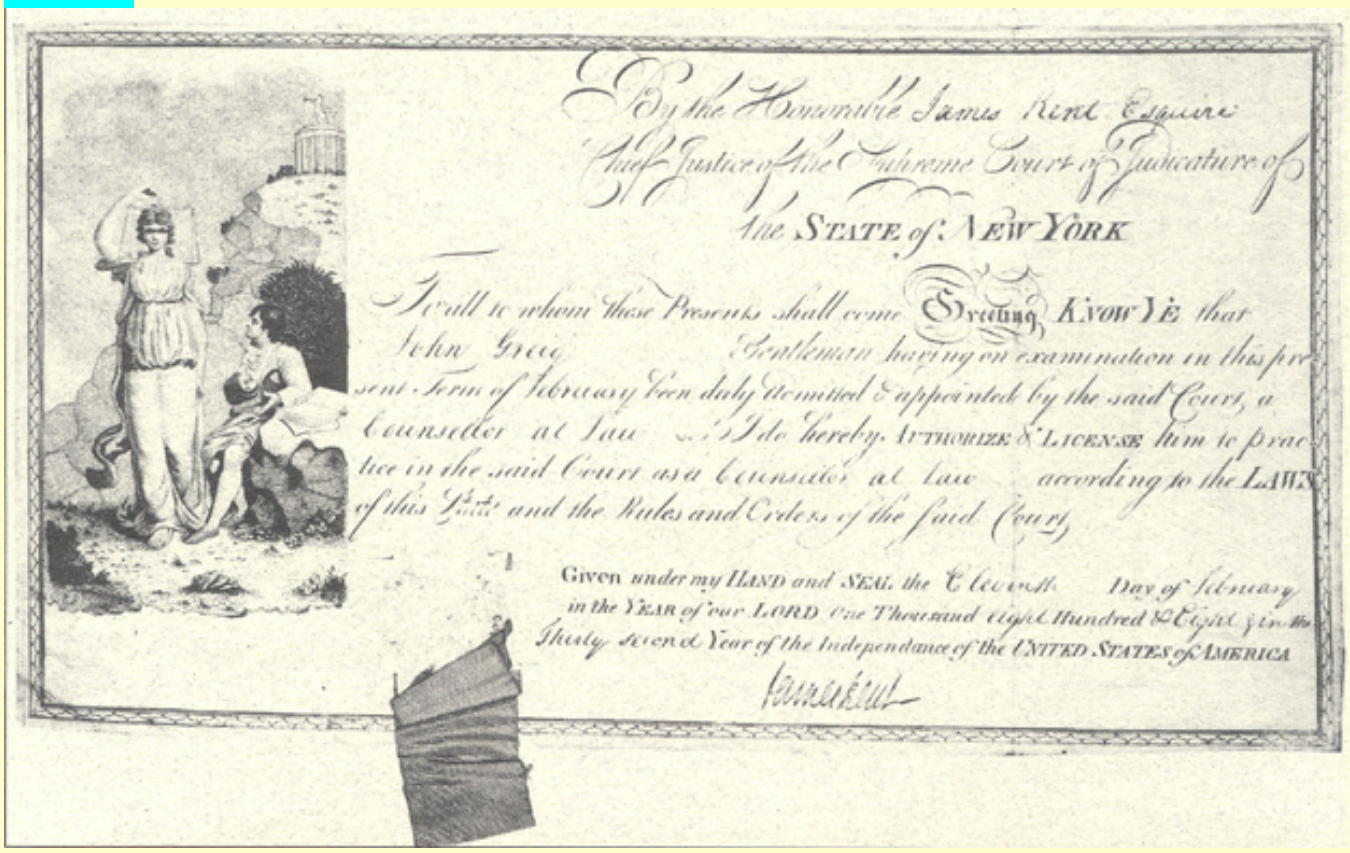
"Duely & Constantly Kept"

Inventory of Record Series [cont.]

Description of Record Series [cont.]

Certificates of Clerkships

The three series described below contain documents relating to clerkships served by persons 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.


By the Honourable 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 Grieg Gentleman having on examination in this pre-
sent Term of February been duly admitted & appointed by the said Court, a
Counsellor at Law I Do hereby AUTHORIZE & LICENSE him to prac-
tice in the said Court as a Counsellor 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

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].)

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 readopted in October term 1829, October term, 1832, and January term, 1836.

J0104 Certificates of Clerkships (Albany), 1803-10, 1813-47. 8.6 cu. ft.

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 J0l30 Minute Books (Albany).

J1104 Certificates of Clerkships (Utica), 1807-26, 1832-36. 1.3 cu. ft.

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 J0l28 Minute Books (Utica).

J2104 Certificates of Clerkships (Geneva), 1838, 1842, 1844. 1.3 cu. ft.

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. Lists of attorneys and counselors were entered in the Utica Minute Books, J0l28.

Description of Record Series [cont.]

Documents Received from New York State Library

A0178 **Book of Entries of Writs Sealed, 1757-62.** 1 vol.

This volume contains entries of writs sealed and issued by the Supreme Court of Judicature of the Province of New York. 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.

B0138 **Precepts for Circuit Courts and Courts of Oyer and Terminer, Queens County, 1788-94.** 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 and court of oyer and terminer to be held at the Queens County courthouse. On the dorso of each precept is the sheriff's return stating that he has carried out the order and the filing date. These documents were burned in the 1911 fire but they are legible and usable.

A0262 **Miscellaneous Writs and Bail Pieces, 1763, 1785-1824.** .5 cu. ft.

This series consists mostly of writs of *capias ad respondendum* ordering a sheriff to arrest a defendant for appearance in court. There are also a few other writs. Other documents include common bail pieces, one recognizance roll, and one indictment (dated 1763). Also found are two parts of a fine, the record of 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 Historical and Genealogical Society around 1966.

Arms of the State of New York.
From The Revised Statutes of the State of New York
(Albany: 1829).

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.[1] Proceedings in certain actions concerning real property were regulated by statutes passed in the 1780's. Proceedings in all forms of actions were outlined in the Revised Statutes of 1829, which also abolished several antiquated forms of action. This appendix lists and describes the principal forms of action over which the Supreme Court of Judicature had jurisdiction.[2] 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 for the injury.[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 is 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 give 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.[4] To identify the form of action in a judgment roll, one should likewise examine the commencement of the declaration, which is always included in the judgment. (The same advice applies to judgments of the courts of common pleas and mayor's and recorder's courts reviewed by the Supreme Court on 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.

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. He then got a writ of summons ordering 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 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 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 if ever employed in New York State courts and was abolished by the *Revised Statutes* of 1829.

Note 1: On the historical development of the forms of action see John H. Baker, *An Introduction to English Legal History*, 2d ed. (London: 1979), pp. 49-61, 263-314, 336-74; 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," *The Law Practice of Alexander Hamilton: Documents and Commentary*, vol. 1, ed. Julius Goebel, Jr. (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.

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. 40-43; and *Law Practice of Alexander Hamilton*, ed. Goebel, vol. 1, pp. 63-66.

[Appendix A continued next page.]

Forms of Action at Common Law [cont.]

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 or never 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 J1Oll 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* was used where 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 sale for the benefit of joint tenants (each holding an equal share under the same title) or to 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 had to be 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 legal means of recovering possession of and testing 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 by a real tenant. AU these steps were fictions alleged in order to determine the title. The fictitious current tenant was the plaintiff in the action and was customarily named "James Jackson." The

[Appendix A continued next page.]

Forms of Action at Common Law [cont.]

fictitious prior tenant was called "John Stiles." Judgment rolls for ejectment cases prior to 1830 are therefore filed either under "Stiles" or under the name of the real defendant if the actual plaintiff won his case. If he lost, the judgment is filed under "Jackson." 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 inflicted. 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 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. Formula in plaintiff's declaration: "Plea that (defendant) render to (plaintiff) a reasonable account".

Covenant

The action of covenant was used to recover 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 be founded 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, 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)."

[Appendix A continued next page.]

Forms of Action at Common Law [cont.]

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 verbal. The action sought 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") covered personal injuries suffered by assault, battery, mayhem, or false imprisonment. This form of trespass also could be brought 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) covered 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 the 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 a plaintiff's injury. 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 was 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 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 by some contract. The plaintiff also demanded damages for the detention. Replevin was the action more commonly used to recover 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 (who had to give security to the sheriff), 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".)

Suggestions for Locating Case Papers

The inventory contains detailed information on the content and arrangement of each series, mentions any indexes, discusses the relation of the records to other series, and cites relevant statutes or court rules. However the records of the Supreme Court of Judicature are complex, and suggestions for locating cases may be useful.

The Supreme Court of Judicature was a court of statewide jurisdiction. A judgment filed and docketed in any one of the clerk's offices could be enforced anywhere in the state. Usually judgment rolls were filed in the clerk's office nearest the filing attorney's place of business. However, judgments could be, and sometimes were, filed in a Supreme Court clerk's office in a different part of the state. Certain other major types of documents were required to be filed in a specific clerk's office. Starting in 1820 statute law required sheriffs to return all process (writs of summons, arrest, and execution) to a designated clerk's office.[1] (See map, p. 22) After 1832 Supreme Court rule 80 directed attorneys to file motions argued before a circuit judge in designated clerk's offices.[1] Motion papers from the first and second circuits were to be filed at New York City; third and fourth circuits, at Albany; fifth and sixth circuits, at Utica; seventh and eighth circuits, at Geneva.[2]

The larger series of Supreme Court documents are usually arranged chronologically by year and then alphabetically by name of judgment debtor or by name of filing attorney. Judgment rolls and records of pleadings furnished to circuit courts (except the pleadings filed at Geneva) follow the first arrangement (judgment debtor). Declarations, motions, and writs of arrest and execution generally follow the second arrangement (filing attorney). Either arrangement poses access problems because of the lack of overall indexes. The dockets of judgments give names of judgment debtors, but the arrangement of the dockets is complex. The Albany dockets were compiled for each court term or for several years together. Transcripts of dockets in the New York, Utica, and Geneva offices were compiled each court term or (after 1829) semimonthly. Thus for the fifty-year period from 1797 to 1847, there are nearly two thousand separate alphabetical indexes to judgments filed in the four offices of the court. The only cumulative index to judgment debtors (usually defendants) for the three upstate offices is J0142 Index to Dockets of Judgments, 1829-35. There is no index to judgment creditors (usually plaintiffs) at all.

There were four practicable ways of locating a judgment when one has some information about a case but not the exact date and place of filing and docketing. The first is to scan the dockets or transcripts of dockets for the Supreme Court office where the judgment roll is believed to have been filed. In this case one must know the name of the losing party and the approximate date of judgment. The second is to look through the judgment rolls themselves. Again one must know the name of the losing party and the probable date and office of filing. One should remember that many types of actions were *transitory*, not *local*, and therefore

the plaintiff could lay the venue in any county he chose. The third way of locating judgments is to search circuit court minutes, which should be in custody of the clerk of the county where the trial was held If one finds the trial minutes, the filing and docketing of final judgment normally would have occurred a few days or weeks afterward. However, most cases will not appear in the minutes because they never went to trial. Instead, judgment was awarded after a defendant's confession or default, after a nonsuit by the plaintiff, or after the court ruled on a point of law raised on demurrer or a special case. A fourth method of locating cases handled by a particular attorney is to search the common rule books of the Supreme Court office serving the county where a plaintiff resided. (The rules are entered under name of filing attorney.)

If one wishes to identify the attorneys practicing in a particular county, city, or village, one may consult the published directories listed in the Bibliography. Names of lawyers can also be found in city directories and county histories. If one is looking for a case in which the State of New York was the plaintiff, one must search under the name of the attorney general, since the case was brought in his name. A list of attorneys general is found in Appendix F.

The records of the Supreme Court of Judicature document many cases that were included in published reports and digests of court decisions. Official law reporting in New York State commenced in 1804, although some unofficial reports exist 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 nonenumerated cases decided by the Supreme Court. The preface to the first volume of *Cowen's Reports* (1824) states that "in deciding calendar causes, and those of the Court of Errors, the Judges usually make copious notes," which they made available to the reporter. However, the judges' opinions in nonenumerated cases were usually delivered orally, and the reporter had to depend on his own notes of what was said. Cowen also remarked that he 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."

Besides the official reports, there were also several published volumes of "unofficial" reports of cases in Supreme Court, the Court of Errors, and the circuit courts (the latter are called *nisi prius* reports). Several digests of reports also appeared in the early nineteenth century. These digests summarized the reported cases by legal topic. *Abbott New York Digest* (1929-43 ed.) summarizes all reported cases from the New York State courts back to 1794, and is the most accessible source for locating reported Supreme Court cases bearing on particular legal topics. For a listing of published court reports and digests, see the Bibliography.

Note 1: Laws of 1820, Chap. 216; Laws of 1829, Chap. 42; Laws of 1830, Chap. 104. *Revised Statutes* (1829), Part III, Chap. 7, Art. 6, Sect. 78.

Note 2: *Rules and Orders of the Supreme Court of the State of New York* (Albany: 1837). The judicial circuits were different from the territories assigned to the Supreme Court clerk's offices for filing of process. Circuit boundaries, which corresponded to Senate districts, were established by Laws of 1823, Chap. 182, and altered by Laws of 1826, Chap. 289, Laws of 1836, Chap. 436, Laws of 1837, Chap. 154, and Laws of 1846, Chap. 328.

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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. These courts were divided into civil and criminal branches, though on each level the officers were generally the same. [1] (For example, justices of the peace tried both civil and criminal cases.) Following is a summary of the jurisdiction and organization of the town, county, and city courts and the circuit courts and courts of oyer and terminer, prior to the judicial reorganization of 1847.

Town Courts

Four justices of the peace were appointed in each town. (After 1826 they were elected.) Each justice was empowered to preside alone over a civil court, which tried personal actions involving demands for $50 or less (in 1840 the maximum was increased to $100). A court of a justice of the peace might award a judgment on confession by the defendant for an amount up to $250. Civil actions involving slander, assault and battery, or recovery of real or personal property could not be brought in this court, no matter what the amount of damages claimed. (They were tried in the Supreme Court or the county court of common pleas.) The justice of the peace kept a docket of cases and sent transcripts of judgments for more than $25 to the county clerk, whose filing of the same created a lien upon the judgment debtor's real estate. The court of justice of the peace was not a court of record, because it possessed no seal or clerk. Three justices of the peace sat together as a criminal court of special sessions of the peace. (After 1845 one justice might preside over the trial, with or without a jury, at the choice of the defendant.) The courts of special sessions tried misdemeanors and crimes through the level of petit larceny. Records of convictions in this court were required to be filed with the county clerk. In either the civil or the criminal justices' courts, the plaintiff or defendant could request a jury trial upon agreeing to pay the costs thereof if he lost the case.

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 judgment creditor's award).[2] The county sheriff and a town constable were jointly responsible for executing the judgment of a court of special sessions.

County Courts

The two principal county courts were the court of common pleas (civil) and the court of general sessions of the peace (criminal). The bench of these courts consisted of one first judge and several assistant judges (after 1818 the number was fixed at four). In most counties a quorum was one judge and two assistants. In the court of general sessions one or both of the assistants might be justices of the peace. The court of common pleas had jurisdiction over all civil actions, both local and transitory, involving any amount of debt or damages. The jurisdiction of courts of common pleas therefore overlapped that of the Supreme Court. The Supreme Court did not allow full court costs to a winning party unless the amount in controversy exceeded $250; therefore cases involving lesser amounts practically always went to common pleas. The court of general sessions of the peace had jurisdiction over all felonies except those punishable by death or life imprisonment. Its jurisdiction thus embraced most of the cases triable in the court of oyer and terminer, discussed below.[3] The surrogate's court, established in each county by a 1787 statute, had probate jurisdiction. The county judge served as surrogate. Appeals from the surrogate's courts lay to the Court of Probates (until 1823) or the Court of Chancery (1823-1847).

New York City Courts

New York City government, including the courts, was established by charters of 1686 and 1739, and by special legislative acts. The mayor's court functioned as the court of common pleas for New York City and County. The mayor, recorder, and aldermen,

[Appendix C continued next page.]

Note 1: There is no general history of the pre-1847 courts, but the following works are useful: Charles V. Lincoln, *The Constitutional History of New York*, 5 vols. (Rochester: 1906); 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); Edgar A. Werner, *Civil List and Constitutional History of the Colony and State of New York* (Albany: 1884), pp. 225-62; David McAdam, ed., *History of the Bench and Bar of New York*, 2 vols (New York: 1897); and *Abbott New York Digest*, vol. 2 (St. Paul: 1929), pp. vii-xvi.

Note 2: On justices of the peace see *Revised Laws* (1813), vol. 2, pp. 506-508; *Revised Statutes* (1829), Part III, Chap. 2, Titles 3-4; and Laws of 1845, Chap. 180. Prior to 1823 justices of the peace were appointed by the Council of Appointment. Between 1823 and 1826 they were appointed by county boards of supervisors. From 1827 on they were elected at town meetings. On duties of constables see *Revised Statutes* (1829), Part II, Chap. 2, Title 4. Several justice's manuals are listed in the Bibliography.

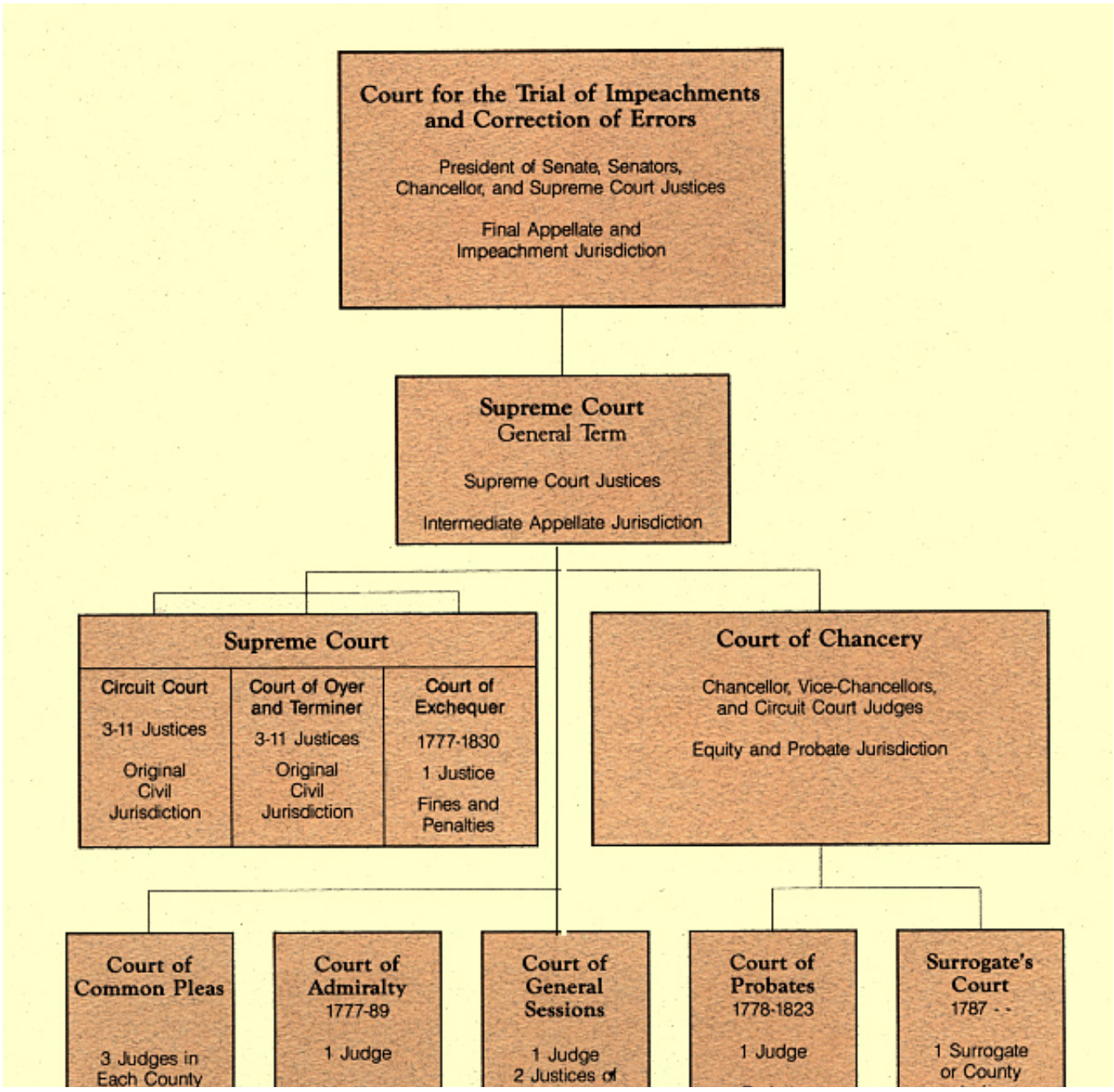
Note 3: On courts of common pleas and general sessions of the peace see *Revised Laws* (1813), vol. 2, pp. 141-51; *Revised Statutes* (1829), Part III, Chap. 1, Title 5.

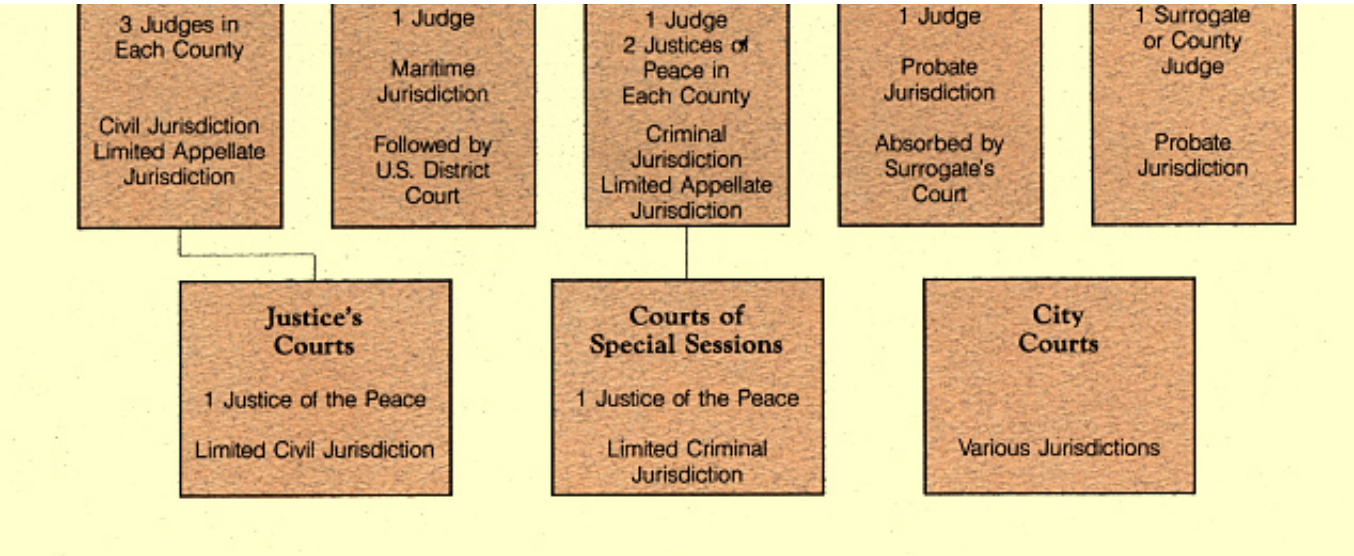
Inferior Courts of Law [cont.]

Diagram of the New York State Court System, 1777-1847.

Adapted from a chart prepared for the WPA Historical Records Survey but never published.

(Series A4192-42 Maps, Charts and Illustrations Prepared by HRS Staff, New York State Archives.)





[Appendix C continued next page.]

Inferior Courts of Law [cont.]

or any three of them, comprised the bench of the court. An 1821 law renamed the mayor's court the court of common pleas and provided for appointment of its own judges. An 1828 law established a New York City superior court, which had three justices. The superior court had original jurisdiction over all civil actions, but its primary business was complex commercial cases and hearing appeals from the court of common pleas and lower civil courts. Minor civil cases were decided by justices of the peace (starting 1797) and assistant justices (starting 1807). The justices' court was renamed the marine court in 1819. Its jurisdiction included small suits and contract and tort actions involving seamen and ship owners or captains. The court of general sessions for New York City and county had jurisdiction over all felonies (except those punishable by death). The court of special sessions tried misdemeanors. The recorder presided over the courts of general and special sessions, assisted by two common pleas judges. Starting in 1789 police justices handled arraignments and bail.

Other City Courts

City courts were established by city charters and other 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 Albany mayor's court dated back to 1686. Mayor's and recorder's courts were established in other cities as follows: Hudson, 1813; Troy, 1816; Rochester, 1834; Buffalo, 1839; Utica, 1844. Typically the mayor and the recorder presided alternately over these courts, and the alderman served as assistant justices. The Albany, Utica, Rochester, and Buffalo city courts had superior criminal jurisdiction, including the power to try indictments (except in capital cases).

Other cities had justices' courts and police courts to handle minor civil and criminal cases. [1]

Circuit Courts; Courts of Oyer and Terminier

Before 1823, Supreme Court justices presided over circuit courts. Starting that year the Governor appointed (with Senate approval) separate circuit judges in each of the eight senatorial districts of the state. Circuit courts were held in each county at least twice a year to try civil cases initiated in the Supreme Court. The circuit judge also received a commission from the governor to preside over a court of oyer and terminer, which can be considered 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 and certain upstate counties the associate judges of the court of oyer and terminer could be either county judges or the mayor, recorder, or aldermen of the city located in that particular county.) Courts of oyer and terminer had the power to inquire by a grand jury into all crimes and misdemeanors in the county, to try indictments found by the grand juries of that court and the court of general sessions, and to "deliver the jail" of the prisoners who had been taken into custody on warrants. [2] (Because of this authority to "deliver the jail," 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.

Note: Between 1823 and 1829 circuit judges presided over courts of equity, which were branches of the Court of Chancery Between 1830 and 1847 the or cult judges served as vice-chancellors in their circuits (unless a separate vice chancellor was appointed). [3]

Note 1: Charles P. Daly, "History of the Court of Common Pleas for the City and County of New York...," in *Smith's Common Pleas Reports*, vol. 1 (1855); also contains general information on the state's court system. On the history of inferior courts in New York City see Anna M. Kross and Harold M. Grossman, "Magistrates' Courts of the City of New York: History and Organization," *Brooklyn Law Review*, 7 (1937), 133-79. For the New York City Court of Common Pleas pertinent statutes are Laws of 1821, Chap. 72, and Laws of 1828, Chap. 137.

Note 2: The following statutes outline the organization and jurisdiction of upstate city courts having superior civil and criminal jurisdiction: Laws of 1789, Chap. 17, Laws of 1814, Chap. 200, Laws of 1830, Chap. 328, Laws of 1833, Chap. 17 (Albany); *Revised Laws* (1813), vol. 2, pp. 501-506 (New York, Hudson, Albany); Laws of 1816, Chap. 131 (Troy); Laws of 1832, Chap. 179, Laws of 1839, Chap. 210 (Buffalo); Laws of 1834, Chap. 199, Laws of 1844, Chap. 145 (Rochester); Laws of 1844, Chap. 319 (Utica).

Note 3: *Revised Statutes* (1829), Part III, Chap. 1, Title 4.

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Appendix D

Supreme Court Justices (1777-1847) and Circuit Judges (1823-1847)[*]

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 29, 1819
John Savage	January 29, 1823
Samuel Nelson	August 31, 1836
Greene C. Bronson	March 5, 1845

Puisne Justices	Years of Service
Robert Yates	1777-1790
John Sloss Hobart	1777-1798
John Lansing, Jr.	1790-1798
Morgan Lewis	1792-1802
Egbert Benson	1794-1801
James Kent	1798-1804
John Cozine	1798
Jacob Radcliff	1798-1804
Brockholst Livingston	1802-1807
Smith Thompson	1802-1814
Ambrose Spencer	1804-1819
Daniel D. Tompkins	1804-1807
William W. Van Ness	1807-1822
Joseph C. Yates	1808-1822
Jonas Platt	1814-1821
John Woodworth	1819-1829
Jacob Sutherland	1823-1836
William L. Marcy	1829-1831
Samuel Nelson	1831-1836
Greene C. Bronson	1836-1845
Esek Cowen	1836-1844
Samuel Beardsley	1844-1847
Freeborn G. Jewett	1845-1847

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	April12, 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** Edgar A. Werner, Civil List and Constitutional History of the Colony and State of New York (Albany: 1884). New York State Archives series A1848 Secretary of State Abstracts of Civil Appointments.

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Appendix E

Supreme Court Clerks (1797-1847) and Circuit Judges (1823-1847)[*]

Albany Office	Years of Service
Francis Bloodgood	1797-1825
John Keyes Paige	1825-1844
Charles Humphrey	1844-1847
New York Office	
James Fairlie	1797-1830
William Paxson Hallett	1830-1847
Utica Office	
Arthur Breese	1807-1825
Thomas H. Hubbard	1825-1837
John Savage	1837-1840
Hiram Denio	1840-1845
J. L. Beardsley	1845-1847
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
O. Curtis (deputy)	1844-1845
Robert Monell	1845-1847
Thomas Maxwell (deputy)	1847

***Source** Dockets and Transcripts of Dockets of Judgments (signed by the clerks).

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Appendix F

Attorneys General (1777-1847) and Circuit Judges (1823-1847)[*]

Attorneys General	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. Cases prosecuted by the attorney general may also be identified by consulting New York State Archives series B0606 Attorney General's Case Registers, 1813-1831, 1841-1883.

***Sources:** Werner, *Civil List*. New York State Archives series A1848 Secretary of State Abstracts of Civil Appointments.

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Appendix G

Supreme Court Terms (1785-1847) and Circuit Judges (1823-1847)[*]

1785	Albany	July, October
	New York	January, April
1797	Albany	January, April
	New York	July, October
1803	Albany	February, August
	New York	May, November
1811	Albany	January, August
	New York	May, October
1820	Albany	February, August
	New York	May
	Utica	October
1823	Albany	February, October
	New York	May
	Utica	August
1820	Albany	January, October
	New York	May
	Utica	July
1841	Albany	January
	New York	May
	Utica	July
	Rochester	October

Note: Places and months of court terms were changed by statutes passed in the years indicated.

***Source:** Session Laws.

The 1848 Code of Procedure

The code of procedure adopted in 1848 (known as the *Field Code*, from its principal author, David Dudley Field) will be outlined here in order to show how it changed procedure in the Supreme Court and the lower civil courts. The discussion will help orient researchers familiar with modern civil procedure to earlier common-law forms and procedures. The 1848 version of the code is the basis for the following discussion.[1] However it must be noted that in subsequent years the Legislature extensively amended the code and in the process vastly expanded its bulk. This process began in 1849 and continued unabated until the code was repealed and replaced with a new one (the so-called *Throop Code*) in 1876. 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.[2]

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 been used in the justices' courts. It resembled the old writ of summons used 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; 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 winning party's attorney prepared the judgment roll and filed it with the Supreme Court clerk. After 1848 the county clerks 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 exceptions. 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 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 real or personal 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 winning 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 in 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 remanded 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 case before 1848. The codifiers left intact the use of *mandamus* to correct actions of public officers.

Note 1: The Code of Procedure was passed as Laws of 1848, Chap. 379.

Note 2: On the history of the 1848 Code and its amendments, see the works cited in the Bibliography—Reform of Practice and Pleadings.

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Pleadings, 1754-1910	141 c.f.
Parchment Rolls, 1686-1799	139 c.f.
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Transcripts of Dockets of Judgments	
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* *Inventories of Supreme Court records in the New York County Clerk's office do not indicate the quantity of records dating prior to 1847. Therefore this list gives quantities through 1910, when a major change in the filing system occurred.*