NEW YORK COURTS
Four Centuries, Past and Present

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May, 2025

Considering that New York (initially New Netherland) was settled over 400 years ago, it comes as no surprise that its court system has generated a variety of tribunals. They fall generally into three eras: first, under Dutch colonial rule, from the 1620s to 1664.

The second era began in 1664, when the British took over the colony from the Dutch, who ceded New Netherland to the British under the Treaty of Breda in 1667. Although the Dutch recaptured the colony, the British ultimately regained it in 1674 under the Treaty of Westminster. We measure the second period, New York as a British colony, from 1664–1776, when we declared independence from England.

The third epoch goes from 1777, when New York became a State, through the present. Over this 400-year period, there have been dozens of courts, with a great many statutory and constitutional alterations. We begin with the Dutch.

* With thanks to Marc Bloustein for his helpful comments.

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The New Netherland Court of Justice and Council

Seeking commercial markets, including the far east, England and the Netherlands were in competition in the 17th Century. In a pivotal event, Henry Hudson sailed from Holland in 1609 on the *Halve Maen*, eventually encountering the river that bears his name. He had been hired by the Dutch East India Company to outpace the competition, and to find a shortcut from Europe to the far east. This would enable the company's investors to tap into the lucrative treasures of the orient, including exotic condiments like pepper, clove, nutmeg, and cinnamon. Although he is sometimes referred to, inaptly, as Hendrick Hudson, he was not Dutch; he was English.[1]

On the heels of Hudson's discovery, the Dutch West India Company (WIC), formed in 1621, gained a monopoly in New Netherland in 1624.

The first leaders of New Netherland were ship captains Adriaen Jorisz Thienpont (1574?–?), and Cornelis Jacobsen May (1580?–?). In 1624, with thirty families of Walloon settlers from Texel, Holland, Thienpont sailed the *Eendracht* to New Netherland.

May captained the ship *Nieu Nederlandt*, sailing to the Colony in March 1624.[2] Willem Verhulst was WIC director in 1625, followed by Pieter Minuit in 1626, then Bastiaen Jansz Krol (1595–1674?) and Wouter Van Twiller (1606–1654). After that came Willem Kieft (1597–1647) in 1638, replaced by Peter Stuyvesant in 1647.

The name New Netherland had first been given to the colony in 1614.[3] May's ship carried some thirty families to America's shores. On arriving in New Netherland, May divided the settlers into several groups, placing some on Staten Island, others on Long Island, and yet others on the island of Manhattan.

Beginning in 1626, the Director and council, acting together, exercised all executive and legislative power within New Netherland. These men also constituted the New Netherland Court of Justice, a tribunal with original civil, criminal, and admiralty jurisdiction, over which the Director presided. In the 17th century, courts had not yet maintained the separation of powers that marks our system, and there was a good deal of overlap in what eventually became the three branches of government.

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[1] *See* generally, Historical Society of the New York Courts, https://history.nycourts.gov/about_period/new-netherland-court-justice/; Albert M. Rosenblatt and Julia C. Rosenblatt, *Opening Statements: Law, Jurisprudence, and the Legacy of Dutch New York* (SUNY Press, 2013); Henry W. Scott, *The Courts of the State of New York,* (1909), online at https://babel.hathitrust.org/cgi/pt?id=uc2.ark:/13960/t9k35sq1w&seq=463&q1=%22+special+sessions%22&start=1; *The Records of New Amsterdam from 1653 to 1674 Anno Domini*, 7 vols., Edmund B. O'Callaghan, Berthold Fernow, ed., 1897, reprint 1976; Peter J. Galie, *Ordered Liberty* (1966).
As to Dutch Courts in New Netherland, *see*, generally, Jaap Jacobs, *New Netherland, A Dutch Colony in Seventeenth-Century America*, (Brill 2005) at 347 et seq.; The name of New Netherland was first given to the country in 1614. See online at https://upload.wikimedia.org/wikipedia/commons/0/01/The_register_of_New_Netherland%2C_1626_to_1674_%28IA_registerofnewnet00ocal_0%29.pdf.

[2] Jaap Jacobs, *The Colony of New Netherland: A Dutch Settlement in Seventeenth-Century America*, at 30.

[3] New York Colonial Manuscripts, p 10 online at https://archive.org/details/documentsrelativ01brod/page/10/mode/2up?view=theater. *See* also online at https://www.newyorkalmanack.com/2021/11/henry-hudson-the-founding-of-albany/. For the Resolutions allowing exploration, see Appendix Two.

From 1629 on, the Court also functioned as an appellate tribunal from decisions of local courts. Cases were brought by the Schout Fiscael (Fiscal), an officer of the court analogous to an Attorney General. But with rudiments of separation in mind, the Fiscael, as a sort of prosecutorial arm of the government, was appointed not by the Director, but by the Company in Amsterdam, to whom he reported directly, giving him a measure of independence from the Director and council.[4]

In the early days of the colony, whenever any of the Company's ships were in port in New Amsterdam, their captains were authorized to participate in the council and the Court. Later, when special questions were to be deliberated by the council, or special cases tried by the New Netherland Court of Justice, leading citizens were added to the council, when warranted.

Jurisprudence in New Netherland was based on the *Provisionele Ordere*, a contract between the colonists and WIC, outlining respective rights and duties, and, in some instances, the *Artikelbrief* (regulations pertaining to employees of the Company). Controversies not covered by these documents were resolved in accordance with the laws in force in the Dutch Republic, based upon the Justinian Code.[5]

At that time, New Netherland was home to approximately two hundred people. During his one-year term of office, Willem Verhulst, the second Director, chaired the council, which consisted of two WIC officials and two Dutch colonists.

On April 22, 1625, WIC gave Verhulst a set of instructions that presaged the arrival of Dutch jurisprudence to the new colony. As historian Martha D. Shattuck has pointed out, these instructions mandated that the ordinances and customs specifically of Holland and Zeeland, and the "common written law qualifying them," particularly regarding "the administration of justice, in matters concerning marriage, the settlement of estates, and contracts" be enforced. Criminal justice was regularized under the adoption of the 1570 Criminal Justice and Procedure Ordinance of Philip II. WIC also instructed that the council could not pass any new laws without first gaining WIC approval. This jurisprudence would govern the actions of the colonial council as well as the court system of governance up to, and in some instances beyond, the English conquest in 1664.[6]

As the highest governing body in New Netherland, the council was responsible for all legislative, judicial, and executive activities within its jurisdiction. In the early years under directors Minuit, Van Twiller, and Kieft, this comprised the entire territory from the Connecticut River to Delaware Bay. However, as New Netherland's population grew, it was necessary to establish new

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[4] *See*, generally, Charles T. Gehring, *Laws & Writs of Appeal 1647-1663*, online at https://www.newnetherlandinstitute.org/application/files/6116/8369/5993/Laws__Writs_of_Appeal_16471663.pdf.

[5] Frances Murray, Historical Society of the New York Courts, online at https://history.nycourts.gov/figure/council-new-netherland/ and https://history.nycourts.gov/about_period/new-netherland-court-justice/. For a chronology of events in New Netherland from 1609 to 1674 *see*, *Annals of New Netherland* online at chrome-extension://efaidnbmnnnibpcajpcglclefindmkaj/https://upload.wikimedia.org/wikipedia/commons/0/01/The_register_of_New_Netherland%2C_1626_to_1674_%28IA_registerofnewnet00ocal_0%29.pdf. *See* also, https://sites.rootsweb.com/~nynewyo2/CourtRecords.htm.

[6] Martha Shattuck, "Dutch Jurisprudence in New Netherland and New York," in *Four Centuries of Dutch-American Relations*, 1609–2009, ed. Hans Krabbendam, Cornelis A. van Minnen, and Giles Scott-Smith (2009), 142. *See*, also, W.B. den Blanken *'Imperium in Imperio?' Sovereign Powers of the First Dutch West India Company,* Master's thesis, Leiden: Leiden University, 2012; Frances Murray. *A Legal History of New Netherland,* online at https://history.nycourts.gov/wp-content/uploads/2023/11/Illustrated-Essay-with-edits-and-endnotes.pdf.

communities with rights and privileges of their own, and to grant older settlements the right to govern themselves within their own local jurisdictions.[7]

For help in applying these laws, the courts were sent copies of the Amsterdam ordinances, as well as legal reference books. Patroon Kiliaen van Rensselaer sent his schout such books as Damhouder's *Procedures in Criminal Matters*, Merula's *Civil Procedure of the Courts of Holland, Zeeland and West-Friesland*, and Hugo Grotius's *Introduction to the Jurisprudence of Holland*.[8]

In 1626, Peter Minuit (1580–1638), as the third Director/Governor, succeeded Verhulst.[9] Minuit introduced a measure of democracy in the colony, employing a five-member advisory council to the Governor to develop and adjudicate a body of laws. He also established the office of *Schout Fiscael* to enforce the laws. The tribunal, in that form, continued until 1637.

From 1626 on, the Director and council had both executive and legislative powers within New Netherland. These men also constituted the New Netherland Court of Justice, a tribunal for the trial of civil and criminal cases. From 1638–1647, Director William Kieft appointed Dr. Johannes La Montagne as the sole member of his council, although he did retain the office of the Schout Fiscael.

Initially, whenever the Company's ships were in port in New Amsterdam, their captains participated in the council and the court. Later, when special questions were to be deliberated by the council, or special cases tried by the New Netherland Court of Justice, leading citizens were added to the council, *pro hac vice*. The Schout Fiscael (Attorney General) participated in a non-voting capacity when the council was in executive session, but when the council functioned as a court, his sole role was as Schout Fiscael.[10]

In 1640, with an eye toward encouraging emigration, "the College of Nineteen" adopted a *Charter of Exemptions and Privileges*, declaring that the Governor and council should hear all claims and disputes, whether by foreigners or inhabitants of the province, and that they should act as an orphan's and surrogate's court, judge in criminal and religious affairs, and administer law generally.[11]

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[7] Charles Gehring, Council Minutes, at xiii, online at https://www.newnetherlandinstitute.org/application/files/8816/8369/4975/Volume_VI_-_Council_Minutes_1655-1656.pdf

[8] Martha Shattuck, "Dutch Jurisprudence in New Netherland and New York," in *Four Centuries of Dutch-American Relations*, 1609–2009, ed. Hans Krabbendam, Cornelis A. van Minnen, and Giles Scott- Smith (2009), 144.

[9] New Netherland Institute, online at https://www.newnetherlandinstitute.org/history-and-heritage/dutch_americans/willem-verhulst.

[10] Historical Society of the New York Courts, https://history.nycourts.gov/figure/council-new-netherland/#:~:text=From%201626%20on%2C%20the%20Director,of%20civil%20and%20criminal%20cases.

[11] Henry W. Scott, *The Courts of the State of New York*, (1909) at 327, online at https://babel.hathitrust.org/cgi/pt?id=uc2.ark:/13960/t9k35sq1w&seq=463&q1=%22+special+sessions%22&start=1; David McAdam, *1History of the Bench and Bar of New York*, at 8, online at https://babel.hathitrust.org/cgi/pt?id=uc2.ark:/13960/t9k35sq1w&seq=463&q1=%22+special+sessions%22&start=1; *See* also online at https://archive.org/details/documentsrelativ01brod/page/122/mode/2up?view=theater at p. 122-123. The beginnings of judicial power over testamentary and intestate matters, as a separately acknowledged division of judicial business, are found in the Charter of Exemptions and Privileges adopted by the College of Nineteen in 1640. Franklyn C. Setaro, *The Surrogate's Court of New York: Its Historical Antecedents,* 2 N.Y.L Sch.

In 1631 or 1632, Minuit was relieved of his duties as governor general, replaced by the fourth director Wouter Van Twiller (1606–1654), who had been a clerk at the WIC in Amsterdam.

When Van Twiller arrived in New Netherland, New Amsterdam was little more than a trading post, and he sought to maintain and extend WIC's commercial monopoly. Arriving without wealth and earning only a small salary from WIC, he became the wealthiest man in the colony during his brief directorship. He became known for his indolence and often brought disgrace upon himself and his office through "drunkenness and lewd women."[12]

During his administration, New Netherland was beset by incursions from the English territories. Although settlers from New England took over the Connecticut Valley, Van Twiller successfully defended the Dutch territory in the Delaware Valley around Fort Nassau from attackers who came from the English Colony in Virginia.

When, in 1636, the Schout Lubbertus Van Dincklage criticized the management of the colony, Van Twiller forced him to return to Holland and refused to pay him the large arrears of salary owed to him. When Van Dincklage arrived in Amsterdam, he told the WIC directors about Van Twiller's behavior. Captain David Pieterszoon de Vries confirmed Van Dincklage's allegations, and the Company removed Van Twiller from office in the summer of 1637.[13]

The fifth director was Willem Kieft (1597–1647), who took up the position in 1638 and held it until 1647.[14] He arrived when the Dutch government decided to become more involved in running the colony, rather than leaving it to the company, which regarded the colony as a lucrative business with a monopoly on the fur trade with the Native Americans.

When the Dutch government stepped in, it opened up trade opportunities for others outside of the company. Soon, settlers from Europe moved in from New England, Maryland, and Virginia.

Kieft's dictatorial behavior produced a reaction from the settlers, and he relented, forming an advisory council of Twelve Men, the first form of participative government for the colony, at least on paper. He is also remembered unfavorably for "Kieft's War" with the Wecquaesgeek Native Americans.[15]

A reconstituted advisory council, consisting of Eight Men, appealed to the Dutch government, which replaced Kieft with Peter/Petrus Stuyvesant, New Netherland's sixth and best-known Director/Governor, who took over in 1647.

The appeal to Patria did more than lead to Kieft's ouster. It was a step along the way from authoritarian rule toward democratic processes in the administrative and judicial realm. The eight men under Kieft were to function in a judicial as well as administrative capacity, but as long as

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L. Rev., 283 (1956), online at https://digitalcommons.nyls.edu/cgi/viewcontent.cgi?article=1778&context=nyls_law_review.

[12] Frances Murray, Historical Society of New York Courts, https://history.nycourts.gov/figure/wouter-van-twiller/.

[13] Frances Murray, Historical Society of the New York Courts, https://history.nycourts.gov/figure/wouter-van-twiller/; New Netherland Institute, https://www.newnetherlandinstitute.org/history-and-heritage/dutch_americans/peter-minuit.

[14] *See* New Netherland Institute, https://www.newnetherlandinstitute.org/history-and-heritage/dutch_americans/willem-kieft.

[15] The Nan A. Rothschild Research Center, https://archaeology.cityofnewyork.us/collection/nyc-timeline/kiefts-war.

Kieft refused to call them together—preferring his own autocratic power—the group would be powerless. This generated a Remonstrance from the Eight, in which they complained to Patria of Kieft's high handed conduct:

> *[The Eight were] never called together again on public business, from November 4, 1643, to the June 18, 1644; though in that period many things occurred. It was, indeed, sufficiently manifest how little were these Eight men respected, for no sooner did they open their mouths to propose anything tending in their judgment to the public good, than the Director [Kieft] met them with sundry biting and scoffing taunts; and sometimes had them summoned, without asking them a question, thus obliging them to return amidst jeers and sneers, as wise as they went.*
>
> *We were finally again convoked, on the I5 June, 1644… when the Director demanded that some new taxes and excise should be imposed on the Commonalty, or he should discharge the English soldiers. Whereupon we remonstrated, that it was impossible for us to raise means from the people, as those outside (de huyten huys luyden) were reduced to the extremest necessity by this war; and we did not conceive that our powers extended so far as to impose new taxes; but that such must first be considered by a higher authority (to wit, by the Lords Majors).*
>
> *Hereat the Director became much enraged, and with an altered mien said to us, in presence of the Fiscal and Montaigne: I have more power here than the Company; therefore, I may do whatever I please.*

Coming from the Director—an employee of WIC—this kind of talk did not please WIC or the States General. They were aware that the population was unruly, composed of a mix of settlers in a new environment, and they expected the Director to be effective but not tyrannical.[16] Their own culture in the judicial and administrative realm demanded no less. The 1644 Remonstrance, with a ringing indictment against Kieft, won the attention of Patria:

> *Honored Lords This is what we have, in the sorrow of our hearts, to complain of; that one man, who has been sent out, sworn and instructed by his Lords and masters, to whom he is responsible, should dispose here of our lives and properties at his will and pleasure, in a manner so arbitrary that a King dare not legally do the like.*[17]

As Kieft's replacement, Stuyvesant tried to restore order and authority, convening a new panel of representatives, called the Nine Men, to consult on public affairs. The Nine, however, also wanted independence and reform, and soon drew up a Remonstrance to Patria, calling for administrative reforms in keeping with previous requests and in accordance with Dutch precedents and practice. Given the increased presence of transplanted New Englanders, the Nine invoked the example of New England, in which neither "Patroons, Lords nor Princes are known… only the People." Additionally, "Each Governor is like a Sovereign in his place, but

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[16] Jonas Michaelius, the first minister to New Netherland, labelled the settlement "a wild country." Dennis Sullivan, *The Punishment of Crime in Colonial New York* (1997), 21.

[17] E. B. O'Callaghan et al., eds*., Documents Relative to the Colonial History of the State of New-York*, comp. John Romeyn Brodhead (Albany, NY, 1856), 1: 212, online at https://archive.org/details/documentsrelativ01brod/page/212/mode/2up.

comports himself most discreetly." Consequently, the governors "are, and are esteemed, Governors next to God by the people, so long as the latter please," and because the people have the "power to make a change; and they would make a change in case of improper behavior, and that they therefore say is the bridle of their great men." Stuyvesant's response to the Nine's criticisms was stark. One of the Nine, Vice-Director Van Dincklagen, reported that "Our great Muscovy Duke goes on as usual, with something of the wolf; the older he gets the more inclined is he to bite. He proceeds no longer by words or writings, but by arrests and stripes. We daily expect Redress and a remedy."[18]

The Council as a Court

The council/court exercised appellate jurisdiction over the inferior courts, including the Patroon Court at Rensselaerswyck, whose chief magistrate, Brant van Slichtenhorst/Slechtenhorst, was rebuked by the council/court in 1652. The ruling imparts a flavor of the court's irritation at his chary behavior:

> *Whereas we have several times been… about the impertinent, unbearable and unchristianlike tyranny of the present commander or, as he styles himself, director of the colony of Rensselaerswyck, in refusing permission to and forbidding the officials of the honorable Company and their good and faithful servants at Fort Orange to cut firewood in the free and open woods for their use and subsistence, except in a certain thicket where the wood is unsuitable and the roads are almost impassable during the winter, or at least very rough and difficult;*
>
> *and whereas we are further informed that the farmers and laborers who have wagons and horses have been prohibited and forbidden to haul firewood for the Company's servants and inhabitants of the aforesaid fort, so that both the officials and servants of the Company are compelled to carry the firewood, which they have begged from him, on their shoulders as slaves, through thick and thin, ice and snow, for the amusement of this overbearing commander and his merciless associates, to the disregard, indeed, contempt of the honorable Company, its officials and good servants; and whereas the aforesaid commander and some of his officers have so far forgotten the teachings of Christ and their neighborly duties by insolently responding on 11 January of this year to the last request of our commissary and inhabitants of the aforesaid fort as follows:*
>
> *Nevertheless, desiring to show ourselves more accommodating and moderate than others, we shall allow the people of the aforesaid fort and the colonists the convenience of fire wood, provided that everyone apply to the director or his magistrates according to the ordinance, under the condition which his honor has*

[18] E. B. O'Callaghan et al., eds., *Documents Relative to the Colonial History of the State of New-York*, comp. John Romeyn Brodhead (Albany, NY, 1856), 1: 453, online at https://archive.org/details/documentsrelativ01brod/page/452/mode/2up; Alden Chester, *Courts and Lawyers of New York, a History, 1609-1925,* at 127.

proposed, that the people of the fort cut down the aforesaid thicket during the winter or have it cut down at their own expense.

Signed: By order of the court of Rensselaerswyck, Anthony de Hooge, secretary.

This sufficiently proves both the prohibition against cutting firewood and the unbearable tyranny by compelling the in habitants of the fort, who desire to cut firewood, which is as necessary to them during the winter as bread, to clear away the thicket and brush or have it done at their expense, which neither the officials nor the free and good subjects of the honorable Company are obligated to do.

After reviewing this errant behavior, the court made a corrective ruling:

…we herewith annul and repeal*, by this our proclamation, everything concerning this matter previously published by the commander, Brant Aris van Slechtenhorst,… and we give permission to the officials of the honorable Company and the free inhabitants at Fort Orange that they, as well as the settlers in the Colony may cut, haul or have hauled and… all the required firewood and building timber in the unfenced and public woods… annulling and voiding all contracts, ordinances and oaths made or taken in this manner as unchristian, unneighborly and unlawful, promising by this proclamation,… to indemnify… all inhabitants and colonists against all attempts… which the commander, Slechtenhorst, or his associates may undertake to carry out in this matter. Thus done and resolved in council at New Amsterdam, 24 January 1652.*[19]

It was attested to by the members of the Council/court

P. Stuyvesant,

H. (Henricus/Hendryck) van Dyck

La Montagne (Dr. Johannes La Montagne)

Brian Newton[20]

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[19] Charles Gehring, New York Historical Manuscripts, Dutch online at https://www.newnetherlandinstitute.org/application/files/8916/8372/4965/Volume_V_-_Council_Minutes_1652-1654.pdf

[20] On June 28, 1645, van Dyck received his commission as fiscal (N. Y. Col. Docs., I: 494), returning to New Netherland with Stuyvesant in May 1647, to take up his new duties. In March 1652, he was removed from office by the director and council. Cal. Hist. MSS., Dutch, 126, online at https://encyclopedia.nahc-mapping.org/sites/default/files/2019-06/a15.pdf.
Jean Mousnier de la Montagne (Johannes La Montagne) was born in France in 1596. His family was Protestant and moved to Holland, where, in 1619, he served on the New Netherland Council and was First Councillor to both Director Willem Kieft and Director-General Peter Stuyvesant. He was appointed Vice-Director of the colony in 1656, with special responsibility for Fort Orange (Albany) and Beverwyck. When New Netherland passed to the English, Dr. La Montagne signed an oath of loyalty to the Crown. Johannes de la Montagne is believed to have died in 1670 in Ulster County, New York. From https://history.nycourts.gov/figure/johannes-la-montagne/; Johannes la Montagne, as Vice-Director at Fort Orange, was President of the Court at Beverwyck, which to all intents superseded that of Rensselaerwyck in 1652, when Stuyvesant, by proclamation on April 10, 1652, erected the court of Fort Orange and the village of Beverwyck in the main settlement of the colony of Rensselaerswyck. In the two volumes of his translations of the minutes of the court of Fort Orange, 1652-1660, State Archivist Van Laer writes, "The erection of the court was the final act in the high-handed proceedings whereby Director Stuyvesant brought to

The Council also dealt in administrative matters, including pricing, and crime control, as in this 1653 New Amsterdam edict:

> *The director and council of New Netherland. To all those who shall hear and see these presents read, greetings, make known that in the month of September last their deputies and the delegates of the respective colonies and courts of New Netherland enacted, published and posted divers ordinances and regulations touching the great and excessive dearness all sorts of merchandise, provisions, grain and laborers' wages, which well-intentioned orders and regulations, published, enacted and made known to all by the preceding edicts, the director-general and council still understand shall be promptly observed and obeyed without any connivance, dissimulation or favor or pain of the fine more fully expressed in the edicts;*
>
> *[H]owever, whereas the recently arrived passengers, merchants and traders were not informed beforehand in the matter of recording their merchandise, and therefore have recorded their merchandise according to the previous custom; also, considering the great dangers of the sea, the heavy insurance and the long time the goods and merchandise lay in the ships by which they have been subjected to water damage, all of which being considered by the director-general and council, they have decided that the merchants presently could not survive with a 100% markup from the entries in the Company's invoice.*

Therefore, in order not to annul completely the previously enacted ordinance, the director-general and council have for the present time thought it best and necessary to appraise some goods and merchandise as follows:

> *A pair of men's shoes, size 8 to 12 at f3,5*
>
> *A pair of Icelandic stockings at 36 stivers*
>
> *A firkin of soap at 20 guilders*
>
> *A can of salad oil at f1,10 A pound of candles at 12 stivers*
>
> *An anker of distilled spirits at f32*
>
> *An anker of wine vinegar at f16*
>
> *An ell of duffel cloth to be sold to Christians no higher than f3,10*
>
> *A pound of nails at f30*

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a close the long standing controversy between the Dutch West India Company and the authorities of the colony of Rensselaerswyck regarding the jurisdiction of the territory around the Fort Newton was Schout-Fiscael of New Netherland (Substituting), 1652, was an Englishman who entered the service of the Dutch West India Company in 1630." In 1647, he became both commander of the military forces in New Netherland and a member of the New Netherland Council. In 1662 he returned to Holland. From https://history.nycourts.gov/figure/brian-newton/.

An anker of Spanish wine at f40

An anker of brandy at f44

Whereas several complaints have been made to us concerning the pillaging and robberies of a certain Thomas Baxter, a fugitive from this jurisdiction, and his companions, committed on Jochum Pietersz Cuyter, Willem Harck, among others, especially the secret and stealthy theft of 10 or 12 horses from the village of Amesfoort, and whereas we are incensed by these and other piracies and robberies committed by the aforesaid Baxter and his accomplices and complained of by the injured inhabitants; therefore, we have resolved to send letters to and summon from each of the nearest subordinate colonies two deputies who are to meet at the City Hall in this city and to whom we think it advisable to add two respected members of our high council, namely, the honorable Mr. Johan la Montagne and Mr. Cornells van Werckhoven who are authorized to present on our behalf the proposal and further to deliberate with the other deputies for the reputation and greater security of the country and its good inhabitants upon some effective remedies and means to prevent and stop these robberies, of which deliberations they will give us a report with all due speed. Done at New Amsterdam, 24 November 1653, signed P. Stuyvesant.[21]

Although its case load was much reduced by the early 1650s, a major problem continued in the New Netherland Court of Justice—Stuyvesant was once more the presiding judge of the court, and he could be autocratic.[22] The New Netherland Court of Justice had the power to banish, as we see in the case of Jochem Pietersen Kuyter/Cuyter/Kuyjter, an influential member of the community, who served in the assemblies of the Twelve Men, the Eight Men, and the Nine Men.[23]

Kuyter criticized former Director Kieft's massacre of Native Americans in February 1643. In response, Kieft accused Kuyter and Cornelis Melyn/Melijn of slander and sedition. Director-General Stuyvesant ordered their arrest. The Court heard the charges, as appears from the record in 1647:

Therefore, the Fiscal instituting criminal suit and process, accuses and convicts the aforesaid Jochem Pietersen of having offended against the Director's quality and falsely injured him in writing… Therefore the Hon. Director General Petrus Stuyvesant, with the advice of his Hon'" Council…hereby doth condemn, the abovenamed Jochem Pietersen, to a banishment of three consecutive

[21] Charles Gehring, New York Historical Manuscripts, Dutch. Online at https://www.newnetherlandinstitute.org/application/files/8916/8372/4965/Volume_V_-_Council_Minutes_1652-1654.pdf.

[22] https://history.nycourts.gov/about_period/new-netherland-court-justice/.

[23] https://history.nycourts.gov/figure/jochem-pietersen/. *See*, also, *Manual Corporation City of New York,* 1852 at 384, https://www.columbia.edu/cu/lweb/digital/collections/cul/texts/ldpd_6864652_003/ldpd_6864652_003.pdf.

years…Thus done and enacted at the Court in fort Amsterdam, in New Netherland, the 25'" July, 1647.[24] *Melyn was banished for seven.*[25]

Stuyvesant was not happy about anyone looking over his shoulder, let alone appealing—and worse yet—undoing his rulings.

"If I were persuaded," Stuyvesant famously said to Melyn, "that you would divulge our sentence, or bring it before their High Mightinesses, I would have you hanged at once, on the highest tree in New Netherland… If any one, during my administration, shall appeal, I will make him a foot shorter, and send the pieces to Holland and let him appeal in that way."[26]

Both banished, they did appeal to Holland, challenging Stuyvesant's arbitrary exercise of power and the sentence imposed on them by the New Netherland Court of Justice.[27]

It worked. Kuyter returned in honor to New Amsterdam.[28]

Stuyvesant designated the Vice-Director, lawyer Lubbert van Dincklagen, to preside whenever the Council met as a court, although he reserved the right to act as presiding judge whenever he deemed a case "important." In 1651, when the Vice-Director challenged some of Stuyvesant's actions, he attempted to remove van Dincklagen from office. The Vice-Director asserted that Stuyvesant did not have that power and, outraged, Stuyvesant had Van Dincklagen arrested and imprisoned. Sometime later, he escaped from prison and fled from New Amsterdam.

The Dutch settlers of New Netherland followed their distinctive system of Roman-Dutch law. Compared with English common law, it did not employ juries. Prosecutions were conducted under the continental inquisitorial system, with judges taking the primary role in deciding and resolving cases. Moreover, all prosecutions were conducted by a public prosecutor/attorney general known as a *schout*.[29]

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[24] Jaap Jacobs *The Colony of New Netherland, A Dutch Settlement in Seventeenth-Century America* (2009) at 81
[25] E.B. O'Callaghan, *History of New York*, Vol 2 at 34; https://ia801906.us.archive.org/31/items/historyofnewnet02ocal/historyofnewnet02ocal.pdf.
[26] John C. Abbott, *Peter Stuyvesant: The Last Dutch Governor of New Amsterdam* (1873), 133, https://archive.org/stream/cu31924064295607/cu31924064295607_djvu.txt.
[27] Jaap Jacobs, "Crimen Laesae Maiestatis or Abuse of Power? The 1647 Trial of Cornelis Melijn and Jochem Pietersz Kuijter" in *Opening Statements: Law, Jurisprudence, and the Legacy of Dutch New York*, ed. by Albert M. Rosenblatt and Julia C. Rosenblatt (2013), pp. 82–103.
[28] Brodhead and Callaghan, *Documents Relative to the Colonial History of NY*. Online at https://archive.org/details/documentsrelativ01brod/page/250/mode/2up?q=melyn; https://archive.org/details/documentsrelativ01brod/page/252/mode/2up?q=melyn; https://archive.org/details/documentsrelativ01brod/page/408/mode/2up?q=melyn; Shorto, Russell, *The Island at the Center of the World* at 197; https://penelope.uchicago.edu/Thayer/E/Gazetteer/Places/America/United_States/_Topics/history/_Texts/FISDQC/7*.html; Melyn died in New Haven around 1674. https://history.nycourts.gov/figure/cornelis-melyn/.
[29] Carlton F.W. Larsen *The Origins of Adversary Criminal Trial in Americ*a, 57 U.C. Davis L. Rev. 1, 36 (2023); *see*, also, The New Netherland Register; New York Secretary of State. Dutch manuscripts, 1630-64.

The Nine Men

After Stuyvesant's arrival in 1647, the Court of Justice of New Netherland continued to decide all major controversies in the colony, but it soon became apparent that the court was too busy and backlogged.

The desire for a popular form of government became so strong after Stuyvesant's arrival that he found it necessary to make some concessions. He allowed the commonalty to elect eighteen persons, from whom he selected nine, as a permanent advisory body, known as the board of the nine men. (See Appendix One for Stuyvesant's Resolution). Three attended in rotation upon every court day, to whom civil cases were referred as arbitrators, and their decision was binding upon the parties, though an appeal lay to the governor and council upon the payment of one pound Flemish. These tribunals, with the manorial courts before referred to, constituted the judicial organization of the colony for seven years afterwards, until 1654.[30]

Of the Nine, three were taken from the merchants, three from the burghers, and three from the farmers. The Board originally had separate criminal and civil jurisdiction, the first exercised by thirteen and the second by seven men. These courts were afterwards united, the number of members being thirteen until 1614, when it was altered to "Nine Well-Born Men."[31]

The Nine Men represented Manhattan, Breuckelen, Amersfoort, and Pavonia, and the principal classes of the community, notably, the merchants, burghers, and agriculturists.[32] The duties of this Board were: "First, to promote the honor of God, the welfare of the country, and the preservation of the Reformed Religion, according to the discipline of the Dutch Church. Second, to give their opinion on matters submitted to them by the Director and Council. Third, three of the nine, viz., one Merchant, one Burgher, one Farmer, were to attend for a month in rotation on the weekly Court, as long as civil cases were before it, and to act subsequently as referees, or arbitrators on cases referred to them. If in case of sickness or absence any of these three could not attend, his place was to be filled by another of the Nine Men of the same class. Six retired from office annually, to be replaced by an equal number selected from twelve names sent in by the whole Board. They held their sessions in David Provoost's School-room, and were the immediate precursors of the Burgomasters and Schepens, and of a Municipal form of government in the City of New Amsterdam."[33]

The Nine Men were: Augustine Heermans, Arnoldus van Hardenburg, Govert Loockermans, merchants; Jan Jansen Dam, Jacob Wolfertsen van Cowenhoven, citizens; Hendrick Hendricksen

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[30] Charles P. Daly, *Historical Sketch of the Judicial Tribunals of New York, from 1623 to 1846* (1855) https://archive.org/stream/historicsketch00dalyrich/historicsketch00dalyrich_djvu.txt; *see* also, Historical Society of the New York Courts,https://history.nycourts.gov/figure/pieter-stuyvesant/. See, generally Jaap Jacobs *The Colony of New Netherland, A Dutch Settlement in Seventeenth-Century America* (2009) at 81and https://history.nycourts.gov/about_period/nine-men/. *See* also *The Register of New Netherland*, https://upload.wikimedia.org/wikipedia/commons/0/01/The_register_of_New_Netherland%2C_1626_to_1674_%28IA_registerofnewnet00ocal_0%29.pdf P. 55; Henry W. Scott, *The Courts of the State of New York,* (1909); at 38, https://babel.hathitrust.org/cgi/pt?id=uc2.ark:/13960/t9k35sq1w&seq=463&q1=%22+special+sessions%22&start=1.

[31] Alden Chester, *Courts and Lawyers of New York: A History, 1609-1925,* at 117.

[32] Amoorsfoort is today part of Brooklyn. Pavonia is in New Jersey. *See,* https://www.newnetherlandinstitute.org/history-and-heritage/digital-exhibitions/a-tour-of-new-netherland/hudson-river/pavonia.

[33] *The Register of New Netherland, 1626 to 1674* (1865) at 55, https://archive.org/stream/registerofnewnet00ocalrich/registerofnewnet00ocalrich_djvu.txt.

Kip, Michael Jansen, Jan Evertsen Bout, and Thomas Hall, farmers. They took office in September, 1647.

The decisions of the Nine Men were subject to appeal to the Director-General and Council, and this system continued until 1653 when WIC ordered Stuyvesant to establish a separate court for New Amsterdam.

Within two years, the first board of Nine Men became dissatisfied and uncompliant, and another was appointed. This second board sent a deputation to the Hague to present to the States General a statement of the grievances of the colonists. Adrian van der Donck was its head.

This important measure was not carried out without a struggle with the imperious Director. When the Nine Men proposed it, they asked permission of Stuyvesant that they might confer with their constituents in a popular meeting to be called to consider the condition of the colony, whether it would approve of sending a delegation to Holland, and to provide means to defray the expenses. The Director refused permission, saying that any such communication with the people must be made through him, and his directions followed. The next best thing the Nine Men could do was to go from house to house to consult with their constituents privately, and Van der Donck was appointed to keep a record of these private conferences. Stuyvesant, exasperated at this defiance of his authority, went to Van der Donck's chamber, in his absence, seized all his papers and had Van der Donck jailed.

In his complaint to Patria, Van der Donck used colorful language, which likely resonated with the authorities in Holland. One paragraph shows Stuyvesant to be of such choleric temperament as to at times berate his councillors "in foul language better befitting the fish market than the council board."[34] In the end, Van der Donck was vindicated by Patria—and is presented as a heroic figure in Russell Shorto's gripping book, *The Island at the Center of the World.*

In fashioning the judiciary, Stuyvesant was exacting enough to put out a schedule of costs for litigants—with due regard for the poor:

Finally, and lastly, all secretaries, notaries and clerks shall be bound to serve the poor and indigent, who ask such as alms, gratis and pro Deo; and may demand and receive from the following fees:

> *For a simple petition written on one side of the paper, 18 stivers.*
>
> *If the petitioner desire to have it recorded or registered; for copying, 12 stivers.*
>
> *For a simple summons, as above, 18 stivers.*
>
> *For an answer, reply or rejoinder, 2 guilders. For engrossing; for copying, 24 stivers.*
>
> *But if the answer, reply rejoinder, summons or petition require more than one half sheet of paper, for each page of 25 to 30 lines, 30 to 36 letters in a line, 30 stivers.*

[34] Maud Wilder Goodwin, *Dutch and English on the Hudson: A Chronicle of Colonial New York* (1921), 68, https://www.gutenberg.org/cache/epub/34977/pg34977-images.html.

For a deduction; each half sheet of 26 to 30 lines, 30 to 36 letters in the line, 2 guilders.

For a petition in appeal to be presented to the director general and council, 2 guilders 10 stivers.

For a petition of revision, review, purging, reduction, rehearing, com plaint, pardon, or liberty to return to the country, to be presented to the director general and council, 2 guilders 10 stivers.

For a petition of the same nature as above, to any inferior court, 36 to 40 stivers. Or per page (lines and letters as before), 20 stivers.

For a judgment, 30 stivers. For extracts from their books (lines and letters as before) per page, 20 stivers. For a contract, obligation, assignment, attestation, lease, or bill of sale, 30 stivers.

For the copy, 20 stivers. For a verbal consultation on a case depending before the director general and council, 20 stivers; but the notary is bound to enter in his journal the time and subject.

For an inventory of documents to be furnished by parties, 15 stivers. For drawing up interrogatories and entering the questions, per half page, 10 stivers; provided that 7 to 8 interrogatories stand on one page.

For the answer to be entered on the opposite side, in like manner, 10 stivers. For one day's journey with or without their client, when required, exclusive of carriage hire and board, 4 guilders.

But within the city, village or place, accompanying their client, when required, 20 stivers.

For attending a term of court, with or without their client, 15 stivers; neglecting to attend it, to pay default and damages thereof. No disbursements for drink, or any other extraordinary presents, gifts, or gratuities shall be brought into any account, or demanded or collected by the secretaries, notaries, clerks or such like officers. And this and the foregoing articles shall not only be published, posted and observed in all places within this New Netherland province, where publication is usually made, but also read by the fiscal, schout and other inferior magistrates privately in their respective courts, before the secretaries, notaries, clerks and such like, now and on the 5th of February, not being Sunday, in every succeeding year, and thereupon the oath exacted from them to regulate themselves precisely in conformity there to, and in case of refusal to be removed from their office and place, with express prohibition neither directly nor indirectly to write any instruments for any person under a penalty of 50 guilders for the first, twice as much for the second time, and an arbitrary correction at the discretion of the judge for the third offense. Thus done at the session of the honorable director general and council of New Netherland held in Fort Amsterdam in New Netherland, the 25th of January 1658.

New Amsterdam Court of Justice

"To favor this new and growing city of New Amsterdam with a court of justice"

In this way, says Dutch New York Scholar Jaap Jacobs, the municipal charter of New Amsterdam was promulgated in 1653. In importance, he says, it ranks just below the famous Schagen letter of 1626, which contains the information that Manhattan had been bought for the sum of sixty guilders. The 1653 document is the municipal charter of New Amsterdam, outlining its form of government.

The chartering of New Amsterdam came relatively late in the history of New Netherland. In several towns much smaller than New Amsterdam, inferior courts of justice had already been established: some English and Dutch towns on Long Island, for instance, as well as Beverwijck, in 1652.[35]

Promulgated on February 2, 1653, the choice of the Charter's date is significant. February 2nd, Candlemass, since 1399 and perhaps even earlier, had been the traditional day on which the burgomasters in Amsterdam took office, having been elected the night before. The director general and council took their instruction to follow Amsterdam customs literally, choosing this day to establish a court of justice in New Amsterdam.

The director-general and council selected the first burgomasters and schepenen. For the city government, only persons qualified who were "honorable, reasonable, intelligent" and "well-to-do." Opponents of the Company were excluded. Candidates had to be either native born, which of course very few in the colony were at this stage, or had to have been burghers for at least seven years, following the laudable customs of Amsterdam. A third possibility was that they had been born in the Dutch Republic. Also, magistrates had to promote and profess the Reformed religion, as in conformity to the word of God and the regulations of the synod of Dordrecht as it is at present taught in the churches of the United Netherlands and here in this country. A difference between local courts elsewhere in New Netherland and the new court in New Amsterdam was the division of duties between burgomasters and schepenen. The burgomasters had administrative and legislative, rather than judicial, duties, and their tasks included the oversight of building regulations, and "public buildings, such as churches, schools, a court house, weigh house, charitable institutions, dock, pier, bridges" et cetera. To pay for the upkeep, the city government was allowed to levy reasonable taxes, which had to be approved by the director general and council. If the burgomasters saw the need for such offices as orphan masters, church masters, surveyors, and fire wardens, they could report to the director general and council and, if approved, could submit a double nomination from which the higher authority would make an appointment.

The schepenen were in charge of judicial matters. Although in Amsterdam burgomasters had no judicial authority, in New Amsterdam they were for the time being to preside over the meetings of the schepenen, in which they had a casting vote. The judicial authority of burgomasters and

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[35] Jaap Jacobs, *To Favor this New and Growing City of New Amsterdam with a Court of Justice: The Relations Between Rulers and Ruled in New Amsterdam,* de Halve Maen: Magazine of the Dutch Colonial Period in America 76 (2003), 65-72. *See*, also, Michael Lorenzini, *A Charter for New Amsterdam: February 2, 1653,* https://www.archives.nyc/blog/2023/1/31/a-charter-for-new-amsterdam-february-2-1653.

schepenen included civil jurisdiction, such as cases of debt or of slander. This was in fact a continuation of the previous situation with the Nine Men, who had since 1647 meted out civil justice. Appeal to the director-general and council was possible in civil cases exceeding a hundred guilders, except when the parties had agreed to subject themselves to arbitration, which in essence was an out-of-court settlement presided over by the two burgomasters with whomever they wished to join them. In criminal matters, the power of burgomasters and schepenen was limited to lower jurisdiction, "consisting of acts, threats, fights or wounding." Again, appeal to the director-general and council, who also dealt with more severe criminal cases, was possible. The charter specifies the procedures to be used, including regulations for defaults and fines. The burgomasters and schepenen would render justice according to the written laws of our fatherland, especially, as far as is possible and the nature of the case will permit, according to the laudable customs and ordinances of the city of Amsterdam and the ordinances issued by the director general and council.

In criminal cases tried before the New Amsterdam court, the schout would conduct the inquiries and act as prosecutor.

When creating the court in New Amsterdam, the director general and council decided that "until further order," the fiscaal would represent the schout of the city. The delegation of administrative duties to the burgomasters was an extension of the previous situation with the Nine Men.

When instituted in 1647, they were allowed to advise on the erection of public buildings and on the required taxes, but played no further role. By 1653, New Amsterdam acquired the authority to manage its own affairs, albeit within the limits circumscribed by the director-general and council. That the director-general and council were the higher authority is also indicated by the fact that they appointed the first burgomasters and schepenen. Burgomasters and schepenen acted as a lower bench of justice and tried cases of slander, insults, minor injuries et cetera. Cases of adultery, theft, blasphemy, serious injuries, and manslaughter were tried before the director general and council.

In 1656 their jurisdiction was widened to include all criminal matters, with the exception of capital cases, as the provincial government reserved so-called high jurisdiction for itself. The Amsterdam city government also obtained the privilege of corporal punishment, such as lashing and branding.

Thus, it amounted to a single geographic area with split jurisdictions: low, middle and high. The division was emphasized by the fact that low and middle cases were brought before burgomasters and schepenen by the schout, while high cases were tried by director general and council, with the fiscaal acting as prosecutor.

The rights of the Company also comprised criminal jurisdiction over New Netherland, which had been granted by the States General. When establishing local courts, parts of the criminal jurisdiction were transferred, and a schout, subordinate to the fiscaal and acting as a representative of higher authority, was appointed. Sometimes a Company official, such as a vice-director, carried out the duties of the schout, although he was then usually called officier (officer). In appointing the fiscaal of New Netherland, residing in New Amsterdam, to the position of schout of New Amsterdam, director general and council combined in one official two positions of different levels, with different judicial competencies.

The people of New Amsterdam were confused by this, but the burgomasters and schepenen understood it quite well, and were not at all pleased, the more so because the position was occupied by the notorious Cornelis van Tienhoven, who was not much loved, to put it mildly. Already in 1653, burgomasters and schepenen petitioned for their own schout, but the two positions were not separated until 1660.

Further, burgomasters and schepenen regarded the prohibition by director general and council as contravening their authority. They received a stern rebuke for this:

> *[T]he establishment of a lower court of justice under the name and title of either 'schout, burgomasters and schepenen' or 'magistrates' does in no way infringe upon or diminish the power and authority of the director-general and council to pass ordinances or issue interdicts especially if they are for the glory of God, the welfare of the inhabitants or the prevention of sin, vice, corruption and misfortunes, and the correction, fine or punishment according to the law of those who wantonly disobey them*.[36]

It was a marker along the road to independence of the judiciary, but the rebuke reveals that independence, as we know it, was a long way off.

The record of the court reveals all manner of adjudication, including judgment, referral to arbitration, orders to show cause, divorce proceedings, and even injunctive relief. Interestingly, it also includes an occasional duty more of an executive or legislative nature, as in a 1649 (?) entry:

> *Whereas we have observed and remarked the insolence of some of our inhabitants who are in the habit of getting drunk, of quarrelling and fighting, and of smiting each other on the Lord's Day of Rest, of which, on the last Sunday, we ourselves witnessed the painful scenes and of which we also came to the knowledge, by report, in defiance of the Magistrates, to the contempt and disregard of our person and authority, to the great annoyance of the neighborhood, and finally, to the injury and dishonor of God's holy laws and commandments, which enjoin upon us to honor and sanctify him on this holy Day of Rest, and which proscribe all personal injury and murder, with the means and temptations that may lead thereunto:*
>
> *Therefore, by the advice of His Excellency the Director General and our ordained Council, here present, to the end that we may as far as it is possible and practicable, take all due care, and prevent the curse of God instead of his blessing rom, falling upon, and our good inhabitants,*
>
> *We do, by these Presents, charge, command, and enjoin upon all Tapsters and Inkeepers, that, on the Sabbath of the Lord, commonly called Sunday, before two of the clock in the afternoon, in case there is no preaching, or, otherwise, before four of the clock in the afternoon, they shall not be permitted to Set, nor Draw,*

[36] Jaap Jacobs, *To Favor this New and Growing City of New Amsterdam with a Court of Justice: The Relations between Rules and Ruled in New Amsterdam,* de Halve Maen: Magazine of the Dutch Colonial Period in America 76 (2003), 65-72.

nor Bring out, for any person or persons, any Wines, Beers, or Strong-waters of any kind whatsoever.[37]

A 1658 entry reads:

Court Minutes of New Amsterdam.[38]

The Director General and Council of N. Netherland are not only-informed, but have sufificiently ascertained, that some individuals, after their marriage bans have been three times proclaimed, do not proceed with the solemnization of their marriages, as they ought to do, but postpone it from time to time, not only weeks but months, which is directly contrary to the good order and customs of Fatherland. Being desirous to provide therefore and to prevent the irregularities and disorders, which may arise from that source, the Director General and Council do command, that all persons, who have been published shall, after three proclamations have been made and no lawful impediments intervening, solemnize their marriage at least within a month after the last publication or to appear in Court before that time and shew cause for such delay under the penalty of ten gl. For the first week after the said month shall have elapsed; and for each of the following weeks fl. 20. Until they shall have explained their non compliance.

Further no man or woman shall presume to live together as married people, until they shall have been legally united under pain of forfeiting 100 guilders or as much more or less as may be deemed proper, considering their station in society, whilst such persons may be fined monthly by the Officer in conformity with the laws and customs of our Fatherland.

Thus done in the Council of the Hon^ Direct' Gen'l and Councillors holden in Fort Amsterdam in N. Netherland, 15 January 1658. Was signed, P. Stuyvesant.

*By order of the Hon"Heer Director General and Council of New Netherland C. Van Ruyven, Sec^*

The record also reveals that woman could appear in court, and that some litgants appeared with attorney: Albert Trumpetter, pltf. v/s Lubbert van Dincklage, deft. Pltf's wife appeared in Court demanding payment of fl. 60.4 for incurred expenses according to her notice. Jan Willemsen Iseltsyn, as attorney for deft Lubbert van Dinclagen, offers to pay the pltf. if she verify her claim on oath. Pltf. being thereon heard, offers to declare on oath that the afore-said fl. 60.4. honestly belongs to her. Therefore the Court condemns the deft, or Jan van Leyden as his attorney, to pay the abovementioned fl. 60.4 and that within 8 days.

Jan Willemsen Iselstyn as attorney of Lubbert van Dincklagen, pltf. v/s Harmen Douwesen, dft. Relative to certain sheep with the increase thereof, together with 31 lbs. twisted tobacco @ 6 stiv. per lb. And whereas the Court wish to have further light on the case, before they dispose thereof, it

[37] https://archive.org/stream/recordsofcityofn01newy/recordsofcityofn01newy_djvu.txt.
[38] https://archive.org/stream/recordsofnewamst02newy/recordsofnewamst02newy_djvu.txt.

is ordered that Jan van Leyden shall appear with his principal by the next Court day.[39]

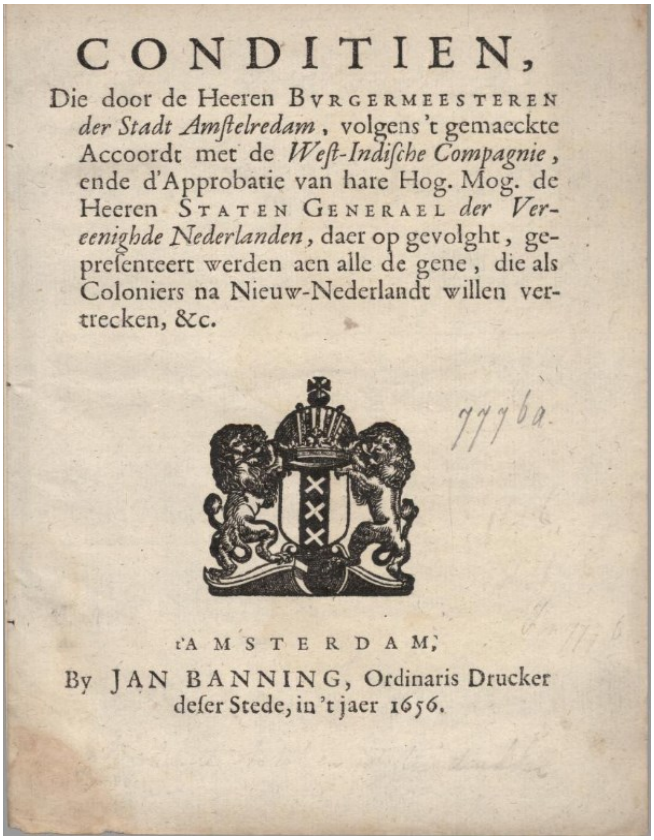
The court had the widest discretion in sentencing. In one case, it stated that it would impose a fine, for an assault, bearing in mind that it had the "customary" power to cut off the assailant's hand.

> *Hon Schout N. de Silla, pltf. v/s Jan de Perie, deft. Pltf. says that deft., having been called into the office of Notary de Vos to testify to the truth, there raised an argument and repeatedly struck on Hendrick the Drummer, and that they were at such handigrips, that it was necessary to separate them, according to the declaration therein; concluding that the deft, shall be punished according to the custom of Amsterdam, to wit:—that his right hand shall be cut off, or that he shall be condemned in such fine as the Court shall deem proper. Deft, acknowledges, that he struck the Drummer, but that it was not in a Notary's office; saying that he was very drunk. The Court having heard the evidence produced by pltf., and having examined their declaration made in Court in the presence of the parties, besides the demand and answer on both sides have condemned deft, for his committed offense, as they hereby do, in the fine and penalty of forty eight guilders to be applied to the prosecutor, to the City and to the Poor. Thus done and adjudged this 8 January 1657., in Court at the City Hall.*[40]

Patroon's Court

In settling New Netherland, the States General enacted the Charter of Freedoms and Exemptions of 1629, encouraging wealthy would-be settlers to create fiefdoms in the colony. Alden Chester noted that in 1629 when the Board of Nineteen adopted a charter of privileges for intending settlers, it proved fatal to the interests of the company, for on its adoption there was a general scramble for the best lands in the province, in which the directors and members of the corporation took part as individuals and not as members of the body. Immense tracts of land were acquired by different parties. The internal administration of the New Netherland colony was exceedingly bad. In 1632, to heal the breaches which internecine dissension had caused, Minuit was deposed.[41]

[39] https://archive.org/stream/recordsofnewamst02newy/recordsofnewamst02newy_djvu.txt.
[40] https://archive.org/stream/recordsofnewamst02newy/recordsofnewamst02newy_djvu.txt.
[41] "Encyclopedia Britannica," under The United States; *See*, also, Alden Chester, *Courts and Lawyers of New York: A History, 1609-1925,* 72, https://archive.org/details/courtslawyersofn01ches/page/86/mode/2up.



CONDITIEN,

Die door de Heeren BVRGERMEESTEREN *der Stadt Amſtelredam*, volgens 't gemaeckte Accoordt met de *Weſt-Indiſche Compagnie*, ende d'Approbatie van hare Hog. Mog. de Heeren STATEN GENERAEL *der Vereenighde Nederlanden*, daer op gevolght, gepreſenteert werden aen alle de gene, die als Coloniers na Nieuw-Nederlandt willen vertrecken, &c.

777 ba.

t'AMSTERDAM,

By JAN BANNING, Ordinaris Drucker deſer Stede, in 't jaer 1656.

Conditions for Patroonship 1656

Patroons were expected to bring their own tenant farmers from Holland. The largest landholding was Rensselaerswijck, established by Kiliaen van Rensselaer, which covered almost all of present-day Albany and Rensselaer Counties. Others included Staaten Eylandt (Staten Island), owned by Cornelis Melyn, and Bronx, owned by Jonas Bronk.

WIC stockholders were authorized to buy land from the Native Americans and set up patroonships that replicated the feudal lordships of Europe. To become Patroons, stockholders would settle the land they purchased by bringing to the colony at least fifty people over fifteen years of age. Patroonships could be set up in any part of New Netherland except Manhattan and could have a frontage of sixteen miles on one bank or eight miles on each bank of any navigable river. The estate could extend "so far into the country as the situation of the occupiers would permit."[42]

The patroons had full title to the land and their power over their settlers was almost unlimited. Without the patroon's written consent, no settler could leave the patroonship until a stipulated number of years had been served. The charter promised the tenants exemption from all taxation for ten years and that the Company would provide "as many blacks (slaves) as they conveniently could" to work the farms.

The patroons were empowered to set up courts of unlimited civil and criminal jurisdiction.[43] Where the sentence imposed affected life or limb, or where the sum in litigation exceeded twenty dollars, an appeal lay to the New Netherland Court of Justice in Fort Amsterdam.[44]

Of the other directors of WIC who were granted patroonships, Samuel Godyn and Samuel Bloemmart, controlled territory on Delaware Bay, Michael Pauw took Staten Island and the New Jersey shore of the Hudson, opposite Manhattan. Other patroons were Cornelis Melyn, Adriaen van der Donck, Meyndert Meyndertse van Keren, Hendrick van der Capelle and Cornells van Werkhoven.[45]

Although several patroonships were set up under the 1629 charter (Swanendael, Pavonia, Staten Island, and Rensselaerwyck), all failed before, during or shortly after Kieft's Indian War with the exception of Kiliaen Van Rensselaer's patroonship in Rensselaerswyck, which lasted into the

[42] Historical Society of the New York Courts, https://history.nycourts.gov/about_period/charter-1629/.
[43] Dennis Sullivan, *The Punishment of Crime in Colonial New York* (1997), 39.
[44] Historical Society of the New York Courts, https://history.nycourts.gov/about_period/patroon-court/.
[45] Alden Chester, *Courts and Lawyers of New York: A History, 1609-1925,* 81-82.

middle of the 19th century. The patroonship system and the crushing burden it imposed on the farmers working the land led to the New York anti-rent cases in the 18th and 19th centuries.[46]

The most successful patroonship was Rensselaerswyck, which was granted to the Amsterdam diamond merchant Kiliaen Van Rensselaer in 1629, and which came to extend over a million acres (400,000 hectares) in the area of present-day Albany, New York.[47]

In 1632, a judicial system consisting of a schout and a court of schepens was laid out for Rensselaerwyck, but it was two years before the court was really set up. It was the first local court established in New Netherland. The first schout was Jacob Albertsen Planck, followed by Adriaen van der Donck, Nicolas Coorn, and Gerard Swart. Arendt van Curler, or Corlaer, was the commissary general, or superintendent, and he was also the colonial secretary until 1642, being succeeded in that office by Anthony de Hooges. Dirck van Hamel was also secretary of the colony. Among the councillors, or schepens, at various times were Brant Peelen, Gerrit Theusze de Reux, or Reus, Cornelis Anthonisz, van Schlick, Pieter Cornelis van Munnicksen, Marinus Adriaenz or Maryn Adriaensen, Laurens Laurensz, Goosen Gerritsz, Rutger Jacobsz, Jan van Twiller, Gerrit Varrick, Jan Baptist van Rensselaer, and Abraham Staas (Staets) who was president of the council.[48]

Alden continues with a description of the Rensselaerwyck Patroonship Court in 1648, as paraphrased: The court as organized (in 1648) by Van Slichtenhorst consisted at first of four and afterwards of five persons, of whom two were designated as gecommitteerden, or commissioners, and two, or afterwards three, are in the record indiscriminately referred to as raden, raetspersonen, gerechtspersonen, or rechtsz'rienden. The duties of the gecommitteerden were primarily of an administrative nature, while those of the raden seem to have been chiefly judicial. The gecommitteerden represented the patroon and acted under definite instructions from the guardians. The raden, on the other hand, were appointed by the director, but represented the colonists. The only requirement was that they should not be in the patroon's service.

The members of the court were, as a rule, chosen from among the most prominent residents of the colony.

The proceedings of the court presided over by Van Slichtenhorst cover the period from April 2, 1648, to April 15, 1652. They form the most important source for the history of the colony (of Rensselaerswyck) during that period, but unfortunately add little to what is known about the controversy between Van Slichtenhorst and Stuyvesant regarding the jurisdiction of the territory around Fort Orange, this controversy having its origin in the claim made by the patroon, as early as 1632, that "all the lands lying on the west side of the river, from Beyren Island to Moeneminnes Castle… even including the place where Fort Orange stands," had been bought and paid for by him. WIC (viz., Stuyvesant) on the other hand, maintained that the territory of the fort, which was erected several years before the land of the colony was purchased from the Indians, belonged to WIC and, consequently, was not included in the patroon's purchase.

In 1651, Van Slichtenhorst was summoned to appear before Stuyvesant and council at Manhattan, and there detained for four months. The controversy continued after his return, but

[46] Historical Society of the New York Courts, https://history.nycourts.gov/about_period/charter-1629/.
[47] Library of Congress, https://www.loc.gov/item/2021666730/.
[48] Alden Chester, *Courts and Lawyers of New York: A History, 1609-1925,* 83.

was settled on April 10, 1652, when Stuyvesant issued a proclamation for the construction of a separate court for Fort Orange.

This was a serious blow to the colony of Rensselaerswyck, from which it never fully recovered. By virtue of this proclamation, the main settlement of the colony, which was known as the Fuyck, but which in the court record is generally referred to as the byeenzvoninge, or hamlet, was taken out of the jurisdiction of the patroon and erected into an independent village by the name of Beverwyck, which afterwards became the city of Albany. As a result of this action, the jurisdiction of the court of the patroonship was thereafter confined to the sparsely settled outlying districts of the patroonship, with very few cases.

Van Slichtenhorst protested against the construction of the court of Fort Orange and Beverwyck, and with his own hands tore down the proclamation which had been posted on the house of the patroon. For this he was arrested on April 18, 1652, and taken to Manhattan, where he was detained until August 1653. With his arrest, Van Slichtenhorst's administration came to a close. On July 24, 1652, he was succeeded as director by Jan Baptist van Rensselaer, and as officer of justice by Gerard Swart, so that thereafter the two functions were no longer combined in one person. The latter had been commissioned schout on April 24, 1652, and continued to hold this position until 1665, when, by order of Governor Richard Nicolls, the court of the colony was consolidated with that of Fort Orange and the village of Beverwyck. The year 1665 therefore marks the end of the existence of the first local court that was organized in the province of New Netherland, outside of New Amsterdam.[49]

Dutch New York Arbitration

In a well- researched article, authors Troy McKenzie and Wilson C. Freeman point out that, in Dutch New York, the courts relied heavily on arbitration as a vehicle for resolving disputes.[50]

The authors note that New Netherland colonial settlers quickly found a need for some system to adjudicate disputes and dispense justice—a task at first highly centralized in the hands of the colony's director general. But dissatisfaction with the sometimes-autocratic rule of various directors general began to mount. After Peter Stuyvesant was appointed director general of the colony, arriving in New Amsterdam in May 1647, the citizenry finally prevailed on him to allow a somewhat more participatory system of government. Stuyvesant and the Board of Nine Men came into being in September 1647, sitting at the town of New Amsterdam as the body that began what would become a New York tradition of arbitration.

Stuyvesant allowed the colonists to select eighteen men, from among whom he chose nine as a body to assist in public affairs. They had an advisory role and some legislative authority, but primarily served as a dispute resolution body. The ordinance establishing the board noted its necessity due to the increase in lawsuits and disputes in the territory, including matters of "trifling moment," which the board was called upon to resolve through arbitration. Three of the

[49] Alden Chester, *Courts and Lawyers of New York: A History, 1609-1925.*
[50] Troy A. McKenzie and Wilson C. Freeman, *Matters of "Trifling Moment" in New Netherland and the New York Tradition of Arbitration.* In *Opening Statements, Law and Jurisprudence in Dutch New York,* edited by Albert M. and Julia C. Rosenblatt.

nine would sit as a panel of arbitrators in these civil cases. Their decisions were binding, but appeal to the governor was possible with the payment of one pound Flemish.

Arbitration was used to handle civil conflicts in the New Amsterdam court for seven years. Eventually one of the nine, Adrian Van der Donck, sailed to Holland and prevailed upon the government there to establish a traditional burgher system in the colony. While this would bring an end to the board, it would not end the pervasive use of arbitration that would characterize civil dispute resolution in New Amsterdam.

Established in February 1653, somewhat according to the custom of "old Amsterdam," the new court system in New Amsterdam consisted of a schout, two burgomasters, and five schepens appointed by Stuyvesant. Like the Nine Men, this group had some legislative function but sat primarily as a court of justice. They met every Monday morning to attend to "all disputes between parties, as far as practicable."[51]

In civil cases, the court frequently called upon arbitrators for assistance in cases that the court felt itself unable, or perhaps unwilling, to tackle on its own. Other Dutch settlements in the colony relied upon this mixed system of courts and arbitration. After the takeover of the colony by the English in 1664, the Dutch practice of relying upon arbitration continued. Of course, arbitration was not altogether foreign to the English, who, despite the historical suspicion of arbitration in the English courts, had a familiarity with arbitral regimes dating back to the fourteenth century.[52]

It was no surprise, therefore, that arbitration continued throughout the later English colonial period, and ultimately that the Court of Burgomasters and Schepens would evolve into the Mayor's Court of New York and continue the use of arbitration.

A Year in the Life of the Court of Burgomasters and Schepens

Many types of cases came before the Court of Burgomasters and Schepens, and usually the court's procedures were quite simple. The court's messenger would summon the adverse party, and the plaintiff would state his case orally before the court. If necessary, additional witnesses would be called and the parties would be asked to swear to facts the court deemed material. Some arbitrators were farmers, traders, or pursued other professions. Nonetheless, Charles Daly, the former chief justice of the New York Court of Common Pleas, in his history of that court, rated them as having a "comprehensive knowledge" and praised their directness.

Arbitrators also acted as quasi-mediators. The court typically used arbitrators to try to bring about a reconciliation between the parties if possible. In a review of the records for the year 1656, for example, approximately 20 percent of the cases before the court were referred to arbitrators.[53]

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[51] The minutes of this court are intact, in *The Records of New Amsterdam*, ed. Berthold Fernow, 7 vols. (New York: 1897).
[52] William Catron Jones, *Three Centuries of Commercial Arbitration in New York: A Brief Survey*, Washington University Law Quarterly (1956): 196-198.
[53] RNA, vol. 2, 1–254.

Some illustrative cases drawn from the records of the court that year will demonstrate the wide variety of cases and fact patterns that were sent to arbitration.

On January 10, 1656, one Luycas Eldertsen sued Carsten Jansen for nonpayment of rent, which the defendant claimed he did not owe.[54]

The court gave very little explanation of the facts but appointed "two impartial persons" who were "authorized to decide the matter" and specified they ought to try to reconcile [the] parties, and if not, decide the case consistent with equity. Despite the apparently low stakes involved, the court elected to seek resolution by arbitrators. The emphasis on reconciliation shown in the treatment of the dispute between Eldertsen and Jansen forms a frequent theme in the record of cases sent by the court to arbitration.

Two weeks later, on January 24, Roeloff Jansen, reported to be a mason, sued Egbert van Borsum and his wife for unpaid wages on account of work performed in the previous year. The defendants claimed that the plaintiff did not finish his work, and that they would pay him when he completed the task.[55]

The court used arbitrators as supplementary fact finders: "[T]he Court refer[s] [the] parties to two arbitrators, to wit; Jan Gerritsen, [a] [m]ason, and Cristian Barentsen to inspect the work done, how near [plaintiff's] contract is finished and how much over he has done; also, if possible, to make them agree." The emphasis on encouraging the parties' mutual agreement to resolve the dispute once again appears as a prominent part of the arbitral regime. In addition, the court appointed an arbitrator with particular expertise by choosing a mason. Presumably, he would be in a superior position to inspect Jansen's work appropriately and judge whether it had been substantially performed.

In October of 1656, another dispute arose of seemingly minor import compared to the previous example. The plaintiff, Jan Hendricksen, alleged that he had performed woodwork for the defendant, Jacob Cohun, for which Hendricksen demanded payment of three beavers.[56]

The defendant appeared to dispute the amount due and owing. The court declared that "the payment shall be made in beavers," which suggests that the dispute turned in part on the type of currency in which payment was to be made (not an uncommon dispute in New Netherland, where payment was often made in commodities rather than in specie).[57]

The court appointed two arbitrators, Christiaen Barentsen and Gerrit Jansen Roos, to inspect the work and determine the value to be paid.[58] The value of this dispute could not have been great, and yet two arbitrators were appointed to resolve it.

Occasionally, the parties would select their own arbitrators, and the court retained a "backstop" role as decision maker only in the event that the parties' attempt at out of court resolution failed.

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[54] *Eldertsen v. Jansen* (New Amsterdam Mun. Ct. 1656), in RNA, vol. 2, 5.
[55] *Jansen v. van Borsum* (New Amsterdam Mun. Ct. 1656), in RNA, vol. 2, 20.
[56] *Hendricksen v. Cohun* (New Amsterdam Mun. Ct. 1656), in RNA, vol. 2, 201.
[57] *Vinje v. Pietersen* (New Amsterdam Mun. Ct. 1656), in RNA, vol. 2, 156; *Van der Veen v. Couwenhoven* (New Amsterdam Mun. Ct. 1656), in RNA, vol. 2, 195.
[58] *Hendricksen v. Cohun* (New Amsterdam Mun. Ct. 1656), in RNA, vol. 2, 201.

From New Netherland to New York

The widespread acceptance of arbitration carried through when, in 1664, the English took possession of New Netherland. Newspaper advertisements, in particular, show the importance of arbitration in the life of the colonists in the English era, due to the very common and casual tone of their references to arbitration. For example, the colonial newspapers contain frequent advertisements for arbitration bond forms (the necessary papers for filing a request for arbitration) listed among other legal documents from local stationers and printers.[59]

The practice initiated by the Dutch, however, became more formalized in the English colonial period. In 1766, a statute concerning arbitration was enacted in the colony.[60] The statute provided that, on motion of either party, cases involving allegedly overdue accounts could be referred for decision by arbitrators.[61]

Although little remains of the legal system erected in New Netherland more than three hundred years ago, the Dutch settlers began what would become an enduring tradition of arbitration in New York. That tradition, firmly established even after Dutch rule, later served as a foundation for the law reform movement in the twentieth century that brought us our modern regime of arbitration. Like the settlers of the seventeenth century, we have found a need for an out of court dispute resolution system that encourages amicable settlement, brings to bear experienced, expert fact finding, and removes cases from burgeoning court dockets.

The Town Court Concept

The Charter of Freedom and Exemptions of 1640 introduced a new concept. WIC now sought to further the growth of towns, villages, and cities, composed of independent settlers, rather than concentrating governmental authority in the Director and Council. The company made important concessions relinquishing its fur trade monopoly, replacing it with a system in which private merchants could trade after paying a recognition fee.[62]

The monopoly had caused considerable agitation among the settlers, who wanted to trade with the Native Americans. On August 17, 1678, John Hendricks Bruyn of Albany was sentenced to imprisonment and a fine for illegally trading with Indians. This did not stop the unrest and the passions of the settlers to enter the trade themselves.[63] The ordinance of 1654 against trading "in the woods" with Native Americans caused unrest among the settlers, who saw personal trading as a legitimate means of earning a living. In July 1655, an officer criticized the way in which complaints against the ordinance were worded:

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[59] N.Y. Weekly Post Boy, Oct. 31, 1743.
[60] Charles Z. Lincoln, William H. Johnson, and A. Judd Northrup, *The Colonial Laws of New York from the Year 1664 to the Revolution* (Albany: J. B. Lyon, state printer, 1894), 4:1040–42.
[61] W.C. JONES, *Three Centuries of Arbitration in New York*, Washington University Law Quarterly (1956), pp. 193, 200.
[62] Jaap Jacobs, *New Netherland: A Dutch Colony in Seventeenth-Century America* (Ithaca: Cornell University Press, 2005), 73.
[63] Donna Merwick, *Possessing Albany, 1630- 1710: The Dutch and English Experiences* (1990) 91- 97; *See* https://ia601600.us.archive.org/8/items/calendarofhistor02innewy/calendarofhistor02innewy.pdf; also https://archive.org/details/calendarofcounci00newy/page/30/mode/2up?view=theater&q=court.

Johan de Deckere, commissary and officer here, ex officio plaintiff, against Juriaen Jansz, defendant. The plaintiff states… that the defendant… has not hesitated in the presence and hearing of the honorable magistrates, Pr. Harties and Frans Barentsz Pastoor, to denounce in scandalous, villanous and contemptuous terms the ordinance against going into the woods to trade, published on the first of July last, and to speak of it in such a way as if the magistrates of this court were thereby trying to reserve the entire trade to themselves; also, to make the aforesaid gentlemen, and hence the entire court, out to be and to call them so to speak before the whole world asses, who were incapable of carrying out the provisions of their placards and ordinances against those who violated them, all of which are matters of serious consequence in a well-regulated country where justice and government prevail, which ought not to be suffered, but severely punished…

The plaintiff, Johannes de Deckere was appointed on June 21, 1655, presiding commissary at Fort Orange, in accordance with a resolution of the Director General and Council of New Netherland of June 16, 1655.[64]

De Deckere was so put out by the criticism that in the most severe terms he demanded a retraction:

Therefore, the plaintiff, in his capacity aforesaid, demands that the defendant shall be condemned to withdraw his statements here in court and furthermore, bareheaded, with folded hands and on bended knees pray God and the court and the aforesaid two honorable magistrates for forgiveness, declaring that he is heartily sorry and promising that he will nevermore in the future do the same, nor anything like it…

The Court agreed, stating:

The honorable members of this court having heard the verbal testimony of the defendant, condemn him to declare publicly that he spoke ill and that he is heartily sorry about it and further condemn him to pay for the benefit of the officer the sum of eighty guilders, to be paid within twenty-four hours, on pain of being apprehended. One-third hereof is set aside for the poor.[65]

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[64] See New York Colonial Manuscripts, vol. 6, p. 57 and 59. The prohibition against going into the woods to trade with Indians appears in E.B. O' Callaghan, *Laws and Ordinances of New Netherland*, *1638-1674* (1808) at 378, 381, 383, 394 in 1660 and 1661. Online at https://ia601309.us.archive.org/34/items/cu31924080779402/cu31924080779402.pdf. *See*, also, New York State Education Department, online at https://iarchives.nysed.gov/xtf/view?docId=tei/A1876/NYSA_A1876-78_V16_pt3_0191.xml; See, also, https://encyclopedia.nahc-mapping.org/document/approval-ordinance-forbidding-trade-woods-indians.This writer could not find an ordinance on 1654 as referred to in this suit.

[65] Van Laer, Minutes of the Court of Fort Orange and Beverwyck, Vol 1, https://books.googleusercontent.com/books/content?req=AKW5Qacg5cZOj-DlOTO3EZPX9-SvBKFfkyRQgIOk1J9cXcSjwh-6oGhI4tAjIqPA13P4rkUvs0nkZsxlxgnXNHqGIv0NP-XNCxVXrm7CuLTEFnqT8orWpr8LW01tsfNBD2jWl_MJ4D5Bec7S1qEJk91duX1THYgqKBkiBbX43e9jjU0j3uuLlN3FNiFd2XCwZHCozlVvMb_6bcKblrV90aMgY-J8_6_fseWnCfinGfJfqbw8jrZEB0SiffGyGgsD3Yk62qSVP_IOnkvNOn5SMS_lNRpWeSKRf5xQfbnx9KBjd_HI7djaTys; The contentiousness over the ordinance is covered in an article by Thomas E. Burke, The New Netherland Fur

WIC purchased all the land west of Oyster Bay from the Canarsee Native Americans, and encouraged emigration from Sweden, France, and Germany.[66]

Towns became political entities, with their own governmental units and officials, thus paving the way for local town and village courts—a far cry from the unitary power lodged in the Director. The pertinent provision in the 1640 document reads:

> *Freedoms and Exemptions granted and accorded by the Directors of the General Incorporated West India Company at the Assembly of the XIX., with the approbation of the High and Mighty Lords States General of the free United Netherlands, to all Patroons, Masters, or Private persons who will plant any Colonies or introduce cattle in New Netherland. Exhibited ID"" July, 1640.*
>
> *And should it happen that the dwelling places of private Colonists become so numerous as to be accounted towns, villages or cities, the Company shall give orders respecting the subaltern government, magistrates and ministers of justice, who shall be nominated by the said towns and villages in a triple number of the best qualified, from which a choice and selection is to be made by the Governor and Council; and those shall determine all questions and suits within their district.*
>
> *[S]hould any Patroon, in course of time, happen to prosper in his Colonie to such a degree as to be able to found one or more towns, he shall have authority to appoint officers and magistrates there, and make use of the title of his Colonie, according to the pleasure and the quality of the persons, all saving the Company's regalia.*[67]

The first charter granted to a Dutch town or village was to Breuckelen (Brooklyn) in 1646, where the settlers had met, and unanimously, elected two persons to act as schepens.

The first village to receive its charter in New Netherland was the English village of Hempstead in 1644**.** The council allowed the town-meeting format, and the eligible voters could choose their own selectmen, but were required to send their choices to the Council for approval.[68] Flushing acquired its patent in October 1645. With it came a guarantee for religious freedom that later formed the basis for the Flushing Remonstrance.[69] The charter guaranteed the right "to have and enjoy liberty of conscience, according to the custom and manner of Holland, without molestation or disturbance."[70]

Trade, 1657-1661, Response to Crisis, online at https://www.newnetherlandinstitute.org/application/files/5416/8415/4640/8.5.pdf.

[66] Simon Middleton, *Order and Authority in New Netherland: The 1653 Remonstrance and Early Settlement Politics,* 67 William and Mary Quarterly, 31(Jan. 2010) at 39.

[67] Documents Relative to the Colonial History of the State of New-York Procured in Holland, England and France Ohn Romeyn Broadhead, Esq., Edited by E.B. O'Callaghan, M.D., LL.D.; Vol. I, 1856. Online at https://archive.org/details/documentsrelativ01brod/page/118/mode/2up?view=theater.

[68] Martha D. Shattuck, "Dutch Jurisprudence in New Netherland and New York," in *Four Centuries of Dutch-American Relations*, *1609–2009*, ed. Hans Krabbendam, Cornelis A. van Minnen, and Giles Scott- Smith (2009), 146.

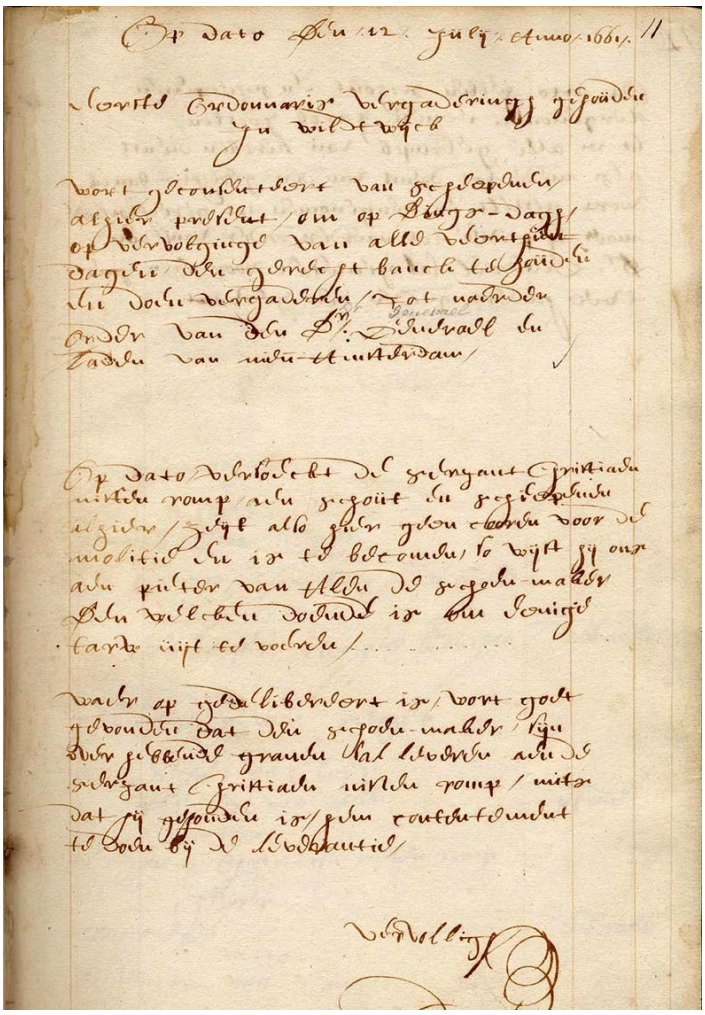
[69] See Bopwne House, online at https://www.bownehouse.org/the-bownes.

[70] Harrop Freeman, *A Remonstrance for Conscience*, 106 U. Pa. L. Rev. 806 (1958), 806.

Flushing opened its civil court in 1648. By the time the first Dutch town, Brooklyn, received its patent in June 1646, four English towns had been chartered.[71]

The Town of Wiltwyck (Kingston) was granted a formal charter in 1661, issuing laws and establishing a Justices' Court.[72] The Town courts exercised authority that spilled into the executive and legislative realms, promulgating rules for price and weight of various breads, and how much a tavernkeeper could charge for drinks.[73]

In 1671 Martha's Vineyard was part of New York, and was one of the towns that had its own court.[74]



Town of Wiltwyck Charter, 1661 From the Archives of the Ulster County Clerk, Taylor Bruck, Acting Ulster County Clerk.

It was to hold fortnightly courts, and empowered to try, without appeal, civil cases where the value in controversy was below fifty guilders. They had jurisdiction of petty criminal offences. But in addition to those judicial powers, the schepens had authority similar to those of the New England selectmen or the town-meeting. They could advise the Director and Council to pass orders concerning roads, the enclosure of lands, and the regulation of churches and

[71] Martha D. Shattuck, *The Dutch and the English on Long Island: An Uneasy Alliance*, *De Halve Maen* 68.4 (Winter 1995), 80-85; https://hollandsociety.org/pdfviewer/1995-winter-vol-lxviii-no-4/?auto_viewer=true&display=true#page=&zoom=page-fit&pagemode=none.

[72] https://clerk.ulstercountyny.gov/archives/resources/opening-of-the-dutch-court-at-wiltwyck-1661

[73] Dennis Sullivan, *The Punishment of Crime in Colonial New York* (1997) at 47.

[74] Online at https://archive.org/details/calendarofcounci00newy/page/14/mode/2up?view=theater&q=court.

schools.[75] To populate New Netherland, WIC made concessions to the English on Long Island, allowing one-man magistracies, customary in New England but not in the Dutch Republic.[76]

[75] American Historical Review, Vol. 6 No. 1 (Oct. 1900), pp 1, 18, online at https://penelope.uchicago.edu/Thayer/E/Journals/AHR/6/1/English_and_Dutch_Towns_of_New_Netherland*.html.
[76] Jaap Jacobs, *New Netherland: A Dutch Colony in Seventeenth-Century America* (Ithaca: Cornell University Press, 2005), 88-89.

Burgher and Schepens Court; Court of Schout, Burgomasters, and Schepens, 1660–1665; 1673–1674

In 1650, the States General ordered that a court similar to Amsterdam's be created in New Netherland, and a burgher government be established at New Amsterdam, to consist of two burgomasters, five schepens, and a schout, and that in the meantime the Board of Nine should continue to administer justice in the Colony.[77]

Brooklyn, as we know today, was originally made up of six separate towns, five of them Dutch and one English. The five Dutch towns were: Bushwick, Flatland, Flatbush, Brooklyn, and New Utrecht. The English Town was Gravesend.

As the final step in this judicial evolution, a permanent tribunal known as the Court of Schout, Burgomasters, and Schepens was established, the records of which were kept by their clerk or secretary. This was a court of record, and the complete minutes of the proceedings have been kept.[78]

The Court heard all cases within its jurisdiction, both civil and criminal. Although a right of appeal to the Council existed from the decisions of the court or its arbitrators, appeals were rare, and this was attributed to the commonsense actions of the magistrates.

Although its case load was much reduced by the early

[77] Henry W. Scott, *The Courts of the State of New York,* (1909) at 39, online at https://babel.hathitrust.org/cgi/pt?id=uc2.ark:/13960/t9k35sq1w&seq=463&q1=%22+special+sessions%22&start=1.
[78] Scott, at 41.

1650s, a major problem continued in the New Netherland Court of Justice. The Director-General was once more the presiding judge of the court and could be authoritarian.[79]

In their own words:

> *Thursday, February 6, 1653, present Martin Krigier, [Arent van Hattem], Poulus Leendersen van der Grist, Maximilyanus van Gheel, Allard Anthony, Willem Beekman and Pieter (Wolfertsen). Their Honors, the Burgomasters and Schepens of this City of New Amsterdam, herewith inform everybody, that they shall hold their regular meetings in the house hitherto called the City tavern, henceforth the City Hall, on Monday mornings from 9 o.c. to hear there all questions of difference between litigants and decide them as best as they can. Let everybody take notice hereof. Done this 6th of February, 1653, at N. Amsterdam. Signed (as above except Arent van Hattem).*[80]

In 1652, Stuyvesant established a court among the English at Beverwyck (Albany), and, in 1656 and 1659, he established similar courts among the English settlers at Canorasset (Jamaica) and Middleburgh (Newton). Courts similar to the Court of Burgomasters and Schepens were also established on Long Island, in the district known as "the Five Dutch Towns," and Breukelen.[81] One researcher noted that by 1664, sixteen inferior courts operated in the colony.[82] Another reports that before Dutch rule passed from New Netherland, by the 1674 Treaty of Westminster, inferior courts were in operation in towns and villages outside of New Amsterdam including Fort Orange, Willemstadt, Schenectady, Wiltwyck, Swaenenburgh, Hurley, Marbletown, Breuckelen, Midwout, Amersfoort, New Utrecht, Boswyck, Middleburgh, Flushing, Hempstead, Rutsdorp, Oyster Bay, Huntington, Seatalcot, Southampton, Easthampton, Southold, Haarlem, Westchester, Mamaroneck, Fordham, Eastchester, and Staten Island.[83]

The Council minutes note the trial in Southampton court inquiring into the murder of Elizabeth Rayner's child.[84] Thus, out of the seemingly unsuccessful convention, so arbitrarily dissolved by Stuyvesant, in 1653, grew the seed of popular government in New York.

The Court of Fort Orange and Beverwyck, 1652-

The newly created court, which was termed a Kleine Banck van Justitie, an inferior bench of judicature, was a court for the trial of civil and minor criminal cases, from which an appeal lay to the director general and council of New Netherland. The court was composed of the commies, or commissary of the fort, afterwards bearing the title of vice director, and variable numbers of commissarissen, or local magistrates, often designated in English documents of the period as "commissaries," who acted as prosecuting officer and who represented the company, were

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[79] Historical Society of the New York Courts, online at https://history.nycourts.gov/about_period/new-netherland-court-justice/.
[80] The Records of New Amsterdam, 1653- 1674-16/4, Vol. I.: *Minutes of the Court of Burgomasters and Schepens*, 1653-1655, p. 4.
[81] Historical Society of the New York Courts, https://history.nycourts.gov/about_period/local-courts-in-new-netherland/.
[82] Andrea Mosterman, *Spaces of Enslavement, A History of Slavery and Resistance in Dutch New York*, (2021), 47.
[83] Alden Chester, *Courts and Lawyers of New York: A History, 1609-1925,* 162.
[84] https://archive.org/details/calendarofcounci00newy/page/28/mode/2up?view=theater&q=rayner%27s+child.

appointed for an indefinite term of years directly by the director general and council of New Netherland, while the magistrates, at least in theory, represented the people and were appointed annually from a double number chosen by the inhabitants. In 1655, Stuyvesant appointed Rutger Jacobsz and Andries Herpertsz, two prominent burghers from the Village of Beverwijck, as magistrates to the Court at Fort Orange.[85] When sitting as a criminal court, the officer presided and demanded justice of the magistrates, who not only found whether the accused was guilty, but also determined the penalty that should be imposed on him. The jurisdiction of the court comprised Fort Orange, the village of Beverwijck, Schenectady, Kinderhook, Claverack, Coxsackie, Catskill, and, after May 16, 1661, Esopus.

The Calendar of Council Minutes record of August 4, 1676 notes that the Esopus court will sit "as a court of oyer and terminer for the trial of a Negro, Balthas, belonging to George Hall accused of murder."[86] Similarly, "on a report from Albany that John Steward a soldier there, has been murdered by two north Indians of Naractak castle; Capt. Silvester Salisbury, Capt. Jeremias van Rensselaer, the commissaries and the officers of the militia to sit as a court of oyer and terminer for the trial of the Indians."[87] One scholar noted that the Court of Albany broke with its policy of never punishing Indians for crimes committed within its jurisdiction. In1673, Salisbury arrested two "Northern Indians," Kaelkompte and Keketamape, for the murder of John Steward, a soldier in the garrison at Albany. Although the schout had previously held at least a few drunken Indians overnight, none had ever been punished or, so far as the records show, ever been called to account for crimes they might have committed. In this case, for the first time, the town held two Indians prisoner and subsequently subjected them to a trial before an English-style court. Governor Francis Lovelace, ordered that Kaelkompte and Keketamape "bee equally and duely prosecuted according to the law, from which neither Indyn nor Christian is to bee exempt."[88]

Excluded from the jurisdiction was the colony of Rensselaerswijck, which maintained its own court, side by side with that of Fort Orange and the village of Beverwijck until 1665, when by order of Governor Richard Nicolls, the two courts were consolidated. A record of the court of Rensselaerswijck for the period 1648–52, when it was presided over by Van Slichtenhorst, has been preserved, but no record exists of judicial proceedings after the last-mentioned date.[89]

A record reveals that "Capt. Chambers to be justice of the peace for the three towns in Esopus Courts at Marbletown and Hurley."[90]

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[85] Dennis Sullivan, *The Punishment of Crime in Colonial New York* (1997) at 45. *See*, also, Martha Shattuck, *A Civil Society: Court and Community in Beverwijck, New Netherland, 1652–1664* (PhD diss., Boston University, 1993).
[86] Online at https://archive.org/details/calendarofcounci00newy/page/26/mode/2up?view=theater&q=court.
[87] Online at https://archive.org/details/calendarofcounci00newy/page/18/mode/2up?view=theater&q=court.
[88] Jacob Goldstein*, Murder in Colonial Albany: European and Indian Responses to Cross-Cultural Murders*, Thesis submitted to The Faculty of The Columbian College of Arts and Sciences of The George Washington University in partial fulfillment of the requirements for the degree of Master of Arts, August 31, 2012; *See*, also, https://www.executedtoday.com/2018/02/15/1673-kaelkompte-and-keketamape-albany-milestones/; https://scholarlycommons.law.northwestern.edu/cgi/viewcontent.cgi?referer=&httpsredir=1&article=4343&context=jclc.
[89] A. J. F. van Laer's prefaces to his translations of the Fort Orange Court Minutes. Online at https://www.newnetherlandinstitute.org/application/files/1516/8372/4469/New_Netherland_Documents_Introductions.pdf.
[90] Calendar of Council Minutes 1668-1783, https://archive.org/stream/calendarofcounci00newy/calendarofcounci00newy_djvu.tx.

According to Van Laer, the records of this court, (which under different names continued to exist until the mayor's court of the city of Albany was created in 1686) consist of eight books of minutes, all in Dutch, of which six, containing the minutes for 1652–56, 1658–59, 1668–73, 1675–84, 1676–80, and 1680–85, are kept in the Albany County Clerk's office, and the remaining two volumes, containing the minutes for 1657 and 1660, form part of volume 16 of the New York Colonial Manuscripts in the New York State Library. A complete calendar of the minutes, with the exception of those for 1657 and 1660, which are listed in the Calendar of Historical Manuscripts, edited by E. B. O'Callaghan, was prepared by Berthold Fernow, in 1894–95, under the direction of Wheeler B. Melius, in connection with the publication of the printed Index to the Records of Albany County, of which Melius was the superintendent. A copy of this calendar, with editorial and genealogical notes by C. A. Hollenbeck, who used the pseudonym of M Jed, appeared under the heading Historical Fragments H in the Sunday issues of the Albany Argus for October 18, 1903-April 23, 1905.[91]

In Volume 2, Van Laer states:

> *The minutes of the court of Fort Orange and the village of Beverwyck, of which translations appear in the present volume, (i.e. Volume 2) consist of four parts, each of which contains the proceedings of the court for a single year. For the years 1657 and 1660, there are no original minutes in the Albany County Clerk's office. Engrossed copies of these minutes, however, are contained in two separate records which before the Capitol fire of 1911 were bound as parts 2 and 3 of volume 16 of the New York Colonial Manuscripts in the New York State Library. Fortunately, these records were salvaged from the fire in very good condition and from them the present translations have been made. The minutes for 1658–1659 make up the first 211 pages of an original record in the Albany County Clerk's office which on the back is lettered: Court Minutes 2, 1658-1660, and underneath, in larger type, Mortgage No. 1, 1652-1660. A translation of these minutes, made by Professor Jonathan Pearson was among the manuscripts which in 1914 were presented to the New York State Library by his sons. With the exception of these minutes, these manuscripts have since been published under the title of Early Records of the City and County of Albany and Colony of Rensselaerswyck volumes 2-4. The present volume does not follow Professor Pearson's manuscript translation of these court minutes, but contains a new translation, which. is uniform in character with that of the earlier minutes that are printed in the first volume of this series. Translations of these proceedings were published by Mr. Berthold Fernow in volume 13 of the Documents Relating to the Colonial History of the State of New York. They have been carefully revised for the present work, in which they appear*.[92]

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[91] Van Laer, *New Netherland. Inferior Court of Justice* (Beverwyck, N.Y.). *Minutes of the Court of Fort Orange and Beverwyck, 1652-16[60]* v. 1. At p. 7 The University of the State of New York, 1920, doi: https://doi.org/10.5479/sil.297018.39088006296412; online at https://library.si.edu/digital-library/book/minutesofcourto01newn.

[92] Van Laer, *New Netherland. Inferior Court of Justice* (Beverwyck, N.Y.). *Minutes of the Court of Fort Orange and Beverwyck, 1652-16[60]* v. 2. At p.7 The University of the State of New York, 1920, doi: https://doi.org/10.5479/sil.297018.39088006296412 Online at https://library.si.edu/digital-library/book/minutesofcourto02newn.

In his introduction to the volume *Fort Orange Records, 1656- 1678*, Charles Gehring notes that its records represent the oldest surviving archival papers of the Dutch community that eventually became Albany. Records were first maintained in the area by the officials of the patroonship of Rensselaerswijck, records concerning WIC's administration of affairs in this area are found among the minutes of the council on Manhattan or in the registers of the provincial secretary. Local WIC records first appeared in 1652 after the Company established the jurisdiction of Fort Orange and the Village of Beverwijck.

On March 6, 1652, Stuyvesant proclaimed a 3000-foot radius around the fort to be within the jurisdiction of WIC, an area which incorporated the bijeenwooningh or "community" established and promoted by Van Slichtenhorst.

As soon as the ice cleared in the North (later Hudson) River, Stuyvesant sent forty soldiers to Fort Orange to enforce the resolution. On April 10, 1652, after reading the proclamation and replacing the Colony's flag with the Company's flag, the newly established court of Fort Orange and the village of Beverwijck held its first session. The servants of the Colony, who fell within the 3000-foot radius around the fort were allowed to abjure their oath to the patroon and swear allegiance to the Company. This area, containing the houses of most of the craftsmen and artisans in the patroonship, was re-named Beverwijck. Eventually it would become the capital of the Empire State.[93]

No longer were Company affairs on the upper Hudson administered from the council in Manhattan. Overnight, a local government was established which not only rivaled the patroon's court in the area, but also transformed a considerable number of the patroon's population into servants of the Company. The new jurisdiction also included the Esopus and Catskill regions south of the patroonship until a court was established at Wiltwijck (Kingston) in 1660. After the English takeover in 1664, the jurisdiction of the court in Albany (formerly Fort Orange/Beverwijck) was expanded to include Rensselaerswijck and Schenectady, approved for settlement toward the end of Stuyvesant's administration.

During the administration of Governor Edmund Andros (February 9, 1674–April 18, 1683). Albany records continued to be kept in Dutch until Governor Dongan granted a charter to the municipality in 1686.

The *Kleine Banck Van Justitie*, or inferior bench of justice of Fort Orange/Beverwijck, was established to function as the local governing body with executive, legislative, and judicial responsibilities. As a local jurisdiction, it kept records of its proceedings for future reference. In addition to the minutes of the court, which included ordinary sessions held every Tuesday and occasional extraordinary sessions, records were also kept of various transactions and interactions of members of the community. Such records were cast in the form of a contract requiring the signatures of the parties involved and the attestation of an authorized official. Normally this official would be a notary; however, in the absence of a notary this function was performed by the secretary. The majority of these records consist of real estate transactions, such as

[93] Resolution, translated and redrafted as a proclamation by Charles Gehring in 2002, online at https://www.newnetherlandinstitute.org/history-and-heritage/additional-resources/dutch-treats/beverwijck-proclomation.

conveyances of property from one individual to another, conditions of sale, conditions of auction, and surrenders of claims; they also include acknowledgements of debt, warrants, powers of attorney, and pledges of security. Such documents carried authentic signatures and could be submitted as legal instruments in court proceedings.[94]

Officials who appear as signatories in this volume are as follows: Johannes La Montagne who served as vice director and commissary at Fort Orange from September 28, 1656, to October 24, 1664; Johannes Provoost who served as clerk under La Montagne, then as secretary of Albany, Colonie, and Rensselaerswijck during the English administration. He also served in this office during the restoration of Dutch rule under Governor Colve, 1673-1674; Dirk van Schellyne served as notary public in Beverwijck beginning in 1660 and town clerk of Albany; Ludovicus Cobus served as secretary under the Colve administration; and Robert Livingston served as secretary of Albany from September 1675.

Charles Gehring explains that this volume is the first part of the surviving records kept by the Albany Municipal Archives. As with other surviving Dutch records in other repositories, they are neither complete nor maintained in their original state. In contrast to the Dutch colonial manuscripts kept in the New York State Archives, which suffered greatly in the 1911 Library fire, they are physically in excellent condition. However, over the years, they were subjected to other abuses. Jonathan Pearson described the situation best in the preface to his translation of these same records: "The earliest registers were simply quires stitched together, which at a later date were gathered up by someone ignorant of the language, and bound and labeled regardless of dates or subjects." [Early Records Albany, iii] Over the years these records were stored, ignored, moved, arranged, and rearranged until they finally were put together in bound volumes to which labels were attached. As with humpty dumpty, we are no longer able to return them to their original state, but are now compelled to follow arrangements, which at times seem arbitrary or illogical.[95]

Court of Albany, Rensselaerswyck, and Schenectady, 1668-1685

Fort Orange surrendered to the English authorities on September 24, 1664. Little change was made in the organization of the court, which continued with the magistrates and inferior officers in their places. As then constituted, the court had jurisdiction over the village of Schenectady, which was settled in 1662, but had ceased to have jurisdiction over the village of Wiltwyck (Kingston), where a local court was established on May 16, 1661.

In 1663, the jurisdiction of the court was extended over the colony of Rensselaerswyck, the patroon court of which, being in that year, by order of Governor Richard Nicolls, consolidated with the court of Albany, which thenceforth became known as the "Court of Albany, colony of Rensselaerswyck and Schaenhechtede."

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[94] Volume I *Register of the Provincial Secretary*, 1638–1642 at 109; https://www.newnetherlandinstitute.org/application/files/1516/8372/4469/New_Netherland_Documents_Introductions.pdf.

[95] At P. xiii, https://www.newnetherlandinstitute.org/application/files/4616/8372/5016/Fort_Orange_Records_16561678.pdf.

In the same year Gerard Swart, who since July 24, 1652, had been schout of the colony of Rensselaerswyck, became schout of the consolidated court. He continued in that capacity until November 1, 1670, when, by a vote of a majority of the burghers, he was succeeded by Captain Sylvester Salisbury, commander of the fort.[96]

The Town of Schenectady, which as early as 1668 had its own schout, remained under the general jurisdiction of the court at Albany until September 6, 1672, when, upon the petition of the inhabitants of Schenectady, it was ordered by the governor and council:

> *That for Redresse of small Grievances by Trespass, Debt or otherwise, they shall have a Towne Court to try all such Causes to the Value of one hundred Guilders, the persons who shall try the same to bee two to bee nominated by the Governor out of three to bee chosen amongst themselves annually; but for greater Suffices to have Application as formerly to the Cort of Commissaryes at Albany.*

The term "Commissaryes," by which the magistrates of the court are designated in the above orders and in many other con temporary English documents, is a literal rendering of the Dutch term commissarissen, which occurs in the original minutes. In the present translations the word "magistrates" has been preferred and been used wherever the term commissarissen occurred in the original text.[97]

Transition, from New Netherland to New York; From a Dutch Colony to an English Colony (1664-1776)

Colonel Richard Nicolls, the first English governor of New York, arrived in the fall of 1664, and walked into two different legal systems. On Manhattan Island and along the Hudson, sophisticated courts modeled on those of the Netherlands were resolving disputes learnedly in accordance with Dutch customary law. On Long Island, Staten Island, and in Westchester, on the other hand, English courts were administering a rude, untechnical variant of the common law carried across the Long Island Sound from Puritan New England and practiced without the intercession of lawyers.[98]

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[96] Minutes of the Court of Albany, Rensselaerswyck and Schenectady 1668–1673, Volume I, edited by A. J. F. Van Laer at 81, online at https://www.newnetherlandinstitute.org/application/files/2616/8372/5025/Court_Minutes_of_Albany_Rennselaerswyck_and_Schenectady_1668-1673_Vol_I.pdf.

[97] Van Laer, online at https://www.newnetherlandinstitute.org/application/files/2616/8372/5025/Court_Minutes_of_Albany_Rennselaerswyck_and_Schenectady_1668-1673_Vol_I.pdf. Van Laer states that "the minutes contained in this volume cover approximately the same period as the Minutes of the Executive Council of the Province of Neu) York, 1668-73, edited by Victor Hugo Paltsits, State Historian, which were published in 1910. Between these two sets of minutes there are many connections, which have been pointed out in footnotes. The original record is a folio volume of 400 pages, which is lettered on the back: "Court Minutes. City & County of Albany Clerk's Office 1668. 1672." The first 332 pages of this volume consist of the minutes of the local court; pages 333–35 contain the minutes of a special Court of Oyer and Terminer, held at Albany on February 14–15, 1672/3; and the last 65 pages are blank. The handwriting varies, but is largely that of Ludovicus Cobes, who was secretary of the court during the entire period covered by the minutes. September 1925.

[98] Nelson, William E. *Legal Turmoil in a Factious Colony*: New York, 1664-1776, 38 Hofstra Law Review 1 (2009) Online at: http://scholarlycommons.law.hofstra.edu/hlr/vol38/iss1.

The English recognized and continued the political organization, the religious principles, the property rights, and the judicial procedure of the Dutch. Nicoll proceeded with a deft hand. In New Amsterdam it was agreed that

> *All inferior civil officers and magistrates shall continue as now they are (if they please) till the customary time of new elections, and then new ones to be chosen by themselves, provided that such new chosen magistrates shall take the oath of allegiance to his majesty of England before they enter upon their office.*

This was true on the Delaware as well, where it was provided that

> *The Present Magistrates shall be continued in their offices and Jurisdic-cons to exercise their Civill power as formerly. "The Schoute, the Burgomasters, Sheriffe, and other inferiour Magistrates shall use and exercise their Customary Power in admrcon [administration] of Justice within their Precincts for Six Moneths or untill his Majties pleasure is further known*.[99]

In March 1665, a convention of delegates from the towns assembled at Hempstead, in accordance with a proclamation of Governor Nicolls, "to settle good and known laws within this government for the future, and receive your best advice and information at a general meeting." At this convention, the boundaries and relations of the towns were settled, and some other matters adjusted. New patents were required to be taken by those who had received their patents from the Dutch authorities, and it was required that patents should be taken by those who had never received any, as was the case with the eastern towns.[100]

Each of the sixteen English towns on Long Island and the Westchester County towns sent two representatives and some of the Dutch towns also participated in the Convention. Because the Duke of York had power under the King's patent to set up a legal system based on English law, Matthias Nicoll, an eminent lawyer and Secretary of the Colony, compiled a code of law that became known as the Duke's Laws.

It was a compilation based on elements of English and Dutch law as well as the codes of the New England colonies. It provided for trial by jury and a proportional taxation on property. The Duke's Laws continued in force in New York until repealed by the Assembly of 1683. Initially, the Duke's Laws applied in the three ridings of Yorkshire—Long Island, Staten Island, and Westchester—but in June 1665, Governor Nicoll promulgated the New York City Charter that extended the code to New York City and set up a system of government there consisting of a Mayor, Aldermen, and Sheriff.[101]

Carrying out a transition of this kind required remarkable diplomacy and skill, and it appears that Nicolls was the perfect person for the job. [102]

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[99] Albert E. McKinley, *The Transition from Dutch to English Rule in New York: A Study in Political Imitation Source*, The American Historical Review, Jul., 1901, Vol. 6, No. 4 (Jul., 1901), pp. 693-724, Oxford University Press on behalf of the American Historical Association Stable https://www.jstor.org/stable/1834176.
[100] Online at https://sites.rootsweb.com/~nynassa2/convention.htm.
[101] Historical Society of the New York Courts, https://history.nycourts.gov/about_period/hempstead-convention/. For prosecution under the Duke's Laws. *See* Goebel and Naughton*, Law Enforcement in Colonial New York* (1944) at 327.
[102] Donna Merwick, *Possessing Albany*, *1630-1710*, 137 The Dutch and English Experiences (1990).

On June 13, 1665, Nicolls revoked the government of burgomasters and schepenen in New York City and the Duke's Laws replaced Dutch law. Nicolls also appointed new officers—a mayor, five aldermen, and a sheriff—to replace the Dutch burgomasters, schepenen, and schout. While only three of the aldermen appointed were Dutch, they were men of considerable standing in New Amsterdam: Olaff Stevensz van Cortland (1600–1684)[103] as burgomaster on the New Amsterdam court and Johannes Pieterse van Brugh (1624–1697) as a schepen. Cornelis van Ruyven was secretary to the colonial council.[104] For the rest of the colony, Nicolls worked with the existing Dutch courts whose records were kept in the Dutch language and which continued to adjudicate according to Dutch law. As Albany's court minutes for the English period are only extant as of September 13, 1668, how much, if anything, of the Duke's Laws was used in the Dutch court between 1664 and that date is not known.[105]

Under Governor Francis Lovelace (ca. 1621–1675?), more English jurisprudence and forms appeared, particularly in the Esopus area, including the village of Wiltwijck (Kingston), as well as the towns of Hurley and Marbletown.[106] Kingston maintained its Dutch format and laws until Lovelace named a commission that made various appointments to the village government. In

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[103] In 1645, he was appointed to be a member of an advisory body to the director of the colony, called *The Body of Eight Men.* In 1649, he was again appointed to another advisory body which consisted of nine men, and was called *The Body of Nine Men*. In 1654, he was elected to be the Schepen, or Alderman, and in 1655, he was appointed to be the burgomaster, or mayor of New Amsterdam. He held the office of mayor continuously until the arrival of the English in 1664.

[104] Cornelis van Ruyven, born circa 1630 in Amsterdam, was appointed Secretary to the New Netherland Council in 1653. He became a full member of the Council in 1659, and held both appointments until 1664. Van Ruyven also held office as Receiver-General of the Port of New Amsterdam from June 1656 to September 1663. When the Dutch colony came under English rule, van Ruyven swore the oath of allegiance to the English Crown. The English Governor, Francis Lovelace, wished to encourage the colony's Dutch trade and appointed van Ruyven to the office of Receiver-General of Customs, a position in which van Ruyven was responsible for administering the commercial laws of the colony as well as collecting duties. Van Ruyven was appointed to the English Colonial Council in 1669 and held that office until the colony once more came under Dutch rule in 1673. The newly-appointed Dutch Governor, Anthony Colve, selected van Ruyven as his emissary, requesting him to return to the authorities in Holland with an urgent appeal for military reinforcements. Van Ruyven owned a five acre farm at Flatbush but is listed as residing on Block L, Lot 7 in the Castello plan of New Amsterdam. From Historical Society of the New York Courts, online at https://history.nycourts.gov/figure/cornelis-van-ruyven/.

[105] Martha Shattuck, "Dutch Jurisprudence in New Netherland and New York," in *Four Centuries of Dutch-American Relations*, *1609–2009*, eds. Hans Krabbendam, Cornelis A. van Minnen, and Giles Scott-Smith (2009), 148.

[106] Lovelace was English Colonial Governor of New York from 1668- 1673 ; *See*, J. Hall Pleasants, New York Genealogical and Biographical Society, Vol. 51, Issue 3, July 1920, online at https://www.newyorkfamilyhistory.org/online-records/nygb-record/566-255; *See*, also Historical Society of the New York Courts, https://history.nycourts.gov/figure/francis-lovelace/, stating that James, Duke of York, appointed Lovelace as successor to Governor Richard Nicoll in 1668. In 1673, Lovelace instituted a monthly postal service between New York and Boston and established the first Merchants' Exchange in New York. His official residence was at Fort James, but he also owned a large estate on Staten Island.
The third Anglo-Dutch war broke out in 1672 and on July 30, 1673, Dutch ships sailed up New York bay and attacked Fort James while Governor Lovelace was at a meeting with Governor Winthrop in Hartford, and so absent from the colony. Lovelace's deputy surrendered the fort, and New York came under Dutch control once again. On his return to England, Lovelace was arrested and sent to the Tower of London on charges of "not having defended the colony and post of New York, according to his commission and duty." While there, Lovelace fell seriously ill and upon his release on April 26, 1675, he went to live with family in Woodstock, near Oxford, and died there later that year.

September 1669, he established a magistrate and two overseers for Hurley and Marbletown with the requirement of using English laws.

The Town of Marbletown, in Ulster County, was settled as early as 1669, but did not receive its patent until the 25th of June, 1703. The patent was granted by Col. Henry Beekman, Capt. Thomas Garton and Capt. Charles Brodhead in trust for the inhabitants.

By 1672, there were fifty-three houses in Marbletown, most of them log dwellings. The surface of the town was hilly upland, broken by valleys and streams. The Esopus flows through the northern part, while the Rondout runs through the southeast corner with a fall at High Falls.

The men who applied for land in 1703 were a mix of Dutch and English names: Capt. Richard Brodhead, John Cock Senior, Moses DuPuy, Jeremy Kittle, Jr., Loondert Kool, William Nottingham, Gysbert Roosa, Thomas Van der Mark, and Richard Wilson. Of the pre-Revolutionary houses now standing in Ulster County, the one at Stone Ridge, known as the Wynkoop Lounsbery house, was built in or before 1772 by Cornelius E. Wynkoop, Major of the Minutemen.[107]

In October 1671, implementation of the Duke's Laws had started. A justice of the peace took office, along with a Court of Sessions that was to meet twice a year. By 1673, the residents of the Esopus area asked for an English court of law. After the Dutch re-took the county for some months, the British took it back again in February1674 under the Treaty of Westminster, and the Duke's Laws were put back in force.[108]

On November 17, 1674, the New York Mayor's Court, with its predominately English members, found reading papers written in Dutch difficult, and decreed that no such papers were to be brought into court or they would be thrown out, excepting the poor who could not afford a translator. This did not occur in Albany, however, where the citizens, mainly Dutch, were still dominant.

While Dutch institutions and customs still appeared both in the court records of Albany until 1685, and in the notarial records until 1696, the days of any Dutch jurisprudence were numbered. By 1683, Governor Dongan divided the colony into counties with courts of session and a court of Oyer and Terminer, while allowing each town a small claims court. Albany received its city charter from Governor Dongan in July 1686, ending the use of the Dutch language in its governmental records and marking the end of Dutch jurisprudence in New York.[109]

In 1687, Governor Dongan provided a list of the courts of justice: "(1) a court of chancery composed of the governor and council, which is the supreme court of appeals; (2) the courts of oyer and terminer held yearly in each county; (3) the court of the mayor and alderman in New

[107] Town of Marbletown history, online at link?
[108] *See*, generally, *Law in Colonial New York: The Legal System of 1691*, 80 Harv. L. Rev. 1757 (June 1967).
[109] Martha Shattuck, "Dutch Jurisprudence in New Netherland and New York," in *Four Centuries of Dutch-American Relations*, 1609–2009, ed. Hans Krabbendam, Cornelis A. van Minnen, and Giles Scott-Smith (2009), 149.

York; (4) the courts of session (justices of the peace); (5) court commissioners for petty cases; [and] (6) a court of adjudicature, a special court established to hear land cases."[110]

In 1692, New York ceded Martha's Vineyard to Massachusetts.[111]

As one scholar has pointed out, Dutch rule and Dutch law came to an end, but some cultural patterns were woven into the society that emerged.[112]

The change, however, disserved women. Under Dutch law in the Netherlands and New Netherland, decedents left most of the marital estate to the surviving spouse, based on the Dutch custom of *boedelhouderschap* by which the survivor—wife or husband—retains the estate. Contrastingly, in the English period, testator-husbands generally reduced the widow's share. Moreover, married couples in New Netherland typically executed joint wills—a practice rejected under English common law. There were also fewer instances under English rule in which husbands named their wives as sole executors. Also, in contrast to English practice, the Dutch, and in turn New Netherland couples, shared equally in each-others' profits and losses, contemplating a "community of goods" (*gemeeenschap van goederen*).[113]

New York Prerogative Court, 1686

New York Court of Probates, 1778-1823

An especially comprehensive article on the history of probate proceedings was written by Royden Woodward Vosburgh in 1922.[114]

He notes that after the English occupation of New Netherland in 1664, the Court of Burgomasters and Schepens of New Amsterdam was changed into the Mayor's Court, which exercised much the same jurisdiction in respect to testamentary matters and estates of persons dying intestate within the City of New York, as the Court of Orphanmasters had previously exercised. By the Duke's Laws, officials were required to search for a will and to make an inventory of the effects of the deceased, returnable to the next Court of Sessions, where probate of wills and the granting of administrations took place, except in the City of New York, where the same jurisdiction was exercised by the Mayor's Court. If the estate exceeded £100 in value,

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[110] Brenda C. See, *Written in Stone? The Record on Appeal and the Decision-Making Process,* 40 Gonzaga L. Rev 157 (2004/2005), online at https://blogs.gonzaga.edu/gulawreview/files/2011/02/See.pdf. For the judiciary under Dongan, *see* Goebel and Naughton, *Law Enforcement in Colonial New York* (1944) at 69.

[111] *See*, Charles Banks, *History of Martha's Vineyard* (1911) at 206, 298, online at https://tile.loc.gov/storage-services/public/gdcmassbookdig/historyofmarthas01bank/historyofmarthas01bank.pdf.

[112] Albert E. McKinley, *The Transition From Dutch to English Rule in New York: A Study in Political Imitation Source*, The American Historical Review, Jul., 1901, Vol. 6, No. 4 (Jul., 1901), pp. 693-724, at 724. Oxford University Press on behalf of the American Historical Association Stable URL: https://www.jstor.org/stable/1834176.

[113] Albert M. Rosenblatt, *Dutch Influences on Law and Governance in New York*, 82 Alb. L. Rev. 1 (2018-2019). *See*, generally, Gherke, Michael Eugene, *Dutch women in New Netherland and New York in the seventeenth century* (2001). Graduate Theses, Dissertations, and Problem Reports, 1430. https://researchrepository.wvu.edu/etd/1430; *See*, also, Shattuck (above) at 151.

[114] *Surrogates' Courts and Records in the Colony and State of New York, 1664-1847.* The Quarterly Journal of the New York State Historical Association, vol. 3, no. 2, 1922, pp. 105–16. http://www.jstor.org/stable/43565740. Accessed 30 March, 2025.

the proceedings had to be transmitted to the office of the secretary of the province in the City of New York, where they were recorded, and the final discharge of executors or administrators was granted by the governor under the seal of the province. In October 1665, an amendment to the Duke's Laws provided:

> *That all Originall Wills after haveing beene prooved att the Court of Assizes or Sessions and returned into the Office of Records att New-Yorke shall remaine there, and the Executors Administrators shall receive a Coppie thereof, with a Certificate of it being allowed and attested under the Seal of the Office.*

The Duke's Laws specify the Court of Sessions as the court of probate; nevertheless, on more than one occasion, probate matters appear in the minutes of the Court of Assizes, the highest court in the province. This procedure continued until 1686, and was changed by royal instructions to Governor Dongan. These instructions placed the ecclesiastical affairs of the province under the jurisdiction of the Archbishop of Canterbury, but excepted certain of the bishop's prerogatives, among them "granting Probate of Wills, which wee have reserved to you our Governour."

In 1684, the Assembly abolished the Court of Assizes, and the same year Governor Dongan appointed as the first Attorney-General of New York, Thomas Rudyard (1640-1682), a London lawyer who had been Lieutenant-Governor of New Jersey. The office of surrogate or probate judge was administered by the governor in person.[115]

After 1686, the royal governor continued to have final jurisdiction in probate matters. The provincial secretary or his deputy served as the governor's delegate or "surrogate" and presided over what was called the Prerogative Court.[116]

In his article, Herbert Alan Johnson states that the Prerogative Court was a close copy of its English prototypes. Its redeeming virtue was the simplicity of its procedures and the lack of preoccupation on the part of its bar and judges with the sterile formalism which ultimately led to the downfall of the English church courts in 1857.The Prerogative Court of colonial New York performed its functions with a suitable respect for traditional English practice and substantive law. But at the same time, it adapted its jurisprudence to the conditions in colonial New York.

The Prerogative Court continued to operate in British-occupied New York City, Long Island, and Staten Island during the Revolutionary War. In 1778, the State Legislature established a Court of Probates, which assumed most of the colonial governor's powers in probate matters. A 1787 statute established a Surrogate's Court in each county. The Court of Probates' jurisdiction was limited to hearing appeals from the Surrogate's Courts; supervising estates of New York residents who died out of state, and of non-residents who died within the state; and issuing certain types of orders.

In 1774, the last Royal Governor, William Tryon (1729-1788), reported that "The Prerogative Court concerns itself only in the Probate of Wills, in matters relating to the administration of

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[115] Henry W. Scott, *The Courts of the State of New York,* (1909), 104, online at https://babel.hathitrust.org/cgi/pt?id=uc2.ark:/13960/t9k35sq1w&seq=463&q1=%22+special+sessions%22&start=1.
[116] *See*, Herbert Alan Johnson, *The Prerogative Court of New York*, *1686-1776*, 17 Am. J. Legal Hist. 95 (April 1973).

Intestates' Estates and granting Marriage Licenses. The Governour is properly the Judge of this Court, but usually acts by Deligate."

This procedure continued in the parts of the Province, held by the English, until 1783, while the new Constitution of the State of New York, adopted in 1777, recognized a Judge of the Court of Probates, and the law, passed March 16, 1778, directed: "The Judge of the Court of Probates of this State shall be vested with all and singular the powers and authorities and have the like jurisdiction in testamentary matters, which, while the State, as the Colony of New York, was subject to the Crown of Great Britain, the Governour or the Commander-in-Chief of the Colony for the time being had and exercised as Judge of the Prerogative Court."[117]

The Court of Probates was abolished in 1823, and its remaining jurisdiction was given to the Surrogate's Court. Between 1823 and 1847, appeals from the Surrogate's Court went to the Court of Chancery. Since 1847, appeals from orders and decrees of the Surrogate's Court have gone to the Supreme Court.[118] In 1691, Col. William "Tangier" Smith was made Judge of the Prerogative Court for Suffolk County.[119]

The County Clerk has the records of Col. Smith's court,1691–1703, (the so-called "Lester Will Book"), and William Smith Pelletreau's transcript of those records was published in *Early Long Island Wills of Suffolk County* (1897). After 1703 and until 1787, Suffolk wills continued to be proved locally but were recorded and subject to probate in New York City.[120]

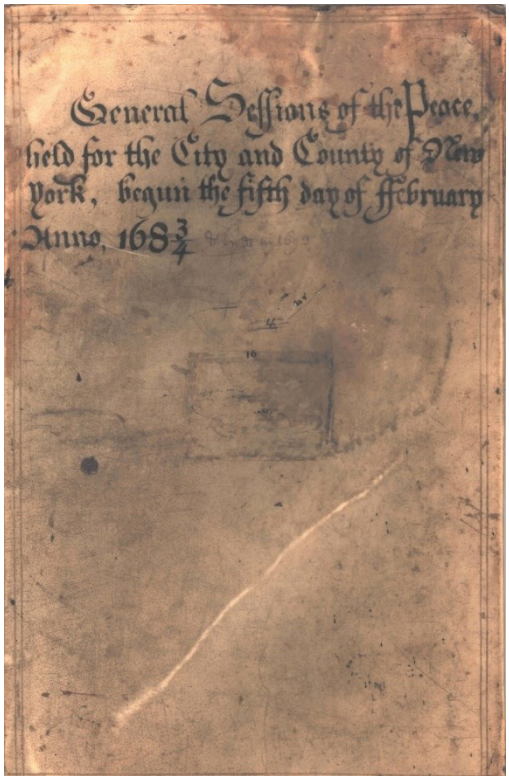
[117] Calendar of Wills on File and Recorded in the Offices of the Clerk of the Court of Appeals, Of the County Clerk at Albany, and of the Secretary of State, Compiled and Edited by Berthold Fernow Under the Auspices of the Colonial Dames of the State of New York, and Published by the Society, https://ia801600.us.archive.org/11/items/calendarofwillso01fern/calendarofwillso01fern_djvu.tx.

[118] The pre-1787 records of the former Prerogative Court and the Court of Probates were divided in 1802: original wills and other filed papers relating to the "Southern District" (New York, Kings, Queens, Suffolk, Richmond, and Westchester Counties) and all record books were transferred from Albany to the New York County Surrogate's Court. (The records sent to New York City included series J0038-92 and J0043-92, described in this leaflet.) Other filed papers of the Court of Probates remained in Albany. After the court was abolished, the Albany records passed into custody of the Secretary of State (1823–29), the Court of Chancery (1829–47), and the Court of Appeals (1847+). These records were placed on deposit at the Historical Documents Collection, Queens College, CUNY, in 1973, and transferred to the State Archives in 1982 and 1985. *See* New York State Archives online at https://www.archives.nysed.gov/research/res_topics_legal_probate_precourts; *See*, also, *Caujolle's Appeal*, 9 Abb. Pr. 393, 399 (1857); *See*, also, https://history.nycourts.gov/court/probate-court.

[119] https://archive.org/details/calendarofcounci00newy/page/64/mode/2up?view=theater&q=court.

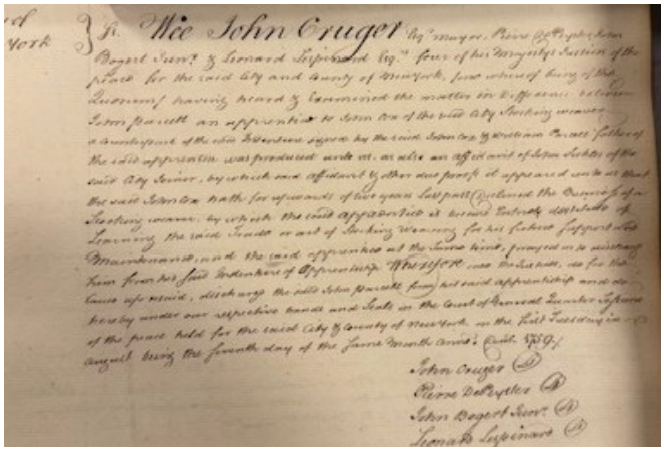
[120] *See,* https://www.newyorkfamilyhistory.org/content/new-york-probate-records-1787.

The Court of General Sessions in New York City, 1683-1962



Minutes of the Court of General Sessions, volume 1, 1683-1687. Original volume from the collection of the New York County Clerk's Division of Old Records. Courtesy, Kenneth Cobb, New York City Municipal Archives.

New York City Historian and Archivist Kenneth Cobb notes that the New York Court of General Sessions was created in 1683, under English rule, when Edmund Andros (1637–1714) was Governor, and that, until its consolidation with the Supreme Court of New York County in 1962, it was the oldest continuing court of criminal jurisdiction in the United States. Its origin dates back to fourteenth-century England when the traditional justices of the peace were required to hear more serious offenses in meetings held four specific times a year which came to be called general or quarter sessions.



At bottom, the names appear, John Cruger, Pierre De Puyster, John Bogert, Leonard Lispenard, 1759. Courtesy, Kenneth Cobb, New York City Municipal Archives.

Leonard Lispenard (1714–1790) was a merchant and politician in New York City, perhaps best known for his participation in the Stamp Act Congress. He became landowner of a tract, which became known as Lispenard Meadows. He was active in multiple levels of government, serving as an alderman from 1756–1762 and as part of the New York Provincial Assembly from 1765–1767. He also was involved in civic work, serving as the treasurer of King's College (now Columbia) and a member and governor of the Society of the New York Hospital. Lispenard was involved in advocacy for colonial rights as early as 1765, when he was chosen as one of New York's delegates to the Stamp Act Congress. He continued to favor the patriotic cause through the early 1770s, becoming a member of New York's Sons of Liberty. He was part of the Committee of One Hundred, a forerunner of New York's new independent government, in May 1775, and later that month he was named a representative to the New York Provincial Congress.[121]

When the English re-established their rule, after the Dutch occupation for a year in 1674-1675, Andros reconstituted the city government, giving the mayor and any four of the aldermen the power to hold a court of sessions. In 1685, a permanent law officer, called a recorder, was authorized, who thereafter sat as part of the court. Formally established by the Judiciary Act of 1691, the Court of General Sessions had jurisdiction to try felony indictments.[122] Under the cognizance of the New York historical archives, Kenneth Cobb, some of these records are at 31 Chambers Street in New York City.

Criminal jurisdiction continued with little change after the Revolutionary War. In 1787, a statute directed that, in New York City, the mayor, recorder, and aldermen, or any three of these, of whom the mayor or recorder had to be one, composed the Court of General Sessions in and for the City and County of New York. The court tried felony indictments before a petit jury. General Sessions also heard appeals from lower courts (Police Court, Magistrates' Court and Court of Special Sessions). In its basic forms and procedures, the court remained relatively unchanged over the next three centuries.

The Court of General Sessions was abolished in all counties except New York by the Constitution of 1846, and its jurisdiction was transferred to the County Courts. In 1962, the court system in New York City was reorganized and the Court of General Sessions became known as Supreme Court, Criminal Branch.

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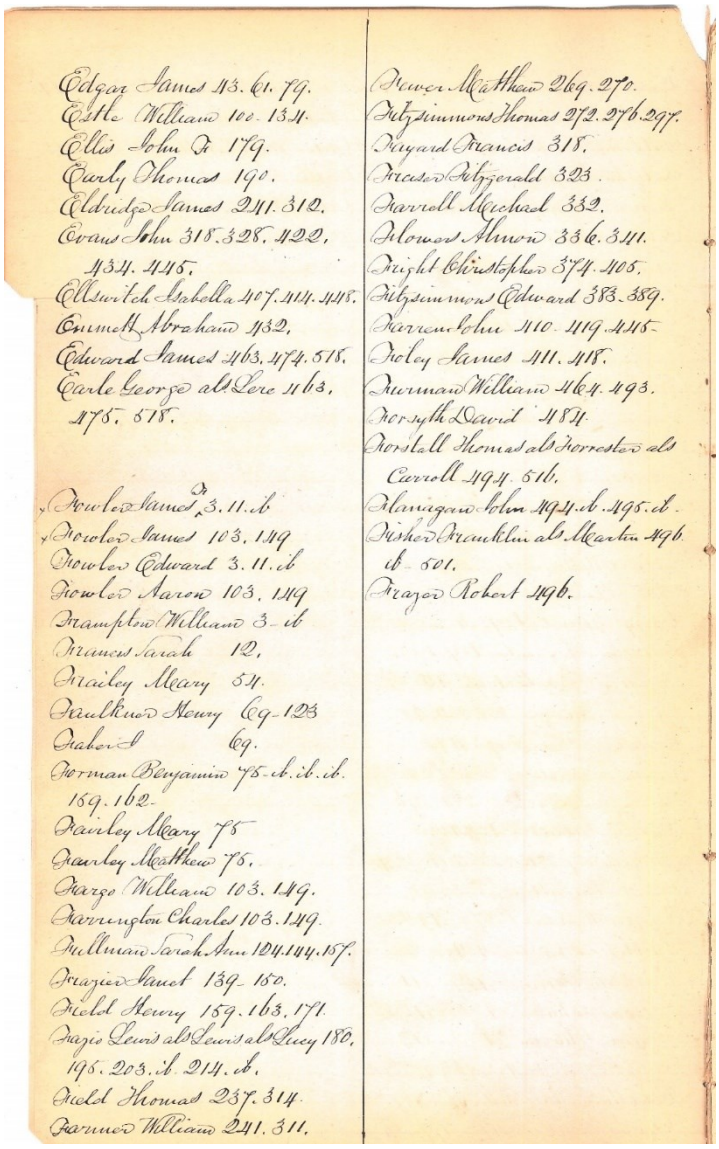
[121] *See,* https://www.google.com/books/edition/History_of_the_City_of_New_York/4JvSsT6J6qoC?hl=en&gbpv=1&pg=PA723&printsec=frontcover (p. 723, footnote) from online at https://fortticonderoga.catalogaccess.com/people/7004.

[122] https://www.google.com/books/edition/The_Colonial_Laws_of_New_York_from_the_Y/d3U4AAAAIAAJ?hl=en&gbpv=1&bsq=1691.



Minutes of the Court of General Sessions, February–December 1836, Index page "E" and "F" names. Courtesy, Kenneth Cobb, New York City Municipal Archives.

The minutes of the New York County Court of General Sessions provide a summary record of the court's proceedings.[123] For each day the court was in session, the minutes record the names of the presiding justice, prosecutor, defendant, defendant's counsel, and jurors. The record also states the charge, defendant's plea and outcome of the proceedings.

Beginning in 1840, as the number of cases increased, the Court divided itself into "Parts," as follows:

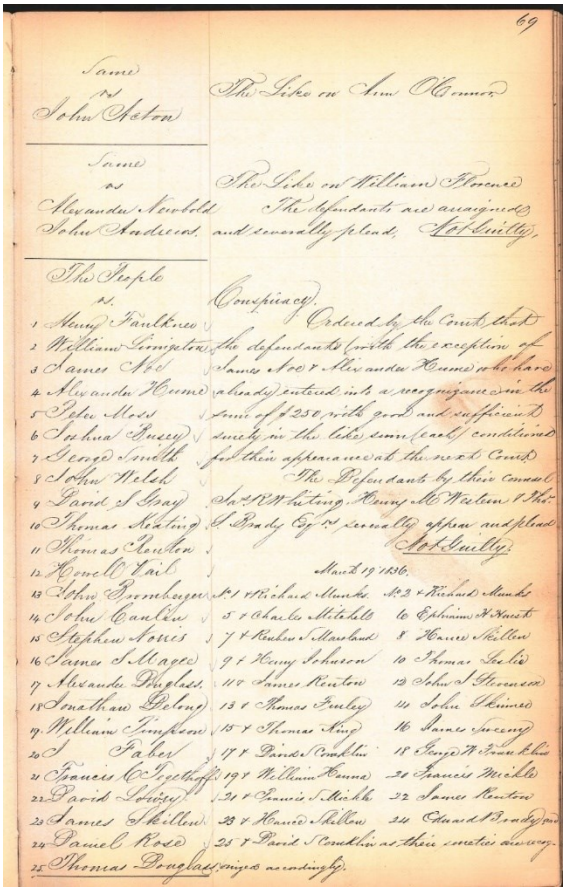
- Feb. 1683–Dec. 1839, 60 vols.
- Part I, Sep. 1840–Nov. 1919, 211 vols.
- Part II, Feb. 1873–May 1919, 59 vols.
- Part III, Mar. 1887–Apr. 1920, 35 vols.
- Part IV, Jan. 1896–Jan. 1920, 28 vols.
- Part V, June 1907–Apr. 1914, 6 vols.
- Part VI, Oct. 1914–Feb. 1921, 5 vols.[124]

The Minutes from 1683-1922 have been microfilmed and are available for research in the Municipal Archives. The minutes after 1922 are hard-copy only and available for research at the

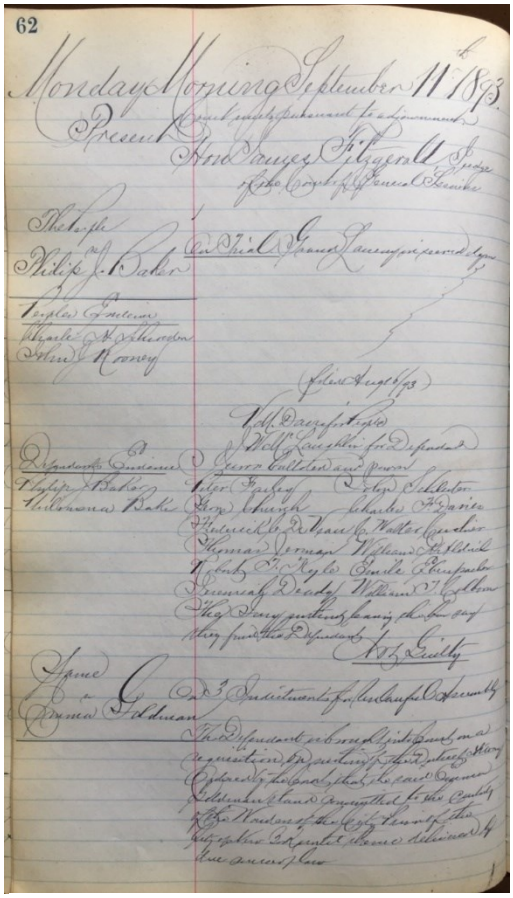
[123] Kenneth Cobb notes that in summary format, the minutes provide essential facts of the prosecution for a felony offense, e.g. date of indictment, date(s) of court appearances, and the jurors' verdict. But perhaps the greatest value of the Minutes is that the date of indictment information can be used to conduct research in the several felony indictment papers series created by the courts and/or District Attorneys. These series are almost always arranged by date of indictment. They document, sometimes in fantastic detail, all aspects of a prosecution from the first appearance in the lower criminal courts, through the final verdict. They often include witness testimony, correspondence and other relevant documentation.

[124] *Court of General Sessions, 1683-1962,* https://www.archives.nyc/blog/2022/3/11/minutes-of-the-court-of-general-sessions; *See*, also, http://sites.rootsweb.com/~nynewyo2/CourtRecords.htm; Scott, Kenneth. *New York City Court Records, 1801-1804: Genealogical Data from the Court of General Sessions.* Arlington, VA: National Genealogical Society, 1988. (N.Y. G12.41 V. 2); Historical Society of the New York Courts, https://history.nycourts.gov/court/the-superior-court-of-the-city-of-new-york-1828-1894/. *See*, also, as to General Sessions, Goebel and Naughton, *Law Enforcement in Colonial New York* (1944), 91.

Archives' Industry City, Brooklyn, location.[125]



The People vs. Henry Faulkner, and others on indictment for "Conspiracy," plead "Not Guilty," Minutes of the Court of General Sessions, March 18, 1836. Courtesy, Kenneth Cobb, New York City Municipal Archives.



The People, etc. vs. Emma Goldman on indictment for unlawful assembly. Minutes of the Court of General Sessions, September 11, 1893. Courtesy, Kenneth Cobb, New York City Municipal Archives.

Court of Special Sessions

According to Henry W. Scott, Chapter XX, title 3, section 1405, of the Greater New York Charter, contains the following provision in reference to this court:

> *The Court of Special Sessions of the city of New York is hereby continued with all the powers, duties, and jurisdiction it now has by law, and such additional powers, duties, and jurisdiction as are contained in and covered by section 1419. The justices of the Court of Special Sessions of the first and second divisions of the city of New York are hereby continued in office until the expiration of the terms for which they have been appointed; and their successors shall be appointed by the mayor for the term of ten years. There shall be six justices of the*

[125] https://www.archives.nyc/blog/2022/3/11/minutes-of-the-court-of-general-sessions.

Special Sessions for the first division and six for the second division for a term of ten years, whose powers, duties, jurisdiction, and compensation shall be the same; whose successors shall be elected in like manner and who shall possess all the requirements for appointment as those hereby continued in office.(As amended by Laws of 1903, Chap. 1.59.)[126]

Pyepowder/Piepowder Court

At the first session of the second assembly, on November 11, 1692, an act was passed "for settling of Fairs and markets in each respective city and County throughout the Province." It provided that there should be held and kept a public and open market on every Saturday in the weekly at Kingston, and also "two fairs yearly for the county of Ulster, the first to be kept at Kingston on the third Thursday in March and to end on the Saturday then next following, being three days inclusive and no longer. The second fair to begin the second Thursday in October and to end the Saturday following." The statute further declared that "all which Fairs, at the times and places aforesaid, in each County respectively, shall beholden together with a court of Pyepowder, and with all liberties and free customs to such fairs appertaining, or which ought or may appertain, according to the usage and customs of fairs holden in their majesties realms of England." The governor or ruler of the fair, with power to hold a court of Pypowder, to be commissioned and appointed by the governor of the Province.[127]

A piepowder court has many spelling variations: piepowder, pyepowder, pipoulder, pepowder, pipoudre, and pie poudre (the latter two hint to its etymological origins), and are used up and down the country, sometimes changing within the same document. The court was a type of tribunal in England organized when a fair or market came to town.[128]

Piepowder courts had jurisdiction over events taking place in the market, and they would preside over things like disputes between traders, thievery, and general acts of disorderly conduct. In the Middle Ages, there were many hundreds of such courts, and a small number continued to exist even into modern times.

They were not known for their thoroughness, nor the severity of the cases they heard. Sir William Blackstone, writing in 1753, had this to say about the court:

The lowest, and at the same time the most expeditious, court of justice known to the law of England, is the court of piepoudre, curia pedis pulverizati; so called

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[126] Henry W. Scott, *The Courts of the State of New York*, at 301, https://babel.hathitrust.org/cgi/pt?id=uc2.ark:/13960/t9k35sq1w&seq=463&q1=%22+special+sessions%22&start=1.
[127] Marius Schoonmaker, *History of Kingston* (1888), 91, https://archive.org/details/historyofkingsto01scho/page/92/mode/2up. *See*, also, *Legislation of the New York Colonial Assembly,* Ch VII, https://sites.rootsweb.com/~vtwindha/hev/hevch8.htm; https://heinonline-org.proxy.library.nyu.edu/HOL/Page?collection=ssl&handle=hein.ssl/ssny0472&id=12&men_tab=srchresults.
[128] John Wallis, *The Natural History and Antiquities of Northumberland and so much of the County of Durham As lies between the Rivers Tyne and Tweedy commonly called in this Bishoprick,* London, MDCCLXIX, https://ia601303.us.archive.org/20/items/naturalhistoryan02walluoft/naturalhistoryan02walluoft.pdf.

from the dusty feet of the suitors; or, according to Sir Edward Coke, because justice is there done as speedily as dust can fall from the foot.[129]

There has been little research or scholarship about this august court, and we were happy to find an article on the topic, written in 1906—much closer to the time of the court than now.[130]

Charles Gross points out that a court was an ordinary appurtenance of a fair in the time of Henry I and in Scotland in the first half of the twelfth century. He reports that Blackstone says that in his day they are "in a manner forgotten," and his contemporary Barrington states that "we hear little of these courts at present." As in the case of the court leet and many other old English institutions, the death-struggle was, however, protracted far into the nineteenth century. There are records of a piepowder court at Eye from 1732 to 1813.

The statutes 17 Edward IV, 1 Richard III, c. 6, the only acts of Parliament relating to this branch of the judiciary, also state that to every fair there pertains a "court de peedow," and they lay down certain rules to remedy abuses of its jurisdiction, notably to prevent the trial of actions concerning contracts or other matters that did not arise in the fair.

The court of piepowder was held before the mayor or bailiffs of the borough, or before the steward if the market or fair belonged to a lord. The mayor or steward was often assisted by two citizens or "discreets."

The piepowder courts are also interesting on account of their early use of a rational method of proof. We have seen that they required the production of evidence by witnesses openly examined in court. This feature of the procedure was well known in the fourteenth century, when compurgation was still in common use in the borough courts and when the examination of witnesses distinct from the jury was not yet firmly established in the royal tribunals at Westminster. When the local records have been more carefully investigated, it may be found that the production of proof based on the examination of witnesses was well known in the piepowder courts long before the fourteenth century, and that these courts helped to rationalize the procedure of the royal tribunals.

Court of Sessions

The Duke's Laws of 1665 proclaim that

the names of the Severall Courts to be held in each Riding three times in the year, shall be called the Court of Sessions. And whereas there is great respect due, and by all persons ought to be given to Courts which so nearly represents his Majesties sacred Person, and that such order, gravity and decorum, which doth manifest the Authority of a Court, may be maintained. These rules and formes

[129] West Sussex Record Office, https://westsussexrecordofficeblog.com/2020/03/14/the-pie-powder-court-of-chichester-dusty-feet-and-quick-justice/; *See*, also, Marius Sohoonmaker, *The History of Kingston, New York: From Its Early Settlement to the Year 1820,* (1888), 92 https://archive.org/stream/historyofkingsto02scho/historyofkingsto02scho_djvu.txt; James Davis, "Market courts and lex mercatoria in late medieval England" in *Medieval Merchants and Money, Essays in Honour of James L. Bolton,* eds. Martin Allen, Matthew Davies (2016), https://www.jstor.org/stable/j.ctv5132xh.20.

[130] Gross, Charles. *The Court of Piepowder,* Quarterly Journal of Economics 20, no. 2 (1906): 231–49. https://doi.org/10.2307/1883654.

following are to be observed for beginning Continuing and proceeding in the said Court: The Court of Sessions are to begin in the East Riding the first Tuesday in June; In the North the Second Tuesday and the third Tuesday following in the West Riding. They are to Continue the Sessions in each place three days, if need So require, but no longer, the second Court of Sessions shall be held the first Second and Third Wednesdays in December, The third Sessions are to be the first, Second and third Wednesdays in March.[131]

Courts of General Sessions of the Peace

These county level courts had jurisdiction over criminal cases such as desertions, vice, apprenticeship disputes, bastardy, and other violations of vice and immorality laws.[132] After 1691, they heard only criminal cases.[133]

Justice of the Peace

From the first settlement of the English in the Province of New York, justices of the peace held town courts. In 1780, the Legislature empowered them to try all cases involving 100 pounds or more.[134]

Article VI, section 17, of the Constitution of 1846 authorized the election of Justices of the Peace to serve in the towns and villages, to be chosen by the local electorate in the manner directed by the Legislature. All actions as cases of debt, slander, trespass, replevin, or for damages, where the amount demanded was less than one hundred pounds, were heard before one of the Justices of the Peace of any of the counties, or mayor, recorder, or alderman for the cities of New York and Albany and the Borough of Westchester.

The practice of the Justices' Courts required that the defendants appear forthwith if served by warrant, but, if by summons, to appear not less than six days, nor more than twelve days after service. Judgment was to be rendered four days after the trial.

If the magistrate who issued the warrant or summons was absent on the day the defendant appeared, the latter was brought before any other magistrate of the same city, town, borough, or district. The process against freeholder and inhabitants having families was by summons only,

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[131] From the Duke's Laws 1665, https://history.nycourts.gov/wp-content/uploads/2018/12/Publications_Dukes-Transcript.pdf.

[132] According to Family Search, some early quarter sessions records have been published in Kenneth Scott, editor, *New York City Court Records, 1684–1804, Genealogical Data from the Court of Quarter Sessions*, Four Volumes. (Arlington, Virginia: National Genealogical Society, 1982–88).

[133] *See,* New York City Court Records, 1684-1804, Genealogical Data from the Court of Quarter Sessions, 4 vols., Kenneth Scott, ed., National Genealogical Society, 1982–88. Records contain lists of persons involved in cases of stealing, assault, battery and illegitimacy, http://sites.rootsweb.com/~nynewyo2/CourtRecords.htm; Scott, Kenneth. New York City Court Records, 1801–1804: Genealogical Data from the Court of General Sessions. Arlington, VA: National Genealogical Society, 1988. (N.Y. G12.41 V. 2); Historical Society of the New York Courts, https://history.nycourts.gov/court/the-superior-court-of-the-city-of-new-york-1828-1894/.

[134] See Smith, *History* at 164, https://quod.lib.umich.edu/cgi/t/text/text-idx?c=evans;cc=evans;rgn=main;view=text;idno=N19064.0001.001.

and served on the defendants personally, or, if they could not be found, a copy could be left at their houses in the presence of some family member of suitable age and discretion, who was to be informed of the contents thereof, at least six days before the time of appearance as mentioned in the summons. The officer who served the summons was required to endorse upon it the manner of its execution.

Upon the defendant's default in appearance, and no good and sufficient reason being assigned therefore, the court proceeded with the trial if the defendant had been personally served; but if a copy of the summons had been left at defendant's residence, a warrant was issued for defendant's immediate appearance.

Upon the plaintiffs' filing an affidavit with the court, to the effect that they were in danger of losing their demand by the issuance of a summons, it was customary for the magistrate to issue a warrant although the defendant was a freeholder. Upon defendant's application, and upon furnishing security therefor, an adjournment of the trial would be granted.

Either party might demand a jury of six free holders to try the case. The following oath was required of jurors, the parties' names being inserted in their proper places:

> *You shall well and truly try this matter in difference between A B, plaintiff, and C D, defendant, and a true verdict give according to the evidence, So Help You God.*

After the close of the case, and when all the proofs had been heard, the jury retired to some convenient place until a verdict was agreed upon; their decision was thereupon announced to the court, and the judge rendered judgment accordingly.

The penalty for non-attendance of jurors, after having been regularly summoned, was a fine of not more than forty pounds and not less than ten pounds, in the court's discretion. These fines were applied to the use of the poor of the district where levied.

Should a plaintiff be non-suited, discontinue, or withdraw the action without the consent of the defendant, judgment was given against the plaintiff for the costs, and if the defendant proved that the plaintiff was indebted to defendant, judgment was given against the plaintiff for the amount of the indebtedness and the costs.

After judgment, execution was issued to the constable, to levy on the debtor's goods, and should there not be sufficient to cover the amount, could take the debtor's body into custody. This continued to be the practice until 1831, when it was finally abolished.[135]

The Supreme Court was authorized to order the Attorney General to prosecute justices guilty of unjust practice. In 1780 the Legislature reduced the jurisdiction of Justices of the Peace to actions involving ten pounds only, and the fees were reduced to one twelfth.

In 1807, the Justices' Court was established for the City of New York, to consist of three judges, whose jurisdiction extended to cases involving an amount from twenty-five dollars to fifty dollars, and to all marine cases between master and mariner, though in excess of the amount above mentioned.

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[135] Henry W. Scott, 308, https://babel.hathitrust.org/cgi/pt?id=uc2.ark:/13960/t9k35sq1w&seq=318&q1=%22+constable,+to+levy%22&start=1.

In 1817, the jurisdiction of the Justices' Court was increased to one hundred dollars; in 1819, the name of the court was changed to the Marine Court of the City of New York, and by the statutes of 1846, the Marine Court was authorized to try actions of assault and battery, false imprisonment, miscellaneous prosecutions, libel and slander, and the general jurisdiction was increased to five hundred dollars. From this court, the City Court of the City of New York evolved.

> *By virtue of the Uniform Justice Court Act in 1967 the local court system was revised and new court names and Judges' titles came into existence… and the Justice of the Peace became the Town Justice. (UJCA 102, 103.) (*See, People v Mann*, 97 NY 530, for a historical discussion of Justices of the Peace.)*
>
> *People v. Fatsis*, 180 Misc. 2d 172, 173 (1999).[136]

Assistant-Justices' Courts

The act of 1807 which created Justices' Courts for the City of New York, also provided for the establishment of Assistant-Justices' Courts in each of the wards of the city. The jurisdiction was limited to actions not exceeding twenty-five dollars; they were the subject of much litigation, and after having undergone many changes, became finally known as District Courts, one being established in each district of New York City. An appeal from the courts of assistant justices, or from the Marine Court, was taken to the Mayor's Court, afterwards called the Court of Common Pleas.

That court was provided for by the amended constitution of 1846. Quoting from article VI, section 1 7 of the constitution of 1846, we have the following

> *The electors of the several towns shall at their annual town meeting, and in such manner as the Legislature may direct, elect justices of the peace, whose term of Office shall be four years. In case of an election to fill a vacancy occurring before the expiration of a full term, they shall hold for the residue of the unexpired term. Their number and classification may be regulated by law.*

The constitution of 1895 provided in article VI, section 1 7 as follows:

> *The electors of the several towns shall at their annual town meetings, or at such other time and in such manner as the Legislature may direct, elect justices of the peace, whose term of Office shall be four years. In case of an election to fill a vacancy occurring before the expiration of a full term, they shall hold for the residue of the unexpired term. Their number and classification may be regulated by law. Justices of the peace and judges or justices of inferior courts not of*

[136] *See,* Justice Court manual online at https://www.nycourts.gov/courts/townandvillage/FinalJusticeCourtManualforUSCsite.pdf; Smith, Chester H. *The Justice of the Peace System in the United States*. California Law Review, vol. 15, no. 2, 1927, pp. 118–41. https://doi.org/10.2307/3475968. Accessed 30 June 2023. *See*, also, *Justice Most Local*, http://www.nycourtreform.org/Justice_Most_Local_Part1.pdf; Charles Austin Beard. *Office of Justice of the Peace in England in Its Origin and Development* (1904).

record, and their clerks, may be removed for cause, after due notice and an Opportunity of being heard, by such courts as are or may be prescribed by law. Justices of the peace and district court Justices may be elected in the different cities of this state in such manner, and with such powers, and for such terms respectively, as are or shall be prescribed by law; and all other judicial Officers in cities, whose election or appointment is not otherwise provided for in this article, shall be chosen by the electors of such cities or appointed by some local authorities thereof.[137]

New York City Mayor's Court (Court of Common Pleas)

The New York City Mayor's Court, also known as the Court of Common Pleas, was established in 1664. The Judicature Act of 1691 (Chap. 4) recognized the (existing) "Courts of the Mayor & Aldermen of the Respective Cittyes of New York & Albany." The act established a "Court of Common Pleas in each Respective Citty and County within this Province."[138]

In approximately 1699, the Mayor's Court moved from the Dutch Stadhuis, built half a century earlier, to its new home in City Hall at the intersection of Wall and Broad Streets. Also housed here were the New York City office of the Supreme Court of Judicature and, in the basement, the municipal jail.

Under the terms of the Montgomerie Charter, reaffirmed by the 1777 state constitution, the mayor himself presided of the Court of Common Pleas. The mayor, recorder, and aldermen or any combination of the three comprised the bench. By 1786, New York City's population had grown from 12,000 at the end of the Revolutionary War to 23,000. As Manhattan expanded, the mayor had less time to preside over the court. The volume of litigation in the Mayor's Court rapidly increased. 254 writs [orders issued from a court requiring the performance of a specific act] were returned for the term of February 6, 1799, for example, as the population of the city had almost trebled since the termination of the war. Two years previously a statute had been passed, empowering mayor and recorder, or either of them, to hold court without the presence of any of the aldermen, who would still be permitted to attend, however: "The recorder was a high-ranking magistrate of the court."

Beginning in 1797, minor civil cases were decided by justices of the peace. The recorder presided over the courts of general and special sessions, assisted by two common pleas judges.

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[137] This section quoted from Henry W. Scott, *The Courts of the State of New York* (1909), 305-312, https://babel.hathitrust.org/cgi/pt?id=uc2.ark:/13960/t9k35sq1w&seq=463&q1=%22+special+sessions%22&start=1.

[138] Mayor's Court and Court of Common Pleas orders, pleas, and complaints for 1786 to 1789, 1811, and 1815 Accession ACC-2010-004. Unprocessed-RG 065. New York State Supreme Court. Accession consists of legal documents from the Mayor's Court and the Court of Common Pleas. The former was incorporated into the latter in the early 19th century. The orders, pleas, and complaints primarily concern debt. There are also orders to collect court costs and for the sheriff to apprehend a defendant for a court appearance. The documents are folded. The paper is fragile and in some cases the ink is fading. NYC Department of Records and Information Services Online at https://a860-collectionguides.nyc.gov/repositories/2/accessions/5085. *See*, also, Act for establishing courts, 1691 *Col. Laws,* 1:229, 23 1, https://www.google.com/books/edition/The_Colonial_Laws_of_New_York_from_the_Y/d3U4AAAAIAAJ?hl=en&gbpv=1&bsq=1691.

Beginning in 1798, arraignments and bail were handled by police justices. According to Burrows and Wallace, "The mayor and aldermen… drew back slowly but surely from the exercise of their judicial functions, giving rise to a de facto separation of powers. Under Mayor De Witt Clinton, in 1803, the jurisdictional reach and number of meetings of the Mayor's Court increased steadily, forcing him to turn its proceedings over to the recorder."

It was not customary during the colonial period for judges to have been lawyers. Merchants often became judges. A "dearth of available legal talent" and low salaries discouraged young lawyers from seeking judgeships. The position of recorder, though, usually went to some with a legal background. As Morris states, "The recorder, however, was the real measure of whatever special training was considered necessary for administering justice in those days. He was legal advisor to both court and council," but most of his job consisted of advising the court. "In addition to his judicial duties, the recorder acted as corporation counsel,… he was always selected from the ranks of the legal profession, was generally an Anglican, and very often in close contact with the provincial government." In 1801, the legal responsibilities of the recorder were transferred to a new official, the corporation attorney. During this period, the court clerk normally kept custody of the books of record.[139]

This court was New York City's version of a lower level, or "town," court. Four jsutices of the peace were appointed to each town in the State of New York. (After 1826, they were elected to the position.) "Each justice was empowered to preside alone over a civil court, which tried personal actions involving demands for $50 or less… Civil actions involving slander, assault and battery, or recovery of real or personal property could not be brought in this court, no matter how much damages were claimed." These types of cases were tried in the Supreme Court of Judicature 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 judgement debtor's real estate."[140]

Chapter 44 of the Laws of 1780, passed February 26th of that year, empowered justices of the peace, mayors, recorders, and aldermen to try all cases involving one hundred pounds or less; all actions as cases of debt, slander, trespass, replevin, or for damages, where the amount demanded was less than one hundred pounds, were heard before one of the justices of the peace of any of the counties, or mayor, recorder, or alderman for the cities of New York and Albany and the Borough of Westchester.

The process against freeholders and inhabitants having families was by summons only, and served on the defendant personally, or, if he could not be found, a copy could be left at his house in the presence of some member of his family, of suitable age and discretion, who was to be informed of the contents thereof, at least six days before the time of appearance as mentioned in the summons. The officer who served the summons was required to endorse upon it the manner of its execution.

Either party might demand a jury of six freeholders to try the case.

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[139] New York City and New York State Legal Documents, 1775-1835; https://archives.nypl.org/mss/18159.
[140] New York City and New York State Legal Documents, Manuscripts and Archives Division, The New York Public Library Manuscripts and Archives Division, https://archives.nypl.org/mss/18159.

After judgment, execution was issued to the constable, to levy on the debtor's goods, and should there not be sufficient to cover the amount, he could take the debtor's body into custody. This continued to be the practice until 1831, when it was finally abolished.[141]

In *Rutgers v Waddington*, striking down the Trespass Act as impermissible, this court made legal history, by engaging in judicial review, well before *Marbury v Madison*.[142]

The Court of Common Pleas

The Court of Common Pleas of New York City is generally synonymous with the Mayor's Court, immediately above. Nevertheless, we include the following segment, if only because James Wilton Brooks wrote *The History of the Court of Common Pleas* (1896) from which this segment is drawn. He begins by pointing out that "Court of Common Pleas, founded in 1686, in the City of New York, extended in 1691 throughout the State, restricted again in 1846 to the City of New York, and under the State Constitution of 1894, passing out of existence on December 31, 1895, the oldest judicial tribunal in the State of New York.[143]

It succeeded "The Worshipful Court of the Schout, Burgomasters and Schepens" established in 1653, and may thus be said "to have had a continuous existence of nearly two centuries and a half. It was twice as old as the nation. In its passing away may be seen the severance of one of the last links which bound our present to the old days when the language of our city was Dutch, when its Courts were Dutch, and when its law came straight from Holland."

Interestingly, in an 1849 treatise, the author states that the Court of Common Pleas has appellate jurisdiction:

> *§ 352. When the judgment shall have been rendered by the marine court of the city of New York, or by a justice's court in that city, the appeal shall be to the court of common pleas for the city and county of New York; and when rendered by*

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[141] Henry W. Scott, *The Courts of the State of New York*, (2018) at 305, https://babel.hathitrust.org/cgi/pt?id=uc2.ark:/13960/t9k35sq1w&seq=463&q1=%22+special+sessions%22&start=1. *See*, also, http://sites.rootsweb.com/~nynewyo2/CourtRecords.htm; New York City and New York State legal documents 1775-1835, https://archives.nypl.org/mss/18159#:~:text=In%20approximately%201699%2C%20the%20Mayor's,the%20basement%2C%20the%20municipal%20jail; Mayor's court minutes, 1674-1821. Salt Lake City, Utah: Filmed by the Genealogical Society of Utah, 1977; 31 microfilm reels ; 35 mm.; https://www.familysearch.org/search/catalog/418909?availability=Family%20History%20Library; NY Public Library has minutes from 1789-1791, *see,* https://archives.nypl.org/mss/2182; Stanford has Select cases of the Mayor's Court of New York City, 1674-1784, edited by Richard B. Morris. *See* https://searchworks.stanford.edu/view/991668; *See, also,* http://sites.rootsweb.com/~nynewyo2/CourtRecords.htm; New York City and New York State legal documents 1775-1835, https://archives.nypl.org/mss/18159#:~:text=In%20approximately%201699%2C%20the%20Mayor's,the%20basement%2C%20the%20municipal%20jail; Historical Society of the New York Courts, https://nycourts.gov/history/legal-history-new-york/other-courts/court-of-common-pleas.html.

[142] N.Y. City Mayor's Ct.1784, reprinted in Julius Goebel Jr., *The Law Practice of Alexander Hamilton: Documents and Commentary,* Vol 1, 282-543 (1964).

[143] James Wilton Brooks, *History of the Court of common pleas of the city and county of New York: with full reports of all important proceedings* (1896).

> *any of the other courts enumerated in the last section, to the county court of the county where the judgment was rendered.*[144]

The Court had cognizance in all actions, real, personal and mixed, where the amount involved exceeded five English pounds. Its errors were corrected in the first instance, by the Supreme Court, to which appeals were allowed for any judgment where the amount involved exceeded the sum of twenty English pounds, or about one hundred dollars of our money.

The Court of Common Pleas in the City of New York was known for many years, in fact until 1821, under its original Dutch name, and was called "The Mayor's Court" Its criminal branch was known as "The Court of Sessions."

As the Court of Common Pleas was the County Court of New York County, it had exclusive jurisdiction in certain actions.

It was the Court of Impeachment for municipal and minor judicial officers. Until within a few years it was the only Court having jurisdiction in cases of forfeited recognizances, or in cases where bonds when confiscated became the property of the City Treasury. Until recently it was the only Court which could give an individual the legal right to change his name. The greater part of lunacy proceedings, mechanic lien litigations and insolvent assignments came before the Court of Common Pleas. It was also the Court where contested wills were tried before a jury. Its equity powers were co-equal with those of the Supreme Court. In connection with the Supreme and Superior Courts, nearly all of the naturalization of the county was done in it—only a small percentage of certificates being issued by the United States Court. Its appellate powers were more varied than those of any New York Court excepting the Court of Appeals.[145]

The following from the biographical section of James Wilton Brooks, History of the Court of common pleas of the city and county of New York, with full reports of all important proceedings (1896), biographies of the first several judges of the court.

JOHN T. IRVING (1778–1838) *Served on the court in 1821*

> Born at New York City, a nephew of the famous author Washington Irving, he graduated from Columbia College (1828) and became a lawyer with interests in real estate and stockbroking. In 1833, he accompanied a party headed by Indian Treaty Commissioner Henry L. Ellsworth "to visit the wild tribes on the prairies" and make treaties with the Pawnee Indians which resulted in his first book, *Indian Sketches* (1835). Two years later, he published his novel, *The Hunters of The Prairie*, or *The Hawk Chief: A Tale of the Indian Country*. Both books "were expressions of that gentlemanly and urban concern for the frontier which so interested Washington Irving on his return from Europe in 1832… It was the record of an excursion [as the author said] 'fraught with novelty and pleasurable

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[144] Townshend, J, et al. *The Code of Procedure*… New York [etc.], 1849 at 98; *See*, also, Henry W. Scott, The Courts of the State of New York (1909), 310, https://babel.hathitrust.org/cgi/pt/search?id=hvd.hx4mju&q1=worshipful&sz=25&start=1&sort=seq&hl=true&page=search&seq=1&orient=0https://babel.hathitrust.org/cgi/pt?id=uc2.ark:/13960/t9k35sq1w&seq=463&q1=%22+special+sessions%22&start=1.

[145] James Wilton Brooks, *History of the Court of common pleas of the city and county of New York: with full reports of all important proceedings*, (1896), 31, https://babel.hathitrust.org/cgi/pt?id=hvd.hx4mju&seq=40&q1=jurisdiction&start=1.

excitement,' conveying 'an idea of the habits and customs of the Indian tribes… who, at the time, lived in their pristine simplicity, uncontaminated by the vices of the lawless white men." Other works by Irving included *The Van Gelder Papers* and *The Attorney*. He was a member of the Authors Club; the St. Nicholas Society; and, the Columbia Alumni and Century Associations. He married Helen Schermerhorn, sister of The Mrs. Astor, founder of the 400, and had eight children (listed).[146]

MICHAEL ULSHOEFFER (1793–1881) *Served on the court in 1834*

Born in New York City, he studied law and was admitted to the bar of his native city in 1813, subsequently achieving a recognized position in his profession. For six years he was a member of the assembly, being the champion of a bill to revise the state constitution, writing a very able reply to Chancellor Kent's opinion disapproving the measure. He became corporation attorney, and later corporation counsel, occupying the latter office for four years. In 1834 he was appointed judge of the court of common pleas, reappointed in 1843, and was elected a member of that bench in 1846 under the new constitution. At the expiration of his term Judge Ulshoeffer did not resume practice, but was frequently selected as an arbitrator and referee.

DANIEL P. INGRAHAM (1800–1881) *Served on the court in 1838*

Born in New York City, Apr. 20, 1800. Columbia College graduate, 1817. Appointed judge of Common Pleas, 1838. Elected to state supreme court, 1857, and again in 1865, serving until 1874. On the reorganization of the state supreme court in 1869, presiding justice of the general term of supreme court, first department. Died Dec. 12, 1881.[147]

WILLIAM INGLIS *Served on the court in 1839*

William Inglis, fourth Judge of the Court of Common Pleas, was, it is believed, born in the city of New York. His father appears to have been John Inglis a native of Scotland, who was a merchant doing business in the lower part of the city as early as 1812, and for years thereafter; or this may have been the Judge's grandfather—for there was a John Inglis in New York in 1785, the only one of the name then living there. Judge Inglis was prepared for and entered Columbia College, being graduated with the class of 1821. His career as a student was distinguished, but he never fully realized the great expectations formed of his future, not so much from want of intellectual ability, as from a certain inertness that indisposed him to exertion where it could be dispensed with; and as he had a modest patrimony, and was careful and economical in his habits, he was able in that respect to do as he wished. His application in college, however, must have been close; and on his graduation he was a good classical scholar, and with other requirements had a knowledge of modern languages, speaking French fluently.

[146] From online at https://americanaristocracy.com/people/john-treat-irving-1.
[147] *See* 1 McAdam, *History of the Bench and Bar of New York*, New York History Co. (1897), p. 365; *see also* 66 Alb LJ 342 (1904-1905).

CHARLES P. DALY *Served on the court in 1844*

Charles P. Daly, fifth Judge of the Court of Common Pleas, was born in New York City in 1816. He was elected to the Legislature in 1843. After the expiration of the term of Judge Inglis, he accepted the office in 1844 which he continued to hold for 41 years.

Judge Daly became "First Judge" of the Court of Common Pleas upon the resignation of Judge Daniel Ingraham in 1857, and was re-chosen to the post in 1873 with title of "Chief Justice."

He has written much and has been connected with many organizations, varying in their range from the Friendly Sons of St. Patrick to the American Geographical Society, over both of which bodies he has presided as president, and was also a member of the Union, the Century, and other clubs and is as active as many of those who are much his junior in years.

The degree of LL.D. was conferred on him by Columbia College in 1860.

His published works are: *The Ancient Feudal and the Modern Banking System Compared*; *The Judicial Tribunals of New York from 1693 to 1848*; *The Settlement of the Jews in North America*; *History of the Surrogate's Court of New York*; *Naturalization, its past History and its Present State*; *Biographical Sketch of Gulian C. Verplanck*; *Barratry: Its Origin, History and Meaning in the Maritime Law*; *Origin of Corporations for the Promotion of the Useful Arts*; *The Jews of New York*; *Sketch of Henry Peters Gray, the Artist*; *When was the Drama Introduced in America*; *Early History of Cartography or What We Know of Maps and Map-making before the Time of Mercator*; *Biographical Sketch of Charles O'Conor*; *Are the Southern Privateersmen Pirates*; *History of Physical Geography*; *Have We a Portrait of Columbus*; *Is the Monroe Doctrine Involved in the Controversy Between Venezuela and Great Britain*; and *Wants of a Botanical Garden in New York.*

LEWIS B. WOODRUFF *Served on the court in 1850*

Born in Litchfield, Conn., he was educated in the Morris Academy at Litchfield, and entered Yale, where he was graduated with high honors in the class of 1830. At the Law School in Litchfield, he was under the instruction of Judge Gould, and on completing his studies in 1832, he was admitted to the Bar of Connecticut. He soon after came to New York City, and formed a partnership with Hon. Willis Hall, which continued until 1836. Afterwards became associated with Mr. George Wood, he then at the head of the bar, and Mr. Richard Goodman, under the style of "Woodruff & Goodman."

In 1849, he was elected Judge of the Court of Common Pleas, to succeed Hon. Michael Ulshoeffer, and held that office for six years, 1850-1855. At the close of is term of office in the Court of Common Pleas he was elected judge of the Superior Court, where he had for associates Judges Oakley, Duer, Bosworth, Hoffman, Slosson and Pierrepont. This office he also filled for six years, 1856-1861. At the close of this judicial term, he remained at the bar, associated as counsel with Hon. Charles F. Sanford, and his son, Charles H. Woodruff, practicing under the firm name of "Sanford &Woodruff," for six years, 1862-1867.

In January 1868, he was appointed a Judge of the Court of Appeals to fill a vacancy occasioned by the resignation of Hon. John K. Porter and held the office until the close of the following year. In December 1869, he was named a Judge of the Circuit Court of the United States for the Second Circuit. He received the honorary degree of Doctor of Laws from Columbia College. He began political life as a National Republican, continued with that party under the name of Free Soil Whig, and on the formation of the present Republican party became and always continued its firm friend and supporter.

JOHN R. BRADY *Served on the court in 1856*

John Riker Brady, seventh Judge of the Court of Common Pleas, was born in the City of New York in 1821, was admitted to the bar in 1842, and immediately went into partnership with Mr. Maurice and with his brother, James T. Brady, the firm being Brady, Maurice & Brady. Mr. Maurice afterwards withdrew, and the two brothers continued alone, until the younger one was called to the bench. Elected in 1855 to the Court of Common Pleas, Judge John R. Brady was re-elected in 1869, and before his second term had expired, he was elected to the Supreme Bench. At his second election to the Common Pleas Bench, he received the endorsement of the Republicans and of all factions of the Democratic party, was unopposed, and consequently elected by an immense vote. At the expiration of his first term on the Supreme Court Bench in 1877, he again received the unanimous nomination of all parties, and had he lived but a few months longer would have retired, having reached the constitutional age of seventy. His career on the bench covered a period of over thirty-five years. In 1863, he married Katherine Lydig, daughter of Philip M. Lydig, and sister of the wife of Judge Charles P. Daly. Judge Brady was a member of many social organizations, was one of the founders of the Manhattan Club, one of the presidents of the Lambs' Club, and served several terms as president of the Friendly Sons of St. Patrick. He died after an illness of less than twenty-four hours, being afflicted with an abscess on the brain, in the Hanover apartment house, in the City of New York, on March 16th (1891). A portrait of Judge Brady for a period adorned the Courtroom of the General Term of the Common Pleas, but on the abolition of the Court was removed to the rooms of the Appellate Division of the Supreme Court.

HENRY HILTON *Served on the court in 1858*

The eighth Judge of the Court of Common Pleas, Hilton was born in October 1824, at Newburgh, in Orange County, N. Y. of Scotch parentage

Henry Hilton was admitted to the bar in 1846, and for some years acted as Master in Chancery. In the early 1850s, he married Miss Ellen Banker, a daughter of Edward Banker of Banker & Schermerhorn, and a sister of James H. Banker, who afterwards became prominent as a financier and capitalist, being president of the Bank of New York, and a director in the New York Central Railroad Company.

He was elected a Judge of the Common Pleas in 1857 by a majority of about 17,000 over William M. Allen. He edited the two volumes of *Hilton's Reports,* covering the period from 1855 to 1860, and the head-notes in those volumes are still regarded as models of concise and accurate statement. At the end of his term, he resumed the practice of the law, taking into partnership Douglas Campbell, the son of Judge William W. Campbell who in the Judge's youth had been his senior partner, and Joseph Bell, who had been Assistant

United States District Attorney for the Southern District of New York, and was later appointed by President Arthur Judge of the Supreme Court for New Mexico, where he died.

After his retirement from the bench, in addition to his office in the firm of Hilton, Campbell & Bell, he also had an office in the mercantile house of Mr. Stewart, and continued in most intimate professional and personal relations until his death. Mr. Stewart, who died in April 1876, left him a large legacy in his Will, and Mrs. Stewart, shortly after her husband's death, at the request of her husband, as she stated, transferred to Judge Hilton all interest in the mercantile business. Thereupon Judge Hilton wholly abandoned his profession and devoted himself to mercantile pursuits.

Judge Hilton has a splendid country seat at Saratoga, known as Woodlawn Park. It consists of about a thousand acres, and has something like fifteen miles of wooded drives which are thrown open to the public, greatly adding to the attractions of that famous resort. He has three sons, Edward B., Henry G., and Albert B. Hilton; and two daughters, Cornelia, the wife of John M. Hughes, and Josephine H., the wife of Judge Horace Russell.

Judge Ingraham occupied the position of First Judge until January, 1858, when he was succeeded by Judge Daly. Judge Woodruff was elected to the Superior Court, and Judge Ingraham to the Supreme Court. The place of the former was filled by Judge Brady, and of the latter by Judge Hilton.[148]

The English Period

The English took over in 1664/1665, changing the name of the Colony to New York. It was an English colony until 1776/1777 when Americans separated from England and established statehood.

Until the end of the Dutch domination, and even long afterward, the governors of the colony counted it a right to preside in Court and to order the affairs of justice, and this was a particular embarrassment of the cause, not only because they knew no law, but also because some of them seem to have been fitter subjects for its discriminations than interpreters of its principles.

In addition to their salary, the governors claimed and received a large income in fees or perquisites for arranging patents or grants in land. Nonetheless, the Court came, remaining during many generations; and the governors often filled the office of Chancellor.

Some of the colonial governors had the honesty to acknowledge their ignorance of the law and behave accordingly. In 1727, "His Majesty has been pleased to appoint John Montgomerie Esq. to be Captain-General and Governor in chief of the Province of New York in America, and the territories depending thereon… in the room of William Burnet Esq. Also to appoint him to be Captain-General and Governor of Nova Caesaria, or New Jersey in Jamaica, in the room of the said William Burnet, Esq." Montgomerie would serve in this role until his death in 1731.

[148] *Reports of cases argued and determined in the Court of Common Pleas for the city and county of New York*, by Henry Hilton. [1855-1860] v.1 (1855/1858), https://babel.hathitrust.org/cgi/pt?id=hvd.32044078486040&seq=10.

Montgomerie declined to sit as a judge, and when ordered to do so on the authority of the Crown, acquiesced unwillingly, encouraging the learned counsel on either side by informing them that he knew nothing whatever of law, but would be pleased to hear them talk and might "patch up" a decision sooner or later. As a matter of fact, he gave but one decree and issued but three orders, with the help of his counsel.

Matters so continued with more or less regularity until Sir Charles Hardy arrived. He was knighted in 1755 and served as governor of the Colony of New York from 1755 to 1757, replaced by James Delancey. Hardy had been a seaman by profession and was informed on arriving that it was necessary for him as governor to sit in chancery, "Gentlemen," he said, "my knowledge relates to the sea; that is my sphere. If you want to know when the wind and tide will suit for going to Sandy Hook, I can tell you; but what can the captain of a ship know about demurrers? If you dispute about a fact I can look into the depositions and perhaps tell you who has the best of it, but I know nothing of your points of law."

Hardy later tried to hear a case of fact only, and called in the three justices of the Supreme Court to assist him, and thereafter they discharged the duties of Chancellor for him.

During the following thirty years and more, 1789 to 1821. the list of Mayors and Recorders who sat in this Court included many of the most distinguished lawyers of the State. The Mayors were: Richard Varick, Edward Livingston, De Witt Clinton, Marinus Willet, Jacob Radcliffe, and Cadwallader D. Colden; and the Recorders were: Samuel Jones (father of the late Chief Justice), James Kent, Richard Harrison, John B. Provoost, Maturin Livingston, Pierre C. Van Wyck, Josiah Ogden Hoffman, Peter A. Jay, and Richard Riker.

While Maturin Livingston was Recorder, Mayor Clinton ceased, perhaps from choice, perhaps from lack of time, to preside in the Mayor's Court, and from that time on the Recorder sat as presiding judge until 1821, when from the fact that its business had greatly increased, and that the Mayor had ceased to preside in it, it was concluded that the name Mayor's Court, no longer in any sense appropriate, should be abandoned. An act was prepared by John Anthon, then the most prominent practitioner at the bar, and was passed by the Legislature, changing the name to the "Court of Common Pleas of the City of New York," and the office of "First Judge" was created. The Governor appointed John T. Irving as First Judge. The Mayor, Recorder, and Aldermen were still authorized to sit in Court as formerly, but the First Judge was empowered to hold it without them, and it was his special duty to hold it. The leading practitioners before him were: John Anthon, Martin S. Wilkins, Elisha W. King, John T. Mulligan, Robert Bogardus, Pierre C. Van Wyck, Thomas Phoenix, Joseph D. Fay, David Graham, Sr., Hugh Maxwell, John Leveridge and Wm. M. Price, though the members of what was then known as the senior bar. Thos. Addis Emmett, Peter A. Jay, Peter W. Radcliffe, Sam M. Hopkins, David B. Ogden, Wm. Slosson, Wm. Sampson and others appeared frequently in the Court as associate counsel in important case.

In 1834, an Associate Judge was provided, vested with all the powers of the First Judge. The Governor appointed Michael Ulshoeffer. His standing both at the bar and in the community is best shown by the fact that he had already served the people as City Attorney, Corporation Counsel, and as member of Assembly, and that he had been in turn a vestryman of St. Mark's and of Grace churches, two of the most influential congregations in the City of New York. On the death of Judge Irving, in 1838, Judge Ulshoeffer was appointed First Judge, which office he held

till his retirement in 1848, and Daniel P. Ingraham (the father of Judge George L. Ingraham, now a Justice of our Supreme Court), was appointed Associate Judge.

Meanwhile (1839) the business of the Court increased so rapidly that an additional judge, vested with all the powers of the other judge, was created, and William Inglis was appointed as an Associate Judge—thus making the full bench of The Common Pleas.

The Constitution of 1846 especially excepted from the general Judicial reorganization of the State, the Court of Common Pleas and the Superior Court of the City of New York. A law enacted in 1847 provided, however, that the judges of both Courts should be elected by the people.

All the existing judges (Ulshoeffer, Daly, and Ingraham) of the Common Pleas were elected in June 1847. The allotment of their judicial terms, for, in accordance with the provisions of the law, each took his chances in drawing by lot resulted in Judge Ulshoeffer's securing the two-year. Judge Ingraham the four-year and Judge Daly the six-year term.

In 1849, Lewis B. Woodruff was elected in place of Judge Ulshoeffer; and in 1850, Judge Ingraham was chosen First Judge. Judge Ingraham was re-elected in 1851, and in 1858 Judge Daly was chosen as Chief Judge of that court.

There have been since 1821 but twenty-three judges, four of whom served as "First Judges," and three, Judge Chas. P. Daly, Judge Larremore, and Judge Joseph F. Daly, as "Chief Justices."

Their successors were: John R. Brady (1856–1869), Henry Hilton (1858–1863) Albert Cardozo (1863–1868); Hooper C. Van Vorst (1867–68); Geo. C. Barrett (1868–69); Frederick W. Loew (1869–75); Charles H. Van Brunt (1870–84); Hamilton W. Robinson (1870–79); Richard L. Larremore (1870–90); George M. Van Hoesen (1876–90); Henry Wilder Allen (1884–91); and Joseph F. Daly (1870–96); Miles Beach (1879–96); Henry W. Bookstaver (1885–96); Henry Bischoff (1890–96); Roger A. Pryor (1890–96); Leonard A. Giegerich (1891–96), who constituted the last Bench of the Court of Common Pleas.

Two have died before the expiration of their term. Judge Robinson in 1879, and Judge Allen in 1891. Judge Allen was stricken in the Court House as he was leaving his Court, and died a few days afterwards in the hospital.

In the year 1824 appear the names of Judge William Kent and Philip Hamilton and D. P. Ingraham, afterwards Judge of the Court of Common Pleas.

In the year 1825 appears the names of William Inglis, afterwards Judge of the Court of Common Pleas; Francis Griffin and Gen. John A. Dix, afterwards Governor of New York, and F. Brockholst Cutting, and E. C. Benedict.

In 1826, N. Bowditch Blunt, afterwards District Attorney, and Judge Thomas S. Brady, the father of John R. and James T. Brady; Philo T. Ruggles and Charles Edwards.

In 1827, D. Graham, Jr., Pierre M. Irving, Charles A. Clinton and Judge T. W. Clerk, and Daniel B. Talmadge.

In 1828, Judge Benjamin W. Bonney, Edward Sandford and David Dudley Field.

In 1829, A. D. Russell, Judge John A. Lott, John McKeon, afterwards District Attorney, and Benjamin D. Silliman, who was at the time of writing the oldest graduate of Yale College, and one of the oldest living members of the New York Bar.

In 1830, Robert H. Morris, afterwards Mayor, Recorder and Judge; Robert R. Lansing, Peter Wilson and Hamilton Fish, afterwards Governor of New York, U. S. Senator and U. S. Secretary of State.

In 1831, Edgard S. Van Winkle and Judge Henry E. Davies, the father of Julian T. and William G. Davies, both well-known members of the bar.

In 1832, Alexander Hamilton and Corporation Counsel Robert J. Dillon.

In 1833, Albon P. Mann, Judge Henry P. Edwards and John T. Irving, Jr., and Thomas A. Brady, brother of John R. and James T. Brady, and Henry C. Murphy.

In 1834, Judge William Mino Mitchell and Nelson Chase.

In 1835, James T. Brady, Theodore Sedgwick, Judge William H. Leonard and Judge Gilbert M. Speir, C. J. DeWitt and Edward DeWitt.

In 1836, Judge Joseph S. Bosworth, Judge Claudius L. Monell and Andrew Warner, who was afterwards one of the four clerks of the Court of Common Pleas, and was, at the age of ninety, the present of the Institute for Savings of Merchant Clerks.

In 1837, Horace F. Clark, Luther R. Marsh, Hiram Barney, Augustus Schell and Charles E. Butler.

In 1838, John Jay, John W. C. Leveridge, Judge John W. Edwards, William C. Noyes and Benjamin F. Butler, the father of William Allen Butler, the leader of our elder bar, and grandfather of William Allen Butler, Jr., the president of the Lawyers Club of the City of New York.

In 1839, Chas. P. Daly, for many years Judge, First Judge and Chief Justice of the Court of Common Pleas, and Vice-Chancellor Lewis H. Sandford.

In 1840, Recorder James M. Smith, Jr., Judge Charles A. Peabody and William J. Hoppin, for many years secretary of our legation to Great Britain and Edward W. Stoughton.

In 1841, John Riker and Henry L. Riker.

In 1842, William T. Horn, John R. Brady, afterwards Judge of the Court of Common Pleas and of the Supreme Court; Nelson J. Waterbury, afterwards District Attorney, and Judge Enoch L. Fancher.

In 1843, John E. Burrill.

In 1844, Judges Charles A. Rapallo, Samuel J. Tilden, afterwards Governor of the State of New York; John E. Devlin and Charles Price.

In 1845, William C. Barrett, Abraham B. Tappen, Ogden Hoffman, Jr., John J. Townsend, and Henry A. Cram.

In 1846, Andrew H. Green, Henry Hilton, afterwards Judge of the Court of Common Pleas; Judges Henry P. McGown, James W. Gerard, Jr., and Henry Morrison.

As the Court of Common Pleas was the County Court of New York County, it had exclusive jurisdiction in certain actions.

It was the Court of Impeachment for municipal and minor judicial officer. Until within a few years it was the only Court having jurisdiction in cases of forfeited recognizances, or in cases where bonds when confiscated became the property of the City Treasury. Until recently it was the only Court which could give an individual the legal right to change his name.

The greater part of lunacy proceedings, mechanic lien litigations and insolvent assignments came before the Court of Common Pleas, a court in which contested wills were tried before jury. Its equity powers were co-equal with those of the Supreme Court. In connection with the Supreme and Superior Courts, nearly all of the naturalization of the county was done in it—only a small percentage of certificates being issued by the United States Court. Its appellate powers were more varied than those of any New York Court excepting the Court of Appeals.[149]

We generally think of trial courts as conducted by a single judge, and of appeal courts or 3, or 5; 7 or 9. This court functioned as a trial court with several judges sitting, as appears on Brooks's treatise:

> *The Court convened again on January 26th, 1833, to try David M. Cowdrey, Clerk to one of the Assistant Justices of the city, for official misconduct. On the second day appointed for the hearing of the charges there were present John T. Irving, First Judge; and Aldermen Cebra, Sharpe, Ferris, Rhinelander, Meigs, John Palmer, James Palmer, Mandeville, Woodruff and Murray. A quorum being present the Court proceeded with the trial.*[150]

The court also met as an impeachment tribunal:

> *The Court of Common Pleas as a Court of Impeachment was convened on the 12th of November, 1877, with the following Judges present: Charles P. Daly, Charles H. Van Brunt, Hamilton W. Robinson, Richard L. Larremore, Joseph F. Daly, and George M. Van Hoesen, the full number of Judges under the amended Constitution of 1869. The Mayor, Recorder, and Aldermen, having ceased to sit as Judges of the County Court or the Court of Common Pleas since the amended Constitution of 1846, and three additional Judges of the Court having been elected pursuant to the amendment of 1869, Chief Justice Daly presented and filed affidavits and charges made against Patrick G. Duffy, Police Justice, pursuant to an Act of the Legislature of the State of New York, passed May 17th 1873, entitled, "An Act to secure better administration in the Police Courts in the City of New York." The charges and specifications against Justice Duffy were printed and filed in the Court, together with his answer submitted on January*

[149] See, also, *Reports of Cases Argued and Determined in the Court of Common Pleas of the City and County of New York*, E. Delafield Smith (1855).
[150] James Wilton Brooks, *History of the Court of common pleas of the city and county of New York: with full reports of all important proceedings* (1896), 35, https://babel.hathitrust.org/cgi/pt?id=hvd.hx4mju&seq=40&q1=jurisdiction&start=1.

22d,1878, by Algernon S. Sullivan and Wheeler H. Peckham, his counsel. On the last named day the Court assembled to receive the said answer and Chief Justice Daly then announced that as the several Judges of the Court were at this time so engaged in the different branches of the Court that it would be necessary to postpone the hearing of the testimony until the first Monday of February next, so that all the Judges could attend, and that the Court would adjourn until that day at 11 o'clock, A.M., which was done.

On February 4th, 1878, the Court met pursuant to adjournment, all the Judges except Judge Van Brunt being present. B. H. Phelps, District Attorney, appeared for the prosecution, and Messrs. Sullivan and Peckham for the defence. Witnesses were examined on that and the two following days, when the case was closed on both sides. By the direction of the Court, it was decided that the Court proceed to a vote upon the charges and that each charge be heard by the Court and the question be taken guilty or not guilty. The clerk then read charge first, and upon calling each Judge all the Judges voted not guilty. The clerk then read charge second, and upon calling each Judge, all the Judges voted not guilty. Chief Justice Daly then assigned his reasons for his vote, in which all the Judges concurred, and the Court adjourned.[151]

Court of Assizes for the Colony of New York 1665–1682/1683

The Court of Assizes, the highest provincial court in New York, was established in New York City, hearing both civil and criminal cases. Along with the Court of General Sessions of the Peace, the Court of Assizes had jurisdiction over probates.[152]

The court was established under the Duke's Laws of 1665, and was composed of the Governor, his Council, and two Justices of the Peace from each of three ridings. It sat in New York once a year, the regular term beginning on the last Thursday of September. Special terms, however, could be called at other times to hear causes requiring speedy dispatch. The court had original jurisdiction in all criminal matters, and civil cases of twenty pounds and upwards. It was abolished in 1683.[153]

The Court of Assizes was originally designed to serve only the English-speaking population of the colony, but after 1675, its jurisdiction expanded to encompass all of New York. After 1675 representatives from Kingston and Albany often sat as part of the court. The Court of Assizes

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[151] James Wilton Brooks*, History of the Court of common pleas of the city and county of New York: with full reports of all important proceedings,* (1896) at 57, https://babel.hathitrust.org/cgi/pt?id=hvd.hx4mju&seq=40&q1=jurisdiction&start=1.

[152] Henry W. Scott, *Courts of the State of New York*, (2018) at 345; *See*, also, Fowler, on the jurisdiction of the court, Albany Law Journal, May 3, 1879, p, 349.

[153] *See*, New York Historical Manuscripts: English. Records of the Court of Assizes for the Colony of New York, 1665–1682, Peter R & Florence A Christoph, eds., online at https://ia601501.us.archive.org/8/items/proceedingsofgen45newy/proceedingsofgen45newy.pdf. *See*, also, http://sites.rootsweb.com/~nynewyo2/CourtRecords.htm; Proceedings of the General Court of Assizes held in the City of New York, October 6, 1680, to October 6, 1682, https://babel.hathitrust.org/cgi/pt?id=mdp.35112104276342&seq=30.

was the highest court of law and equity in the province. It exercised exclusive jurisdiction in cases of capital offenses and appellate jurisdiction in all criminal and civil matters. When conducting equity proceedings, the court modelled its procedures after the High Court of Chancery in England. The Court of Assizes was abolished in 1684 by an act of the newly created colonial Assembly and its pending cases transferred to the Court of Chancery established the previous year (Chapter 31, Laws of 1684).[154]

In 1691, the New York Supreme Court of Judicature took over as the State high court. (See New York Supreme Court of Judicature in this publication.)

> *January 5th, 1676, the Governor issued his special warrant requiring the Justices of the north riding, the west riding, and Mr. Woodhull, of the east riding, to assemble at the City Hall on Friday, the 12th inst., to constitute a court for the trial of this offender, John Fenwick and on the same day had proclamation made that such Court would be held, then and there for that purpose. On that day the Governor, the Judges of the Assizes, and the Mayor and Aldermen of the city made a court, when Samuel Leet, the King's counsel, presented the various charges made, and requested John Fenwick to plead thereto*.[155]

Since the Court of Assizes met only once a year, matters that would come before it were handled by the Governor and Council or by the Court of Oyer and Terminer commissioned ad hoc.[156]

The Duke's Laws gave jurisdiction over such cases to the "Court of Assizes where matters of [e]quity shall be decided, or [p]unishment awarded according to the discretion of the [b]ench." The second provision specified that judges were to "direct[] the [j]ury in point of [l]aw" and the jury was only to "find the matter of fact"; the Court of Assizes interpreted this provision to give judges power to set aside verdicts where the jury had undertaken to find the law in conjunction with the facts.[157]

In 1665, the Court of Assizes sponsored a witchcraft trial in Seatalcott, or Setauket (later Brookhaven). The records of the trial against Ralph Hall and Mary Hall reveal that at the Court of Assizes, held in New York October 2, 1665, the couple were charged "upon suspicion of witchcraft." The jury consisted of "Thomas Baker, Foreman of the Jury, of East Hampton; Capt. John Symonds of Hempsteed; Mr. Hallet of Jamaica; Anthony Waters of Jamaica; Thomas Wandall of Marshpath Kills; Mr Nicolls of Stamford; Balthazer de Haart of New Yorke; John Garland of New Yorke; Alexander Munro of New Yorke; Anthony de Mill of New Yorke, and Thomas Searle of New Yorke; and Jacob Leisler of New Yorke."

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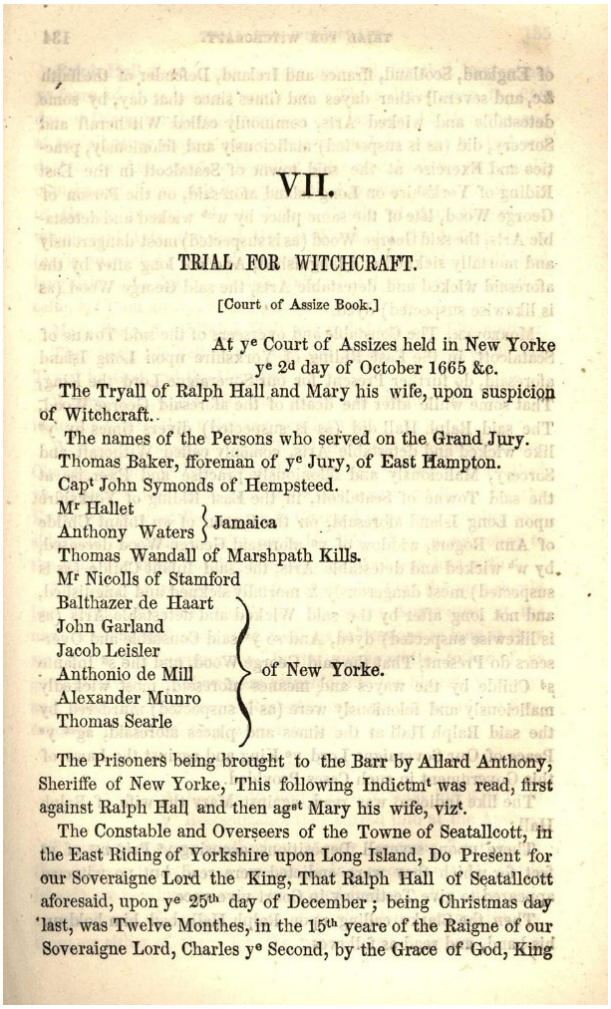
[154] New York State Archives, online at https://www.archives.nysed.gov/creator-authority/new-york-colony-court-assizes. *See*, also, In the bill abolishing the court of assize, passed October, 1684, it was provided, that all actions, suits, & c., by plaint, bill, & c., should be determined and finished by the high court of chancery, acc. to Murray Hoffman, *A Treatise on the Practice of the Court of Chancery* (1834, 2010*)* at 10.

[155] Online at https://tile.loc.gov/storage-services/public/gdcmassbookdig/sketchoflifechar01clem/sketchoflifechar01clem_djvu.txt.

[156] Dennis Sullivan, *The Punishment of Crime in Colonial New York* (1997) at 318; Goebel and Naughton*, Law Enforcement in Colonial New York* (1944) at 61.

[157] Nelson, William E. *Legal Turmoil in a Factious Colony*: New York, 1664–1776, 38 Hofstra Law Review 1 (2009) 98.



VII.

TRIAL FOR WITCHCRAFT.

[Court of Assize Book.]

At ye Court of Assizes held in New Yorke ye 2d day of October 1665 &c.

The Tryall of Ralph Hall and Mary his wife, upon suspicion of Witchcraft.

The names of the Persons who served on the Grand Jury.

Thomas Baker, fforeman of ye Jury, of East Hampton.
Capt John Symonds of Hempsteed.
Mr Hallet, Anthony Waters } Jamaica
Thomas Wandall of Marshpath Kills.
Mr Nicolls of Stamford
Balthazer de Haart, John Garland, Jacob Leisler, Anthonio de Mill, Alexander Munro, Thomas Searle } of New Yorke.

The Prisoners being brought to the Barr by Allard Anthony, Sheriffe of New Yorke, This following Indictmt was read, first against Ralph Hall and then agst Mary his wife, vizt.

The Constable and Overseers of the Towne of Seatallcott, in the East Riding of Yorkshire upon Long Island, Do Present for our Soveraigne Lord the King, That Ralph Hall of Seatallcott aforesaid, upon ye 25th day of December; being Christmas day last, was Twelve Monthes, in the 15th yeare of the Raigne of our Soveraigne Lord, Charles ye Second, by the Grace of God, King

The case went to the jury. The jurors did not simply say guilty or not guilty as to either Mary Hall or Ralph Hall, although their determination as to Ralph Hall was close to a verdict of not guilty. As for Mary Hall, they had their suspicions, but they appreciated that guilt requires more, and so they fashioned a sort of probation. According to records of the Court of Assizes, she was allowed to remain in Westchester.[158]

Interestingly as well, the Court of Assizes in New York City from 1680 to 1682 report a case compelling arbitration of a dispute involving the sale of goods and enforcing two arbitration awards.[159]

A record of the court reveals its principals, in 1680:

Att A General Court of Assizes holden in the Citty of New Yorke by his Majtis Authority beginning the sixth Day of Octobr in the 32th yr of the Reigne of our Sovereign Lord Charles the Second by the Grace of God, of England, Scotland, France & Ireland King Defender of the Faith &c and in the yeare of our Lord 1680.[160]

[158] Minutes of the Executive Council of the Province of New York Administration of Francis Lovelace 1668-1673 Volume II Collateral and Illustrative Documents, XX-XCVIII Edited by Victor Hugo Paltsits, (1910) at 394, citing, Court of Assizes Records, Vol 2, p, 238, 239, 255. *See* https://ia801608.us.archive.org/35/items/minutesofexecuti00newy/minutesofexecuti00newy.pdf.

[159] Amy J. Schmitz, *Ending a Mud Bowl: Defining Arbitration's Finality Through Functional Analysis*, 37 Ga. L. Rev. 123, 143 (2002).

[160] Online at https://ia801501.us.archive.org/8/items/proceedingsofgen45newy/proceedingsofgen45newy.pdf.

PROCEEDINGS OF THE
GENERAL COURT OF ASSIZES

HELD IN THE CITY OF NEW YORK
OCTOBER 6, 1680, TO OCTOBER 6, 1682

Att A General Court of Assizes holden in the Citty of New Yorke by his Majtis Authority begining the sixth Day of Octobr in the 32th yr of the Reigne of our Sovereign Lord Charles the Second by the Grace of God, of England, Scotland, France & Ireland King Defender of the Faith &c and in the yeare of our Lord 1680.

PRESENT

The Right Honoble Sr Edmund Andros, Knt.
Gover[or] Capt Mathias Nicolls
Capt William Dyre
Mr Fred. Flipson
Mr William Darvall
Mr Steph. Courtland. } of the Councell

Mr Francis Rumbouts Mayor of the Citty of New Yorke

Mr William Beakeman
Mr Thomas Lewis
Mr Peter Jacobs
Mr Gelyne Ver Planke
Mr Samuel Willson } Aldermen of the same Citty

Present Governor The Right Honoble Sr Edmund Andros,[161] Knt. Capt Mathias Nicolls,[162] Capt William Dyre,[163] Mr Fred Flipson, Mr

[161] For bios of Andros and Courtland [Olaff Stevensz van Cortland) (1600–1684)], see above. Francis Rombouts (1631–1691) was the twelfth Mayor of New York.

[162] Peter R. Christoph, *The New York Genealogical and Biographical Record,* July 1989, at 151: Matthias Nicolls lived in New York for almost thirty years, serving as Provincial Secretary; president of the court of assizes; judge on courts of oyer and terminer, courts of admiralty, and courts martial; member of the Governor's Council; captain of regulars, and of cavalry for the Long Island volunteers; tax collector for Queens County; Speaker of the General Assembly; auction master; and member of the New York City Common Council for ten years, eight as alderman and two as mayor. He served as the sixth and eighth Mayor of New York.

[163] William Dyre, was the 13th Mayor of New York between 1680 and 1682. In 1660, his wife, Mary Dyre, was the only woman to suffer capital punishment in all the oppression of the Friends the world over. Mayor Dyre was appointed to the military service under the crown and proposed the conquest of New York from the Dutch. He was made collector of customs of his territories in America by the Duke of York, July 2, 1674, and took up his residence in New York. He was a member of the governor's council, and in 1680 was elected mayor of the city. From *The*

William Darvall,[164] Mr Steph. Courtland of the Councell, Mr Francis Rumbouts (Rombouts) Mayor of the Citty of New Yorke, Mr William Beakeman,[165] Mr Thomas Lewis, Mr Peter Jacobs, Mr Gelyn Verplank,[166] Mr Samuel Willson, Aldermen of the same Citty.

Not only was the General Court of Assizes a court of appeals; it was also a court of first instance. Its minutes show that upon several occasions grand juries presented true bills, or presentments were made, to it directly. Altogether, during the last two years (1680–82) for which there are extant minutes of the Court's proceedings, some thirty cases were tried by the General Court of Assizes, of which nine tenths were heard on appeal. And of the entire number, including cases of first instance as well as appeals, the Court in seven instances gave permission to litigants to prosecute appeals to the "King and Councill" in England.[167]

Twentieth Century Biographical Dictionary of Notable Americans,
https://archive.org/details/twentiethcentury03john/page/372/mode/2up.

[164] A merchant in New York with commercial ties in Amsterdam and Rotterdam. Operating as Darvall and Company, he both shipped cargos and owned vessels that transported Virginia tobacco directly to Europe From Kimberly Ronda Todt, *Countries with Borders—Markets with Opportunities: Dutch Trading Networks in Early North America, 1624-1750;* A Dissertation Presented to the Faculty of the Graduate School of Cornell University In Partial Fulfillment of the Requirements for the Degree of Doctor of Philosophy by August 2012, 244 online at https://ecommons.cornell.edu/server/api/core/bitstreams/467e21d0-2e3c-4698-899d-596ff83328b1/content.

[165] Wilhelmus or William Beekman, son of Hendrick Beekman, born at Hasselt, Overyssel, April 28, 1623; died Sept 21, 1707. He came to New Amsterdam from Holland in the ship Princess, on May 27, 1647, with Peter Stuyvesant. His name is perpetuated in the names of William Street and Beekman Street in New York City. He was appointed one of the five Schepens of New Amsterdam, serving between 1652 and 1658 as Lieutenant of the Burgher Corps of New Amsterdam and then in 1658 he received, through the influence of the Dutch West India Company, the appointment of Vice-Director or Governor of the colony of Swedes on the Delaware or South River, where he resided until 1663, and then moved to Esopus, now Kingston, N. Y., to assume the duties of his new appointment as Schout (Sheriff) and Commissary at that place. He took the oath of allegiance to Charles II on October 18, 1664. His jurisdiction as Commissary at Esopus and its dependencies extended from the Katskill, where that of Fort George terminated, to the Dans Kamer, a few miles above the Highlands, which was the northern limit of the jurisdiction of Fort Amsterdam.
The Beekman homestead in New Amsterdam was built near the present corner of Pearl and Beekman Streets by William Beekman in 1670. Beekman was Lieutenant in the militia in 1673 and Deputy Mayor of New York from 1681 to 1683. He bought a tract of land on the Hudson from Indians and built the estate "Rhinebeck." He was Alderman of the east ward in 1691. He occupied the Beekman homestead on the estate purchased from Thomas Hall until his death.
From https://www.henrylivingston.com/bios/mayorwilhelmbeekman.htm.

[166] Gelyne/Gelyn/Geleyn/Giuliam VerPlanke/Verplank was an arbitrator and Schepens, *See* online at https://archive.org/stream/recordsnewamste00ocagoog/recordsnewamste00ocagoog_djvu.txt

[167] Hamlin and Baker, *The Supreme Court of Judicature of the Province of New York, 1691- 1704* Vol.1 at 10, online at https://babel.hathitrust.org/cgi/pt?id=mdp.39015042023740&seq=58. The minutes of the General Court of Assizes appear not to have been kept in any one book or series of books. Rather they were entered on loose pieces of paper or on several sheets of paper—a quire, for instance—loosely bound together. Partly as a result of this carelessness, large portions of the minutes have been lost. Writing as of 1900, the State Historian of New York stated that they were located in "various places," but mentions one volume, "Court of Assize, 1665–72." The contents of another paper volume covering the years October 6, 1680–October 6, 1682 were printed by The New-York Historical Society in 1912.25 The former volume seems to have been destroyed in the Albany fire of 1911, although a 49-page type-written calendar of it is in the New York Public Library and extracts of the minutes themselves are at The New-York Historical Society. Certain it is that those that have been preserved give a much fuller description of the cases that came before the Court than do the minutes of the Supreme Court covered by this survey. For the most part they are concerned with titles to land, although, as was stated above, consideration of and decisions upon a variety of other matters are interspersed, including an appeal in equity and a case of witchcraft decided humanely at the very first session of the Court, October 2, 1665. Not so enlightened, however, were the

All first- instance cases in the Assizes, as in the lower courts, were tried by regularly impaneled juries.

In 1684, the Assembly abolished the Court of Assizes.[168] Another source gives the date as 1683:

> *[T]he Court of Assizes was established under the authority of "The Duke's Laws," 1665. It was composed of the Governor, Members of the Council, High Sheriff and such Justices of the Peace, as might attend. It sat in New York once a year, the regular term beginning on the last Thursday of September. Special terms, however, could be called at other times to hear causes requiring speedy dispatch. The court had original jurisdiction in all criminal matters, and civil cases of twenty pounds and upwards. It was abolished in 1683.*[169]

An account of the proceedings before the Court of Assizes is available online,[170] listing such offenses as:

> *The Grand Jury present the Citty of New York for suffering and conniving at the Generall breach & profanation of the Sabbath by the frequent meeting of negroes in tumultuous crowds the comon playing of children upon the street, the frequenting of publick taverns & ale houses. Ordered this Presentmt be reccomended to the Mayor of the Citty of New York.*

The Marine Court of the City of New York, 1807-1883

The Marine Court was initially known as the Justices' Court and was established in New York City in 1807. In 1817, the court was granted jurisdiction to confiscate ships and vessels for marine debts, and in 1819, was renamed the Marine Court of the City of New York.[171] By Chapter 38 of the Laws of 1883, the name of the court was changed to the "City Court of New York."[172]

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sentences imposed in 1682 upon five Negroes, two of whom were runaways from Virginia and Maryland, for breaking jail and trying to escape out of the harbor in a boat which it was alleged they had stolen. Hamlin and Baker, 12.

[168] Henry W. Scott, *The Courts of the State of New York,* (1909) at 104, online at https://babel.hathitrust.org/cgi/pt?id=uc2.ark:/13960/t9k35sq1w&seq=463&q1=%22+special+sessions%22&start=1 Sources and further reading: *New York Historical Manuscripts: English*, "Records of the Court of Assizes for the Colony of New York, 1665-1682," Peter R. & Florence A. Christoph, eds.; The New York Historical Society, *Proceedings of the General Court of Assizes held in the City of New York, October 6, 1680, to October 6, 1682*, https://ia601501.us.archive.org/8/items/proceedingsofgen45newy/proceedingsofgen45newy.pdf; *See, also,* Connors Genealogy, *Manhattan: Court Records,* http://sites.rootsweb.com/~nynewyo2/CourtRecords.htm.

[169] The New York Historical Society The John Watts DePeyster Publication Fund XLY Online at https://ia601501.us.archive.org/8/items/proceedingsofgen45newy/proceedingsofgen45newy.pdf.

[170]https://babel.hathitrust.org/cgi/pt?id=mdp.35112104276342&seq=210&q1=taverns&start=1.

[171] Henry W. Scott, *The Courts of the State of New York,* (1909), 409, https://babel.hathitrust.org/cgi/pt?id=uc2.ark:/13960/t9k35sq1w&seq=463&q1=%22+special+sessions%22&start=1.

[172] Historical Society of the New York Courts Calendar 2024, https://history.nycourts.gov/product/2024-society-calendar-ny-courts-yesteryear/. *See*, also, https://history.nycourts.gov/case/marine-court/.

Court of Admiralty

On Oct. 5, 1678, Colonial Governor Edmond Andros appointed Stephen Van Cortlandt, then Mayor of New York, to be the judge of the Court of Admiralty of the Province of New York, and the following year appointed Thomas Delavall.

In 1683 Dongan issued a commission:

> *Whereas his Royal Highness James Duke of York and Albany, etc. hath by his Commission dated at St. James October 3, 1682, made and constituted me his vice Admirall of New York, and hath authorized and impowered me to appoint a Judge, Register, and Marshall, of a Court of Admiralty. I therefore appoint you, Lucas Santen, Esq. Judge of said Court. And Wm. Beekman Deputy Mayor, John Laurence and James Graham aldermen of this city, of New York. Mr. Cornelius Steenwyck, Mr. Nicholas Bayard, Mr. Wm. Pinhorn and Mr. Jacob Leysler, and you, or any six of you to hear and determine any or all Treasons, felonies, Roberies, murders, manslaughter, confederacies, breaches of Trust embezelling goods or other transgression, done and committed on board. the ship Camelion, of London, Nicholas Clough, Commander. I also appoint Wm. Nicolls to be Register, and John Cavalier to be Marshal of this Court. Given under my hand September 15, 1683.*

In May 1684, Governor Dongan appointed John Palmer to be judge, John Spragge to be Register, and John Cavalier/Collier to be Marshall of the Court of Admiralty.[173]

The Colonial Court of Vice-Admiralty came to an end on Dec. 19, 1775, when it was succeeded by the Admiralty Court of the State of New York, which lasted until the adoption of the U.S. Constitution, and the Judiciary Act of 1789 vested admiralty jurisdiction in federal court.[174]

There is an entry as to the Court of Admiralty as early as July 1675, stating that it is to sit "in the case of the ketch Susannah," apparently, "sometime in the fall of 1675," New York City port authorities detained the ketch Susanna/Susannah, "for Trading in the Port, contrary to [the late] Act of Parliament. This vessel was owned by "Dutchmen" in the city and had carried a Dutch cargo partly on behalf of Asser Levy.[175]

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[173] Calendar of Council Minutes 1667–1783, https://archive.org/stream/calendarofcounci00newy/calendarofcounci00newy_djvu.txt.

[174] George Chalos, *Courts of New York Go Hand in Hand,* The Federal Lawyer, August 2018, 71. Henry W. Scott, *The Courts of the State of New York,* (1909) at 353, 189; online at https://babel.hathitrust.org/cgi/pt?id=uc2.ark:/13960/t9k35sq1w&seq=463&q1=%22+special+sessions%22&start=1. See, also, E. B. O'Callaghan, ed., *Calendar of Historical Manuscripts*, Part II: English Manuscripts (Albany: 1866), has an entry (p. 257) on Apr. 29, 1697: "Warrant of the lords of the Admiralty to appoint William Smith judge; John Tuder register; Jarvis Marshall marshal; and James Graham advocate of the Court of Vice Admiralty of New York, Connecticut and East Jersey. At that time the governor was Benjamin Fletcher. Abstracts of cases in the NY Court of Admiralty between 1715 and 1788 are in Charles Merrill Hough, *Reports of Cases in the Vice Admiralty of the Province of New York and in the Court of Admiralty of the State of New York, 1715-1788* (Yale U.P. 1925).

[175] Online at https://archive.org/details/calendarofcounci00newy/page/22/mode/2up?view=theater&q=court; *see*, also, https://dokumen.pub/empire-at-the-periphery-british-colonists-anglo-dutch-trade-and-the-development-of-the-british-atlantic-1621-1713-9780814749425.html.

Another Council entry notes the "Declaration of war against Spain received from England and published. Proclamation in regard to pirates published. Court of admiralty in New York empowered to the trial of prizes."

According to Scott, the first "Court of Admiralty" as a distinct tribunal, was fashioned when New York was an English Colony under Governor Benjamin Fletcher, with William Pinhorne as the first judge of admiralty, in 1696 or 1697.[176]

A third source states that Governor Andros was authorized by the King to erect a court of admiralty, but he simply issued a few special commissions for such trials, and otherwise the Mayor's Court entertained them.[177]

Minutes of the Council state that "William Atwood sworn of the council and as judge of the admiralty. Sampson Shelton Broughton sworn as attorney-general of the court of admiralty."[178]

On November 25, 1775, the Continental Congress recommended that the Colonies establish Courts of Admiralty relating to captures at sea, and in response to the Second New York Provincial Congress, established new York's High Court of Admiralty, which continued until preempted under the Federal Constitution in 1789. As the Supreme Court noted in *C. J. Hendry Co. v. Moore,* 318 U.S. 133, 143-145 (1943) "In New York, admiralty jurisdiction was vested in the Mayor's Court in 1678, and that court continued to exercise jurisdiction in all maritime cases, including those arising under the Navigation Acts, throughout the colonial period even after the establishment of a court of vice-admiralty. *See Select Cases of the Mayor's Court of New York City, 1674-1784 (ed. Morris, 1935), pp. 39-40, 566 et seq.*"

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Court of Vice Admiralty

The colonial Courts of Vice Admiralty were branches of the High Court of Admiralty in London, upholding British maritime law by royal prerogative. Vice-Admiralty courts, acting without juries, dealt with claims for salvage and seamen's wages, claims for prize vessels and cargoes

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[176] Henry W. Scott, *The Courts of the State of New York,* (1909) at 353, 189, online at https://babel.hathitrust.org/cgi/pt?id=uc2.ark:/13960/t9k35sq1w&seq=463&q1=%22+special+sessions%22&start=1.

[177] https://web.archive.org/web/20110611154513/http://www.courts.state.ny.us/history/elecbook/browne/pg2.htm; Edgar A. Werner, *Civil List and Constitutional History of the Colony and State of New York* (1891), pp. 371–72 has a history of the Court of Admiralty, stating that the court was formally organized in 1678; Michael Kammen (Cambridge, Mass.: 1972), vol. 1, pp. 267-68 has a brief description of the Court of Admiralty. *See*, https://history.nycourts.gov/case/court-admiralty/; Case papers of the Court of Admiralty of the State of New York, 1784- 1788, Washington, D.C.: National Archives & Records Administration, Central Plains Region, 1973 online at https://www.archives.gov/publications/microfilm-catalogs/fed-courts/part-02.html.

[178] Calendar of Council minutes 1668–1783 at 263, New York (Colony) Council; Fernow, Berthold, 1837-1908. cn; Van Laer, Arnold Johan Ferdinand, online at https://archive.org/details/calendarofcounci01newy/page/n317/mode/2up?q=%22court+of+admiralty%22.

[179] Historical Society of the New York Courts Calendar 2024, online at https://history.nycourts.gov/product/2024-society-calendar-ny-courts-yesteryear/.

taken in wartime, and violations of British trade and navigation statutes. The New York Court of Vice Admiralty had jurisdiction over New York, New Jersey and Connecticut. Its records, dating from 1753 to 1770, comprise one volume recording decisions chiefly on prize cases, with memoranda on commissions for privateers, at the Court of Vice Admiralty for the Province of New York. The bulk of the cases date from the Seven Years' War (1756-1763). Cases were heard before Judges Lewis Morris, Jr. (tenure 1738–1762) and Judge Richard Morris (tenure 1762–1775), in New York City or places convenient for Lewis Morris at the end of his life. Records for the years 1755, 1765–1766, and 1768–1769 are not present; those entered 1753–1754 concern a prize case from 1745. [180]

Supreme Court of Judicature 1691

By Chapter 4 of the Laws of 1691, the New York Assembly established the New York Supreme Court of Judicature with the same common law jurisdiction as the English Courts of King's Bench, Common Pleas, and Exchequer.[181]

The origin of the Supreme Court of Judicature was through a statute passed by the legislature of the colony of New York on the 6th day of May 1691, whereby, among other things, it was enacted

> *that there shall be held and kept a Supreame Court of Judicature, which shall be Duely & Constantly kept att the Citty of New Yorke and not Elsewhere, att the severall & Respective times hereafter mentioned. And that there be five Justices at Least appointed & Commissionated to hold the same court, two whereof together with one Chief Justice to be a Quorum. Which Supream Court are hereby fully Impowered and Authorized to have Cognizance of all pleas, Civill Criminall, and Mixt, as fully and amply to all Intents & purposes whatsoever, as the Courts of Kings Bench, Comon Pleas, & Exchequer within their Majestyes Kingdome of England, have or ought to have.*

This statute was to remain in force for only two years, but it was renewed and confirmed by colonial act or royal ordinance substantially in the words quoted until the adoption of our first constitution.[182]

The court did not have jurisdiction in equity—which was vested in the Court of Chancery.[183] Under the 1846 Constitution, the equity jurisdiction of the Court of Chancery became vested in

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[180] Online at https://archives.nypl.org/mss/2230; see also, Henry W. Scott, *The Courts of the State of New York,* (1909) at 192, online at https://babel.hathitrust.org/cgi/pt?id=uc2.ark:/13960/t9k35sq1w&seq=463&q1=%22+special+sessions%22&start=1.

[181] *See*, generally, Charles Z. Lincoln, *Constitutional History of New York*, Vol 2 at 150.

[182] *Matter of Steinway*, 159 NY 350 (1899) citing the extensions in 1 Col. Laws, pp. 226-229, 303-306, 358, 380; 2 Col. Laws, 462, 639, 948; 3 Col. Laws, 546, 780, 1007; 4 Col. Laws, 1088; 5 Col. Laws, 73.; *See*; also, https://www.google.com/books/edition/The_Colonial_Laws_of_New_York_from_the_Y/d3U4AAAAIAAJ?hl=en&gbpv=1&bsq=establish%20; https://archive.org/stream/geographicalgaze00chil/geographicalgaze00chil_djvu.txt. For location of the Court's minute books, see New York State Archives at https://iarchives.nysed.gov/xtf/view?docId=ead/findingaids/JN531.xml

[183] *"Duely & Constantly Kept", 1691-1847,* (Second edition, 2022), 157.

the New York Supreme Court, which from then on possessed general common law and equity jurisdiction.[184]

A May 15, 1691 entry contains this item: Joseph Dudley appointed chief justice Thos. Johnson, Wm. Smith, Steph. van Cortlandt and Wm. Pinhorne justices of the supreme court.[185] An April 3, 1693 entry recites: Wm. Pinkhorne [Pinhorne], Chidley Brooke and John Laurence take the oaths as judges of the supreme court.[186]

The Supreme Court of Judicature originally consisted of a chief judge and two puisne judges. By the time of the Revolution, the number had grown to four. The court held terms in New York City, mostly trying difficult civil cases and major criminal cases. The judges also held circuit sessions in the counties at which they tried civil and criminal cases; the criminal circuit sessions were called courts of oyer and terminer. The judges were appointed by the colonial Governor and sat at his pleasure. The court's term was limited: "The Justices must hold a term once every six months and no oftener, on the first Tuesday of October and the first Tuesday of April annually at the city hall in the city of New York, provided they shall not sit longer than eight days."[187]

The original manuscript minutes of the Supreme Court of Judicature, April 4, 1693, to April 1, 1701, bound with the proceedings of the General Court of Assizes held in the City of New York, October 6, 168, to October 6, 1682, are recorded in the Catalogue of the Books and Manuscripts in the Library of the New-York Historical Society (New York: 1813), but erroneously as "Proceedings at the general court of assizes begun the 6 of Oct. 1680 to 1701 , N. Y. fol." This folio, containing the minutes of both courts for the years mentioned, was published as the Collections of The New-York Historical Society for the Year 1912.

The first Constitution (1777) took the supreme court as it found it, recognized and continued it, but made no special provision concerning it. This court, established by the act of the colonial legislature in May 1691 (then called the Supreme Court of Judicature), had, at the time of the Revolution, a chief justice and four associate justices, and they comprised the judicial force of the supreme court. The Provincial Constitutional Convention inaugurated the new state supreme court by the election of a chief justice and two associate justices, and by later appointments the membership of the court was increased to five.

Over the years, commentators have written treatises on the jurisdiction of the Supreme Court. In most instances they have not always distinguished between the Supreme Court and the Supreme Court of Judicature, presumably counting the latter as the former.

In 1808, George Caines wrote a treatise on the Supreme Court of Judicature, spelling out its jurisdiction and terms of the court:[188]

> **Jurisdiction**: *In this court, the various functions of the ancient Aula Regis are centered. It has original jurisdiction over all actions, real, personal, and mixed.*

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[184] Historical Society of the New York Courts, https://history.nycourts.gov/court/nys-supreme-court/. *See*, also, https://ww2.nycourts.gov/courts/1jd/supctmanh/A_Brief_history_of_the_Court.shtml.
[185] NYS Library, Calendar of Council Minutes, 1668–1738, https://archive.org/details/calendarofcounci00newy/page/64/mode/2up?view=theater&q=dudley.
[186] Calendar of Council Minutes, 1668–1783, 83, https://archive.org/details/calendarofcounci00newy/page/82/mode/2up?view=theater&q=%22+supreme+court%22 .
[187] https://www.nycourts.gov/ad3/about/ad3-court-history.pdf.
[188] George Caines, *Summary of the Practice of the Supreme Court of the State of New-York,* 1808.

From the different courts of common pleas throughout the state, writs of error lie to this tribunal. It corrects the proceedings before justices of the peace, by certiorari; and from this, as from the fountain of justice, issue all writs, whether of grace, of right, or prerogative. It Is to the inferior species of writs, denominated process, and the subsequent proceedings in a suit, that the object of the present notes is confined.

Terms of the Court: *Of these there are four within the year, denominated, from the months in which they are respectively held, February term, May term, August term, and November term. They all commence on the first Monday of the month in which held, excepting November term, which begins on the second Monday of the month. They continue till the Saturday in the next ensuing week, both days inclusive. February and August terms are held in Albany; May and November, in New-York. Warrants to sue and defend, will be mentioned under the heads of declaring and pleading.*[189]

In David A. Graham 1832 treatise on practice in the "Supreme Court," he noted that it has original jurisdiction of all actions civil and criminal, and a revisory power over every Court of law or statutory jurisdiction in the State, excepting only the Court for the Correction of Errors, to which, a writ of error lies from every final judgment or decision of this Court.

As to habeas corpus in 1832, Graham said:

If the witness be in custody at the time of the trial, the only way of bringing him into court to give evidence, is by habeas corpus ad testificandum. This may be obtained in the case of a witness in custody for any cause except a sentence for a felony. Such writ may also be issued by the chancellor, or any justice of the Supreme Court, or any officer authorized to perform the duties of such justice, upon the like application of a party to any suit or proceeding pending in a court of record, or pending before any officer or body who may be authorized to examine witnesses in any suit or proceeding. Ibid. sec. 3. Such writ may also be issued by any of the officers aforesaid upon the application of a party to a suit before any justice of the peace, to bring any prisoner confined in the jail of the same county, or the county next adjoining that, where such justice may reside, before such justice, to be examined as a witness.

[189] In 1930, two manuscript volumes of minutes of the Supreme Court of Judicature of the Province of New York, August 11,1701, to October 14, 1704, totaling 184 folio pages, came to the New-York Historical Society inscribed "Three Years Unknown Records." And in 1939 Paul M. Hamlin discovered the earlier minutes, October 6, 1691, to October 12, 1692, in 27 folio pages, sewed but badly worn, buried among some old papers in the Court of Appeals Hall, Albany, where they were on file in the Office of the Clerk of the Court of Appeals. These minutes together with the Society's Collections for the Year 1912, cover the first fourteen consecutive years (1691–1704) of the New York Supreme Court's existence; Paul M. Hamlin and Charles E. Baker, *Supreme Court of Judicature of the Province of New York*, *1691–1704*, https://babel.hathitrust.org/cgi/pt?id=mdp.39015042023740&seq=9Ss.

In 1849, John Townshend wrote a treatise on practice in the "Supreme Court."[190] He observed that: "An appeal may be taken to the supreme court from the judgment rendered by a county court or by the mayors courts, or the recorders courts of cities."

> *§ 352. When the judgment shall have been rendered by the marine court of the city of New York, or by a justice's court in that city, the appeal shall be to the court of common pleas for the city and county of New York; and when rendered by any of the other courts enumerated in the last section, to the county court of the county where the judgment was rendered*.[191]

The author also listed all the courts in the state as of that year (1849):

> § 9. The following are the courts of justice of this state:
>
> 1. The court for the trial of impeachments.
> 2. The court of appeals.
> 3. The supreme court.
> 4. The circuit courts.
> 5. The courts of oyer and terminer.
> 6. The county courts.
> 7. The courts of sessions.
> 8. The courts of special sessions.
> 9. The surrogates' courts.
> 10. The courts of justices of the peace.
> 11. The superior court of the city of New-York.
> 12. The court of common pleas for the city and county of New-York.
> 13. The mayors' courts of cities.
> 14. The recorders' courts of cities.
> 15. The marine court of the city of New-York.
> 16. The justices' courts in the city of New -York.
> 17. The justices' courts of cities.
> 18. The police courts.

[190] Townshend, J, et al. *The Code of Procedure…* (New York, 1849).
[191] Townshend, 98.

Judge Claudius Monell (1815–1876) born in Columbia County, and chief judge of the Superior Court of New York City, wrote a treatise in 1852, commenting on the jurisdiction of the Supreme Court of Judicature.[192] He noted:

> *Upon the creation of the court in 1691 in this form, a chief justice and four associate justices were appointed; and upon the expiration of this act by its own limitation, it was by an act passed on the 11th of November, 1692, re-enacted for two years more, in the same form, with the single exception that it directed that the Supreme Court should be held in the other counties besides New York and that one of the judges should hold the circuits in those counties. It was continued in the same manner, by subsequent enactments, each limited for two years, and finally, in 1697, it appears to have been permanently continued, with-out any limitation as to time, and as far as the statute books show no formal repeal of it can be found.*

In the edition of the laws by Livingston and Smith, and Van Schaak, the title of the act is preserved, and constitutes the 62nd chapter of those editions, although in the margin they speak of it as lost, evidently not knowing of the existence of Bradford's edition of 1694, in which it is preserved entire.

In all the subsequent editions of the laws, which are referred to, by the revisers of 1813, in their introduction, (1) it is preserved merely by its title; and in a note to the act, in that edition, regulating its terms and other incidents, (2) the revisers remark that, it was first established by law in 1691, and after some subsequent laws on the subject, was at length regulated and fixed by an ordinance of the governor and council of May 15, 1699, and by an additional ordinance of April 3, 1704, and from that time till the adoption of the constitution of the state in 1777, was held under those ordinances only.

Hamlin and Baker state that, as established in 1691, the Supreme Court sitting at New York exercised a geographical jurisdiction over the entire Province, from beyond Schenectady to the eastern end of Long Island, a distance well over two hundred and fifty miles. That made it difficult for litigants to get there. Such inconveniences had led to the abolition of the General Court of Assizes in 1684, creating Courts of Oyer and Terminer to sit regularly in each county.

The Judiciary Act of 1692 corrected this original defect of the Supreme Court by providing for stated sittings of the Supreme Court with countywide jurisdiction in each of the outlying counties as well as for sittings of the Court, en banc in New York City.

When on circuit, the composition of the Court differed from county to county, for only one Justice of the Supreme Court was required.

The jurisdiction of the Supreme Court of Judicature throughout the Colonial period was defined in general as the power "to have and take cognizance of all pleas [and causes,] civil, criminal and mixed, [and to hear, try and determine the same,] as fully and amply absolutely] to all intents

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[192] *See*, Claudius Monell, *A Treatise on the Practice of the Supreme court of the State of New York; adapted to the Code of Procedure, as amended by the Act of April 11, 1849, and the Act of April 16, 1852, and the rules of the Supreme Court*, https://archive.org/stream/nysupremeprac01mone/nysupremeprac01mone_djvu.txt.

and purposes whatsoever, as the Courts of King's Bench, Common Pleas and Exchequer, within his Majesties Kingdom of England, have or ought to have. "The only limitation placed on this jurisdiction was the provision that civil actions or suits could originate in or be re-moved to the Supreme Court only when 'upwards of twenty pounds' or 'the right or title of any freehold' was involved." All other legislative or ordinance provisions respecting the jurisdiction of the Supreme Court were but partial specifications of the powers implied by the general conference clause quoted above.

The jurisdiction of the Court included civil, criminal. and mixed actions, and on occasion, matters of equity, functioning both at its regular sittings and at separate terms established for that purpose as a court of exchequer, "assumed admiralty powers, functioned as an orphans court," and, on occasion, acted as grand jury, prosecuting attorney, and court all in one.

The Court's supervisory jurisdiction over the inferior courts of the Province and its broad transfer jurisdiction were set forth in the creating acts and ordinances: the

> *Supream Court… shall and may by certiorari, habeas corpus, or any other lawful writ, remove out of any of the respective courts of mayors and aldermen, sessions of the peace or common pleas, any information or indictment there depending, or judgment thereupon given, or to be given in any criminal matter whatsoever cognizable before them, or any of them; as also all actions, pleas, and suits, real, personal or mixt, depending in any of the said courts, and all judgments thereupon given, or to be given, Provided always, That the action or suit depending or judgment given, be upwards of the value of twenty pounds, or that the action or suit there depending or determined, be concerning the right or title of any freehold.*

The appellate jurisdiction of the Court was equally broad and specific:

> *any Freeholders, Planter, Inhabitant or Sojourner within this Province, may have Liberty if he or they see meet, to make his or their Appeale or Appeales, from any Judgement obtained against him or them in Case of Error, in the severall Courts aforesaid, in such manner and forme as is hereafter Expressed, That is to say, From the Courts of Mayor & Aldermen and Courts of Common Pleas, to the Supream Court, for any Judgement above the Value of Twenty Pounds.*

As for appeal *from* the judgments of the Supreme Court, the creating acts provided for appeals

> *in Case of Error… from the Supreame Court at New Yorke to ye Governour & Council for any Judgement above the Value of one hundred pounds; And from the Governour & Councill to their Majestyes in Council for any decree or Judgement above the Value of three hundred pounds, as in their Majestyes Letters Pattents to his Excellency, Doth and may more fully appeare.*

Governor Sloughter's Instructions of January 30, 1690, further required that he

> *permitt appeals to us in Council in all cases of Fines Imposed for Misdemeanors, Provided the Fines so imposed, exceed the Value of Two hundred Pounds, The Appelant first giving good security he will effectually prosecute the same and answer the condemnation if the sentence by which such Fine was imposed shall be affirmed.*

In 1786, the Justices of the Supreme Court of Judicature were directed to hold sessions of the Circuit Court in the counties to which they were assigned. Individual justices heard all civil cases triable within an assigned county and the court records were returned to the Supreme Court where final judgment was rendered. The Circuit Court was abolished by the Constitution of 1894 and its jurisdiction was transferred to the New York Supreme Court.[193]

Hamlin and Baker conclude, stating that the Supreme Court of Judicature of the Province of New York during the years 1691–1704 was the court of last resort in all civil cases cognizable by it involving no more than £100 and in all criminal cases whatsoever, except that during the years 1691–1692 and 1702–1704 appeals to the King in Council were permitted in misdemeanor cases where the fine exceeded £200.

They also observe that to practice before the Court, applicants were to first petition the Governor, who would then turn it over to the Justices for their consideration, and if approved would take the oath of an attorney at law.[194]

Summarizing, Hamlin and Baker lay out the Court's jurisdiction:

> (1) ORIGINAL JURISDICTION of all pleas, Civill [involving over £20 or freehold titles] Criminall, and Mixt, as fully & amply to all Intents & purposes whatsoever, as the Courts of Kings Bench, Comon Pleas, & Exchequer within their Majestyes Kingdome of England, have or ought to have; and of such marine matters as the Trade and Navigation Acts placed within its competence;
>
> (2) CONCURRENT JURISDICTION in equity with the High Court of Chancery; in maritime matters with the Court of Vice- Admiralty and the New York City Mayor's Court; and in civil, criminal, and mixed actions to the same extent and with the same courts as its transfer jurisdiction;
>
> (3) TRANSFER JURISDICTION of any information, indictment, or judgment in any criminal matter whatsoever, and of all actions, pleas, and suits, real, personal or mixed, depending or adjudged, involving upwards of £ 20 or right or title of any freehold, in "the respective courts of mayors and aldermen, sessions of the peace or common pleas.";
>
> (4) APPELLATE JURISDICTION in the same categories, to the same extent, and over the same courts as its transfer jurisdiction; and
>
> (5) FINAL JURISDICTION in all matters cognizable by it ex-cept: in civil cases involving upwards of £100, where recourse was by writ of error to the Governor in Council; and in mis- demeanor cases involving fines of more than £ 00, where re-course was by appeal to the King in Council, it was a Supreme Court in fact as well as in name.[195]

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[193] Historical Society of the New York Courts, https://history.nycourts.gov/court/circuit-courts-1786-1895/.
[194] Hamlin and Baker, *On admission of attorneys to practice in early New York Courts*, Vol 1, 104; *see* Hamlin, *Legal Education in Colonial New York*, pp. 120-126, 210-216.
[195] Hamlin and Baker, Vol 1, 67-77; https://babel.hathitrust.org/cgi/pt?id=mdp.39015042023740&seq=35, as summarized and paraphrased by your writer.

Interestingly, the Rules of the Court contemplated arbitration when agreed to or ordered:

> *ARBITRATION is when the parties injuring and injured , submit either by agreement , or by order of the court , all matters in dispute , relative to any personal chattel or wrong , to the judgment of two or more arbitrators; and, if they do not agree, it is usual to add, that another person may be called in as umpire, to whose sole judgment it is then referred; or, frequently, there is only one arbitrator originally appointed. Reference to arbitration is of three kinds: 1. before any suit; 2. pending a suit, by the act of the parties; 3. after issue joined, and before or on the trial, by order of the court.*[196]

Another scholar/researcher observes that the Supreme Court as originally established, supplemented four other types of judicial bodies which were already in existence: the justices of the peace at the local level, the sessions courts at the county level, the courts of common pleas at the county level in the rural counties, and the courts of mayor and aldermen of the cities of New York and Albany. The Supreme Court had original jurisdiction over all criminal pleas and over all civil pleas valued at twenty pounds or more and also had appellate jurisdiction to review cases originally decided in the lower courts. Initially the court was to meet only in New York City, but beginning in 1692 the court also heard cases on circuit in the outer counties. The original enabling statute provided that the court was to meet once every six months for a term of eight days. In 1704, Governor Cornbury, Edward Hyde, 3rd Earl of Clarendon (1661–1723) mandated that the court was thenceforth to meet four times a year, five days each term. In 1750, Governor Clinton expanded two of the four terms to nine days.[197]

William Pinhorne, Chidley Brooke, and John Laurence/Lawrence took their oaths as the first judges of the Supreme Court of Judicature on April 3, 1693.[198]

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[196] William Wyche *A treatise on the practice of the Supreme Court of judicature of the State of New-York in civil actions* (1794), https://babel.hathitrust.org/cgi/pt?id=njp.32101036902466&seq=308.

[197] Rosen, Deborah A. *The Supreme Court of Judicature of Colonial New York: Civil Practice in Transition, 1691-1760*, Law and History Review, vol. 5, no. 1, 1987, pp. 213–47. https://doi.org/10.2307/743941. Accessed 7 April, 2025. Established in 1691, the Supreme Court replaced the Court of Assizes (established in 1667 in the administration of Governor Lovelace), and the Court of Oyer and Terminer (instituted by Governor Dongan in 1683). In his "*Duely & Constantly Kept", 1691–1847* (Second edition, 2022), James D. Folts has presented a history of the Supreme Court and an inventory of its records. The Court was initially created as the Supreme Court of Judicature, the Colony's highest common law court, vested with original, transfer, and appellate jurisdiction. *See, Clopper v. Jermin*, Minutes of the Supreme Court of Judicature of the Province of New York, Hall of Records, New York, New York [hereinafter cited as Mins SCJ], 1754-1756 92; Parchment Rolls, Hall of Records, New York, New York [hereinafter cited as H.R. Parch.] 101-H-8. Deborah A. Rosen has elaborated on the work of the Court, stating that between 1754 and 1756 the Supreme Court of Judicature dealt with more than twelve times as many civil matters as it did between 1694 and 1696 (1026 compared to 85). Yet in neither period did the court actually use every day of the term authorized by statute. From 1694 to 1696 the court was authorized to meet in New York City en banc thirty days (five days each term, two terms a year, three years) as well as on circuit forty-two days (two days each county session, seven county sessions a year, three years). In fact, the court met only twenty-four days en banc in New York City in April and October and only nine days on circuit plus three days in a special out-of-term criminal court in New York.

[198] https://archive.org/details/calendarofcounci00newy/page/82/mode/2up?view=theater&q=court.

We include short biographies: Chidley Brooke,[199] John Laurence/Lawrence (1618–1699),[200] and William Pinhorne (1649? –1720?).[201]

The Constitution of 1777 perpetuated the Supreme Court, changing only the provisions relating to the appointment, qualification and tenure of the judges.

James Folts points out that 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, he states, 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.

Article 32 of the Constitution of 1777 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.

In 1795, we see Judge Egbert Benson of the *Supreme Court of Judicature* author the opinion in *Platt v P,latt*, Cole. Cas. 36.

In 1799, we see Supreme Court of Judicature judges Jacob Radcliff, James Kent, Egbert Benson, Morgan Lewis, and Chief Judge John Lansing decide *Neilson v Blight*, 1 Johns. Cas. 205. In 1800, we see the same Supreme Court of Judicature judges in *Sable v Hitchcock*, 2 Johns. Cas. 79.

In 1803, 1 Caines Reports includes cases of the *Supreme Court of Judicature*, including those by Judges Brockholst Livingston and Jacob Radcliff.

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[199] Historical Society of the New York Courts, https://history.nycourts.gov/figure/chidley-brooke/; *See*, also, his memorandum of 1696, https://quod.lib.umich.edu/cgi/t/text/text-idx?c=evans;cc=evans;rgn=main;view=text;idno=N29518.0001.001; https://www.british-history.ac.uk/cal-state-papers/colonial/america-west-indies/vol15/pp71-91; *See*, Memorial of Chidley Brooke and William Nicolls to the Lord Justices of England, 19 May, 1696, in which Brooke and Nicolls speak on behalf of the province of New York to acquaint the Justices of England of some issues that need immediate attention. They explain that the loyalty of the Five Nations is wavering, and it is feared that they will defect to the Canadian side and begin attacking English settlements in New York and New England. Brooke and Nicolls also state that the war cost a great deal, and that New York is in desperate need of assistance to pay its debts. https://www.google.com/books/edition/Memorial_of_Chidley_Brooke_and_William_N/WsFB0AEACAAJ?hl=en. Biography in Hamlin and Baker Vol 3 Biographies and indexes,30.

[200] Historical Society of the New York Courts, https://history.nycourts.gov/figure/john-lawrence/. Biography in Hamlin and Baker, Vol. 3 Biographies and indexes, 160.

[201] Biography in Hamlin and Baker, Vol. 3 Biographies and indexes, 122.

In 1806, the opening pages of 1 Johnson's Reports list the judges of the Supreme Court of Judicature as Chief Judge James Kent, and judges Brockholst Livingston, Smith Thompson, Ambrose Spencer, and Daniel P. Tompkins

In 1809, Smith Thompson as a judge of the Supreme Court of Judicature authored Thompson v Ketcham, 4 Johns. 285, and in 1815, as Chief Judge of the Supreme Court of Judicature he authored *Jackson v Hart*, 12 Johns. 77, with Judges Jonas Platt, Robert Yates, William Van Ness, and Ambrose Spencer.

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 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 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 court. (Almost no trials were now held in the 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 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.[202]

The content of that citation [5 Denio 705 (1848)] explains a lot in terms of the expiration of the Supreme Court of Judicature—as the court was originally called. From time to time during its 117-year history, from 1691–1848, people began sometimes calling it the Supreme Court, so it was hard to know when the Supreme Court of Judicature actually came to an end—particularly because the Supreme Court was continued after the Supreme Court of Judicature expired. They are two different courts.

Notably, the Constitution of 1846 directed that "the Supreme Court of Judicature theretofore existing, should *cease* on the first day of July, 1848." There are 70 reported cases of the Supreme Court of Judicature in 1848, in keeping with that provision.

At the adjournment of the 1848 May Term of the Supreme Court of Judicature, when the court came to its official end, on the 18th of May, 1848, a meeting of the members of the Bar was held at the court room in the City Hall, in the City of New York. It was reported the following resolutions which were unanimously adopted.

> *Resolved, that a committee of five be appointed to prepare resolutions expressive of the views of the meeting. The committee withdrew, and after a short absence:*
>
> *Resolved, That in taking our final leave of the original Supreme Court of this State [i.e. The Supreme Court of Judicature] a tribunal which has existed without*

[202] *"Duely and Constantly Kept"*, 19, https://www.archives.nysed.gov/sites/archives/files/duely_and_constantly_kept.pdf. For terms and location by year, *see*, the chart on page 197.

essential change for more than a century and a half [171 years since 1691] and during this large portion of our whole colonial and national existence, has, by its wise and upright decisions, commanded the unwavering confidence of the community, and moulded the common law into a happy conformity to our free institutions—a tribunal never tarnished by the breath of suspicion, which has embodied some of the most illustrious names afforded by judicial history, and whose published decisions for the last half century have exhibited a body of municipal law honored at home and respected everywhere—we are impressed with a feeling of regret, mitigated only by the hope that the tribunal which succeeds it will pursue a course equally honorable and useful.

Resolved, That the present and recent Justices of this court, whose last term for hearing arguments has now closed, have merited and secured the undiminished confidence of the public; and that by their diligent research, the soundness and accuracy of their opinions, and their uniform kindness and courtesy to the profession, they are entitled to our highest respect and regard, and are followed by our cordial wishes for their individual prosperity and happiness.

Resolved, That we deem the close of our former judiciary system a fitting occasion for the expression of our respect and regard for the eminent jurist who for so many years past has discharged the laborious and responsible duties of Chancellor of this State, and whose last term for hearing arguments has also recently ended. That the published volumes of his reports evince a degree of acuteness and discrimination, love of truth, sound morality, and thorough legal research, unsurpassed by any others, and honorable alike to himself and the jurisprudence of our State.

Resolved, That the Chairman and Secretary cause the proceedings of the meeting to be published, and that they also furnish to each of the Judges of the Supreme Court, Beardsley and to the Chancellor, a copy of such proceedings.

A. L. JORDAN, Chairman.
H. R. SELDEN, Secretary.

Justice Samuel Beardsley (1790–1860) of the Supreme Court of Judicature, responded after the Court had drawn to its close. At the Court's final curtain, Beardsley had been a judge of the court, having been appointed in 1844. At the time other members were: Freeborn Jewett (1791–1858) (appointed in 1845), and Frederick Whittlesey (1799–1851) (appointed 1847), and Thomas McKissock (1790–1866) (appointed 1847).[203]

From Utica, on June 30, 1848, Judge Beardsley answered:

GENTLEMEN—I had the honor to receive a few days since, your letter inclosing the proceedings of a meeting of members of the Bar at the close of the late May Term of the Supreme Court, and which has hitherto remained unacknowledged.

[203] *"Duely & Constantly Kept"*, *1691-1847*, second edition, 2022, 192.

These proceedings of the Bar have given my brethren of the Supreme Court and myself the most-sincere gratification, as they also constitute the highest reward which could be bestowed. We are greatly debtors to the gentlemen of the legal profession, as well for the aid furnished by elaborate, investigations and luminous arguments, as for the courtesy and respect which have been uniformly extended to us, and for which we desire to make our sincere and heartfelt acknowledgments. It has been our aim faithfully to administer the law as we found it, and to maintain, unimpaired, the reputation of the tribunal of which we were judges; and looking to the testimonials, although perhaps too complimentary, contained in the proceedings of the Bar, we may indulge the belief that our efforts have not been wholly unsuccessful.

This day brings our judicial term to a close, and we shall, I trust, be allowed to take a place to-morrow with our brethren of the Bar, a position, than which, when rightly maintained, none can be more honorable or useful.

I am, gentlemen, With great respect, Your very obedient servant, SAMUEL BEARDSLEY.

The Constitution of 1846 provided for a Supreme Court with general jurisdiction in law and equity and reserved to the Legislature the same power to alter and regulate the jurisdiction and proceedings in law and equity as they have heretofore possessed. This new Constitution (1) abolished the Court of Chancery and transferred its jurisdiction to the Supreme Court; (2) abolished the circuit judge system and vested the justices of the Supreme Court with full power to preside at circuits, at special term, and in general term; and (3) provided that the Supreme Court was to be a single court and not a specified and distinct number of courts, administering justice independently, by judicial districts. An appeal lay from decisions of the Supreme to the newly established Court of Appeals.

The records of the Supreme Court of Judicature are now preserved in the New York State Archives.[204]

Hamlin and Baker list the names of the judges of the Supreme Court of Judicature from 1691 to 1709.[205] In his *"Duely and Constantly Kept"*, James Folts lists the names of the judges of the Court from 1691–1847.

Under the rules and practice of the Court, a writ of habeas corpus took several forms, the most frequent being the writ of habeas corpus cum causa. This writ was obtained by a defendant to transfer his case from a lower court to the Supreme Court. (The defendant might be either jailed or released on recognizance of bail.) In other cases, the writ of habeas corpus did not transfer the record of case proceedings to the Supreme Court. Therefore, the proceedings in Supreme Court had to commence anew. Other forms of habeas corpus were employed to produce a person in custody of a court or a prison to testify in the trial of another defendant; to remove a prisoner from one county to another for trial or sentence; and to consider the legality of detention of an individual. Each writ of habeas corpus bears a note stating that it had been allowed by a Supreme

[204] *"Duely & Constantly Kept", 1691–1847*, second edition, 2022, 28.
[205] Hamlin and Baker, *Supreme Court of Judicature of the Province of New York*, Vol 1 Introduction (1952), 90-93.

Court justice or commissioner. In civil cases, this was the writ of capias ad respondendum or capias ad satisfaciendum; in criminal cases, the warrant of commitment or the indictment; and for convicted prisoners, the minutes of conviction and sentence.[206]

The names of the judges of the New York Supreme Court of Judicature are gathered from several sources: Hamlin and Baker, *Supreme Court Province of New York, 1691–1704* at pages 90-93, and under Historical Society of the New York Courts, as assembled by Frances Murray, and *"Duely and Constantly Kept*," by James Folts.

JOSEPH DUDLEY (1647–720) *Chief Justice of the New York Supreme of Judicature, 1691-1692*

> Joseph Dudley, the first Chief Justice of the New York Supreme Court of Judicature, was born in Roxbury, Massachusetts on September 23, 1647. The fourth son of Thomas Dudley, Governor of Massachusetts, he was educated at the Free School in Cambridge and graduated from Harvard College in 1665. He became the representative from Roxbury at the Massachusetts Bay General Court, House of Deputies (lower chamber of the legislature) in 1673, and became a member of the House of Assistants (upper chamber) in 1676.
>
> In 1682, when King Charles II of England sought to revoke the Massachusetts Bay Company charter, Dudley was sent by Massachusetts Bay to London to advocate for its preservation. James II succeeded to the throne in 1685 and, by royal appointment dated October 8, 1685, Joseph Dudley became president of the Massachusetts Provisional Council. When James II established the Dominion of New England in America in 1686, he appointed Sir Edmund Andros as Governor. Joseph Dudley became a member of the new governor's Council and, in 1687, was appointed Chief Justice of the Dominion's Superior Court.
>
> James II was deposed in 1688, and William of Orange and Queen Mary ascended to the English throne. In April 1689, word of the revolution reached Boston, and the colonists rose up against Andros and Dudley. They were jailed and sent to England for trial, where the charges against Dudley were dismissed. While in England, he became acquainted with Colonel Henry Sloughter, the newly appointed governor of New York. He was appointed to the Governor's Council and sailed with the Governor's retinue to New York in December 1690. In early 1691, Governor Sloughter appointed Dudley Chief Judge of the special session of the Court of Oyer and Terminer convened to try Jacob Leisler for treason. When, on May 6, 1691, the New York Assembly established the New York Supreme Court of Judicature, Joseph Dudley was appointed its first Chief Judge. Governor Sloughter died suddenly in July 1692 and his successor, Governor Fletcher, favored the Leislerian faction. These events caused Joseph Dudley to leave the province and return to Roxbury, MA. Governor Fletcher removed Dudley from office and appointed William Smith in his place.

[206] *"Duely & Constantly Kept", 1691-1847,* (Second edition, 2022), 160.

In 1693, Dudley returned to England and became Lieutenant-Governor of the Isle of Wight. In 1702, Queen Anne appointed him Governor of Massachusetts, a position he held until 1715. He died at Roxbury, MA, on April 2,1720.

WILLIAM TANGIER SMITH (1655–1705) *Justice and Chief Justice of the New York Supreme Court of Judicature, 1691-1703 [intermittent]*

Col. William Smith, known as "Tangier" Smith, was born in Newton in Northamptonshire, England on February 2, 1655. As a young man, he moved to British Tangier, a military and naval base in Morocco, North Africa, where he became a merchant, commander of the town militia, councilman, alderman and mayor. When the British abandoned the city during the Berber siege of 1684, he returned to London.

At the suggestion of the newly appointed Provincial Governor of New York, Thomas Dongan (who had been Lieutenant-Governor of Tangier before its fall), Colonel Smith and his family sailed for America and arrived in New York on August 6, 1686. Through land grants and purchases, Smith acquired an extensive estate on Long Island. Under a patent granted by Governor Benjamin Fletcher, these lands became the Manor of St. George.

In 1691, Smith was appointed to the Governor's Council. He served as a judge of the special session of the Court of Oyer and Terminer convened for the Jacob Leisler Treason Trial. When the New York Supreme Court of Judicature was established by the colonial Assembly in April 1691, William Smith was appointed a justice of the court. The following year, Joseph Dudley, the first Chief Justice, was removed from office. On November 11, 1692, William Smith became Chief Justice, a position he held until January 21, 1701. He was reappointed Chief Justice on June 9, 1702, and served until April 5, 1703.He died on February 18, 1705, at his home in Sebonac, Long Island.

WILLIAM PINHORNE (Unknown–1719) *Justice of the New York Supreme Court of Judicature, 1691–1698*

Emigrated from England to the Province of New York and was admitted to practice before the New York courts in 1675. He became a freeman of New York City in 1680, an Alderman in 1683, and Speaker of the Assembly in 1685. Upon Governor Sloughter's arrival in the province in 1691, Pinhorne was appointed to the Governor's Council and served with Nicholas Bayard and Stephen Van Cortlandt on the Committee for Preparing the Prosecution of Jacob Leisler. He was a judge on the special session of the Court of Oyer and Terminer convened to try Jacob Leisler on charges of treason. On May 15, 1691, Pinhorne was appointed an associate judge of the New York Supreme Court of Judicature and a Judge of the Court of Admiralty.

On June 7, 1698, Governor Bellomont ordered Judge Pinhorne stripped of all his offices in New York for harboring a Jesuit in his house. The Governor also revoked the patent to his extensive estate along the Mohawk River in New York. Pinhorne then took up residence at Mount Pinhorne, his estate in New Jersey. He was appointed to the New Jersey Council and to the office of Second Judge of the New Jersey Supreme Court of Judicature. In 1709, Pinhorne became President of the Council and Commander-in-Chief

of New Jersey. From the date of his will and the subsequent grant of probate, it appears that he died sometime between May 1719 and April 1720.

CHIDLEY BROOKE (?–?) *Justice of the New York Supreme Court of Judicature, 1693–1698*

Related to the Bellomont family, and perhaps brought up on their estates in Ireland, Chidley Brooke arrived in New York on January 25, 1691. A member of newly appointed Governor Sloughter's Council, he had sailed from England with Captain Richard Ingoldsby on board the Beaver. Shortly after his arrival, he was appointed to the office of Collector and Receiver-General. He became a freeman of New York in 1695 and on April 3, 1693, he was appointed to the Supreme Court of Judicature. When his kinsman, Richard Coote, Earl of Bellomont, was appointed Governor of the Province and arrived in New York in 1699, he considered Chidley Brooke incompetent and removed him from office. Few records of his participation in the work of the Supreme Court of Judicature exist.

JOHN LAWRENCE (1618–1699) *Justice of the New York Supreme Court of Judicature, 1693–1698*

Born in Hertfordshire, England in 1618 and came to America with his family in 1635 on board the ship *The Planter*. Although they landed in Massachusetts, the family later settled on Long Island, in the Dutch colony of New Netherland. By grant of the Dutch Director-General Willem Kieft, Lawrence and others acquired large tracts of land in Hempstead. Lawrence was also granted land in Flushing. A prosperous merchant, he settled in New Amsterdam in 1658 and was appointed by the Dutch to negotiate with the English over the boundaries between New Netherland and New England. Following the English conquest, he became one of the first aldermen of the City of New York in 1665. He was appointed Mayor of New York in 1672 and again in 1691. A member of the Governor's Council from 1674, he was a judge on the special session of the Court of Oyer and Terminer convened to try Jacob Leisler on charges of treason. Lawrence was appointed to the Supreme Court of Judicature on April 3, 1693. Due to his advanced age, he was removed from office by Governor Bellomont in 1698. He died in 1699.

JOHN GUEST (1650–1707) *Justiceof the New York Supreme Court of Judicature, December 1699–Summer 1700*

A graduate both of Cambridge and of Oxford, and a barrister of Lincoln's Inn of twenty-four years standing, he was sent out by William Penn to be Chief Justice of Pennsylvania. For reasons not stated, he was not admitted to that office until 1701, and in the meantime, he organized the judicial system of New York

ABRAHAM DE PEYSTER (1657–1734) *Justice of the New York Supreme Court of Judicature, 1698–1702, Chief Justice, 1701*

Born in 1657 to a French Huguenot family that had settled in New Amsterdam, Abraham De Peyster was a wealthy merchant and ship owner. In 1685, he became an alderman of New York, and the following year became a captain in the New York militia. Although allied with the Leislerites, he became Mayor of New York in 1691 and served in that office for three years. In 1693, he became colonel in the militia and a member of the Governor's Council. On October 4, 1698, De Peyster was appointed to the Supreme Court of Judicature. Because of regular conflicts of interest that arose due to his extensive

business involvement, he was recused from many cases. In 1702, following the furor that ensued from the decision in the trial of Col. Nicholas Bayard for high treason, De Peyster was removed from both the Supreme Court of Judicature and the Governor's Council.[207]

Despite this, he became Chief Justice on January 21, 1701. When William Atwood assumed the office of Chief Justice on August 5, 1701, De Peyster remained on the bench as an associate justice.

Nonetheless, he was appointed to the new post of Provincial Treasurer in 1706, an office he held until his son succeeded him in 1721.He died on August 2, 1734.

WILLIAM SMITH (THE ELDER) (1697–1769) *Justice of the New York Supreme Court of Judicature, 1763–1769*

Born at Newport, Pagnell, England, on October 8, 1697. His family moved to New York, arriving on August 17, 1715. Shortly afterward, he entered Yale College and graduated in 1719. He continued his studies in classics and religion, received a further degree from Yale in 1722, and became a tutor there from 1722 until 1724. During this time, he commenced his legal studies and was admitted to the Bar on May 20, 1724. He started a law practice in the city of New York and rapidly rose to eminence. In 1733, James Alexander, William Smith, and Lewis Morris established the *New-York Weekly Journal* with John Peter Zenger as printer. It was the province's first independent newspaper and regularly published articles critical of Governor William Cosby's administration. In August 1752, Governor Clinton appointed Smith Attorney General and Advocate General. Also in 1752, Smith was appointed to the Governor's Council. In 1754, Smith was a delegate to the General Congress that met at Albany during the French and Indian War and was a drafter of a plan for a unified government for "defense and other general important purposes." William Smith was appointed a judge of the Supreme Court of Judicature in 1763, an office that he retained until his death. He was a member of the court that tried the 1764 landmark jury trial case of *Forsey v Cunningham* and was also a member of the court that tried Anti-Rent Movement leader William Prendergast on a charge of treason in the 1766 case of *Crown v Prendergast*.

Judge Smith was a linguist, theologian, mathematician and scientist. He died in the city of New York on November 22, 1769.

STEPHEN VAN CORTLANDT (1643–1700) *Justice of the New York Supreme Court of Judicature, 1691–1700; Chief Justice, 1700*

Born in Brouwer Street, New Amsterdam on May 7, 1643, the eldest child of prosperous merchant Olaff Van Cortlandt. He received a good education from private tutors and became a merchant. He was appointed to the Governor's Council in 1674 and became the first native-born Mayor of New York City in 1677. In that capacity, he presided over the Mayor's Court. In 1691, he was appointed (with Nicholas Bayard and William Pinhorne) to the Committee for Preparing the Prosecution of Jacob Leisler. When the Supreme Court of Judicature was established in May 1691, he was appointed Fourth Justice. He became Chief Justice on October 30, 1700, less than a month before his death on November 25,1700. Van Cortlandt acquired a large land holding along the Hudson River

[207] *See*, https://www.british-history.ac.uk/cal-state-papers/colonial/america-west-indies/vol20/pp745-765.

and by royal patent dated June 17, 1697, the Van Cortlandt Manor (ultimately 87,000 acres) was established. The manor house was built at Croton-on-Hudson.

DAVID JONES (1699–1775) *Justice of the New York Supreme Court of Judicature, 1758–1773*

Born at Fort Neck on September 16, 1699, the son of Major Thomas Jones, a Welsh settler who had acquired an extensive landed estate on Long Island, he was well educated, studied law, and became a leading member of the New York Bar.

In 1734, he was appointed a judge of the Court of Common Pleas in Queens County. Elected to the Provincial Assembly in 1737, Jones became Speaker of the Assembly in 1745, a position that he held for thirteen years. During this time, he was a close ally of Chief Justice James De Lancey. On November 21, 1758, he was appointed Fourth Justice of the New York Supreme Court of Judicature and held the office of First Justice from March 17, 1762, until he left the bench in 1773. He was a judge in the landmark 1764 case of *Forsey v Cunningham*. He died in Fort Neck, New York, on October 11, 1775.

THOMAS JONES (1731–1792) *Justice of the New York Supreme Court of Judicature, 1773–1776*

Son of David Jones, a judge of the New York Supreme Court of Judicature, was born on April 30, 1731, at his father's house in Fort Neck, New York. Following graduation from Yale College in 1750, he studied law and was admitted to the bar. In 1757, he was appointed Clerk of the Court of Common Pleas of Queens County. From 1769 to 1773, he was Recorder of New York City and from 1771, he also held the office of Corporation Counsel of New York City.

On September 29, 1773, Jones was appointed to the Supreme Court of Judicature, an office he held until 1776. In April 1776, Justice Jones presided at a term of the Supreme Court of Judicature, the final session of the Provincial Supreme Court of Judicature. As Thomas Jones noted, the adoption of the Declaration of Independence that July put "an end to the administration of justice under the British Crown within the thirteen colonies." By September 1776, the British forces were in possession of New York City, Long Island, Staten Island, and the county of Westchester, and military courts were established in the British-held area.

On October 23, 1779, the New York State Legislature passed an Act of Attainder and Thomas Jones was one of those named. His estate was confiscated, and he was forced to sail with his wife to England, where he remained in exile until his death on July 25, 1792. During his time in England, he wrote a book entitled *History of New York During the Revolutionary War and of the Leading Events in the Other Colonies at That Period*.

WHITEHEAD HICKS (1728–1780) *Associate Justice of the New York Supreme Court of Judicature, 1776*

The Hicks family first came to America in 1641. Whitehead Hicks, son of Judge Thomas Hicks, was born in Bayside, Long Island on August 24, 1728. He studied law in the office of William Smith, the elder, and was admitted to practice in 1750. In October 1766, he became the forty-second Mayor of New York, a position he was to hold for ten years. He supported independence and by early 1776, the office of Mayor in British-held New York

became untenable, and he resigned from office. On February 14, 1776, he was appointed a Judge of the Supreme Court of Judicature. He was a member of the court that decided *Crown v Prendergast*, the treason trial of Anti-Rent Movement leader William Prendergast. He resigned from the bench shortly afterward and retired to Jamaica, Long Island. Upon his father's death, he inherited the Bayside, Long Island, property where he was born and where he died on October 4, 1780.

JOHN CHAMBERS (1710–1764) *Justice of the New York Supreme Court of Judicature, 1751–1762*

Born in 1710, the son of William Chambers, a landowner in Newburgh, New York. He began the study of law when admitted to the Middle Temple in London, England on May 3, 1731. Chambers was admitted to the New York Bar in 1735, commenced a practice in New York City, and almost immediately became involved in the great controversy of the time, the trial of John Peter Zenger (1735).

He married into the Van Cortlandt family and became a prominent and wealthy New York City lawyer. He was a longtime alderman of New York City, and Chambers Street in Manhattan is said to be named for him. On July 30, 1751, he was appointed Second Justice of the New York Supreme Court of Judicature, a position he held until 1762. In 1752, he became a member of the Governor's Council, and he was also a delegate to the Albany Congress of 1754.

At his death, April 19, 1764, Chambers is said to have owned the largest law library in the province, part of which he willed to his nephew, namesake and godson, John Jay.

BENJAMIN PRATT (1710–1763) *Chief Justice of the New York Supreme Court of Judicature, 1761–1763*

Born in Massachusetts in 1710. He graduated from Harvard College in 1737 and studied law with a leading lawyer of the time, Jeremiah Gridley. Following his admission to the Bar, Pratt had an extensive legal practice and became involved in politics.

In October 1761, at the invitation of Cadwallader Colden, Lieutenant-Governor of New York Province, Pratt moved to New York. In November of that year, he was commissioned Chief Justice of the Supreme Court of Judicature "during his Majesty's pleasure." The wording of his commission brought him to the forefront of a longstanding and bitter fight between the elected Assembly and the Council, appointed by the executive. The crisis deepened with the death of George II, at which time all judicial commissions expired. The Assembly refused to grant any salary to the Chief Justice or to any of the justices unless their commissions were issued "during good behavior." The Lieutenant-Governor was determined that all judicial commissions should be at the pleasure of the Crown. The Puisne (associate) judges presented a memorial to the Lieutenant-Governor noting that the commissions formerly granted to them by the late Governor were "during good behavior." They declined new commissions "at his Majesty's pleasure." Pratt himself expressed the dilemma: "A Judge liable to be broke by the Governor if he don't please him. And to be starved by the Assembly if he don't please them." He was also a poet of some renown, and his poem "Death" is included in several anthologies.

ROBERT R. LIVINGSTON (1718–1775) *Justice of the New York Supreme Court of Judicature, 1763–1775*

Born in New York City in August 1718. He studied law, was admitted to practice, and became a prominent member of the Bar. He was appointed a judge of the Court of Admiralty in 1760 and was commissioned as Fourth Justice of the Supreme Court of Judicature on March 16, 1763.

Livingston represented Dutchess County at the Provincial Congress from 1759 to 1768. He was a member of the Stamp Act Congress of 1765 and the New York-Massachusetts Boundary Commission in 1767 and 1773. He was also a member of the Committee of 1775, which was elected to control all general affairs.

Although Robert R. Livingston was the only justice of the Supreme Court who sided with the colonists at the commencement of the Revolution, he was not in favor of American independence, but rather favored the continuance of the colonial government provided that the colonists were entitled to all the rights of Englishmen. On the Bench, he opposed the practice of granting general warrants to customs officers to search for dutiable goods. He was the father of Robert R. Livingston, Chancellor of New York and Edward Livingston, distinguished lawyer and statesman. He died on December 9, 1775.

GEORGE DUNCAN LUDLOW (1734–1808) *Justice of the New York Supreme Court of Judicature, 1769–1808*

The last of the colonial judges of the Supreme Court of Judicature, born on Long Island in 1734. His grandfather, Gabriel Ludlow, had emigrated from Somerset, England in 1694. The family was wealthy, and George received an excellent education. He studied law, was admitted to the bar, and rose rapidly within the profession. His practice was confined to commercial cases, and he was constantly employed either as an arbitrator or an adjustor. He rapidly amassed a fortune and retired early to a handsome estate on Long Island.

Shortly after his retirement, he was appointed judge of the Court of Common Pleas, and on December 14, 1769, he was commissioned as a judge of the Supreme Court of Judicature. Disappointed that he had been passed over in favor of William Smith for the office of Chief Judge of New York, he resigned from the bench. During the Revolution he was loyal to the Crown and at the close of the war, his property, including an estate of 140 acres in Hyde Park, passed to the State under the Confiscation Act of 1779.

On April 11, 1783, Congress officially declared an end to the Revolutionary War and on June 19, 1783, Ludlow sailed for England. With other loyalists, he sought office from the Crown, and in April 1784, received a royal appointment as Chief Justice of Nova Scotia and was also appointed to the Council. Ludlow died in Fredericton, New Brunswick, on November 13, 1808.

WILLIAM ATWOOD (1652–c. 1709) *Chief Justice of the New York Supreme Court of Judicature, 1701–1702*

Born in England around 1652, the son of a leading English barrister. He graduated from Cambridge University and was admitted to the Inner Temple in December 1669. He was

admitted to Gray's Inn in 1670 and called to the Bar in 1674. In the winter of 1674, he was appointed Master of Revels at Gray's Inn, a high honor.

Atwood received a Crown commission as Chief Judge of the Province of New York and on August 4, 1701, was sworn in as a member of the Governor's Council and as a Judge of the Court of Admiralty. The following day, he was sworn in as Chief Justice of the Supreme Court of Judicature. Almost immediately, he became the center of controversy due to misuse of his judicial office. His rulings in the treason trial of Col. Nicholas Bayard (1702) were infamous, and the court's sentence (that Bayard be hung, drawn and quartered) was overturned upon appeal to London. In November 1702, Atwood was suspended from office by Governor Cornbury.[208] Although a warrant had been issued for his arrest, he escaped and fled to England. There, he sought to justify his actions and be restored to office as Chief Judge. He died around 1709.

On April 3, 1704, Governor Cornbury and his Council, citing the delays occasioned by the shortness and infrequency of the sessions of the Supreme Court of Judicature during Atwood's tenure as Chief Justice, issued an ordinance detailing when the Supreme Court of Judicature should be in session. This system lasted until 1777.

ROBERT WALTERS (Unknown–1733) *Justice of the New York Supreme Court of Judicature, 1701–1702; 1718–1733*

Believed to have been born in Plymouth, England and is known to have been a resident of New York by 1685. On February 4th of that year, he married Catherine Leisler, daughter of Jacob Leisler. He became a wealthy businessman and was appointed by Governor Bellomont to the Council in 1698. Walters was chosen to substitute on the Supreme Court of Judicature for Justice Abraham De Peyster whenever the latter was recused (because of the latter's conflicts of interest due to his extensive business involvement). He also substituted for Justice Stephen van Cortlandt during an absence occasioned by illness.

When William Atwood arrived from London and was sworn in as Chief Justice on August 5, 1701, Robert Walters was appointed Third Judge. He was a member of the court that tried and condemned to death Col. Nicholas Bayard and John Hutchins for treason. The furor that followed led to his suspension on June 9, 1702, from both the Court and the Governor's Council.[209] He was again appointed to the Governor's Council in 1710 and commissioned as Second Judge of the Supreme Court of Judicature in 1718. He remained on the bench until his death in 1733.

JOHN BRIDGES (Unknown–1704) *Justice of the New York Supreme Court of Judicature, 1702–1703 Chief Justice, 1703–1704.*

John Bridges was educated at Cambridge University in England and was conferred with the degree of Doctor of Laws. Admitted to the Middle Temple and called to the Bar on May 22, 1691, he practiced law for eleven years in England and became a member of the

[208] *See,* https://www.british-history.ac.uk/cal-state-papers/colonial/america-west-indies/vol20/pp745-765.
[209] *See,* https://history.nycourts.gov/figure/william-atwood/
In 1702, following the furor that ensued from the decision in the trial of Col. Nicholas Bayard for high treason, De Peyster was removed from both the Supreme Court of Judicature and the Governor's Council.

Inner Temple. John Bridges arrived in the Province of New York with Governor Cornbury. He was sworn in as Second Justice of the Supreme Court of Judicature on June 14, 1702 and became Chief Justice on April 5, 1703. In July of that year, he was appointed to the Governor's Council. Governor Cornbury granted him land patents in Suffolk County and in the Catskill mountains (the Wawayanda Patent) and these were confirmed by Queen Anne. When John Bridges came to New York, he brought with him a large collection of books, a library that was noted as far away as Boston. He died on July 6, 1704.

ROBERT MILWOOD (Unknown) *Justice of the New York Supreme Court of Judicature, 1703–1718*

Arrived in the Province of New York with Governor Cornbury in May 1702. In the document declaring him a freeman of the city, he is described as an attorney-at-law. He was appointed Second Judge of the Supreme Court of Judicature on April 5, 1703. He was suspended from the Supreme Court in November 1713, but was reinstated later that year and served until October 1718.

THOMAS WENHAM (Unknown–1709) *Justice of the New York Supreme Court of Judicature, 1703-1709*

[Evidently one of the Nine Partners of Dutchess County.][210] A merchant in the Province of New York in 1685, he was elected an alderman of New York in 1698 and was among a group of merchants who, in March 1700, petitioned the King to replace Governor Bellomont. In June 1702, Thomas Wenham was appointed to the office of the Collector and Receiver-General, and on April 5, 1703, he was appointed Third Justice of the Supreme Court of Judicature. He was appointed to the Governor's Council in July of that year and died in 1709.

ROGER MOMPESSON (1662–1715) *Chief Justice of the New York Supreme Court of Judicature, 1704–1715*

Born in 1662 in Dorset, England, educated at Oxford University, admitted to Lincoln's Inn, and called to the Bar in 1685. He became Recorder of Southampton and was twice elected to the English parliament. Mompesson arrived in Pennsylvania in February 1704. He was appointed to the Governor's Councils in Pennsylvania, New York and New Jersey and to high judicial office in those three jurisdictions. Mompesson became Chief Judge of the Province of New York on July 15, 1704, and Chief Judge in New Jersey on November 17, 1704. Later, on April 17, 1706, he became Chief Justice of Pennsylvania, although it is not clear that he ever presided in that court. In 1710, he either resigned or was removed as Chief Judge of New Jersey. He continued to hold the office of Chief Judge of New York until his death in March 1715. Mompesson is credited with preparing the first abridgment of the laws of the Province of New York. Historian James Sullivan considered Mompesson the most capable jurist of his time, and the first to bring English forms of procedure into the province. E. B. O'Callaghan, compiler of *Documents Relative to the Colonial History of the State of New York*, argued that Mompesson "did more than any other man to mould the judicial system of both New York and New Jersey."

[210] https://sites.rootsweb.com/~nylnphs/Places/Patent.htm.

Mompesson was one of the grantees of the Little Nine Partners Patent, consisting of lands in Dutchess County**,** including the towns of Milan and Pine Plains. The patent was confirmed by Queen Anne on September 25, 1708.

LEWIS MORRIS (1671–1746) *Justice and Chief Justice of the New York Supreme Court of Judicature, 1715–1733*

Born in New York on October 15, 1671. His father, Captain Richard Morris, had served with distinction in Cromwell's army. Following the Restoration, Captain Morris fled from England to Barbados and later moved to New Amsterdam where, with his brother, Colonel Lewis Morris, he purchased the estates of Jonas Broncks, the first settler of Westchester County. Orphaned in infancy, Morris was raised on the family's extensive estates by his uncle, Colonel Lewis Morris. When the colonel died in February 1691, he willed his estates to his nephew and on May 8, 1697, Governor Fletcher granted Morris a patent that established the estate as the Manor of Morrisania.

Morris studied law and became an attorney and a member of the New Jersey Council. He was elected to the Assembly in 1707 and became president of the Council in 1710. On March 15, 1715, Morris was appointed Chief Justice of the New York Supreme Court of Judicature. In this capacity, he presided over the 1733 case of *Cosby v Van Dam*. The case was decided in favor of Governor Cosby by a majority of the court, Justices James De Lancey and Frederick Philipse. Chief Justice Morris dissented and delivered a written opinion in which he stated that the Supreme Court of Judicature did not have jurisdiction in the case. Governor Cosby demanded the written opinion from Morris. Morris complied, but also arranged to have the decision printed and publicly distributed, accompanied by a letter in which he stated: "If judges are to be intimidated so as not to dare to give any opinion, but what is pleasing to the Governor, and agreeable to his private views, the people of this province who are very much concerned both with respect to their lives and fortunes in the freedom and independency of those who are to judge them, may possibly not think themselves so secure in either of them as the laws of his Majesty intended they should be."

Morris's publication of his dissenting opinion enraged Governor Cosby, who summarily removed Chief Justice Morris from office. Morris and his son went to London to appeal Cosby's action, and the Lords of the Board of Trade ultimately declared Cosby's removal of Morris without a formal inquiry illegal.

Lewis Morris was a strong advocate of freedom of opinion and of the press, and was closely allied with William Smith and James Alexander, the attorneys who initially represented John Peter Zenger at his trial for seditious libel. *Crown v Zenger* is a landmark case in the jurisprudence of colonial America.

In 1738, King George II of Great Britain appointed Lewis Morris Governor of New Jersey, an office that he held until his death in 1746. He was grandfather to Lewis Morris III, a signatory of the Declaration of Independence, and Gouverneur Morris, legislator, statesman and diplomat.

JAMES DE LANCEY (1703–1760) *Chief Justice of the New York Supreme Court of Judicature, 1733–1760*

Born in New York City on November 27, 1703, the eldest son of Etienne De Lancey, a Huguenot who fled France after the revocation of the Edict of Nantes, arrived in America in 1686, and amassed a large fortune. His mother, Anne Van Cortlandt, was the daughter of New York Mayor Stephanus Van Cortlandt. Their family home at 54 Pearl Street later became Faunces Tavern, the venue for Washington's farewell address. James received an excellent education, and graduated from Corpus Christi College, Cambridge, England. He studied law at the Inner Temple in London and was called to the Bar.

On his return to New York in 1725, James entered politics and in 1729 became a member of the New York Assembly. In 1730, De Lancey led a commission to frame a new charter for the City of New York, the Montgomerie Charter, enacted by the New York Assembly in 1732. As a reward for his services, De Lancey was presented with the Freedom of the City, making him the first person to receive this honor. Also in 1730, De Lancey was appointed to the Governor's Council. The following year, he was appointed a Justice of the New York Supreme Court of Judicature, and he was a member of the majority that found in favor of Governor Cosby in the case of *Cosby v Van Dam*. Governor Cosby immediately removed from office the justice who wrote the dissenting opinion in that case, Chief Justice Lewis Morris, and appointed James De Lancey to replace him.

Chief Judge De Lancey presided over the 1735 case of *Crown v Zenger*, the trial of John Peter Zenger, the publisher prosecuted for seditious libel in the aftermath of the *Cosby* case. Zenger's attorneys, William Smith and James Alexander, challenged the validity of De Lancey's appointment as Chief Justice on the ground that Lewis Morris had been removed from office without an investigation (indeed, the Lords of the Board of Trade in London would later rule that Morris's removal had been illegal). De Lancey responded by striking both men from the roll of attorneys and appointing John Chambers, a young, newly-admitted attorney, to represent Zenger. Chambers did so until the arrival in New York of the renowned Philadelphia lawyer, Andrew Hamilton.

Justice De Lancey was also a judge on the court that conducted the 1741 Slave Insurrection Trials.

In 1746, King George II appointed De Lancey Lieutenant-Governor of New York. Governor Clinton withheld the commission until October 1753 because of De Lancey's support of the New York Assembly's position in a dispute regarding the Governor's salary. In October 1753, George Clinton was replaced as Governor and the new Governor, Sir Danvers Osborne, died five days after his arrival. De Lancey became acting Governor and in this capacity, he convened and presided over a congress of colonial delegates held in Albany, NY in June 1754 (the Albany Congress). It was the first meeting of colonial representatives to discuss some form of formal union of the colonies in America.

In September 1755, Sir Charles Hardy arrived from London to assume the office of Governor of New York, and De Lancey returned to his duties as Chief Justice. When Sir Charles took command of a military expedition to Louisbourg, Nova Scotia in July 1757,

De Lancey again became acting Governor, an office that he performed until his death on July 30, 1760.

De Lancey is credited with directing "the development of the civil policy of the province, to the end of making it an efficient mechanism for executing the will of the people, without impairing the efficiency of the executive. Encroachments upon the power of the executive were made only when necessary for the purpose of public protection, and not for the purpose of making it subservient to the Assembly."

FREDERICK PHILIPSE II (1698–1751) *Justice of the New York Supreme Court of Judicature, 1731–1751*

Frederick Philipse II was born on the island of Barbados on October 17, 1698, the son of Philip Philipse, eldest son of Frederick Philipse, Lord of the Manor of Philipsburg, and Maria Sparks, daughter of the Governor of Barbados. His mother died shortly after his birth. Following his father's death in 1700, young Frederick went to New York to live with his grandfather. When his grandfather died in 1702, Frederick was raised by his grandfather's wife, Catharine Van Cortlandt, who took him to England to be educated. He studied law in England, and upon reaching his majority, he inherited a large part of the Philipse estate and became the second Lord of Philipsburg.

He served as a Justice of the Peace, Alderman, and, between 1721 and 1728, Speaker of the Assembly. He was appointed Third Justice of the Supreme Court of Judicature in 1731. He took office as Second Justice in 1733, a position that he held until his death in 1751.

Justice Philipse was a member of the majority that found in favor of Governor Cosby in *Cosby v Van Dam*, the 1733 case that precipitated the political crises that led to the Zenger trial. As Second Justice, he participated in the 1741 New York Slave Conspiracy Trials which, based upon questionable testimony, resulted in death sentences for 34 defendants.

DANIEL HORSMANDEN (1721–1778) Justice and Chief Justice of the New York Supreme Court of Judicature, 1737–1777

Born in Purleigh in Essex, England on June 4, 1691, studied law, was admitted to the Middle Temple on May 20, 1721, and to the Inner Temple on May 9, 1729. He arrived in New York in 1731 and set up a law practice. Two years later, he was appointed to the Governor's Council. For his services on the committee charged with identifying seditious statements in John Peter Zenger's *New-York Weekly Journal*, he was appointed Recorder in May 1735, Judge of the Court of Vice-Admiralty in 1736, and Third Justice of the Supreme Court in January 1737.

Horsmanden was among the judges who presided at notorious trials of those charged in the New York Slave Conspiracy Trials in 1741. Some 200 people were arrested and tried in the Supreme Court of Judicature. Based upon legally dubious testimony, thirty were sentenced to death and seventy others to slavery in the Caribbean. Horsmanden, whose professional reputation was at stake, wrote a journal that has been described as "one of the most startling and vexing documents in early American history."

In March 1763, Horsmanden became Chief Justice of the Colony of New York and in 1773, he was appointed to the royal commission of inquiry into the burning of the King's ship Gaspee in Rhode Island. On February 21, 1773, he reported upon the proceedings to the Earl of Dartmouth, stating: *My Lord, as to the Govern' (if it deserves that name) it is a downright Democracy; the Govr is a mere nominal one, and therefore a Cypher, without power or authority, entirely controuled by the populace elected annually, as all other Magistrates & officers whatsoever.*

In 1764, Chief Justice Horsmanden presided in one of the most important cases of the colonial era, *Forsey v Cunningham*. The Lieutenant-Governor, then acting Governor, sought to amend or reverse a jury verdict by royal prerogative. Horsmanden was a staunch protector of the jury, and his assertion that the only appeal from a jury verdict lay by way of a writ of error was confirmed by both the attorney-general and solicitor-general of England in a joint opinion issued by them in 1765.

Horsmanden also presided in the 1766 case of *King v Prendergast*, the treason trial of the Anti-Rent Movement leader William Prendergast, whom he sentenced to death. The execution was stayed by the Governor, and Prendergast later received a royal pardon. Horsmanden, the last to serve as Chief Justice of the Supreme Court of Judicature in the Province of New York, died at Flatbush, New York on September 28, 1778.

ESEK COWEN **(**1787–1844) *Associate Justice of the New York Supreme Court of Judicature, 1835–1844*

Born in Rhode Island on February 24, 1787, he moved with his family to New York shortly afterward. He worked on his family's farm and had little opportunity to attend school. Self-educated, he became well versed in the classics, Latin and Greek and in English literature. At the age of 15, he became a teacher and shortly afterward started his legal studies in the Hudson Falls law office of Roger Skinner. Later, he studied in the law office of Zebulon Shepherd and was admitted to the bar in 1810. Within a few years, Cowen had built a successful law practice in Saratoga, New York.

In 1815, Esek Cowen became a Justice of the Peace and a few years later published *A Treatise on the Civil Jurisdiction of a Justice of the Peace,* the first work of its kind in the State. The treatise was highly regarded and frequently cited in New York court decisions. By 1823, he had become Reporter of the Supreme Court of Judicature and of the New York Court of Errors, publishing nine volumes of the Reports between 1823 and 1828. He was also an author of Cowen and Hill's Notes on Phillips' Evidence (1839).

Governor Nathaniel Pitcher (1777–1836) appointed Cowen a judge of the 4th Circuit in 1828, and seven years later Governor William Marcy (1786–1857) appointed him to the New York Supreme Court of Judicature, a position that he held until his death on February 11, 1844. Perhaps his most famous opinion was written in the case of *People v Alexander McLeod*, a prosecution that arose from events during the Canadian Rebellion of 1837.

THOMAS JOHNSON (c. 1656? –1693) *Justice of the New York Supreme Court of Judicature, 1691–1693*

Little is known of him, the, Second Justice of the New York Supreme Court of Judicature. It is thought that he was born in England around 1656, and he may have been admitted to Gray's Inn in 1672.

Records show that Johnson sailed from England with Governor Sloughter and arrived in New York on March 19, 1691. Almost immediately, Governor Sloughter appointed him to the special session of the Court of Oyer and Terminer convened to try Jacob Leisler on charges of treason. On March 27, Johnson was appointed to the Governor's Council and on May 15, 1691, he was appointed Second Justice of the newly established New York Supreme Court of Judicature. He died on January 6, 1693.

Supreme Court of New York

Under the present Constitution:

> *[Supreme court; jurisdiction] §7. a. The supreme court shall have general original jurisdiction in law and equity and the appellate jurisdiction herein provided. In the city of New York, it shall have exclusive jurisdiction over crimes prosecuted by indictment, provided, however, that the legislature may grant to the city-wide court of criminal jurisdiction of the city of New York jurisdiction over misdemeanors prosecuted by indictment and to the family court in the city of New York jurisdiction over crimes and offenses by or against minors or between spouses or between parent and child or between members of the same family or household. b. If the legislature shall create new classes of actions and proceedings, the supreme court shall have jurisdiction over such classes of actions and proceedings, but the legislature may provide that another court or other courts shall also have jurisdiction and that actions and proceedings of such classes may be originated in such other court or courts. (Subdivision b repealed and subdivision c relettered b by vote of the people November 8, 1977.)*[211]

New York Court of Oyer and Terminer and General Gaol Delivery, 1683

In reporting to the Lords of Trade in 1687, Governor Dongan explained why a Permanent Court of Oyer and Terminer and General Gaol Delivery for New York had been established in 1683. Having given the General Assembly credit for the establishment , he said that it had been found too inconvenient for people having business with the old General Court of Assizes to reach New York City "from the remote parts of this Government" and it had therefore been decided to replace the cumbersome Assizes Court with a court having general appellate jurisdiction which could "be held once every year within each County for the determining of such matters as should arise within them respectively , the members of which Court… to bee one of the two judges of this province assisted by three justices of the peace of that County wherein such Court is held." The creating act specified that this "Court of Oyer and Terminer and Generall Goale Delivery" should have original jurisdiction of "all matters Causes and Cases Capitall Criminall or Civill, and Causes tryable at Common Law," and appellate or transfer jurisdiction of "any Accon or

[211] https://dos.ny.gov/system/files/documents/2025/01/constitution-january-1-2025.pdf.

suite" involving more than £5.00 and of "any Judgment Information or Indictment" had or depending in any inferior court. Though this Act further provided that appeal from the Court of Oyer and Terminer and General Gaol Delivery lay directly "to our Soverigne Lord the King," although in practice, appeals were sometimes taken to the High Court of Chancery.[212]

In 1683 Governor Dongan had two well-trained lawyers for the judgeships of the newly established Court of Oyer and Terminer. The first, Matthias Nicolls, a 58-year-old barrister of Lincoln's Inn and Inner Temple, had come to New York in 1664 as secretary to the expedition of conquest. Nicolls had already enjoyed fifteen years of legal practice in London, which stood him in good stead in the newly conquered Colony, where he held a number of important offices, both civil and judicial. He continued as a judge of the Court of Oyer and Terminer until Leisler voided his commission in 1689.

The other judgeship went to John Palmer of Inner Temple and Cambridge University. Born about 1631, he had been in Massachusetts as a Councilor of the Dominion of New England and was named Chief Justice of the Dominion's Superior Court, succeeding Dudley and Stoughton. Like his colleague Nicolls, Palmer had practiced law for nearly fifteen years before settling in the New World; Like Nicolls, he was honored with several civil and judicial posts in New York He was fifty-three years of age when appointed a judge of the Court of Oyer and Terminer—professionally in the prime of life. Until an interim in 1687, when he returned to England on urgent personal business in chancery and as the agent of the Province, he rode the circuit regularly He and Nicolls appear to have been of equal rank and authority.[213]

"Beginning with the first regular colonial legislature, convened in 1691 by Gov. Sloughter, the council became a legislative body, coordinate with the assembly. Its legislative minutes have been printed as the Journal of the legislative council of the colony of New York begun the 9th day of Apr. 1691 and ended the 3d day of Ap. 1775. In vol. 6-8, executive and legislative minutes are kept separate, the latter at the end of each volume. Vol. 6 contains also the minutes of the council in its judicial capacity 1687-88, and vol. 7, proceedings of the court of oyer and terminer, 1679-85. In vol. 9-17, 1702-36, the two functions were mingled and the minutes printed as legislative have been marked by a pen or pencil line in the margin. Vol. 18, 20, 22, 24, 27, 28 and 30 contain only legislative minutes and were printed entire, as also some minutes of 1775-76, found in vol. 26.[214]

In 1788, the justices were required to convene criminal courts (Oyer and Terminer) during the terms of the Circuit Court. The Court of Oyer and Terminer consisted of a Supreme Court Justice and two or more judges of the Court of Common Pleas with jurisdiction to hear all felony cases including those punishable by life imprisonment or death.

Under the Constitution of 1821, Circuit Court judges presided in the Courts of Oyer and Terminer outside New York City and had jurisdiction to try indictments found by a Grand Jury. The Oyer and Terminer Court was abolished by the Constitution of 1894 and its jurisdiction was transferred to the New York Supreme Court:

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[212] Hamlin and Baker, *The Supreme Court of Judicature of the Province of New York, 1691- 1704* Volm1 at 18-19 online at https://babel.hathitrust.org/cgi/pt?id=mdp.39015042023740&seq=67

[213] Hamlin and Baker at 18

[214] NYS Library CALENDAR OF COUNCIL MINUTES 1668-1783- Online at https://archive.org/details/calendarofcounci00newy/page/4/mode/2up?view=theater&q=court

§ 6. Circuit courts and courts of oyer and terminer are abolished from and after the last day of December, one thousand eight hundred and ninety-five. All their jurisdiction shall thereupon be vested in the supreme court, and all actions and proceedings then pending in such courts shall be transferred to the supreme court for hearing and determination."

According to *People v. Quimbo Appo*, 18 How. Pr. 350, 354 (1859):

The oyer and terminer there, was less extensive in its jurisdiction than that of the commission of general jail delivery, which allowed the trial of cases whenever the indictment was found, if the prisoner was in confinement. The distinction in this country has not been observed between these courts; but, until the adoption of the constitution of 1846, the powers of the court under either commission were always united under the common title of courts of oyer and terminer and general jail delivery. The latter part of the name appears to have been dropped since that time, both in the constitution and statutes, and these courts have, since that time, been known as courts of oyer and terminer; but, as they are continued merely by the constitution and statutes, the change in the name would not be held as in any way altering the powers and jurisdiction of the court, and the powers formerly possessed by both are now specially granted to the oyer and terminer, (2 R. S. 205.)

By 1803 the spelling had changed from the quaint (goal) to the present (jail) State Act of the 21st March, 1801 (sec. 1, Rev. Laws of N. Y., vol. 1, p. 302). That statute, after giving the justices a right to inquire of all offenses, &c., and going on to confer on them a right to hear offenses of grand larceny, has the following proviso:

Provided always, that it shall not be lawful for any of the said courts to hear and determine any indictment of, or for any treason, misprision of treason, murder, or other felony or crime, which is or shall be punishable with death, or with imprisonment in the State Prison for life, but shall cause the indictments for the same to be delivered to the next Supreme Court, or Court of Oyer and Terminer or jail delivery, to be held in such city or county, there to be determined according to law.[215]

Under the Constitution of 1821, Circuit Court judges presided in the Courts of Oyer and Terminer outside New York City and had jurisdiction to try indictments found by a Grand Jury. The Court was abolished by the Constitution of 1895 and its jurisdiction was transferred to the New York Supreme Court. from HSNYC

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[215] *People v Youngs,* 1 Cai. R. 37, 42 (1803). *See,* Historical Society of the New York Courts, https://history.nycourts.gov/case/court-oyer-terminer/.

[216] *See,* Historical Society of the New York Courts, https://history.nycourts.gov/case/court-oyer-terminer/; *People v Quimbo Appo*, 18 How. Pr. 350, 354 (1859); and *People v Vlasto,* 78 Misc. 2d 419, 421 (1974).

Court of Chancery (1683-1846)

Under the Duke's Laws, the several courts of the Colony, reaching down to the lowest town courts, had equity jurisdiction with appeal to the General Court of Assizes. The Judiciary Act of 1683 did not disturb this jurisdiction, so far as the lower courts were concerned, but interposed a circuit Court of Oyer and Terminer to which transfers and appeals might be made from the lower courts, and placed over all a so called "Supreme Court" to be known as the Court of Chancery of the Province of New York.[217]

The following year the Court of Assizes was specifically abolished and provision made "thatt all actions suites or Complaints now depending in the said Court of Assizes either by Bill, plaint, Declaracion, appeale, review, by Peticon to the Governor and Councell, or any other ways or means whatsoever, shall bee ended determined and finished by the High Court of Chancery."[218]

Dongan himself, in a report to the Lords of Trade, February 22, 1687, called the Court of Chancery "the Supreme court of this province to which appeals may be brought from any other court." How this was to work in practice and on what authority is not made clear, though the fact that appeals were sometimes brought from the Court of Oyer and Terminer to the Court of Chancery can be documented. The appellate jurisdiction of the Chancery Court may have been derived from the clause of the original act which provided that , besides its "power to heare and determine all matters of Equity," the Court of Chancery "shall bee Esteemed and ac-counted the Supreame Court of this province"; or perhaps general appellate jurisdiction was thought to be implied in that clause of the act of October 29, 1684, which provided that every appeal or review "now depending in the said Court of Assises shall be ended determined and finished by the High Court of Chancery."[219]

New York's first Constitution (1777) continued the *Court of Chancery* that had existed—beginning in 1683—when New York was an English colony. Patterned after the English Court of Chancery, the court dealt with matters of equity rather than law. The English system of equity emerged during the late Middle Ages in response to several defects in the rigidly prescriptive

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[217] On the jurisdiction and procedure of the Court of Chancery, *see* Dominick T. Blake, *An Historical Treatise on the Practice of the Court of Chancery of the State of New York* (1818); Murray Hoffman, *A Treatise Upon the Practice of the Court of Chancery* (1834, 2010); *see* also, Henry W. Scott, *The Courts of the State of New York,* (1909) at 104, 116, 259, and 365, https://babel.hathitrust.org/cgi/pt?id=uc2.ark:/13960/t9k35sq1w&seq=463&q1=%22+special+sessions%22&start=1.

[218] Smith dates the Court of Chancery from 1701: In this interval, on the 19th of May, Nanfan, the lieutenant-governor, arrived, and settled the controversy, by taking upon himself the supreme command. Upon Mr. Nanfan's arrival, we had the agreeable news, that the king had given two thousand pounds sterling, for the defence of Albany and Schenectady, as well as five hundred pounds more for erecting a fort in the country of the Onondagas. And not long after an ordinance was issued, agreeable to the special direction of the lords of trade, for erecting a court of chancery, to sit the first Thursday in every month. By this ordinance the powers of the chancelor were vested in the governor and council, or any two of that board: commissions were also granted, appointing masters, clerks, and a register: so that this court was completely organized on the 2d of September, 1701. *See*, William Smith, *The history of the province of New-York, from the first discovery to the year 1732. To which is annexed, a description of the country, with a short account of the inhabitants, their religious and political state, and the constitution of the courts of justice in that colony*, https://quod.lib.umich.edu/cgi/t/text/text-idx?c=evans;cc=evans;rgn=main;view=text;idno=N19064.0001.001. John Nanfan (1634–1716) was a Lieutenant Governor of the Province of New York from 1698 to 1702.

[219] Hamlin and Baker, 14, https://babel.hathitrust.org/cgi/pt?id=mdp.39015042023740&seq=63.

English common law. Litigants sought to redress the defects in the common law through the Chancellor, the King's chief legal advisor and head of the Chancery (the government's writing office). Chancellors responded to petitions to the King, including those requesting remedies not available at law or redress for grievances arising out of miscarriages of justice.

Robert R. Livingston was appointed New York's first Chancellor. During the early decades of the State, the Court of Chancery was one of the pre-eminent courts in the United States. In May, 1788, the Council of Appointment was authorized to appoint masters and examiners in Chancery. In 1814, the office of vice-chancellor for New York City was authorized and a court reporter was appointed. The Constitution of 1821 authorized the Governor, with the consent of the Senate, to appoint the Chancellor who retained office during good behavior until age sixty. Appeals from the Chancellor's decision went to the Court for the Correction of Errors, at which the Chancellor was to be given an opportunity to justify his decision although he would not have a vote in the final judgment.

The Constitution of 1821 changed the administration of equity in New York, establishing judicial circuits, each presided over by a circuit judge with powers equal to those of a justice of the Supreme Court of Judicature. Each circuit judge was also vested with equity powers within their circuits subject to the appellate jurisdiction of the Chancellor. The Chancellor shared equity jurisdiction within the circuits with the circuit judges and also exercised appellate jurisdiction over them. He alone, however, had the authority to hear causes involving parties from different circuits or out of state.

In 1823, an act was passed conferring the powers and jurisdiction of the Chancellor in equity cases upon the eight Circuit Judges, subject to an appeal to the Chancellor. That same year the Court of Probates was abolished, and its appellate jurisdiction transferred to the Court of Chancery (Chapter 70).

In his treatise on practice in 1862, George Van Santvoord described the jurisdiction of the Court of Chancery:[220]

> *It treated the Chancellor as an officer in being, and the jurisdiction of his court as already established and defined by law. The fifth section, article fifth, declares that such equity powers may be vested in the circuit judges, or in the County Courts, or in such other subordinate courts as the Legislature may by law direct, subject to the appellate jurisdiction of the Chancellor. Under this authority, the Legislature accordingly proceeded to define the power and jurisdiction of these subordinate officers, and completed the organization of the court, as it continued to exist in this state down to the time it was abolished. The jurisdiction and power of the Court of Chancery was declared to be co-extensive with that of the high Court of Chancery in England, with the exceptions, additions, and limitations, created and imposed by the Constitution and laws of this state.*

[220] George Van Santvoort, *A Treatise on the Practice in the Supreme court, of the State of New York, in Equity Actions, Adapted to the Code of Procedure* (1862).

The whole power of the courts was vested in the Chancellor, who exercised an original jurisdiction in every case, co-extensive with the state, and an appellate jurisdiction where a concurrent power was vested in the vice-chancellor.

The circuit judges in each of the eight circuits into which the state was divided, exercised, under the name of vice-chancellors, concurrently with the Chancellor, within their respective districts, and exclusive of any other circuit judge, all the powers of the Chancellor in the following cases: When either the cause or matter arose within the circuit; or the subject matter in controversy was situated therein; or the defendants or persons proceeded against, or either of them resided therein; subject to the appellate jurisdiction of the Chancellor. The Chancellor was autho-rized, not only to review any decisions of the vice-chancellors on appeal, but also to withdraw a cause from them when it was ready to be set down for a hearing and hear it himself. He might also refer to them the hearing or decision of any motion or of any cause set down for hearing before him; and might require them to execute such other powers and duties in relation to any matter in the Court of Chancery as he should from time to time

The Constitution of 1846 abolished the Court of Chancery and vested equity jurisdiction in the New York Supreme Court.[221]

The act of the Legislature, known as the Judiciary act, passed May 12th ,1847, was designed to give effect to and put into practical operation these radical changes in the organization of the courts. The sixteenth section of article third provides that the Supreme Court organized by this act shall possess the same powers and exercise the same jurisdiction as is now possessed and exercised by the present Supreme Court and Court of Chancery; and the justices of said court shall possess the powers and exercise the jurisdiction now possessed and exercised by the justices of the present Supreme Court, Chancellor, vice-chancellor and circuit judges, so far as the powers and jurisdiction of said courts and officers shall be consistent with the Constitution and provisions of this act; and all laws relating to the present Supreme Court and Court of Chancery, or any court held by any vice-chancellor, and the jurisdiction, powers and duties of said courts, the proceedings therein, and the officers thereof, their powers and duties, shall be applicable to the Supreme Court organized by this act, the powers and duties thereof, the proceedings therein, and the officers thereof, their powers and duties, so far as the same can be so applied and are consistent with the Constitution and provisions of this act.

By the twentieth section of article third of the same act, special terms of the Supreme Court were directed to be held for the purpose, among other things, of taking testimony (which by the Constitution was required to be taken orally, before the judge in court), and hearing and determining suits and proceedings in equity, at which terms, orders and decrees in suits and proceedings in equity might be made; and all such suits and proceedings were required to be first heard and determined at a special term unless the justice holding it should direct the same to be heard at a general term. In case any suit or proceeding in equity should be heard and determined at a special term, either party might apply at a general term for a rehearing.[222]

[221] *See* Historical Society of the New York Courts, https://history.nycourts.gov/case/court-chancery/**;** Social Networks and Archival Context, https://snaccooperative.org/ark:/99166/w60k679w.
[222] Santvoort, 6.

The following is a list of the Chancellors of the State of New York with the date of their appointment, from the adoption of the first constitution down to the time when the office of Chancellor was abolished.

ROBERT R. LIVINGSTON appointed Oct. 17th, 1777.

JOHN LANSING appointed Oct. 21st, 1801, in place of Chancellor Livingston, resigned.

JAMES KENT appointed Feb. 25th, 1814, in place of John Lansing.

NATHAN SANDFORD appointed Jan. 27th, 1823, in place of James Kent. Entered on the duties of his office Aug. 1, 1823.

SAMUEL JONES appointed Jan. 26th, 1826, in place of Nathan Sandford.

REUBEN H. WALWORTH appointed April 13th, 1828, in place of Samuel Jones, appointed Chief Justice of the Superior Court of New York.

Court of Exchequer

Most of us are unfamiliar with the concept of an exchequer court. The records reveal that in America, as early as December 14, 1685, we see mention of establishing a Court of Exchequer.[223]

We also see that on February 19, 1686 Claes Bickers is appointed Commission (Commissioner?) for the Court of Exchequer.[224]

Further, in 1686 Governor Dongan stated:

> *Besides these, my Lords, I finding that many great inconveniences daily hapned in the management of his Mats (Majesty's) particular concerns within this Province relating to his Lands, Rents, Rights, Profits & Revenues by reason of the great distance betwixt the Cursory settled Courts & of the long delay which therein consequently ensued besides the great hazard of venturing the matter on Country Jurors who over and above that they are generally ignorant enough & for the most part linked together by affinity are too much swayed by their particular humors & interests, I thought it fit in Feb. last by & with ye advice & Consent of ye Council to settle and establish a Court which we call the Court of Judicature (Exchequer) to be held before ye Govr. & Council for the time being, or before such & soe many as the Govr. should for that purpose authorize, commissionat & appoint on the first Monday in every month at New York, which Court hath full power and authority to hear, try & determin Suits, matters and variances arising*

[223] Calendar of Council Minutes, 1668- 1783, https://archive.org/details/calendarofcounci00newy/page/46/mode/2up?view=theater&q=exc.
[224] https://archive.org/stream/calendarofcounci00newy_0/calendarofcounci00newy_0_djvu.txt.

betwixt his Maty (Majesty) & ye Inhabitants of the said Province concerning the said Lands, Rents, Rights, Profits and Revenues.[225]

In a report which he made on February 22, 1687, to the Committee of Trade, Governor Dongan referred at length to this new court of exchequer, which he called the Court of Judicature.[226]

This is explained by James Folts in his *"Duelly and Constantly Kept"*, stating that the Supreme Court could *sit* as a Court of Exchequer:

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.[227]

Nevertheless, a separate Court of Exchequer never operated continually during New York's colonial era.[228]

Court of Lieutenancy, 1686-1696

The Records of 1880 of the New York Historical Society contain the following:

The common law of England gave the sovereign no absolute power to control his troops, and Parliament was never forward or even disposed to confer it by statute. All parties in the high councils, of the nation, had regarded the standing armies of the Stuarts with great aversion as the tools of tyranny, jealousy of the control of the militia was signally dis-played by the first English Colonists in Massachusetts, from whose laws were derived the earliest regulations of the militia in New York, when it came under English authority at the Conquest. The Duke's Governors during the whole period down to 1691 were constantly at issue with the people when this topic came up: and as this Court of Lieutenancy was begun under the sway of James II, and continued under the reign of William and Mary—it furnishes many singular instances of the methods pursued in such tribunals and is the more valuable from the fact that it is really unique.[229]

There are multiple entries dealing with military regulations, such as one on June 1, 1688:

Att A Court of Lievtenancy ffriday the 1st of June Being Present, viz

1688, Coll: Bayard, Cap. Leislar, Cap. Depister, Lieu. Kiersten, Lieu. Vanfflecq

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[225] Alden Chester at 419- 420 Online at https://archive.org/details/courtslawyersofn01ches/page/420/mode/2up?q=judicature%22.
[226] https://archive.org/details/courtslawyersofn01ches/page/418/mode/2up?q=%3A+%22court+of+judicature%22.
[227] *"Duely & Constantly Kept", 1691-1847,* (Second edition, 2022), at 15, 48.
[228] *"Duely & Constantly Kept", 1691-1847,* (Second edition, 2022), at 17.
[229] https://babel.hathitrust.org/cgi/pt?id=uc1.b3494924&seq=23&q1=court+of+lieu&start=1.

Major Demire, Cap. Munvill, Cap. D. Browne, Leu Van Clyffe

Ensigne Deremere, Ensigne Dupeister, Ensigne Bayard

ORDERS TO BEE OBSERVED BY THE MILITARY WATCH APPOINTED FOR THE CITTY OF NEW YORKE

Imprimis. That the Watch bee Sett Every Night by nine of y clock imeadiately after the ringing and continew till the ringing of the Bell in the Morning.

2dly That the Respective Captaines of this Citty and their Severall Commission Officers shall By Equall Turnes have the Sole Command of the said Watch and give theire personall Attendance all night under the penalty of Tenn Shillings.

And another:

Citty of N. York at a Court of Leftenancy houlden at the Citty Hall within the Said Citty on Monday 24 August 1601.

Cap wilson making Complaint that Henry Le count, a Souldjer of his Comp upon Some Frivolous Pretences . Refused to serve on the watch desiring the opinion of this board thereupon [T]he said le count being sent for apeareth before this board and Pretended to be freed for being a Powder maker and haveing been Chose to officiate as a leftet before the gove's arrivell and further using Some Threatning words against his Capt . it was Concluded by this bord that the said la Count was lyable to doe his duty as a Private Souldjer on the waths & for his Contempt to Pay the Provoost Marshall Six Shillings.

The Court also established a military court for courts martial:

Know Yee that by Vertue of the power and Authority Granted unto me by their Majesties Letters Pattents for y Government of the Province of New Yorke and Dependencies I doe hereby Erect and Establish A Court Martial in the Said Citty which said Court shall Consist of A President Judge Advocate the Capt and other Commission officers of the Citty Regiment whereof the President & Six att least of the Capts . or of y Lieuts . in the Absence of the Capts shall allways be Present, And I doe hereby Grant unto the said President and six att least of the Cap's or Commission. officers full power to hear Judge and Determine all Criminalls or Offenders Pursuant to an Act of Generall Assembly made in this Province Instituted An Act for settling the Militia And to Award Execution Accordingly to which End itt shall be in the power of the President of ye said Court to Issue forth his Orders for the Calling the said Court together from time to time att such Convenient place and Soe often as shall be Necessary for the hearing Judging and Determining such offenders as Aforesaid and I doe by these Presents Nominate Constitute and Appoint Coll . Abraham D Peyster to be President of the said Court and In Case of his Absence the next field officer of the said Regiment that shall be Resident in the said Citty shall Preside in the said Court. And I doe hereby Nominate Constitute & appoint James Graham Esq to be Judge Advocate.

Provided allways that noe Punishment upon any Decree or Sentence of said Court shall be Inflicted upon Offenders to the Losse of Life or Member untill Notice

thereof shall be first Given to me and my Pleasure shall be thereupon made known.

Provided, also that from time to time as the said Court Martiall shall Sitt the President shall forthwith thereupon Transmitt unto me A True Coppy of all the Proceedings of the said Court and the Power and Authority Granted by this Commission to Remaine in force Dureing my Pleasure. Given under my hand and Seale att Arms att Fort William Henry the fifth day of July, 1694. Annoqs RR & Re Will & Maria Angl. & c: Sexto. By his Excellencies Comand. DAN: HONAN. BEN: FLETCHER

Recorders Court

These courts no longer exist. Pursuant to article 6, section 17, of the New York State Constitution, recorder's court is now part of the New York State Unified Court System.

By the act of the legislature of 1839, the recorders court was created for the City of Buffalo. Over the years there were several recorder's courts in various locations. For example, one in Utica (L.1844, c. 319); and Oswego, (L. 1849, c. 134).

In an article by Judge Dennis Dugan, he states:

> *When [James]Matthews landed on his feet, securing the position of Recorder of Deed in New York City. Matthews practiced law in Albany for forty-two years with offices at 18 South Pearl Street. In 1895, he won election for Albany's Recorder's Court, becoming the first African American judge in New York State.*
>
> *For any attorney admitted before about 1976, he or she can remember the Albany Recorder's Court presided over by Judge John E. Holt-Harris hearing traffic cases. However, in its day, the Recorder was an all-purpose court, and the Judge exercised administrative authority commonly exercised by the executive branch…*
>
> *The Police Headquarters is now located in a new structure on Henry Johnson City Court, Criminal Part Morton and Broad Streets Blvd. The position of Recorder's Court and Police Court were abolished in 1995 when the local courts became a unified City Court*.[230]

In *Duely & Constantly Kept", 1691–1847,* (Second edition, 2022) James Folts states "The Supreme Court also reviewed civil judgments of the New York City Mayor's Court (starting in

[230] W. Dennis Dugan, *A History of the Bench and Bar of Albany County,* 34, 121, 126, https://history.nycourts.gov/wp-content/uploads/2022/02/County-Legal-History_Albany-min.pdf; *See*, also, Henry W. Scott, *The Courts of the State of New York*, (1909), https://babel.hathitrust.org/cgi/pt?id=uc2.ark:/13960/t9k35sq1w&seq=463&q1=%22+special+sessions%22&start=1; Judge Duggan adds, at p, 46: "Recorder's Court, established in 1686 in New York City's and Albany's original charters, heard important civil and criminal matters and the Recorder had administrative duties as well. Over the years, its jurisdiction was constricted under statutory reforms and, as last constituted in Albany in up to 1995, it had become the Traffic Court. In 1995, Traffic Court and Police Court became part of a unified City Court."

1821 called the Court of Common Pleas for the City and County of New York), the superior courts in New York City and Bufalo, and the mayor's or recorder's courts of upstate cities."[231]

Also in the original 1686 New York City Charter the following appears:

> *AND further I do by these presents grant for and on behalf of his Sacred Majesty aforesaid, his heirs and successors, that the Mayor and Recorder of the said city for the time being and three or more of the Aldermen of the said city, not exeeding five, shall be Justices and keepers of the peace of his Most Scared Majesty heirs and successors, and Justices to hear and determine matters and causes within the said city…*[232]

In 1972, Presiding Justice Herlihy stated that,

> *History does not indicate how welcome we were at City Hall, whether as tenants or guests, but it could hardly have been an easy assignment for City Hall, not only to quarter its own city and county offices, but, in addition, the five permanent members of the new Appellate Division and staff, the trial and special terms of the Supreme Court, the county and recorder's court and their staffs, as well as to provide chambers for the resident Justices of the Supreme Court*.[233]

The Elmira City Charter provides that

> *The recorder may appoint a clerk for the recorder's court, who shall be the official stenographer thereof, and who may be removed by him whenever he may deem it advisable…*
>
> *The clerk of the recorder's court shall be a stenographer and shall attend upon said court during the time it is by law required to be kept open for business and shall keep the dockets and books of account thereof, and make up under the direction of the recorder the returns on appeal to the county court, and the return in any other matters in which testimony and proceedings shall be required by law to be returned to the county court or judge thereof, or filed in county clerk's office*.[234]

There may have been other Recorder's Courts; listing them all or elaborating on them is beyond the scope of this work.

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[231] *"Duely & Constantly Kept", 1691-1847,* (Second edition, 2022), 161.
[232] https://dn790002.ca.archive.org/0/items/dongancharterofc00newyrich/dongancharterofc00newyrich.pdf.
[233] *The History and Justices of the Appellate Division, Third Department, 1896 to the Present,* https://nycourts.gov/ad3/about/ad3-court-history.pdf.

[234] Online at https://library.municode.com/ny/elmira/codes/code_of_ordinances?nodeId=PTICHRELE_SPACH_ARTIXDEJURECO; see also,

Martial Court at Albany

Richard Ingoldsby served William of Orange as a field officer in the campaign in Ireland and was appointed captain of the military company sent to New York with the new Governor, Henry Sloughter, in September 1690. Ingoldsby was on the first ship that arrived in port in New York, and he immediately demanded that Jacob Leisler, who had assumed the office of lieutenant governor of New York following the demise of the Dominion of New England, surrender the Province of New York to him. Leisler did not comply until Governor Henry Sloughter arrived in March 1691 whereupon Leisler was tried for treason and hanged in May 1691. Governor Sloughter died in New York on July 23, 1691, and the New York Council appointed Ingoldsby as commander-in-chief pending the arrival of the next governor, Benjamin Fletcher.

The City of Albany came under martial law in 1693, and Major Richard Ingoldsby became commander of Fort Orange and president of the Court Martial. When Lord Cornbury was commissioned Governor of New York, Ingoldsby was appointed Lieutenant-governor and also held office as a member of the New Jersey Provincial Council.

Following the death of Governor John Lovelace on May 6, 1709, Ingoldsby became the acting governor of both New Jersey and New York. His gubernatorial commission was revoked in 1710, and he died in New York on March 1, 1719.[235]

Circuit Court (1796-1894)

Under the Constitution of 1821:

> *§ 5. [Judicial circuits.]—The state shall be divided, by law, into a convenient number of circuits, not less than four, nor exceeding eight, subject to alteration, by the legislature, from time to time, as the public good may require; for each of which a circuit judge shall be appointed, in the same manner, and hold his office by the same tenure, as the justices of the supreme court; and who shall possess the powers of a justice of the supreme court at chambers, and in the trial of issues joined in the supreme court; and in courts of oyer and terminer and gaol delivery. And such equity powers may be vested in the said circuit judges, or in the county courts, or in such other subordinate courts, as the legislature may by law direct, subject to the appellate jurisdiction of the chancellor.*

In 1786, the Justices of the Supreme Court of Judicature were directed to hold sessions of the Circuit Court in the counties to which they were assigned. Individual justices heard all civil cases triable within an assigned county and the court records were returned to the Supreme Court

[235] Historical Society of the New York Courts, https://history.nycourts.gov/figure/richard-ingoldsby/; *See*, also, Henry W. Scott, *The Courts of the State of New York,* (1909) at 120, online at https://babel.hathitrust.org/cgi/pt?id=uc2.ark:/13960/t9k35sq1w&seq=463&q1=%22+special+sessions%22&start=1; The National Archives of the United Kingdom, Kew (TNA) WO 87/17, Evidence of Captain John Forbes to the court martial of Brigadier Ingoldsby, https://www.degruyterbrill.com/document/doi/10.12987/9780300268539-018/pdf?licenseType=restricted&srsltid=AfmBOorg9dde3sgpl5cr8Asxh8dIf_v-H_SVaykhzbfyXM-5uJxA2KGt.

where final judgment was rendered. The Circuit Court was abolished by the Constitution of 1894 and its jurisdiction was transferred to the New York Supreme Court.[236]

Case reports reveal appeals from the Circuit courts in the counties of New York, Kings, Dutchess, Cayuga, Delaware, Orange, Mongomery, Ulster, Saratoga, Seneca, Suffolk, Greene, Rensselaer, Onondaga, Albany, Herkimer, Oneida, and Washington.

Mayor's Court of Albany

Little is discoverable about this court, except that it existed, and was mentioned by the Supreme Court of Judicature in *Williams v Albany Mayor's Court*, 12 Wend, 266 (1834). The decision cites the enabling statute by which the court was established. L 1801, Ch 153, reads:

> *…it shall be lawful for the mayor or recorder and any two or more aldermen, by a precept under their hands and seals, to command the sheriff of the city and county of Albany, to impannel and return, and he is hereby required to impannel and return a jury, to appear before the mayor's court of the said city at any term thereafter… and the verdict of such*
>
> *jury, and the judgment of the said mayors court thereon, and the payment*
>
> *of the sum of money so awarded and adjudged, to the owner…*
>
> *owners thereof…*

Appeals from the court went to the Supreme Court of Judicature, and a case could be removed from it, by way of habeas corpus, to the Supreme Court of Judicature.[237]

In 1812, the Supreme Court of Judicature in *Mandell v Barry*, 9 Johns. 234, 237 referred to it as the "Court of Common Pleas, or Mayor's Court, of Albany."

Oddly, even though the court was said to have been established in 1801, the Supreme Court referred to it in 1800, in *Stafford v Van Zandt*, 2 Johns. Cas. 66.

The court existed until at least 1847, as it was mentioned on appeal in *Trs. Of St. Mary's Church v Cagger,* 6 Barb. 576, 579 (1849).

[236] Historical Society of the New York Courts, https://history.nycourts.gov/court/circuit-courts-1786-1895/.
[237] *Clark v Stewart*, 20 Johns. 51 (1822) (appeal); *Youngs v Van Schaik*, 5 Cow. 281 (1826) (habeas corpus).

Police Court

Police courts no longer exist. [238]

Superior Court of the City of New York, 1828-1894/5

This was a trial court, established by the Legislature in 1828 and lasted until 1894, when by Constitutional Amendment it merged into the State Supreme Court.[239] Then, as now, appeals from the Superior Court (later Supreme Court) went to an intermediate appellate court (for a time, General Term, and after 1894 to the Appellate Division) and then to the New York Court of Appeals.[240] That is the route the *Lemmon Slave Case* took, when the State of Virginia appealed the ruling of Judge Paine from the Superior Court of the City of New York 5 Sandford Reports

[238] Police Court cases, 1808 to 1912 Accession ACC-1972-020. Unprocessed - RG 012/RG 012.3. Criminal Court (New York County); Police Court bonds, 1791 to 1921; Accession ACC-1972-018. Unprocessed - RG 012/RG 012.3. Criminal Court (New York County); Police Court coroner inquisitions, 1818 to 1898 Accession ACC-1972-023; Dates: 1818-1898; Police Court magistrates appeals for 1895 to 1922; Accession ACC-1972-021; Dates: 1895-1922; Police Court Special Sessions Court cases for 1883 to 1931; Accession ACC-1972-022; Dates: 1883-1931; bulk 1889-1916; online at https://a860-collectionguides.nyc.gov/repositories/2/accessions/919; New York Police Courts records are online at https://a860-collectionguides.nyc.gov/agents/corporate_entities/309;
An old entry reads: "If, under the general or local laws, there now exists or shall hereafter be established in the city a court of criminal jurisdiction known as the police court, it shall have the jurisdiction and powers hereinafter provided. N.Y. Second Class Cities Law § 180" N.Y. Second Class Cities Law § 180.

[239] Consolidated with the Supreme Court, by the Constitution of 1894 with respect to the Superior Court of the City of New York, the Court of Common Pleas for the City and County of New York, the City Court of Brooklyn and the Superior Court of Buffalo, *see American Historical Soc. v. Glenn,* 248 N.Y. 445, 450 (1928).

[240] *See*, generally, E. Paine and William Duer, *The practice in civil actions and proceedings at law in the state of New York; in the Supreme Court, and other courts of the state, and also in the courts of the United States* (1830), https://archive.org/details/practiceincivil00duergoog/page/718/mode/2up?q=judicature.

681 (1852)] to Supreme Court General Term *(Lemmon v. People ex rel. Napoleon,* 26 Barb. 270 (1857) and then to the Court of Appeals [*Lemmon v. People,* 20 N.Y. 562 (1860)]

Superior Court of Buffalo

By an act of the Legislature passed in 1839, a Recorder's Court was created for the City of Buffalo, and the appointment of the Recorder was vested in the Governor. The term of office was four years, and it was held by Horatio J. Stow, from 1840 to 1844; Henry K. Smith, from 1844 to 1848. By the Constitution adopted in 1846, the office became elective, under which it was held by Joseph G. Masten from 1848 to 1852; George W. Houghton, from 1852 to 1854.

By legislation in 1854, the Court was reorganized, and merged into the Superior Court, with three judges, whose term of office was fixed at six years. Provision was also made that the incumbent of the office of Recorder, at the time of the reorganization, should serve as one of the judges of the Superior Court for the remaining portion of the term for which he had been elected. Recorder Houghton was therefore, under this arrangement, entitled to serve two years as judge of the new court.

At the first election under the new law, George W. Clinton and Isaac A. Verplanck were chosen as the other judges, and upon casting lots for the long and short terms, Judge Clinton secured the full term of six years, and Judge Verplanck that of four years. The judges of the reorganized court have been:

George W. Houghton, 1854–1856

Joseph G. Masten, 1868–1871

I.A. Verplanck, 1854–1858

James M. Humphrey, 1871–1872

***

George W. Clinton, 1854–1860

Joseph G. Masten, 1856–1862

I.A. Verplanck, 1858–1864

George W. Clinton, 1860–1866

Joseph G. Masten, 1862–1868

I.A. Verplanck, 1864–1870

George W. Clinton, 1866–1872

James Sheldon, 1872

I.A. Verplanck, 1870–1873

James M. Smith, 1873–1874

James M. Smith, 1874

George W. Clinton, 1872

Charles Beckwith, 1878

JUDGE MASTEN died in the spring of 1871, after serving two terms and a half, or fifteen years, and James M. Humphrey was appointed by Gov. Hoffman to fill the vacancy. At the succeeding election in November 1871, James Sheldon was elected as the successor of Mr. Humphrey.

JUDGE VERPLANCK died in the spring of 1873, after serving two full terms, and two fractional terms, or a little more than eighteen years, and James M. Smith was appointed to the vacancy by Gov. Dix. At the succeeding election in November 1873, Judge Smith was chosen his own successor.

Judge Verplanck was appointed Chief Judge in 1870, and upon his decease, Judge Clinton was appointed to fill that position.

By the provisions of the sixth article of the Constitution, which article was ratified by the people of the State, on the second day of November 1869, the Superior Court of Buffalo was continued, with the powers and jurisdiction it theretofore had, and such further civil and criminal jurisdiction as might thereafter be conferred by law, and the term of office was extended to fourteen years, whether chosen to fill a vacancy or otherwise. The civil jurisdiction and powers of the court are defined in the present Code of Civil Procedure, and are the same, with some unimportant exceptions, which were possessed by the court, before the constitutional enactments above referred to. It possesses and exercises, within the city of Buffalo, jurisdiction and authority, concurrent and co-extensive, the Court heard appeals in civil and criminal cases.[241]

The clerks of the Court have been:

M. Cadwallader, 1839–1844

Dyre Tillinghast, 1856–1862

Nelson Ford, 1844–1846

Thomas M. Foote, 1862–1863 1846–1848

Amos A. Blanchard, 1863–1875 1848–1851

C. M. Cooper, no available date

William Davis, no available date

Jared S. Torrance, 1851–1856

John C. Graves, no available date [242]

City Court of Brooklyn

The City Court of Brooklyn was established as "an inferior local court of civil and criminal jurisdiction," under the authority of the Constitution of 1846. (Const., art. 6, § 14.)[243] Evidently, the City Court of Brooklyn had appellate powers, as the City Court of Brooklyn, General Term (Ch, J Neilson, J.) reversed a ruling of "Special Term" in the famous case of *Tilton v Henry Ward Beecher*.[244] Joseph Neilson (1812–1888) was regarded as a scholar and luminary.

Appeals from the City Court of Brooklyn went to Supreme Court General Term.[245] The Constitution of 1894 provides for the abolition of the City Court of Brooklyn, starting January 1, 1896.

> *The Superior Court of the City of New York, the Court of Common Pleas for the City and County of New York the Superior Court of Buffalo, and the City Court of Brooklyn, are abolished from and after the first day of January, one thousand eight hundred and ninety-six, and thereupon the seals, records, papers and documents of or belonging to such courts, shall be deposited in the offices of the*

[241] *Landers v Staten Island R. Co*., 53 N.Y. 450 (1873).
[242] https://distantreader.org/stacks/trust/coo/coo_31924072060068.txt; https://books.google.co.ls/books?id=F1pHAAAAYAAJ&printsec=frontcover#v=onepage&q&f=false.
[243] *Landers v Staten Island R. Co*., 53 N.Y. 450, 453 (1873).
[244] *New York Times*, December 30, 1874.
[245] *Latham v Rowan*, 17 Abb. Pr. 237 (1862); *Goulard v. Castillon*, 12 Barb. 126 (1851).

Clerks of the several counties in which said courts now exist; and all actions and proceedings then pending in such courts shall be transferred to the Supreme Court for hearing and determination.[246]

Court of Magistrates of the City of New York, 1902

The Magistrates' Courts of the City of New York were organized under an act of the legislature formerly known as the Inferior Criminal Courts Act of the City of New York. It was later known as The New York City Criminal Courts Act and governed both the Magistrates' Courts and the Court of Special Sessions of New York City.[247]

Scott states that in 1903 the Greater New York Charter provided that 15 Magistrates are to sit in various districts.[248]

The Municipal Court has been called the largest judicial tribunal in the world. According to a recent estimate about two million persons are affected by it every year. During 1932, 530,686 actions and 308,516 summary proceedings were instituted; the total amount of judgments entered reached the tremendous figure of $54,389,252.00.

The Court was established in 1897. By the New York City Charter of 1897, the District Courts of the City of New York and the Justices ' Courts of the First, Second, and Third Districts in Brooklyn were "…continued, consolidated and reorganized under the name of the Municipal Court of the City of New York…which said court shall be a local civil court within the City of New York and shall not be a court of record or have any equity jurisdiction." The Court at that time had jurisdiction of civil actions in which the amount involved was not more than $500.00.

The Court had evolved from the Justice of the Peace Court and takes cognizance of petty claims. However, the constant pressure to increase its jurisdiction in order to relieve congestion in the higher courts has brought about many changes. Thus, in 1914, the Municipal Court Commission appointed by Mayor Gaynor published a report as a result of which the Legislature in 1915 enacted the Municipal Court Code, under which the Court now operates. The new law increased the jurisdiction of the court to $1,000, made it a court of record, made the practice and procedure in large part conform to that of the Supreme Court and simplified the rules and methods of pleading.

In 1921, the adoption of the Civil Practice Act brought about changes in Municipal Court Practice, especially in regard to summary proceedings to recover possession of real property,

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[246] *See*, also, Henry W. Scott, *The Courts of the State of New York*, (1909) at 237, 403, https://babel.hathitrust.org/cgi/pt?id=uc2.ark:/13960/t9k35sq1w&seq=463&q1=%22+special+sessions%22&start=1.
[247] Raphael R. Murphy, *Proceedings in a Magistrate's Court Under the Laws of New York,* 24 Fordham L. Rev. 53 (1955), https://ir.lawnet.fordham.edu/flr/vol24/iss1/3.
[248] Henry W. Scott, *The Courts of the State of New York*, (1909) at 449, https://babel.hathitrust.org/cgi/pt?id=uc2.ark:/13960/t9k35sq1w&seq=463&q1=%22+special+sessions%22&start=1. *See*, also, *Annual Report of the Board of City Magistrates of the City of New York (Second Division) for the Year Ending December 31, 1910,* telling of a Domestic Relations Court and of a Night Court for Women, https://babel.hathitrust.org/cgi/pt?id=mdp.35112101536136&seq=30.

commonly called landlord-tenant proceedings. The court was eventually folded into the Municipal Court of the City of New York.

In Samuel Seabury's *Final Report to the Appellate Division*, he gave the history as follows:

> *The City Magistrates' Courts, as we know them today, were created by Chapter 659 of the Laws of 1910, entitled "An Act in Relation to the Inferior Courts of Criminal Jurisdiction in the City of New York," defining their powers and jurisdiction and providing for their officers, effective June 25, 1910, and the subsequent amendments thereto. This Act was adopted after an extended investigation of the inferior courts by a Commission known as the Page Commission, created by the Legislature in 1908 to conduct an inquiry into the "Courts of Inferior Criminal Jurisdiction in Cities of the First Class" The Page Commission held hearings from September, 1908 to December, 1909. The testimony adduced before the Page Commission revealed a shocking condition of affairs in the inferior courts in New York City. The record of its work, collected in five large volumes, contains a vast amount of information, which, when compared with the voluminous testimony offered before your Referee in the present investigation, has a strikingly familiar sound.*

In 1910, after the Page Commission, the City Magistrates' Courts were reorganized under the Inferior Criminal Courts Act. This Act was believed at the time by many reformers to contain truly modern provisions under which justice might be administered. The atmosphere at the time was full of hope that a new era in the dispensation of justice in the inferior criminal courts had been reached. In fact, for years after the enactment of the Inferior Criminal Courts Act, reform organizations hailed it with enthusiasm and approval. The fact that the evils disclosed by the testimony taken before the Referee herein were substantially the same as those which were shown before the Page Commission is conclusive proof that the optimism with which the Inferior Criminal Courts Act was hailed was premature and ill-founded. The reason why we are no better off to- day under the Inferior Criminal Courts Act than we were prior to its enactment is that the Inferior Criminal Courts Act left unimpaired and free to flourish the basic vice in the Magistrates 'Courts, i. e., their administration as a part of the political spoils system. It left the Magistrates to be ap- pointed by a political agency, the Mayor, upon the recommendation of the district leaders within his political party—and these men, as we know, have regarded the places to be filled as plums to be distributed as rewards for services rendered by faithful party workers. The Courts are directed by these Magistrates in cooperation with the Court clerks, who are not Civil Service employees and who are appointed without the slightest regard to fitness or qualification, but solely through political agencies and because of political influences. The assistant clerks and attendants, though nominally taken from the Civil Service List, are still, in almost all instances, faithful party workers who, despite Civil Service provisions, have secured their places through political influence as a recompense for services performed for the Party. The insidious auspices under which the Magistrates, the clerks, the assistant clerks and the attendants are appointed are bad enough; the conditions under which they retain their appointments are infinitely worse, because they involve the subserviency in office to district leaders and other politicians. It is a by-word in the corridors of the Magistrates' Courts of the City of New York that the intervention of a friend in the district political club is much more potent in the disposition of cases than the

merits of the cause or the services of the best lawyer and, unfortunately, the truth of the statement alone prevents it from being a slander upon the good name of the City.[249]

Municipal Court of the City of New York

The Municipal Court has been called the largest judicial tribunal in the world. According to an estimate, about two million persons are affected by it every year. During 1932, 530,686 actions and 308,516 summary proceedings were instituted; the total amount of judgments entered reached the tremendous figure of $54,389,252.00.

The Court, as now organized, was established in 1897. By the New York City Charter of 1897, the District Courts of the City of New York and the Justices' Courts of the First, Second and Third Districts in Brooklyn were "…continued, consolidated and reorganized under the name of the Municipal Court of the City of New York… which said court shall be a local civil court within the City of New York and shall not be a court of record or have any equity jurisdiction." The Court at that time had jurisdiction of civil actions in which the amount involved was not more than $500.00.

The Court thus evolved from the Justice of the Peace Court and takes cognizance of petty claims. However, the constant pressure to increase its jurisdiction in order to relieve congestion in the higher courts has brought about many changes. Thus, in 1914, the Municipal Court Commission appointed by Mayor Gaynor published a report as a result of which the Legislature in 1915 enacted the Municipal Court Code, under which the Court now operates. The new law increased the jurisdiction of the court to $1,000, made it a court of record, made the practice and procedure in large part conform to that of the Supreme Court and simplified the rules and methods of pleading.

In 1921, the adoption of the Civil Practice Act brought about changes in Municipal Court Practice, especially in regard to summary proceedings to recover possession of real property, commonly called landlord-tenant proceedings.[250]

From The Municipal Court of the City of New York / Commission on the Administration of Justice in New York State; John L. Buckley, chairman, https://babel.hathitrust.org/cgi/pt?id=uiug.30112062378226&seq=11.

City Court of the City of New York

The "New York City Court" goes back at least to 1808, as mentioned in an appeal from that court to the Supreme Court of Judicature in *Hallet v Wylie*. 3 Johns. 45 (1808). In 1926, the Legislature adopted the New York City Court Act (L. 1926, c. 539, in effect January 1, 1927) repealing the old City Court Act (L. 1920, c. 935). It provides (§ 27) that "all process and mandates of the court *may be executed in any part of the State*." It provides:

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[249] Samuel Seabury, Final Report, https://babel.hathitrust.org/cgi/pt?id=umn.31951002583285t&seq=25&q1=handler&start=1.

[250] *See*, also, a decision from the "City Court of New York" in 1888, *Morrell v Long Island R. Co.,* 1 N.Y.S. 65.

§ 2. Organization and powers. The city court of the city of New York, from and after the first day of January, nineteen hundred and twenty-seven, shall be continued and extended throughout the city of New York under the name of the city court of the city of New York, with such powers and jurisdiction as are provided by law.[251]

On September 1, 1962, the City Court of the City of New York and the then Municipal Court of the City of New York were abolished and the Civil Court of the City of New York came into existence, replacing such courts and combining their respective functions, powers and jurisdiction.[252]

Over the years, serving on the City Court of the City of New York were Judges

Allen
Birdie Amsterdam[253]
Baer
Ballman
A. David Benjamin
Berry
Solomon Boneparth
Brady
John A. Brynes
Joseph M. Callahan
Louis Capozzoli
Frank A. Carlin
Samuel C. Coleman
Conroy
Erastus D. Culver
Vincent D. Damiani
Evans, Faulkner
Finlite
Frank
Archie Gorfinkel
Green
John Greenwood
Gustave Hartman
Louis B. Heller
Nathaniel T. Helman
Joyce, Kahn, Hyman Korn
La Fetra
Nathan A. Lashin
Lefkowitz
John C. Leonforte
Luce
Vincent A. Lupiano
John V. McAvoy
Edward J. McCullen
Owen McGivern
McKee
Meyer
James Mulcahy
William O'Dwyer
Rocco A. Parella
Piciarello
Quinn
William L. Ransom
Reynolds
Francis E. Rivers[254]
Rubin
Santangelo
Schimmel
Schwartzwald
Bernard L. Shientag
J. Irwin Shapiro
Silverman
Spector
Samuel Strasbourger
Sullivan
Louis A. Valente
Arthur Wachtel
Maurice Wahl
Walsh
Wendel
Max J. Wolff[255]

[251] *See*, generally, *Territorial Jurisdiction of the City Court of the City of New York*, 2 St. John's L. Rev. No. 2, May 1928; *American Historical Soc. v. Glenn*, 248 N.Y. 445, 448 (1928).
[252] *Alesi v Procaccino*, 47 A.D.2d 887, 887 (1st Dept 1975).
[253] The first woman elected to the New York State Supreme Court.
[254] The first Black judge on the City Court.
[255] Where possible, from information online, the full name of the judge is listed. In decisional law research, the name of the court varies, sometimes called, for example, the City Court of Brooklyn, at other times, the City Court of New York (Brooklyn), and similar variations.

Children's Court

Until September 15, 1924, there was a division of the Court of Special Sessions of the City of New York known and designated as the Children's Court of the City of New York. By Chapter 254 of the Laws of 1924, effective September 15, 1924, the Children's Court, as a division of the Court of Special Sessions of the City of New York, was discontinued and a new court was created, to be known and designated as "Children's Court of the City of New York."[256]

The New York State Legislature passed the Children's Court Act (L 1922 ch 547), declaring:

> *§ 5. Jurisdiction. 1. Children. The children's court in each county shall have within such county exclusive original jurisdiction of all cases or proceedings involving the hearing, trial, parole, remand or commitment of children actually or apparently under the age of sixteen years for any violation of law, and in all cases involving juvenile delinquency; children who are material witnesses, as provided by law; children who are mental defectives, as provided by law; improper guardianship, or neglected children, as provided herein. Subject to the limitations herein provided, the court also shall have jurisdiction in proceedings to determine the question of the rightful custody of children whose custody is subject to controversy, as related to their immediate care. The "court" shall have like jurisdiction and authority as is now conferred on "county courts" as concerns "adoption" or and "guardianship."*
>
> *Except as herein otherwise provided, the court shall have original jurisdiction to hear, try and determine all cases less than the grade of felony, which may arise against any parent or other adult responsible for or who contributes to the delinquency of or neglects any child; or who is charged with any act or omission in respect to any child, which act or omission is a violation of any state law or municipal ordinance.*
>
> *The court shall also have exclusive original jurisdiction in all cases against persons charged with a failure to obey any order of the court made in pursuance of the provisions of this section.*
>
> *The court shall have power to punish, in the manner and subject to the limitations prescribed by article nineteen of the judiciary law, any person guilty of a criminal contempt.*
>
> *The jurisdiction herein given to children's courts shall in no wise be deemed to include any matter or proceeding involving alone the religious faith of a child, other than as herein provided, or matters or proceedings having to do with separation or and divorce or any matter or proceeding involving the property rights of children or and adults over and in which the surrogate or and supreme*

[256] Samuel Seabury's Final Report, https://babel.hathitrust.org/cgi/pt?id=umn.31951002583285t&seq=187&q1=handler&start=1.

courts have jurisdiction; nor shall it impair the jurisdiction conferred on the supreme court, relating to mental deficiency.[257]

In 1962 the Legislature passed the Family Court Act, subsuming the Children's Court.

Domestic Relations Court of the City of New York

Under the Laws of 1933, Chapter 482, the court was established. It became a law on April 26, 1933, as the Domestic Relations Court of the City of New York, (DRCCNY).

There is some nomenclature worth addressing here. As early as 1920, in *New York v Hall*, 192 A.D. 430, 432 (2d Dept 1920) the Appellate Division made reference to the City Magistrates' Court (Domestic Relations Court), borough of Brooklyn, City of New York. The Domestic Relations Court, per se, however, was not formed until 1933. The enabling legislation for the DRCCNY made provision for superseding and absorbing other courts:

The 1933 enactment provided that the court would "succeed to all the powers and jurisdiction of the children's court of the city of New York and of that part of the magistrates' court system of the city of New York known as the family court, and which shall also have the powers and jurisdiction herein provided."

The legislation further provided that

the family courts then part of the city magistrates ' court system of the city of New York located in the boroughs of Manhattan, the Bronx, Brooklyn and Queens shall be discontinued, and the powers and duties of city magistrates in all boroughs of said city to deal with cases involving the support of a wife, child or poor relative shall cease and determine.

Also, that

the court known as the children's court of the city of New York, and all the parts thereof, shall be discontinued and all the powers and jurisdiction which on the said thirtieth day of September are vested by law in said children's court shall thereupon be vested, merged and continued in the domestic relations court of the city of New York hereby established.

The DRCCNY of 1933 comprised two divisions to be known as the "Children's Court" and the "Family Court," respectively.

As for jurisdiction under DRCCNY:

§ 61. The children's court in each county shall have exclusive original jurisdiction within such county to hear and determine all cases or proceedings involving the hearing, trial, parole, probation, remand or commitment of children…under the age of sixteen years, or who were, or who are alleged to be (a) delinquent, (b) physically handicapped, (c) material witnesses, (d) mental defectives, (e)

[257] https://heinonline-org.proxy.library.nyu.edu/HOL/Page?collection=ssl&handle=hein.ssl/ssny0209&id=224&men_tab=srchresults#.

neglected, and shall also have jurisdiction to appoint guardians of the person of such children, and to grant orders for the adoption of such children.

Such court shall also have jurisdiction in proceedings to determine the question of the rightful custody of such children if their custody is subject to controversy and such custody or controversy relates to their immediate care.

2. The children's court shall have jurisdiction, whenever the issues involving a delinquent or neglected child are before the court summarily to try, hear and determine any charge or offense, less than the grade of a felony, against any parent, or other person in loco parentis to such child, involving an act or omission in respect to such child in violation of any law of the state or ordinance of the city of New York, or which has or is alleged to have contributed to the delinquency, neglect or dependency of any such child; and the court is authorized and empowered to render judgment therein , and if judgment be rendered sustaining the charge against such parent or other person the court shall have power to fix such punishment as the law provides, or may, in the discretion of the court, suspend sentence or place on probation, and by order impose upon him such duty as shall be deemed to be for the best interests of such child.

3. The children's court shall also have jurisdiction whenever the issues involving a delinquent or neglected child are before the court, to inquire into and determine the liability of any parent or other person who is charged with failure to provide for the maintenance of any such child

In other division, the family court was given jurisdiction for numerous provisions for support.

§ 58 of the DRCCNY provided that appeals might be taken to the Appellate Division by any party to the proceeding from any final order or judgment of the DRCCNY.[258]

The Domestic Relations Court Act of the City of New York was repealed in its entirety upon the enactment of the Family Court Act effective September 1, 1962 (L 1962, ch 686).[259]

Court of Claims

At the Constitutional Convention of 1867, a section creating a Constitutional Court of Claims with jurisdiction to hear and determine "such claims against the state as the Legislature shall by general law direct" was included in the proposed constitution, but it failed of ratification. The creation of a Constitutional Court of Claims was again urged in the Constitutional Commission of 1872 but was defeated, as it was at the Constitutional Conventions of 1894 and 1915. The proposal finally became a part of the Constitution by vote of the people on November 3, 1925, approving the adoption of a new judiciary article (article VI) of the Constitution, including Section 23:

[258] e.g. *Sussman v Sussman,* 242 A.D. 843 (2d Dept., 1934).
[259] *Hirsch v Hirsch*, 142 A.D. 2d 138, 141-142 (2d Dept., 1988).

Nothing in this article contained shall abridge the authority of the legislature to create or abolish any board or court with jurisdiction to hear and audit or determine claims against the state, and any such tribunal existing when this article shall take effect shall be continued with the powers then vested in it until otherwise provided by law.

In 1897 (L. 1897, ch. 36) the Legislature enacted "an Act to revise, amend and consolidate the several acts relating to the Board of Claims, and to establish a Court of Claims." In effect, the Board of Claims was continued under the designation "Court of Claims." It had all the powers and jurisdictions of the old board.

The existing commissioners were continued in office as "Judges of the Court of Claims," with six-year terms. In 1906 (L. 1906, ch. 692), the terms of judges then in office were extended to 10 years. In 1911 (L. 1911, ch. 856), the Court of Claims was abolished and reconstituted under the title of "Board of Claims, " its members to be known as commissioners instead of judges. The judges of the Court of Claims, then serving as such, were to be known as commissioners and their terms were abrogated and their successors directed to be appointed by the Governor within 60 days after the passage of the act.

In 1915 (L. 1915, chs. 1 and 100), the Board of Claims in turn was abolished and the Court of Claims revived permanently. The court created in 1915 was continued by Laws of 1920, Chapter 922. The next Court of Claims Act was passed in 1939 (L. 1939, ch. 860), effective July 1, 1939, providing for a court of five judges appointed by the Governor, with the advice and consent of the Senate, for terms of 9 years each.

The present Court of Claims Act reads as follows:

This act shall be known as the "Court of Claims Act."

Such court shall consist of (a) twenty-seven judges, who shall be appointed by the governor, by and with the advice and consent of the senate; (b) such number of additional judges not exceeding seventeen to and including December thirty-first, nineteen hundred eighty-two, and not exceeding fifteen on and after January first, nineteen hundred eighty-three, as shall be appointed by the governor, by and with the advice and consent of the senate; (c) such number of additional judges not exceeding nineteen as shall be appointed by the governor, by and with the advice and consent of the senate prior to December thirty-first, nineteen hundred eighty-two; (d) such number of additional judges not exceeding thirty-two as shall be appointed by the governor, by and with the advice and consent of the senate, prior to December thirty-first, nineteen hundred eighty-six; (e) such number of additional judges not exceeding twelve as shall be appointed by the governor, by and with the advice and consent of the senate, provided that no more than five of such judges shall be appointed prior to July first, nineteen hundred ninety.[260]

[260] The New York State Court of Claims: Its History, Jurisdiction and Reports.1 From Sovereign Immunity to the Court of Claims Act as excerpted from New York State Library Bibliography Bulletin 83, The State Education Department, Albany (1959),https://history.nycourts.gov/wp-content/uploads/2018/11/History_Court-Claims-Bibliography-Bulletin.pdf. *See*, also Henry W. Scott, *The Courts of the State of New York,* (1909) at 471, https://babel.hathitrust.org/cgi/pt?id=uc2.ark:/13960/t9k35sq1w&seq=463&q1=%22+special+sessions%22&start=1.

Family Court

Family Court was established in 1962 its purpose to adjudicate comprehensively every justiciable family issue:

> *Sept. 1, 1962 § 6. This act shall take effect September first, nineteen hundred sixty-two*
>
> *CHAPTER 686*
>
> *AN ACT to establish a family court for the state of New York to implement article six of the constitution of the state of New York, approved by the people on the seventh day of November, nineteen hundred sixty-one*
>
> *Became a law April 24,1962, with the approval of the Governor.*[261]
>
> *§ 115. Jurisdiction of family court.*
>
> *(a) The family court has exclusive original jurisdiction over*
>
> *(i) neglect proceedings, as set forth in article three;*
>
> *(ii) support proceedings, as set forth in article four;*
>
> *(iii) proceedings to determine paternity and for the support of children born out-of-wedlock, as set forth in article five;*
>
> *(iv) proceedings permanently to terminate custody of a child by reason of permanent neglect, as set forth in part one of article six;*
>
> *(v) adoption proceedings, as set forth in part two of article six;*
>
> *(vi) proceedings concerning juvenile delinquency and whether a person is in need of supervision, as set forth in article seven; and*
>
> *(vii) family offenses proceedings, as set forth in article eight.*
>
> *(b) The family court has such other jurisdiction as is set forth in this act, including jurisdiction over habeas corpus proceedings and over applications for support and custody in matrimonial actions when referred to the family court by the supreme court, conciliation proceedings, and proceedings concerning physically handicapped and mentally defective or retarded children.*
>
> *(c) The family court has such other jurisdiction as is provided by law.*
>
> *§ 411.The family court has exclusive original jurisdiction over support proceedings under this article and in proceedings under article three-a of the domestic relations law, known as the uniform support of dependents law. On its*

[261] https://babel.hathitrust.org/cgi/pt?id=uc1.b4378119&seq=441&q1=%22family+court+%22&start=1.

own motion, the court may at any time in the proceedings also direct the filing of a neglect petition in accord with article three of this act.

511. Jurisdiction. The family court has exclusive original jurisdiction in proceedings to establish paternity and, in any such proceedings in which it makes a finding of paternity, to order support and determine custody, as set forth in this article. On its own motion, the court may at any time in the proceedings also direct the filing of a neglect petition in accord with the provisions of article three of this act.

§ 612. Jurisdiction: the family court has original jurisdiction over proceedings permanently to terminate custody of a child under this part by reason of permanent neglect.

§ 641. Jurisdiction over adoption proceedings: Effective September first, nineteen hundred sixty-four, the family court has exclusive original jurisdiction over adoption proceedings under article seven of the domestic relations law. From the effective date of this act until September first, nineteen hundred sixty-four, the family court has original jurisdiction concurrent with the surrogate's courts over such adoption proceeding.

§ 713. Jurisdiction. The family court has exclusive original jurisdiction over any proceeding involving a person alleged to be a juvenile delinquent, subject to section seven hundred fifteen, or a person in need of supervision.

§ 812. Jurisdiction. The family court has exclusive original jurisdiction over any proceeding concerning acts which would constitute disorderly conduct or an assault between spouses or between parent and child or between members of the same family or household.

§ 912. Jurisdiction: The family court has original jurisdiction over conciliation proceedings under this article.

Accordingly, Family Court incorporated the former State Children's Courts, the domestic violence parts of the local criminal courts, and the paternity parts of the former Court of Special Sessions. Also, it was granted adoption and abandonment jurisdiction, concurrent child, and concurrent post-divorce modification and enforcement jurisdiction.

The initial measure separating children's issues from traditional common law rules was the 1824 legislative incorporation of a House of Refuge statute that may be fairly characterized as the state's first child neglect law; under its provisions children could be placed in public or private childcare agencies upon a finding of parental malfeasance.

The initial adoption laws and compulsory education laws also date from that period. Administered by the criminal courts, the piecemeal enactment of "child saving" legislation was for children to receive, and hopefully rehabilitate, all such children under 16 years of age as shall be convicted of criminal offenses.

In 1851, a Juvenile Asylum was legislatively incorporated to house impoverished, neglected young children and, in 1853, the Children's Aid Society was founded to "rescue" immigrant children from the streets and poorhouses through placement in foster homes or farm

apprenticeships. The post-Civil War era further awakened a perceived need to protect children who were maltreated, or who had lapsed into wayward behavior. The post war social repercussions, rapid industrialization, and massive immigration spawned a “child savers” movement which lobbied successfully for extensive children's legislation.

In 1865, the Legislature enacted the “Disorderly Child” Act, a statute roughly equivalent to the present status offense or PINS statute. Twelve years later the legislature passed an “Act for Protecting Children,” a refined and codified as part of the 1881 Penal Code.

By the late nineteenth-century the major causes of action involving children had hence been enacted, and were enforced by public or private agencies, including the police and the societies for the protection of cruelty to children. Simultaneously, the legislature incorporated a plethora of childcare agencies to cafe for needy and maltreated children. Completing the evolutionary decriminalization of children's activities, a 1909 Act coined the term “juvenile delinquency.”

Thereafter, and until the enactment of the 1978 Juvenile Offender Act, any action of murder committed by a youngster under the age of sixteen could not be deemed a crime. The important contemporary proceedings heard before the Family Court, child neglect or abuse, juvenile delinquency, status offenses and adoption, were thus developed and applied in postbellum America. However, jurisdiction had been lodged in the criminal courts (a not illogical choice given the absence of specialized family tribunals). Given an increasing children’s case load, the growth of the social sciences, the development of childcare agencies, and the inappropriateness of mixing children's and criminal proceedings, the progression to a specialized court proved inevitable.

In 1901, the year the first juvenile court in America was established in Chicago, the New York State legislature segregated juvenile cases by creating specialized children’s pans within New York City. Within a decade, the children's court’s parts were operating in most of the state’s urban areas. Finally, joining the by then national movement, New York established a separate Children's Court in 1922.

Children’s issues, involving specialized social, educational and mental health expertise, were divorced from the criminal court milieu. Separated from the mainstream of criminal and civil jurisdiction, the children's courts developed unique characteristics, including confidentiality, privacy of proceedings and the disuse of procedural due process standards. The courts even substituted their own nomenclature for traditional legal terms; for example, the substitution of “fact finding” hearing for trial and “dispositional hearing” for sentence dates from the 1922 establishment of the Children’s Courts.

The Children’s Courts continued for forty ears (1922–1962). By 1960, the court’s limitations and deficiencies had been well documented. Split jurisdiction, the absence of legal representation and procedural anarchy were among the criticisms which led to the development of a Family Court concept. Of equal significance, in 1961, the state reorganized the entire court structure, the first major judicial restructuring in almost a century.

The Family Court Act, circa 1962, incorporated several landmark provisions (in addition to the grant of more extensive jurisdiction). For the first time, children were afforded assigned counsel, enhancing procedural safeguards

It also indirectly spawned litigation which expanded children's rights, such as the right (and the empowerment) to appeal adverse decisions, and the right to discover and present evidence addressing the child's interest. The Act also incorporated expanded child protective provisions affecting children and their parents.[262]

Civil Court of the City of New York

Laws of New York, 1962 Chapter 693 provides:

> *AN ACT to establish a civil court for the city of New York to implement article six of the constitution of the state of New York, approved by the people on the seventh day of November, nineteen hundred sixty-one*
>
> *Became a law April 24, 1962, with the approval of the Governor.*
>
> *§ 6. Jurisdiction; in general. The court shall have jurisdiction as set forth in this article and as elsewhere provided by law. The phrase "ten thousand dollars", whenever it appears herein, shall be taken to mean "ten thousand dollars exclusive of interest and costs."*
>
> *7. Money actions and actions involving chattels. The court shall have jurisdiction of actions and proceedings for the recovery of money, actions and proceedings for the recovery of chattels and actions and proceedings for the foreclosure of liens on personal property where the amount sought to be recovered or the value of the property does not exceed ten thousand dollars, provided either:*
>
> > *(a) that defendant resides within the city of New York, or*
> >
> > *(b) that the cause of action arose within the city of New York and the defendant either resides or has regular employment or a place for the regular transaction of business within the city of New York or the counties of Westchester or Nassau, or*
> >
> > *(c) that the action is brought to recover damages for a personal injury or an injury to property and the cause of action arose within the city of New York.*
>
> *A corporation and joint-stock or other unincorporated association, shall, within the meaning of this section, be deemed to have a residence wherever it is established by law or wherever it transacts its general business or keeps an office or has an agency.*
>
> *§ 8. Actions involving real property. The court shall have jurisdiction of the following actions provided that the real property involved or part of it is situate within the counties of the city of New York in which the action is brought:*

[262] The Family Court segment taken from the fine article by Merril Sobie, *The Family Court—A Short History*, 1 Jud. Notice 6 (2011), https://history.nycourts.gov/wp-content/uploads/2019/01/Judicial-Notice-01.pdf#page=6.

(a) An action for the partition of real property where the assessed valuation of the property at the time the action is commenced does not exceed ten thousand dollars.

(b) An action for the foreclosure, redemption or satisfaction of a mortgage on real property where the amount of the mortgage lien at the time the action is commenced does not exceed ten thousand dollars.

(c) An action for the foreclosure of a lien arising out of a contract for the sale of real property where the amount of the lien sought to be foreclosed does not, at the time the action is commenced, exceed ten thousand dollars.

(d) An action for the specific performance of a contract for the sale of real property where the contract price of the property does not exceed ten thousand dollars.

(e) An action for the establishment, enforcement or foreclosure of a mechanic's lien on real property where the lien asserted does not, at the time the action is commenced, exceed ten thousand dollars.

(f) An action to reform or rescind a deed to real property where the assessed valuation of such property does not exceed ten thousand dollars at the time the action is commenced.

(g) An action to reform or rescind a contract for the sale of real property where the agreed price of the property as stated in the contract does not exceed ten thousand dollars; or, if the controversy shall be with regard to the price of the property, where the agreed price as claimed by plaintiff does not exceed ten thousand dollars.

(h) An action to reform or rescind a mortgage on real property where the unpaid balance of the debt secured by the mortgage does not exceed ten thousand dollars at the time the action is commenced.

(i) An action to compel the determination of claim to real property under article fifteen of the real property law where the assessed valuation of such property does not exceed ten thousand dollars at the time the action is commenced.

§ 9. Summary proceedings. The court shall have jurisdiction over summary proceedings to recover possession of real property located within the city of New York, to remove tenants therefrom, and to render judgment for rent due without regard to amount.

§ 10. Interpleader. The court shall have jurisdiction of an action of interpleader and defensive interpleader as defined and governed by the provisions applicable in supreme court in like cases, provided that the amount in controversy or the value of the property involved does not exceed ten thousand dollars, and provided further that in an action of interpleader the plaintiff satisfies, as to at least one of

the defendant-claimants, the requirements of either subdivision (a) or (b) of section seven of this act.

§ 11. Arbitration and conciliation. The court shall have jurisdiction to provide systems of arbitration and conciliation of claims within its jurisdiction, and to enter judgment on the award of arbitrators where the relief awarded is within the court's jurisdiction.

§ 12. Small claims. The court shall have jurisdiction of small claims as defined in article seventeen of this act.

§ 13. Counterclaims. The court shall have jurisdiction of counterclaims as follows:

> *(a) Of any counterclaim over which the court would have jurisdiction if sued upon separately.*
>
> *(b) of any counterclaim for money only, without regard to amount*
>
> *(c) of any counterclaim for the rescission or reformation of a transaction, or for an accounting between partners after dissolution of the partnership, regardless of monetary criteria, provided that such counterclaim relate to the same transaction or occurrence as forms the basis of plaintiff's cause of action.*

§ 14. Provisional remedies. The court shall have power to issue or vacate a warrant of attachment, an order of arrest, a requisition to replevy, or a warrant to seize a chattel, in any action where, were it brought in supreme court, such remedy could be granted there. The powers of the court with regard to the foregoing shall, consistent with its jurisdiction, be the same as those of supreme court.

§ 15. Contempt. All of the provisions of the judiciary law relating to civil and criminal contempts shall apply to this court, except subdivision seven of section seven hundred fifty-three of said law and except that the provisions of said law relating to sheriffs shall apply as well to marshals

§ 16. Additional jurisdiction and powers. In the exercise of its jurisdiction the court shall have all of the powers that the supreme court would have in like actions and proceedings

151. Parts for the determination of small claims established.

152. Commencement of action upon small claims.

§ 150. Small claims defined. The term "small claim" or "small claims" as used in this act shall mean and include any claim or cause of action or counterclaim within the jurisdiction of this court except real property actions as defined by section eight of this act and summary proceedings for the recovery of real property, where the amount claimed by the plaintiff or claimant or defendant, or the value of the property affected or of the right claimed, does not exceed three hundred dollars exclusive of interest and costs, and where the defendant either

resides, or has an office for the transaction of business or a regular employment, within the city of New York.

County Court

Today, a County Court sits in each of the 57 counties of the state outside the City of New York. Under the Constitution, they have unlimited criminal jurisdiction, but their civil jurisdiction is limited to money claims for not more than $25,000. The County Court also has limited appellate jurisdiction; in the Third and Fourth Judicial Departments, it hears appeals from civil and criminal judgments of justice courts and city courts.

The State Constitution of 1846 declared that there should be elected in each of the counties of the state, except the City and County of New York, one county judge, who should hold office for four years. Under the present Constitution:

> *§10. a. The county court is continued in each county outside the city of New York. There shall be at least one judge of the county court in each county and such number of additional judges in each county as may be provided by law. The judges shall be residents of the county and shall be chosen by the electors of the county. b. The terms of the judges of the county court shall be ten years from and including the first day of January next after their election.*

Retirement is mandatory at the end of the calendar year in which a judge turns 70 years of age.

The Constitution authorizes the Legislature to provide that the same individual may hold two or all of the positions of county, surrogate, and family court judge at the same time:

> *§14. The legislature may at any time provide that outside the city of New York the same person may act and discharge the duties of county judge and surrogate or of judge of the family court and surrogate, or of county judge and judge of the family court, or of all three positions in any county.*

There are many so-called "two-hat" and "three-hat" judges in upstate counties.[263]

Supreme Court, General Term (As an appeals court)

The General Term System was in force from the adoption of the Constitution of 1869 to the adoption of the next Constitution on November 6, 1894, which went into effect January I, 1895. It had been continued nearly half a century and it was the tribunal that reviewed the decisions of the Special Terms and the results of all trials in the Supreme Court before juries. There appears to be an oddity here, as it seems that well before 1869, the Supreme Court had a General Term that sat as a court of review (e.g., in 1819 The Supreme Court General Term sat as an appellate Court in *Berdell v Parkhurst*, 58 How. Pr. 102. In *Ainslie v Mayor,* 1 Barb. 168, 171 [1847] Supreme Court General Term stated: The circuit judge afterwards gave judgment on the case so made, in favor of the plaintiffs, and increased the amount of the damages to $2040, and the cause is now brought before this court, on an appeal from the judgment given by the circuit judge. Also, in

[263] *See* https://video.dos.ny.gov/lg/handbook/html/the_judicial_system.html.

Lemmon v People ex rel. Napoleon, 26 Barb. 270 [1857] the Supreme Court General Term affirmed a decision of the Superior Court of the City of New York. In *Wood v. Perry,* 1 Barb. 114, 135 [1847] Supreme Court stated: "The decree of the late vice chancellor of the seventh circuit must be reversed…").

There are many other such illustrations. The Constitution of 1846 states that "§ 3. [Supreme court.]—There shall be a supreme court, having general jurisdiction in law and equity," but does not specifically state that Supreme Court has appellate jurisdiction. Nor does the Constitution of 1821. The prior Constitution (of 1777) does seem to contemplate appellate review by the Supreme Court, as the language states:

> *And if the cause to be determined shall be brought up by writ of error, on a question of law, on a judgment in the supreme court, the judges of that court shall assign the reasons of such their judgment, but shall not have a voice for its affirmance or reversal*.

Accordingly, one may infer that the appellate review powers were continued in the Constitutions of 1821 and 1846. Indeed, the Constitution of 1846 abolished the Supreme Court as it then, and had previously existed in the State, and created a new Supreme Court, having general jurisdiction in law and equity.

Civil actions were tried at Circuits, held by one Judge and the Criminal Court, in each county, presided over by one Justice of the Supreme Court and two Justices of the Sessions of the county where the Court is held, were to be called Courts of Oyer and Terminer.

The eight judicial districts of the State were divided into four judicial departments, in each of which there was organized a General Term.

Each of these was composed of a Presiding Justice and two Associate Justices, who were to be selected and designated by the Governor of the State from the whole number of the Judges of the State.

The General Terms thus created, had jurisdiction to hear and determine appeals from the judgments and orders of the Circuit Courts; the special terms of the Supreme Court; the Courts of Oyer and Terminer, and the County Courts of each county within the department (except in the First Department, which had no County Court), but there the General Term reviewed the decisions of all the inferior Courts of Record. Appeals from the judgments, decisions and orders of the General Term lay to the Court of Appeals.

The General Terms in the first four departments were organized under the law of 1870, Chapter 403. Interestingly, under Section 8. "No Judge or Justice shall sit at a General Term of any Court, or in the Court of Appeals, in review of a decision made by him, or by any Court of which he was at the time a sitting member," thus overruling *Pierce v Delamater* 1 NY 17, 3 How. Prac. 162 (1847).[264] The Constitution of 1846 was amended so that the Legislature was to provide not more than five General Terms. Under Section 224, a Presiding Justice, designated for a Judicial

[264] By the Revised Statutes, 2 R. S. 275 (2 Edm. 284, § 3) the legislature had circuit declared that "no judge of any appellate court, or of any court to which a writ of certiorari or of error shall be returnable, shall decide or take part in the decision of any cause or matter which shall have been determined by him when sitting as a judge of any other court." From Charles Z. Lincoln, *Constitutional History of New York*, Vol 1 at 209.

Department, may preside at a General Term, held in another department, if the Presiding Justice of that department is absent, or disqualified from acting; Under Section 225. (Amended 1877, c. 416). General Term was designate the times and places for holding the General Terms of the Supreme Court, within their Judicial General Term was required to have been attended by the Sheriff of the County in which it is held, and must cause the room in which the General Term is held, to be properly heated, ventilated, lighted, and kept comfortably clean and in order.

The Court could enforce the performance of that duty by the Sheriff, who was required to provide the Court with all necessary stationery and minute books, upon the written requisition of the Court.

The History of the General Term, however, belongs to the period between its creation, under the Constitution of 1869, and the Constitution of 1894, when that Court ceased, and it was superseded by the Appellate Divisions.

The Constitution of 1894 was adopted by a majority of 82,695, and the work the General Term had done in its history.[265]

Appellate Division

Before the constitutional change in 1894, appeals from trial level courts would go to "Supreme Court General Term," as, for example, *People v Terwilliger*, 74 Hun 310 (1893) one of the last such cases, an appeal to General Term from the Court of Sessions, Ulster County.

In creating the Appellate Division, the Constitution of 1894 provided:

> *[Judicial departments; appellate division, how constituted; governor to designate justices; reporter; time and place of holding courts.]-The Legislature shall divide the State into four judicial departments. The first department shall consist of the county of New York; the others shall be bounded by county lines, and be compact and equal in population as nearly as may be. Once every ten years the Legislature may alter the judicial departments, but without increasing the number thereof.*
>
> *There shall be an Appellate Division of the Supreme Court, consisting of seven Justices in the First Department, and of five Justices in each of the other departments. In each department four shall constitute a quorum, and the concurrence of three shall be necessary to a decision No more than five Justices shall sit in any case.*
>
> *From all the Justices elected to the Supreme Court the Governor shall designate those who shall constitute the Appellate Division in each department; and he shall designate the Presiding Justice thereof, who shall act as such during his term of office, and shall be a resident of the department. The other Justices shall be*

[265] The above taken from two articles: Alan D. Scheinkman, *Finding the Perfect Number*, 17 Jud. No., 47, https://history.nycourts.gov/wp-content/uploads/2023/08/22_Judicial_Notice_Issue-17_compressed.pdf; Clark Bell, *History of the General Term of the New York Supreme Court*, 22 Medico-Legal J. (1904-1905), 51; *See*, also, Charles Z. Lincoln, *Constitutional History of New York*, Vol 3, 336-363 https://archive.org/details/cu31924032657631/page/354/mode/2up?q=%22+general+term%22.

designated for terms of five years, or the unexpired portions of their respective terms of office, if less than five years.

The Supreme Court, Appellate Division, as it exists today in four departments, was created under the Constitution of 1894:

> *The Legislature shall divide the State into four judicial departments. The first department shall consist of the county of New York; the others shall be bounded by county lines, and be compact and equal in population as nearly as may be. Once every ten years the Legislature may alter the judicial departments, but without increasing the number thereof. There shall be an Appellate Division of the Supreme Court, consisting of seven Justices in the First Department, and of five Justices in each of the other departments. In each department four shall constitute a quorum, and the concurrence of three shall be necessary to a decision No more than five Justices shall sit in any case. From all the Justices elected to the Supreme Court the Governor shall designate those who shall constitute the Appellate Division in each department; and he shall designate the Presiding Justice thereof, who shall act as such during his term of office, and shall be a resident of the department. The other Justices shall be designated for terms of five years, or the unexpired portions of their respective terms of office, if less than five years.*

It replaced the process by which appeals went from trial courts to Supreme Court General Term.

On the 100th anniversary of the court, each of the four departments put out a publication giving its history.[266] Here follows excerpts from those publications:

FIRST DEPARTMENT

> On January 6, 1896, at one o'clock in the afternoon, the first session of the Appellate Division of the Supreme Court, First Department, took place at 111 Fifth Avenue in New York City.
>
> The Justices seated at that first session were Presiding Justice Charles H. Van Brunt, and Justices George C. Barrett, Morgan J. O'Brien, Edward G. Patterson and P. C. Williams. They faced a dignified and notable body of spectators, including Joseph Choate and Elihu Root, whose political skills and organizational abilities had shepherded the revisions of Article VI through the Convention. Root, in addressing the new tribunal, expressed his belief that "the Court would be second to none in power, honor and dignity."
>
> In June 1896, the Justices of the First Department approved plans for the construction of a courthouse suitable for the sort of court that Elihu Root had envisioned.
>
> The architect commissioned to prepare plans for the new courthouse was James Brown Lord, who was given complete control of the artists and their work. Lord turned to the high classical tradition's use of columned porches and statues, drawing on the style and

[266] For the First Department, *see* https://www.nycourts.gov/courts/AD1/courtinfo/aboutthecourt.shtml. For the Second Department, *see* https://history.nycourts.gov/wp-content/uploads/2018/11/History_Appellate-Second-1896-1996.pdf. For the Third Department, *see* https://history.nycourts.gov/wp-content/uploads/2018/11/History_Appellate-Third-1896-1996.pdf.

tradition of Andrea Palladio, the famous architect of Vincenza. To fund this courthouse, the City of New York budgeted $700,000, a large sum for such a building in those days. The courthouse in fact cost only $633,768, and was completed in time for its scheduled opening in 1900.

On January 2, 1900, the Court took formal possession of its new courthouse at 27 Madison Avenue. It has remained at this 25th Street location since that time.[267]

SECOND DEPARTMENT

The first case that the court decided in 1896 at the Appellate Division Second Department was reported by Marcus T. Hun, and appears in the volume cited as 1 Appellate Division. It involved an action brought against the endorser of a promissory note, on an appeal from what was then called the Kings County Circuit (see*, Kinsland Land Co. v Newman*, 1 App Div 1). When the Appellate Division, Second Department, was established, it was housed in a courtroom in Brooklyn's Borough Hall. The grandeur of the court's prior trappings may still be seen in Borough Hall's refurbished ceremonial courtroom. In 1938, the present courthouse opened its doors. The Appellate Division was conceived as a court that had the jurisdiction to provide review for the vast majority of cases, leaving the Court of Appeals free to declare and settle the law. History has validated that design. In the ensuing one hundred years, the Appellate Division has heard a multitude of cases, both civil and criminal, under its broad power to review both legal and factual questions. During its first hundred years, the court has seen many milestones. Its first Black Justice was appointed in 1980 and its first woman Justice was appointed in 1984. In April, 1994, a bench of the court was solely comprised of female Justices. This was the first time this had occurred in an appellate court in the history of the State of New York.[268]

THIRD DEPARTMENT

The Third Department held its first two regular sessions, in January and April 1896, and an extraordinary session in October 1896, in Albany's present City Hall, where it occupied temporary quarters and convened in the Common Council chambers. The Court's predecessor, the General Term, had previously been housed in the same building. The Court heard its first case on Tuesday, January 14, 1896.

The first lawyer to argue before the Court was Isaac H. Maynard, who had been a member of the Court of Appeals from 1892 to 1893. He appeared in a railroad condemnation proceeding, which was one of the Court's earliest reported decisions (*Erie & Central New York R. Co. v Welch*, 1 App Div 140). The Court issued 14 opinions from that January 1896 term. The first reported decision, *People ex rel. French v Town* (1 App Div 127), an opinion by Presiding Justice Parker, held that the board of street commissioners of the Village of Saratoga Springs had no authority to hire an attorney to

[267] https://www.nycourts.gov/courts/AD1/courtinfo/aboutthecourt.shtml; *see*, also, https://history.nycourts.gov/wp-content/uploads/2018/12/History_Appellate-First-1896-1996.pdf; https://history.nycourts.gov/biographies/app-div-first-dept-judges/.

[268] https://history.nycourts.gov/wp-content/uploads/2018/11/History_Appellate-Second-1896-1996.pdf; *see,* also, https://history.nycourts.gov/biographies/app-div-second%20-dept-judges/.

protect Village property since the Village board of trustees had retained an attorney whose services were available to the board of street commissioners.

Nearly 80 years later, the case was cited with approval by the Court of Appeals (*Cahn v Huntington*, 29 NY2d 451, 454). The other decisions issued from the first term concerned procedural matters, a Village of Cortland ordinance controlling the sale of intoxicating liquors, a Delaware County case in which a wife sued the seller of liquor to her husband for resulting injuries to herself after the husband became intoxicated, an action on a promissory note given for a loan to purchase a popcorn wagon, and interpretation of a provision of a will probated in the Broome County Surrogate s Court bequeathing $1,000 to the Japan Mission. The present City Hall is the second city hall to occupy the site, the first having been destroyed by a fire of mysterious origin on February 10, 1880. City Hall was built during the years 1881 to 1883.[269]

FOURTH DEPARTMENT

The Constitution of 1894 replaced the five existing General Terms with four Appellate Divisions. The jurisdiction of the Fourth Department was drawn to include the Fifth Judicial District, comprised of the counties surrounding the Cities of Syracuse, Utica and Watertown; the Seventh Judicial District, comprised of the counties surrounding Rochester; and the Eighth Judicial District, comprised of the counties surrounding Buffalo. The Cities of Syracuse, Rochester and Buffalo all competed for The Day Calendar for January 21, 1896 prepared by Newell C. Fulton, the first clerk of the court the new appellate court.

The Rochester Union and Advertiser reported that the Rochester Chamber of Commerce planned to send a delegation to Albany in March 1895 to the Assembly's Judiciary Committee, to urge that committee to select Rochester as the site of the Appellate Division. Additionally, the Monroe County Bar Association received letters from prominent attorneys in several Appellate Division, Fourth Department, 100th Anniversary.

The Appellate Division sitting in Syracuse during the October 1995 Term "Appellate Division, Fourth Department, 100th Anniversary" counties, including Ontario, Genesee and Chemung, urging that Rochester be chosen as the site. In Syracuse, the plan for the new courthouse included an Appellate Division courtroom. Indeed, when the court-house in Syracuse was constructed in the early 1900's, the courtroom was included even though the Appellate Division was already located in Rochester.

Undoubtedly, the central location of Rochester within the Fourth Department was a critical factor in its selection as the site of the Court. The New York State Archives reports that Rochester also had an edge over Syracuse and Buffalo because, by the 1870s, Rochester held two General Terms every year as opposed to one each held in Syracuse and Buffalo. Rochester also had a special advantage because of its law library. The library was established by chapter 386, § 35 of the Laws of 1840, which reduced the salaries of Supreme Court Clerks and other court officers and used the money saved to purchase law

[269] https://history.nycourts.gov/wp-content/uploads/2018/11/History_Appellate-Third-1896-1996.pdf; *see*, also, https://history.nycourts.gov/biographies/app-div-third%20-dept-judges/.

books for the library and Supreme Court Justices. The Supreme Court libraries in Syracuse and Buffalo, however, were not established until approximately 20 years later.

On January 21, 1896, at 10:00 A.M., the Appellate Division, Fourth Department, held its first session in the new courthouse located on Main Street in Rochester. Present on the bench were Hon. George A. Hardin, Presiding Justice, and Associate Justices Hon. David L. Follett, Hon. Manley C. Green, and Hon. William A. Adams. The January 21, 1896 edition of the Rochester Union and Advertiser reported that, although Hon. Hamilton Ward of Buffalo was expected, he had not yet arrived.

The Court's first five justices included a former Presiding Justice of the General Term, a former District Attorney and State Senator, a former member of Congress, a former Chief Judge of the temporary second division of the Court of Appeals, and a former practitioner from a small community. The designation of justices with distinguished legal careers has provided this Court with successive benches composed of the finest judicial talent available. Moreover, the varied backgrounds of its justices had enabled this Court, throughout its history, to view its cases from differing perspectives, thereby helping to insure the fairness of its decisions.[270]

Appellate Term

The Appellate Terms exist only in the First and Second Departments. Their genesis can be traced back to the New York Constitution of 1894, which established an Appellate Division of the Supreme Court in each of the four Departments.

That Constitution also provided in Article VI, section 5, that the Appellate Division would hear appeals from certain lower courts. Shortly thereafter, the New York Legislature enacted section 1344 of the Code of Civil Procedure in 1895, which created the appellate terms by providing that: Appeals from judgments or orders of the Municipal Court of the City of New York or from judgments or orders of the City Court of the City of New York may be heard either by the Appellate Division *or by not less than three justices of the Supreme Court in each of the First and Second judicial departments, who shall be… known as the Appellate Term of the Supreme Court in the First and Second Departments, respectively*.[271]

The first decisions rendered by the Appellate Term are dated as early as 1895.[272]

Given the appellate terms' growing success, the New York State Constitution, which became effective in 1939, gave the respective Appellate Divisions authority to establish an appellate term in Article VI, section 3:

> *The appellate divisions in the first and second departments shall severally have the power to establish an appellate term of the supreme court to be held in and for its department, to be constituted by no less than three no more than five justices of*

[270] *See*, https://history.nycourts.gov/biographies/app-div-fourth-dept-judges/

[271] *Katz v. Waneta Realty Co*., 191 A.D. 509, 509(1st Dept. 1920).

[272] *In re Webb's Will*, 33 N.Y.S. 968 (App. Term 2d Dept 1885); *Lynch v. Sauer,* 16 Misc. 362 (App. Term 1st Dept. 1896).

the supreme court, who shall be designated from time to time by such appellate division and shall be residents of the department.

Pursuant to this constitutional provision, the appellate terms were authorized in the First and Second Departments by their respective Appellate Divisions. Notably, the Appellate Divisions in the Third and Fourth Departments chose not to create appellate terms.

The Appellate Term in the First Department hears appeals from the New York City Civil Court and Criminal Court in New York County (1st Judicial District) and Bronx County (12th Judicial District).[273]

There is no automatic right to appeal the Appellate Term's determinations. In criminal cases, an aggrieved party must seek leave to appeal to the Court of Appeals. In civil cases, the aggrieved party must seek permission to appeal from the Appellate Term, or if it is denied, from the Appellate Division.[274]

In January 1968, the Appellate Division, Second Department divided its Appellate Term into two courts. Currently, one court covers the 2nd, 11th and 13th Judicial Districts, which consist of Kings, Queens, and Richmond Counties.[275]

The Appellate Term 1st Department hears appeals from Civil and Criminal Courts in those counties, all of which are part of New York City. The other Appellate Term, in the Second Department, serves the 9th and 10th Judicial Districts, encompassing Nassau, Suffolk, Westchester, Rockland, Orange, Putnam, and Dutchess Counties. It hears appeals from City and Justice Courts located in those judicial districts, and from District Courts in Nassau County and Suffolk County. Additionally, it determines civil appeals from County Courts in its districts, except for Sex Offender Registration Act cases. Practice before both courts is governed by the Rules for the Appellate Term, Second Department, as codified in 22 N.Y.C.R.R. Parts 730 and 731.16.

Each of the Appellate Term benches in the First and Second Departments consists of five Supreme Court justices appointed by the Chief Administrative Judge of the State of New York with the approval of the Presiding Justice of the respective Appellate Division.[276]

In each Appellate Term, Justices sit in panels of three; two are sufficient for a quorum, and two justices must concur for a decision. Similar to the Appellate Division, the Appellate Term reviews both questions of law and fact, as well as the exercise of discretion by the court below. The bulk of the appeals in civil matters arise in the context of commercial and residential landlord-tenant litigation, first-party no-fault benefits cases, and small claims. Previously, the civil jurisdiction monetary limit in New York City lower courts, other than in landlord-tenant cases and with respect to counterclaims, was $25,000.

In criminal matters, which include misdemeanors and violations, most appeals involve the sufficiency of an accusatory instrument, a plea, or a verdict. In general, a judgment of conviction

[273] *See* N.Y. Const. art. VI, § 8(d); 22 N.Y.C.R.R. § 640.1; The rules of practice before this court are found in 22 N.Y.C.R.R. Part 640 - Rules of Practice (§ 640.1 to 640.10)
[274] *See* N.Y. Crim. Proc. §§ 450.90, 460.20, & 460.30; C.P.L.R. § 5703(a).
[275] *See* 22 N.Y.C.R.R. § 730.1(a)(1).
[276] *See* N.Y. Const. art. VI, § 8(a).

must be rendered before a defendant can take an appeal, and the People cannot appeal a verdict of acquittal.

In addition to appeals, the court reviews a substantial number of applications seeking, pursuant to CPLR § 5704(b), to vacate or modify an ex-parte order granted by a lower court or the grant of an ex-parte order refused by the court below. Most of these applications are emergency in nature and require immediate disposition. For example, if a Civil Court judge declines to sign an order to show cause containing a stay of eviction, an aggrieved tenant can apply to the Appellate Term, pursuant to CPLR § 5704(b). If the application is granted, the Appellate Term will issue an order making the order to show cause returnable in Civil Court.

The court has its own appellate courtroom equipped with a three-judge bench inside the building of the New York County Supreme Court at 60 Centre Street. On several occasions, the court has heard arguments also in the Bronx County Supreme Court. The Appellate Term for the 2nd, 11th and 13th Judicial Districts sits most of the time in a private building at 141 Livingston Street in Brooklyn. Twice a year the court sits in Queens, and once a year in Staten Island

The Appellate Term for the 9th and 10th Judicial Districts alternates its sittings generally between three locations: Mineola, White Plains, and Central Islip.[277]

Surrogate's Court

The Surrogate's Courts are statutory courts that were established by chapter 38 of the Laws of 1787. The Surrogate's Court, one in each county, has jurisdiction in probate and administration of estates within the county. Surrogate's Courts have concurrent jurisdiction with the Family Court and the Supreme Court over guardianships of the person and property of infants. Family and Surrogate's Courts have concurrent jurisdiction over adoption proceedings.[278]

The Constitution of 1846 officially creates the office:

> *§ 14. [County judges and surrogates.]—There shall be elected in each of the counties of this state, except the city and county of New York, one county judge, who shall hold his office for four years. He shall hold the county court and perform the duties of the office of surrogate.*

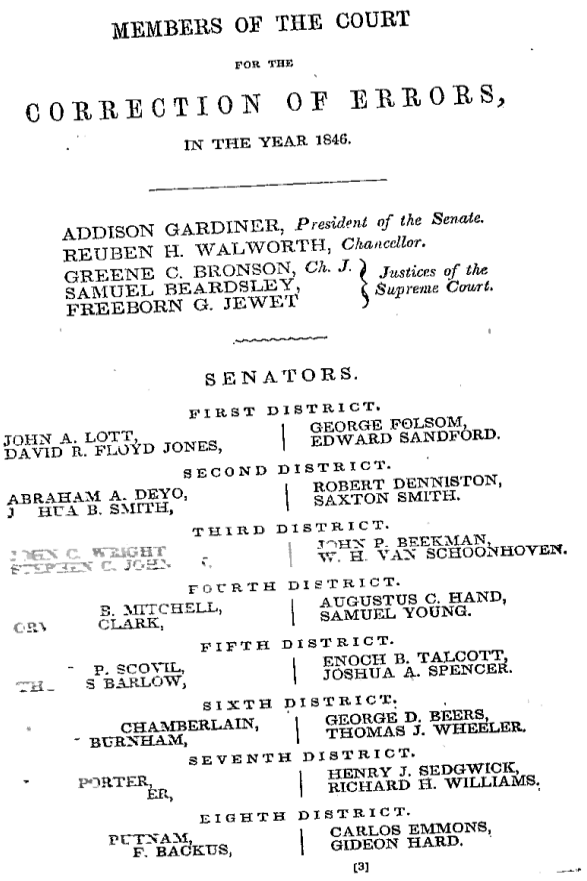
In counties having a population exceeding forty thousand, the legislature may provide for the election of a separate officer to perform the duties of the office of surrogate.[279]

Court for the Trial of Impeachments and Correction of Errors, 1777-1846

[277] This segment, on the Appellate Term, taken from Clara Flebus, *The Appellate Term: A Cherished Known "Unknown" Court*, 17 Jud. No. 36, https://history.nycourts.gov/wp-content/uploads/2023/08/22_Judicial_Notice_Issue-17_compressed.pdf.

[278] Historical Society of the New York Courts, https://history.nycourts.gov/case/surrogates-court/.
[279] Franklyn C. Setaro, *The Surrogate's Court of New York: Its Historical Antecedents,* 2 N.Y.L. SCH. L. REV. 283 (1956), https://digitalcommons.nyls.edu/cgi/viewcontent.cgi?article=1778&context=nyls_law_review.

Established by the Constitution of 1777, it was the court of final appeal, replacing the Provincial right of final appeal to the Crown in London. The Court heard appeals from the New York Court of Chancery and the New York Supreme Court of Judicature. Its members consisted of the President of the New York Senate, the New York Senators, and either the Judges of the Supreme Court or the New York Chancellor, depending upon the court from which the appeal was taken. With the creation of the office of court reporter we begin to see the decisional output of this court, under the names of Johnson, Caines, Cowan, Wendell, Hill, Denio, and Lockwood. The database computes 930 cases reported from 1800 to 1847.



MEMBERS OF THE COURT

FOR THE

CORRECTION OF ERRORS,

IN THE YEAR 1846.

ADDISON GARDINER, *President of the Senate.*
REUBEN H. WALWORTH, *Chancellor.*
GREENE C. BRONSON, *Ch. J.* } *Justices of the*
SAMUEL BEARDSLEY, } *Supreme Court.*
FREEBORN G. JEWET

SENATORS.

FIRST DISTRICT.
JOHN A. LOTT, DAVID R. FLOYD JONES, | GEORGE FOLSOM, EDWARD SANDFORD.

SECOND DISTRICT.
ABRAHAM A. DEYO, J HUA B. SMITH, | ROBERT DENNISTON, SAXTON SMITH.

THIRD DISTRICT.
[illegible] | JOHN P. BEEKMAN, W. H. VAN SCHOONHOVEN.

FOURTH DISTRICT.
B. MITCHELL, CLARK, | AUGUSTUS C. HAND, SAMUEL YOUNG.

FIFTH DISTRICT.
P. SCOVIL, S BARLOW, | ENOCH B. TALCOTT, JOSHUA A. SPENCER.

SIXTH DISTRICT.
CHAMBERLAIN, BURNHAM, | GEORGE D. BEERS, THOMAS J. WHEELER.

SEVENTH DISTRICT.
PORTER, | HENRY J. SEDGWICK, RICHARD H. WILLIAMS.

EIGHTH DISTRICT.
PUTNAM, F. BACKUS, | CARLOS EMMONS, GIDEON HARD.

[3]

The Court for the Correction of Errors in 1846.

The Court of Errors was abolished under the Constitution of 1846 and replaced by the New York Court of Appeals.

In an important step in the Separation of Powers, no longer would the State's tribunal of last resort consist of both legislators and judges.[280]

The Court for the Trial of Impeachments and Correction of Errors was established by the Constitution of 1777. Commonly called the Court of Errors, it was the court of final appeal and replaced the Provincial right of final appeal to the Crown in London. The Court heard appeals from the New York Court of Chancery and the New York Supreme Court of Judicature, and its bench consisted of the President of the New York Senate, the New York Senators and either the Judges of the Supreme Court or the New York Chancellor, depending upon the court from which the appeal was taken. The Court of Errors was abolished under the Constitution of 1846 and replaced by the New York Court of Appeals.[281]

Court of Appeals

[280] *See*, Historical Society of the New York Courts, https://history.nycourts.gov/court/court-impeachments-errors/.
[281] Historical Society of the New York Courts, https://history.nycourts.gov/court/court-impeachments-errors/.

The Constitution of 1846 continued the Supreme Court, but made it subordinate to the appellate jurisdiction of Court of Appeals

> *§ 2. [Court of appeals.]—There shall be a court of appeals, composed of eight judges, of whom four shall be elected by the electors of the state for eight years, and four selected from the class of justices of the supreme court having the shortest time to serve. Provision shall be made by law for designating one of the number elected as chief judge, and for selecting such justices of the supreme court, from time to time, and for so classifying those elected, that one shall be elected every second year.*
>
> *§ 3. [Supreme court.]—There shall be a supreme court, having general jurisdiction in law and equity.*
>
> *§ 26. The court shall have full power to correct and redress all errors that may happen in the court of chancery, or in the supreme court. [1 R. L. 133, § 7.]*
>
> *§ 27. The court shall examine all errors that shall be assigned, or found, in any record brought from the supreme court, or in any process or proceeding touching the same; and shall have power to reverse or affirm the judgment of the supreme court, or to give such other judgment as the law may require.*[282]

To the same effect, See, L 1847 c. 320:

> *§ 8. The court shall have full power to correct and redress all errors that have happened to may happen, in the present supreme court and court of chancery, and that may happen in the supreme court organized by this act; and all laws relating to the court for the correction of errors, the jurisdiction, powers and duties thereof, the proceedings therein, and the officers thereof, and their powers and duties, shall be applicable to the court of appeals organized by this act; the jurisdiction, powers and duties therefore, the proceedings therein and the officers thereof and their powers and duties, so far as the same can be applied, and are consistent with the constitution, and the provisions of this act.*

By the Laws of 1847 c. 280, the New York Court of Appeals was made the State's high court, with authority to review errors of the New York Supreme Court.[283]

The Constitution of 1846 provided that the Court of Appeals succeed the Court for the Trial of Impeachments and assume its business:

> *The legislature, at its first session after the adoption of this Constitution, shall provide for the organization of the court of appeals, and for transferring to it the business pending in the court for the correction of errors, and for the allowance of writs of error and appeals to the court of appeals from the judgments and*

[282] From *Report[s] of the Commissioners Appointed to Revise the Statute Laws of this state: made to the Legislature pt. 3 1826/1828*, https://babel.hathitrust.org/cgi/pt?id=mdp.35112203964657&seq=52.
[283] https://history.nycourts.gov/wp-content/uploads/2018/11/Judiciary-Act-1847.pdf.

> *decrees of the present court of chancery and supreme court, and of the courts that may he organized under this Constitution.*[284]

As reported in the June 23, Albany *Argus*, the terms of the judges were determined by lottery.[285] The first name drawn, Freeborn G. Jewett, was designated to serve for two years. Greene C. Bronson, Charles H. Ruggles, and Addison Gardiner, were designated for terms of four, six and eight years, respectively. Judge-elect Jewett, having the shortest term to serve, was named Chief Judge. The lottery was also used to determine the terms for Justices elected to each of the eight Judicial Districts of the Supreme Court. Thereafter, the four Justices with the shortest terms to serve in the First, Third, Fifth and Seventh Districts were designated by the Governor to serve as ex-officio Judges of the 1847 Court of Appeals. These Justices were Samuel Jones, William B. Wright, Thomas A. Johnson, and Charles Gray.

In January 1849, these Justices gave place to their counterparts in the Second, Fourth, Sixth and Eighth Districts. The rotation continued in subsequent years, with the four Supreme Court Justices from the designated Districts whose terms were ending each serving one year on the Court of Appeals. On Monday July 5, 1847, the holiday commemorating the Fourth, the Albany *Argus* listed the Doings of the Day, which included a general procession to the North Dutch Church where an oration was to be delivered by the poet Alfred B. Street.

After 20 years as constituted, the operation of the Court of Appeals was reviewed at the 1869 Constitutional Convention. The arrangement by which judges rotated in and out had created administrative and juridical problems. Each year, the Court lost half of its membership and acquired four different Justices from the Supreme Court. Every two years, the term of one of the Judges elected statewide would end, so that frequently more than half of the Court was replaced at the end of a year. In the first twenty-three years of the Court's existence, one hundred and twenty-three Judges were members of the Bench.

In his essay "The New York Court of Appeals: 1847-1977," Francis Bergan noted that:

> *Sometimes, as might be expected, Supreme Court justices came into the court with very strong ideas against the legal "There shall be a Court of Appeals…" policy which the court had been following. These justices made their views felt in the decision process, so that in some areas of ongoing development of the law, the court seemed to take a staggered course.*

Meanwhile, the State and country were growing rapidly, and life was becoming more complex. The eight General Terms, which were the intermediate appellate courts, issued decisions independent of and without reference to each other. Backlogs mounted in the Court of Appeals—the Court inherited some 1,500 cases which were pending before the Court for the Trial of Impeachments and the Correction of Errors in 1847—and, by 1865, it took four years for the Court to reach an unpreferred cause.

The Public Service of the State of New York, 1880–1882 criticized the arrangement by which judges sat in review of their own decisions. The commentators also believed the eight-year term was too short, rendering elections too frequent, often remitting a judge to private life just as he

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[284] *See*, also, Francis Bergan, *The History of the New York Court of Appeals, 1847-1932* (1985).
[285] Frances Murray and Judith Kaye*, There Shall be a Court of Appeals…: 150th Anniversary of the Court of Appeals of the State of New York* (1997).

had become most useful to the State, and possibly interfering with the complete independence of the Judiciary. An age limitation was once again considered desirable, although the limit of sixty years imposed by the earlier constitutions was rejected.[286]

Under the 1869 Constitution, the Court of Appeals emerged with a Chief Judge and six Associate Judges, each chosen by election and holding office for a term of fourteen years, with the retirement age set at seventy.

A Commission of Appeals was created to deal with backlog. The Commission consisted of five Commissioners—the four Judges elected statewide to the old Court, with a fifth Commissioner appointed by the Governor.

The members of the 1870 Court were Chief Judge Sanford E. Church, and judges William F. Allen, Rufus W. Peckham, Martin Grover, Charles A. Rapallo, Charles Andrews, and Charles J. Folger. The first meeting of the new Court of Appeals took place on Monday, July 4, 1870, in the Senate Chamber of the old Capitol. Secretary of State Homer A. Nelson administered the oaths of office to the Judges-elect.[287]

In 1917 there were major changes to the jurisdiction of the Court. Appeals as of right were abolished unless a constitutional question was directly involved, or a disagreement in the courts below appeared through reversal, modification or dissent. An appeal from any other final order would require the permission of the Appellate Division or, upon that court's refusal, permission of the Court of Appeals granted in the "interest of substantial justice." On January 8, 1917, dedication ceremonies marked the transfer of the newly renovated building, formerly known as the old State Hall, to the Court of Appeals. Henceforth to be known as Court of Appeals Hall, the building contained a newly designed addition into which the Richardson Courtroom was relocated from the third floor of the Capitol.[288]

A Constitutional amendment authorized the central administration of the State courts, now known as the Unified Court System. A major change took place in 1977 with the repeal of the 1846 constitutional provision requiring that the Judges of the Court of Appeals be elected. The amendment provided that, henceforth, the Judges of the Court of Appeals would be chosen by the Governor from a list of names recommended by the Commission on Judicial Nomination and approved by the New York State Senate. Another major change implemented by the adoption of the 1977 constitutional amendment provided that the Chief Judge of the Court of Appeals would be the Chief Judge of the State of New York and the Chief Judicial Officer of the Unified Court System. Legislation enacted in 1985 granted the Court more control over its docket. Commonly known as Chapter 300 and affecting only civil appeals, the statute abolished appeals as of right from a reversal or modification by the Appellate Division, or upon a single dissent from the decision of an Appellate Division panel. A 1985 allowed the Court to answer questions of New York law certified to it by the Supreme Court of the United States, a Court of Appeals of the United States, or an appellate court of last resort of another state.

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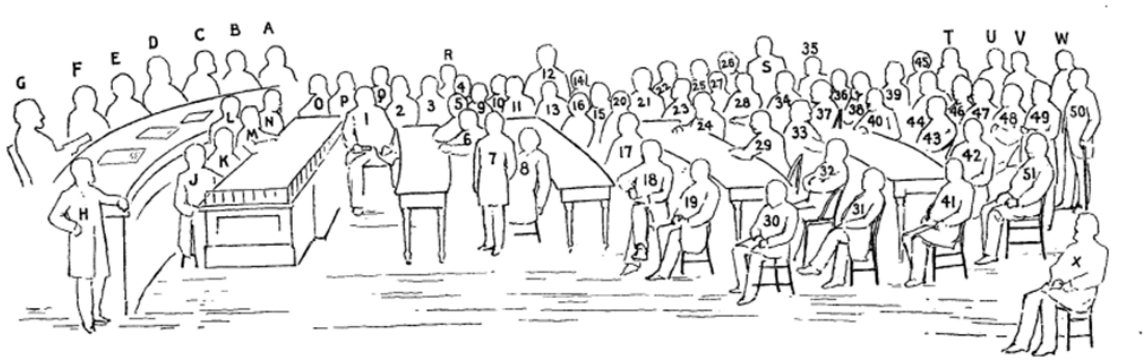
[286] Frances Murray and Judith Kaye, *There Shall be a Court of Appeals…: 150th Anniversary of the Court of Appeals of the State of New York* (1997).
[287] Frances Murray and Judith Kaye, *There Shall be a Court of Appeals, 150th Anniversary of the Court of Appeals of the State of New York* (1997), 2-14.
[288] Frances Murray and Judith Kaye, *There Shall be a Court of Appeals, 150th Anniversary of the Court of Appeals of the State of New York* (1997), 20.

This certification practice has continued in effect, with a great many cases certified to it, mostly from the Federal Court of Appeals for the Second Circuit.[289]



KEY TO PHOTOGRAPH, COURT OF APPEALS. (1878).

JUDGES OF THE COURT.

G. Hon. Theodore Miller.
F. Hon. Charles A. Rapallo.
E. Hon. Wm. Allen.
D. Hon. Sanford E. Church, Chief Justice.
C. Hon. Charles J. Folger.
B. Hon. Charles Andrews.
A. Hon. Robert Earle.

OFFICERS OF THE COURT.

H. Amos Dodge, Court Crier.
I. F. Stanton Perrin, Deputy Clerk.
K. Hon. E. O. Perrin, Clerk of the Court.
L. A. J. Chester, Attendant.
M. G. Parks, Assistant Clerk.
N. H. E. Sickles, Reporter.
X. J. Cooper, Doorkeeper.

1. Hon. Matthew Hale, Albany, N.Y.
2. Prof. T. W. Dwight, N. Y. City.
3. Hon. Charles Hughes, Sandy Hill, N.Y.
4. J. E. Burrill, Esq., N.Y. City.
5. A. J. Vanderpool, Esq., N.Y. City.
6. *Hon. Samuel Hand, Albany.
7. Hon. Wm. M. Evarts, Washington, D.C.
8. *Hon. Jas. K. Porter, New York City.
9. W. C. Ruger, Esq., Syracuse.
10. Wm. H. Waring, Esq., Brooklyn, N.Y.
11. S. P. Nash, Esq., N.Y. City.
12. Hon. David Dudley Field, N.Y. City.
13. Hon. Geo. B. Bradley, Corning, N.Y.
14. Hon. Horatio Ballard, Courtland, N.Y.
15. **Hon. Daniel Pratt, Syracuse, N.Y.
16. *Hon. Geo. F. Comstock, Syracuse.
17. Joseph H. Choate, Esq., N.Y. City.
18. Hon. Francis Kernan, Utica.
19. **Hon. Amassa J. Parker, Albany.
20. Hon. Sherman S. Rogers, Buffalo.
21. Benj. D. Silliman, Esq., Brooklyn.
22. E. D. Roman, Esq., Albany.
23. Hon. J. McGuire, Elmira, N.Y.
24. William Allen Butler, N.Y. City.
25. N. Comstock, Esq., Brooklyn.
26. Hon. J. Lawrence Smith, Smithtown, L.I.
27. Calvin Frost, Esq., Peekskill, N.Y.
28. John Sherwood, Esq., N.Y. City.
29. Hon. Homer A. Nelson, Po'keepsie, N.Y.
30. Gen'l Jas. H. Martindale, Rochester.
31. *Hon. Henry E. Davis, N.Y. City.
32. Hon. A. Schoonmaker, Jr., Att'y Gen'l.
33. Hon. Geo. F. Danforth, Rochester.
34. Elbridge T. Gerry, Esq., N.Y. City.
35. J. Hampton Wood, Esq., Albany.
36. N. C. Moak, Esq., Albany.
37. L. B. Kerr, Esq., DeRuyter, N.Y.
38. Esek Cowan, Esq., Troy, N.Y.
39. Hon. A. P. Lanning, Buffalo, N.Y.
40. W. F. Coggswell, Esq., Rochester.
41. Hon. Wm. A. Beach, N.Y. City.
42. *Hon. Henry R. Seldon, Rochester.
43. Roger A. Pryor, Esq., Brooklyn.
44. Hon. E. C. Sprague, Buffalo, N.Y.
45. Hon. John F. Seymour, Utica.
46. Benj. K. Phelps, Esq., New York City.
47. Jas. Hubbell, Esq., Buffalo.
48. Geo. N. Kennedy, Esq., Syracuse.
49. W. A. Poucher, Esq., Oswego, N.Y.
50. W. W. McFarland, Esq., N.Y. City.
51. Rufus W. Peckham, Esq., Albany.

O. Geo. C. Eldridge.
P. F. J. Swinburne.
Q. W. M. Scott.
R. J. K. Larmon.
S. Scott D. M. Goodwin.
T. S. W. Rosendale.
U. A. T. Bulkley.
V. P. F. Miller.
W. Geo. H. Stevens.

*Formerly Judge of the Court of Appeals. **Ex-Judge, Supreme Court.

From 2 Green Bag 277 (1890) Irving Browne, The New York Court of Appeals, with thanks to Ross Davies.

Court of Appeals Second Division

In 1887, the Legislature adopted a Resolution to amend the Constitution to provide for a second division of the Court of Appeals. On November 6, 1888, the voters approved it by a wide margin The Court sat from March 1889 through October 1892. Its decisions appear in the even numbered volumes of the *New York Reports* from 114 to 134. The Division consisted of seven judges, appointed by Gov. David B. Hill: Chief Judge David F. Follett, and judges George B. Bradley, Joseph Potter, Irving Vann, Albert Haight, Alton B. Parker, and Charles F. Brown. In late 1891, Judson Landon replaced Joseph Potter.[290]

[289] For a list of judges who have served on the New York Court of Appeals beginning in 1847, *see* the Historical Society of the New York Courts' website, https://history.nycourts.gov/biographies/nys-court-appeals-judges/.

[290] *See*, Albert M. Rosenblatt, *The Judges of the New York Court of Appeals* (2007), 1009-1010; Bergan, *The History of the New York Court of Appeals, 1847–1932* (1985), 132-136.

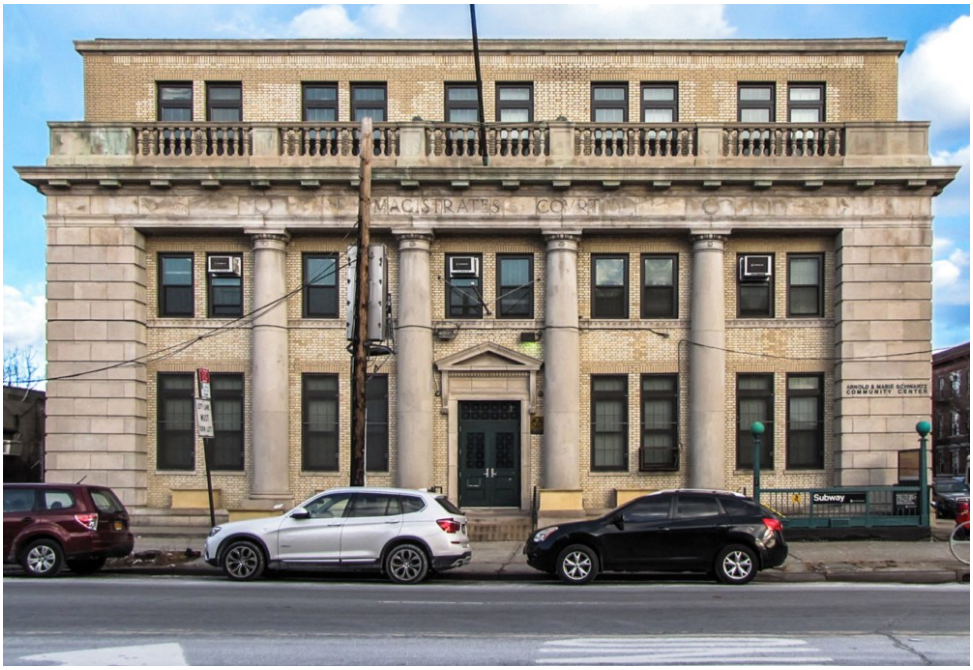
Commissioners of Appeals

To handle a growing backlog of cases, the Commissioners of Appeal came into existence simultaneously with the re-shaped Court of Appeals of 1870. Co-equal in authority with the Court of Appeals, the Commissioners took on the pre-1870 cases. Their decisions appear in 44 N.Y. The Commissioners consisted originally of John A. Lott (Chief Commissioner), Robert Earl, Ward Hunt, Hiram Gary, and William Leonard, followed by Alexander S. Johnson, Charles C. Dwight, and John H. Reynolds.

Criminal Court of the City of New York

The Legislature created the court in 1962:

> *This act shall be known as "The New York City Criminal Court Act."*
>
> *The criminal court of the city of New York is hereby established as a single, city-wide court, as provided by sections one and fifteen of article six of the constitution; it shall be a part of the unified court system for the state, and a court of record with such power and jurisdiction as are herein or elsewhere provided by law. It shall consist of the number of justices of the court of special sessions of the city of New York and magistrates of the city magistrates' courts of the city of New York authorized by law on the first day of March, nineteen hundred sixty - two. Each of the justices of the court of special sessions of the city of New York and each of the magistrates of the magistrates' courts of the city of New York in office on the first day of September, nineteen hundred sixty-two shall, until the last day of the year in which the term for which he was appointed would otherwise have expired, be a judge of the criminal court of the city of New York.*
>
> *§ 21. Administration (1) As provided by section twenty-eight of article six of the constitution and article seven-A of the judiciary law, the appellate divisions of the supreme court in the first and second judicial departments shall supervise the*



administration and operation of the court in their respective departments, either separately or jointly…[291]

This former courthouse, designed in the neo-Classical style popular for government buildings at the time, the Magistrate's Court was the work of Mortimer Dickerson Metcalf, who previously worked for the prestigious New York architectural firm of Warren & Wetmore (architects of Grand Central Terminal). It was one of many such courthouses in Brooklyn, where low-level criminal cases were heard until the city's court system was centralized in 1962 (From the Historic District Council, https://6tocelebrate.org/site/former-magistrates-court/).

District Court of Nassau County

The enabling legislation for the District Court of Nassau County began with L.1936, c. 879.[292]

The law provided for the organization and establishment of a County District Court—an inferior court having civil and criminal jurisdiction. A general referendum was held in the County of Nassau, at which the voters approved and adopted the form of government as provided by the enabling legislation The Legislature then enacted the Nassau County District Court Act in L.1939, c. 274.

The Act provided that the Judges of the District Court might hold Courts of Special Sessions within the county and that, as such, Courts of Special Sessions should have original and exclusive jurisdiction of all misdemeanors committed within the county. By chapter 565 of the Laws of 1963, the Legislature adopted the Uniform District Court Act.

This act provided for the jurisdiction and the practice and procedure in each District Court governed by the Uniform District Court Act. At the time, the Nassau County District Court was still governed by the Nassau County District Court Act as to jurisdiction, practice and procedure.

[291] https://babel.hathitrust.org/cgi/pt?id=uc1.b4378119&seq=505&q1=%22criminal+court%22&start=1. For a list of current Criminal Court judges, *see* https://www.nyc.gov/site/macj/appointed/criminal-court.page.
[292] *Doran v District Court of County of Nassau,* 45 Misc. 2d 212 (1965).

By chapter 568 of the Laws of 1963, the Legislature repealed the Nassau County District Court Act and amended the County Government Law which had established the District Court of Nassau County and provided an amendment to section 2401 of the Nassau County Government Law so as to create in the County of Nassau a District Court to be governed by the Uniform District Court Act above referred to. Chapter 568 of the Laws of 1963 became effective September 1, 1963.

On that day, the Judges of the court were empowered to sit as a Court of Special Sessions and were given original jurisdiction on all misdemeanors committed within the limits of the County of Nassau. Until this amendment became effective, the District Court had not only original jurisdiction but exclusive jurisdiction of all misdemeanors. They still retained the original jurisdiction of all misdemeanors under the Uniform District Court Act.[293]

District Court of Suffolk County

The Suffolk County District Court became operational in January 1964. Prior to its creation, each of the five western towns of the county (Babylon, Huntington, Smithtown, Islip and Brookhaven) had what would now be considered a town justice court (as the five eastern towns of Suffolk County still operate).

The Uniform District Court Act transferred the authority of the five western town courts to the newly established District Court and provided for a courthouse in each of the five districts and a central location referred to as the First District.

First District Court encompasses the towns of Babylon, Brookhaven, Huntington, Islip, and Smithtown, with the court located in Islip.

Second District Court encompasses the town of Babylon.

Third District Court encompasses the town of Huntington.

Fourth District Court encompasses the town of Smithtown.

Fifth District Court encompasses the town of Islip.

Sixth District Court encompasses the town of Brookhaven.

In 1993, that "central location" became the District Court Building of the Cohalan Court Complex in Central Islip (which also houses other state courts and county agencies). In Central Islip, judges hear criminal matters as a local criminal court, as provided in the Criminal Procedure Law (CPL).

In 1998, First District Court Civil Division opened in Ronkonkoma, sharing the facility with Fifth District Court. In this courthouse, and the other four "outlying" courthouses, judges hear civil matters, small and commercial claims, landlord & tenant matters, and town ordinance offenses (which are prosecuted by the Town Attorney's office in each of the towns).

[293] *Doran v District Court of County of Nassau*, 45 Misc. 2d 212 (1965), 214.

The Suffolk District Court now consists of 24 Judges and a support staff of 330 non-judicial state employees in six different facilities in five towns. In 2004, over 70,000 criminal cases, 58,000 civil filings, and 21,000 parking tickets were accepted, over 1,000 trials were heard, and more than $10,000.000 in fines, fees, and bail was received by the court.

Under the District Court Act § 2401:

> *District court establishment. There shall be a district court system established in the area or areas of the county of Suffolk as herein provided. The Suffolk County district court shall be an inferior court and the judges thereof shall have the civil and criminal jurisdiction prescribed hereinafter. Such court shall not be a court of record*.[294]

City Court, Town Court, Village Court

Article 6 Sec 17 of the New York Constitution contemplates city, town, and village courts:

> *§17. a. Courts for towns, villages and cities outside the city of New York are continued and shall have the jurisdiction prescribed by the legislature but not in any respect greater than the jurisdiction of the district court as provided in section sixteen of this article. b. The legislature may regulate such courts, establish uniform jurisdiction, practice and procedure for city courts outside the city of New York and may discontinue any village or city court outside the city of New York existing on the effective date of this article*.[295]

CITY COURT

Under L. 1988, ch 397, City Courts were established.

> *Section 1. In each city of the state, other than the city of New York, wherein there are established for that city two or more separate courts, such courts shall be merged into a single court which shall be known as the city court of such city*.[296]

That statute is the source for Sec. 2104 of the Uniform City Court Act, which prescribes the qualifications, terms, distinction between full and part-time judicial service on the court, number of judges, methods of selection, and methods of filling vacancies

Establishment of City Courts is governed by the Uniform City Court Act, which governs

[294] *See*, https://ww2.nycourts.gov/courts/10jd/suffolk/dist/history.shtml.
[295] *See*, generally, *New York City Bar Assoc. Task Force on Town and Village Courts*, October 2007, https://www.nycbar.org/pdf/report/Town%20_Village_TF.pdf.

[296] *See*, also, Uniform Justice Court Act ("UCJA") §103(a) & (b). 8UCJA § 105; 22 NYCRR § 17.2. Became a law July 29 1988; Online at https://heinonline-org.proxy.library.nyu.edu/HOL/Page?collection=ssl&handle=hein.ssl/ssny0009&id=624&men_tab=srchresults.

1. Qualifications for city court judges, including being an attorney admitted to practice law in New York for at least 5 years and residing in the city or county where the court is located (with some exceptions specified).

2. Terms of office for city court judges, which are generally 6 years for part-time judges and 10 years for full-time judges.

3. Restrictions on full-time city court judges engaging in the practice of law or other professional business that interferes with their judicial duties.

4. The specific number of city court judges (both full-time and part-time) for each city court outside of New York City.

5. Methods for selecting city court judges, which can be through election or appointment by the mayor, city council, or city commission, depending on the city and whether the judgeship is full-time or part-time.

6. Procedures for filling vacancies in city court judgeships, either through temporary appointments or special elections.

The Town and Village Courts are established by the New York State Constitution as part of the Unified Court System. NY Const., Art. VI, §§ 1(a), 17.[297]

At present there are city courts in many locations:

Albany
Auburn
Canandaigua
Cohoes
Hudson
Kingston
Watervliet
Rensselaer
Troy
Amsterdam
Geneva
Glens Falls
Gloversville
Johnstown
Mechanicville
Ogdensburg
Plattsburgh
Saratoga Springs
Schenectady
Fulton
Little Falls
Oswego
Rome
Rochester
Syracuse
Sherrill
Utica
Binghamton
Cortland
Elmira
Ithaca
Norwich
Olean
Oneida
Oneonta
Batavia
Buffalo
Dunkirk
Jamestown
Lackawanna
Lockport
Niagara Falls
North Tonawanda
Olean Salamanca
Beacon
Peekskill
Middletown
Mount Vernon
Newburgh
New Rochelle
Port Jervis
Poughkeepsie
Rye
Tonawanda
Watertown
White Plains
Yonkers
Glen Cove
Long Beach

[297] https://www.nycbar.org/pdf/report/Town%20_Village_TF.pdf.

TOWN COURTS

There are close to 1,200 Town and Village Courts (collectively known as the Justice Courts) located in most of New York State's town and villages (none are located in New York City). The nearly 1,800 Town and Village judges handle close to 1 million cases a year.[298]

Under Sec. 20 of the Town Law:

> *Every town of the first class shall have a supervisor, four town council members, unless the number of council members shall have been increased to six or decreased to two as provided by this chapter, a town clerk, two town justices, a town superintendent of highways, one assessor, a receiver of taxes and assessments, as many town police officers and such other employees as the town board may determine necessary for the proper conduct of the affairs of the town.*

VILLAGE COURTS

Under the Village Law, Sec 3-301, each Village must have a mayor, trustees, a treasurer, and a clerk, but it *may* have no more than two village justices and has the power to abolish the office:

> *The office of village justice is continued in every village in which it is now established. The board of trustees of any other village may establish such office by resolution or local law, subject to a permissive referendum. The board of trustees of any village by resolution or local law, subject to permissive referendum, may abolish such office…*

A number of Attorney General Opinions address the point:

> *A village in which the office of justice has not been established has the option to establish the office. If it is not established, the town court would receive all village matters within the court's jurisdiction. The statutory residency requirement precludes a person from serving as justice in two or more villages*.[299]

> *A village in which the office of justice has not been established has the option to establish the office. If it is not established, the town court would receive all village matters within the court's jurisdiction. Whether a person may serve as justice for more than one village will depend upon the applicable residency requirement for each village*.[300]

> *Resolution of village board of trustees to abolish village justice court is subject to a permissive referendum and cannot be effective until the expiration of the current term of that office, even though there is a vacancy in that office; because the office cannot be abolished until the end of the current term, where there is a vacancy in the office the acting village justice continues in office and conducts the*

[298] Unified Court System of New York, https://www.nycourts.gov/courts/townandvillage/introduction.shtml.
[299] 1981 NY Ops Atty Gen Feb 11 (informal).
[300] 1981 NY Ops Atty Gen Feb. 11 (informal).

court until the vacancy in the office of village justice is filled. The vacancy must be filled. The village mayor has the authority to make the appointment.[301]

The salaries of town and village justices and the staffs of the Town and Village Courts, as well as expenses of the Courts, are paid by the municipality, village or town, in which the court is located.[302]

Village Courts are not mandatory. If a village decides to have a court, two justices are elected or one is elected justice and a second is appointed an acting justice who presides when the elected justice is not available. If a Village Court is abolished, the business of the court goes to the Town Court and the fines for violation of village law, ordinances or regulations remain the property of the village.[303]

Towns have two justices.[304] Through a town board resolution and permissive referendum, the number of justices can be reduced to one.[305] By amendment of UJCA § 106-a, effective July 18, 2007, the Legislature expanded the number of towns able to establish a single town court.

The Town and Village Courts are the only local courts for the 21 counties in which there are no City Courts.

According to the Spangenberg Report:

The various available sources do not agree on the number of Town and Village Courts. The Comptroller's website states that there are 1,270 Town and Village Courts; the Dunne Commission (at 21, 81) found 1,277 (Dunne Commission Report at 21, 81); and the Spangenberg Group and OCA found 1,281 (Spangenberg Report at 104 and Appx N; Action Plan at 8). Approximately 925 are Town Courts and 325 are Village Courts. Dunne Commission at 81; see also Spangenberg Report at 104 and Appx N (reporting 924 Town and 357 Village Courts). There are approximately 2,150 Town and Village judgeships. (The Comptroller put the number at 2,250.) The justices can hold preliminary felony and misdemeanor suppression hearings, negotiate dispositions, conduct trials (including jury trials where authorized), impose sentences, hear probation violation proceedings, and hold sex offender registration hearings. Proceedings at trial are conducted pursuant to the Criminal Procedure Law. UJCA § 2001.[306]

New York City Housing Court

The Civil Court of the City of New York consists of 3 parts: General Civil, Housing, and Small Claims. The Housing Part hears landlord-tenant matters and cases involving maintenance of

[301] 1974 NY Ops Atty Gen Aug 21 (informal).
[302] Town Law §§ 20(a), 20(b), 27, 116; Village Law § 4410(2); Judiciary Law §§ 39(1), 200.
[303] Village Law § 3-301(2); Uniform Justice Court Act ("UJCA") § 106 (1).
[304] Town Law § 20(a), (b).
[305] 8 Comptroller's November 2003 Report at 1.
[306] Spangenberg, *Status of Indigent Defense in New York: A Study for Chief Judge Kaye's Commission on the Future of Indigent Defense Services* (Final Report), June 16, 2006.

housing standards. The Small Claims Part hears cases where parties are seeking monetary relief up to $10,000.

Housing Court hears Non-payment, Holdover, HP cases (for tenants seeking repairs) Harassment, Article 7A cases, Illegal Lockouts.[307]

New York City Traffic Court (Traffic Violations Bureau)

This is an administrative agency managed by the NYS Department of Motor Vehicles. We include it only insofar as it is sometime called "Traffic Court."

The TVB is authorized by Vehicle and Traffic Law article 2-A, which was created by chapter 1074 of the laws of 1969 (enacted May 26, 1969, effective July 1, 1970) under Governor Rockefeller. The rationale behind the establishment of this office was to offload the large volume of such cases from the New York City Criminal Court, and also authorized local parking violations bureaus.

NY Veh & Traf L § 227 (2024):

> *§ 227. Hearings; determinations. 1. Every hearing for the adjudication of a traffic infraction, as provided by this article, shall be held before a hearing officer appointed by the commissioner. The burden of proof shall be upon the people, and no charge may be established except by clear and convincing evidence. The commissioner may prescribe, by rule or regulation, the procedures for the conduct of such hearings…*
>
> *3. After due consideration of the evidence and arguments offered in a contested case, the hearing officer shall determine whether the charges have been established. Where the charges have not been established, an order dismissing the charges shall be entered. Where a determination is made that a charge has been established, either in a contested case or in an uncontested case where there is an appearance before a hearing officer, or if an answer admitting the charge otherwise has been received, an appropriate order shall be entered in the department's records.*

Justices Court of City of Albany

The Laws of 1821, ch.47, contain "An act for establishing a Justices' Court in the city of Albany," passed February 16th, 1821, as follows:

> *Be it enacted by the people of the state of New York, represented in senate and assembly, that it shall and may be lawful for the person administering the government of this state, by and with the advice and consent of the council of appointment, from time to time, to appoint and continue three proper and discreet persons to be called and known by the name of "The justices of the Justices' Courts in and for the city of Albany"; and one other proper and discreet person,*

[307] *See,* Unified Court System, https://ww2.nycourts.gov/courts/nyc/housing/index.shtml.

to be called and known by the name of "The clerk of the Justices' Courts in and for the city of Albany," to hold their said offices respectively, for and during the pleasure of the said council; and the said commission of the judges aforesaid shall issue once at least in every three years; and in their said commissions said justices shall also be appointed justices of the peace in and for the county of Albany, with all and singular powers in criminal cases, incident to the offices of justices of the peace.

And be it further enacted that the said justices of the said Justices' Courts shall have power and authority to hold a court at the capitol, in the city of Albany, or at such other or proper and convenient place in said city, as the common council thereof may, at any time direct and appoint; and such court shall be called "The Justices' Court of the city of Albany," and it is hereby declared to be a court of record, and shall have exclusive jurisdiction in the said city, to hear, try, and determine all actions which are now cognizable before a single justice of the peace in said city, and shall in all respects proceed in like manner, except as is otherwise provided by this act.[308]

Municipal Court of City of Rochester

Laws of 1876, chapter 196, section 1, is as follows:

A court of civil jurisdiction to be called and known as the "Municipal Court of the City of Rochester," is hereby created and established in and for the said city with the jurisdiction and powers hereinafter provided. Immediately upon the passage of this act there shall be appointed by the governor, by and with the advice and consent of the senate, two judges of said court, whose duties shall be to organize and hold said court in said city as hereinafter provided.[309]

Municipal Court of the City of Brooklyn

In *Whitney v Johnson,* 12 Wend. 359 (1834), the Supreme Court of Judicature of New York mentions the Municipal Court of City of Brooklyn.

In a 1934 decision, *Haggerty v New York*, 153 Misc. 841, 843-849 (1934), Judge Edward Cassin gives a good bit of history:

In 1780 the Legislature (Chap. 44) authorized justices of the peace, and the Mayor's Court in New York city, to try claims. By chapter 8 of the Laws of 1787 the Mayor's Court and justices of the peace were given similar powers, the former

[308] Henry W. Scott, *The Courts of the State of New York*, (1909), 469.https://babel.hathitrust.org/cgi/pt?id=uc2.ark:/13960/t9k35sq1w&seq=463&q1=%22+special+sessions%22&start=1.

[309] Henry W. Scott, *The Courts of the State of New York*, (1909), 473, https://babel.hathitrust.org/cgi/pt?id=uc2.ark:/13960/t9k35sq1w&seq=483. *See*, also, *Burns v Howard*, 9 Abb. N. Cas. 321 (1881).

acting in the city. Any doubt that the Mayor's Court was the New York City Justice of the Peace Court was settled (Laws of 1791, chap. 12) by a law passed for the purpose of so declaring it. By chapter 20 of the Laws of 1797 the Governor was to appoint New York justices of the peace with jurisdiction similar to State justices of the peace, and two were to sit daily in the City Hall. In 1801 (Chap. 165) the jurisdiction of these New York city justices of the peace was enlarged.

In 1804 (Chap. 27) the law was recast with the new name "Courts of Justice of the Peace in and for the City of New York." Assistant justices of the peace came later (Laws of 1807, chap. 139), but each Assistant's Court was given all such power "as is usual in courts of record in this State and in the same manner as the Justices of the Peace in the several counties of the State." (The same act also created another court, which began as the "Justices Court," became the Marine Court in 1819, and later the City Court of the City of New York.)

The reorganization of 1820 (Chap. 1) again gave the assistant justice the powers of justices of the peace in the ten wards of the city, and they were made salaried officers.

These New York city justices of the peace and assistant justices were expressly continued by the Constitution of 1821 (Art. IV, § 14), their terms extended to four years, and their removal procedure indicated; they are described in terms of "the Justices of the Peace in other Counties of this State." The constitutional amendment of 1826 provided how justices of the peace should be elected. In 1827 the assistant justices were the subject of a revised statute, effective 1830, providing for their apportionment among the city wards. It was reiterated in 1828 with a recitation of the jurisdiction of the justice of the peace (2 R. S. 224, 225 et seq.).

In 1846 the new Constitution contained provisions for electing justices of the peace for four years and how they should be removed. In 1848 the Assistant Justices Courts were merged into the Justices Court of the City of New York (Chap. 153). In the same year the court was renamed "Assistant Justices Courts," with jurisdiction similar to that conferred upon justices of the peace, being the same court as that mentioned in section 59 of the new Code of Procedure (Chap. 379). That Code (§§ 46, 47) specified the jurisdiction of justices of the peace, and it reads very much like the equivalent provisions of the present Municipal Court Code. In 1849 (Chap. 438), jurisdiction in summary proceedings was given both to that Justices Court and to the justices of the peace in towns. Justice Lauer says (§ 6, at p. 31): "The Justices Courts of cities and Justices of the Peace possessed the same jurisdiction," citing the relevant sections of chapter 438.

In 1851 (Chap. 514), the clerk of each Justices Court in New York city acquired a seal, and a six-year term (the present terms of our clerks); each justice was to be elected for six years. In 1852 the name was changed to "District Courts in the City of New York" (Chap. 324). In 1857 the laws affecting "the district courts" in the city were codified, each court was called by its district, and jurisdiction was enlarged, with new rules; justices must now be lawyers, each court had a seal, and appeals were allowed (Chap. 344). Also, there was certain criminal jurisdiction which Justice Lauer (§ 6, at p. 34) says is "usually exercised by a Justice of the Peace and committing magistrate," the rules of the Supreme Court were to apply as far as possible, and the city constables became city marshals and must live in the district. The constitutional amendment of 1869 provided how justices of the peace and District Court justices should be elected and removed. In 1871 the power to issue warrants for certain law violations was given to any justice of the District Court of the city of New York, or any justice of the peace (Chap. 721). In 1879, jurisdiction in summary proceedings was given to justices of the peace and, inter alia, justices of

the District Court of the city of New York (Chap. 101). In 1880, the Civil Code provisions as to "Justices Courts, or Courts of a Justice of the Peace, and the District Courts of the City of New York" became effective; the former including Brooklyn, Queens and Richmond, the latter, New York County. The courts were continued with their old jurisdiction and powers, but the procedure was somewhat altered. The Consolidation Act of the city of New York (1882) repeated the provisions governing District Courts in Manhattan, recognizing their 1877 jurisdiction and powers.

The 1894 Constitution again provided for the election of justices of the peace every four years and contained in addition this provision, "Justices of the Peace and District Court justices may be elected in the different cities of this State" in the manner provided by law; also that no new courts of record shall be created. This is a rapid summary of the history of the New York County and New York City Justices of the Peace Court in its various forms for a period of over a hundred years ending with 1897.

The county of Kings contained for many years Brooklyn and other separate communities. Each of the towns had its own justice of the peace pursuant to the constitutional provisions, although these justices antedated the Constitution as did all justices of the peace throughout the State. In 1827, the laws relative to the village of Brooklyn were consolidated and what had been the Justices of the Peace Court became the Municipal Court. They were invested with "all and singular the powers of Justices of the Peace for the County of Kings" (Laws of 1827 chap. 155). It was a court of record with a seal and had power to try all matters "now cognizable before a single Justice of the Peace within the limits of the said village."

In 1830, this status was recast (Chap. 79), repeating that the Municipal Court in the village of Brooklyn had all the powers of justices of the peace in any town in the county. When the Code of Procedure was passed in 1848 it recognized the Municipal Court of Brooklyn (§ 9) and it reiterated the grant of jurisdiction such as was possessed by courts of justices of the peace.

In 1849 (Chap. 125), a general act covering Brooklyn was passed. The city of Brooklyn was divided into court districts, in each of which a justice of the peace should be elected every four years who had the same jurisdiction in the said city as justices of the peace had in towns and that they should be justices of the peace of the county of Kings. It was expressly provided that they should have jurisdiction of summary proceedings to the same extent as the assistant justices across the river in the city of New York then had. The name was changed, and it was no longer called the Municipal Court. In 1871, the jurisdiction of the justices of the peace of the city of Brooklyn was extended (Chap. 492).

In 1880, the City of Brooklyn was divided into judicial districts and the successors of the existing justices of the peace then in office were to be elected (Chap. 256). In 1883, this act was amended again providing that justices of the peace of the city of Brooklyn should have power and jurisdiction and perform such duties "as were designated by the code of criminal procedure and the code of civil procedure," and that they were to exercise and perform the duties of justices of the peace (Chap. 256). That gives the history of the court which existed in Brooklyn at the time of the consolidation. The fact that they were generally spoken of as Justices Courts does not alter the fact that they were the constitutional court known as justices of the peace.

In what is now the borough of Queens there had been also many separate communities, all of which were towns and villages, and in 1870 Long Island City was incorporated, Newtown was

added to it and the act provided (§ 719) for the election of two justices of the peace in the city. These justices were to have the same jurisdiction as justices of the peace in towns. This seems to have been the situation in 1897.

Greater New York came into existence by law in 1898 and all these communities were consolidated. "The Justices Courts and the office of Justice of the Peace in the Cities of Brooklyn and Long Island City" were abolished; their powers, etc., were transferred to the Municipal Court. Likewise, the District Courts in Manhattan, known as the District Courts of the City of New York, were continued, consolidated and reorganized under the new name. All these local courts in three counties, namely, the Justices Court in Brooklyn and the justices of the peace in other parts of Kings County, and the District Court in New York county and the Justices Courts in Queens County were all succeeded by the Municipal Court.

Justice Lauer says on this point:

> *The question was subsequently presented to the Courts whether the Municipal Court as thus consolidated and reorganized was a continuation of the old courts under a new name or the creation of a new local inferior court.*

He says that the answer to that was given by the Court of Appeals in the *Worthington* Case (164 N. Y. 81) wherein many contrary holdings were reversed, and it was held that it is not a new court, but old tribunals continued, consolidated and reorganized under a new name. The meaning of this, of course, is that the Municipal Court as it now exists is made up of the welding together of at least three courts, namely, the Justice of the Peace Courts outside of the cities in the three counties, the Justice of the Peace Court in the city of Brooklyn, and the differently named Justice of the Peace Court in Manhattan, namely, the District Court.

Tracing the District Court back it is soon seen to be the Justices of the Peace Court so that, really, the Municipal Court of today is made up of this group of Justices of the Peace Courts with a new name. No one has ever suggested that a Justice of the Peace Court is not a constitutional court. That is not necessary of discussion because throughout all Constitutions since 1777 the Justice of the Peace Court has been expressly recognized and named in the Constitution and if there were any doubt about its status it has been expressly held to be a constitutional court. It is the undoubted holding of *Beach v Baker* (25 App. Div. 9) and *People ex rel. Burby v Howland* (155 N. Y. 270, affg. 17 App. Div. 165) that the justice of the peace is a constitutional officer and that prior to the latest amendment to the Constitution it could not be abolished by the Legislature. If, therefore, to be protected by the constitutional salary provision justices must be members of a constitutional court it would seem evident that the justices of the Municipal Court have exactly that status. This 1897 status of the Municipal Court continued until 1915 when it was reorganized without change of name or powers and was made a court of record. The reason it could be made a court of record was that it was not a new court. The Legislature has not had power for almost a century to make new local courts and make them courts of record.

The provision in the 1915 reorganization that this court was to be a court of record is, therefore, proof of the fact that it is not a new court.[310] In 1925, when the whole judiciary article was elaborately recast, the Municipal Court was for the first time named specifically in it and in two

[310] *Matter of Levy*, 192 App. Div. 550; *Matter of Markland v Scully*, 203 N. Y. 158; *Matter of Hottenroth v Flaherty,* 61 Misc. 108.

sections justices of the Municipal Court were specified. Section 17 of article VI specifically provides for the method of removal of these justices, and for the first time the Municipal Court then entered into the Constitution by name and was expressly made the subject of a constitutional provision as to it.

In *Matter of Adler v Voorhis* (254 N. Y. 375), the Court of Appeals said that our justices are "members of the judicial system of the State." In their older decision (*Whitmore v Mayor*, 67 N. Y. 21), they went so far as to say that a clerk in our court "is a judicial officer, embraced within the judiciary system of the State." In *Ledwith v Rosalsky* (244 N. Y. 405), they said that judicial officers in courts of limited geographical jurisdiction are "part of the judiciary system of the State." In *Matter of Richards* (179 App. Div. 823; affd., 221 N. Y. 684) the Appellate Division said that "the office of Justice of the Municipal Court of the City of New York is an office in the judicial system of the State." Justice Cohalan said in the *Schneider* Case (94 Misc. 481, at p. 485) that the courts hold "that an attache of a court or of its clerk's office is not a part of the city government, but is part of the judicial system of the State. (*Whitmore v. Mayor*, 67 N. Y. 21; *Quinn v. Mayor*, 44 How. Pr. 266; affd., 53 N. Y. 627; *Taylor v. Mayor*, etc., 67 id. 93; *Stewart v. Mayor*, 15 App. Div. 548; *People ex rel. Gilchrist v. Murray*, 73 N. Y. 535.)"

If the justices of the peace and the Justices of the Peace Courts are constitutional officers and constitutional courts, and if the Municipal Court is made up of the combined Justice of the Peace Courts regardless of how they were named in cities and is the continuation of those courts under another name then any constitutional provision applicable to constitutional courts is applicable to the Municipal Court of the City of New York. The history of the justice of the peace and his court, as recorded in the *Howland* Case (155 N. Y. 270), contains the statement that it was "established by the Constitution." The court also states that since the court was well known when the Constitution was adopted "it is presumed that the framers thereof and the people meant to establish it as an office."

In *People ex rel. Wogan v Rafferty* (208 N. Y. 451) the court indicated that when the Constitution recognizes an existing office that recognition takes it out of the power of the Legislature to reduce its functions; the opinion fairly indicates that a constitutional status is given to an office when "the Constitution… recognizes its existence." It would seem to be unnecessary to discuss that question further.

The case of *Koch v Mayor* (152 N. Y. 72) is probably the first to refer to courts in terms of their constitutional status. The office of police justice of the city of New York, which seems to have been created by the Legislature in 1848, was before the court because of an attempt to abolish it. The court said that the judiciary article amendment of 1870 did not make the office of police justice a constitutional office, and Judge Vann seemed to stress the fact that of the "many inferior local courts… and judges or justices of inferior courts not of record, created by statute and in existence at the time the Constitution was adopted, not one of them is continued eo nomine." That cannot be said today of the Municipal Court.

Whether or not the office of police justice, which was not then specified in the Constitution, could be abolished by the Legislature did not require any decision as to which other courts in the State are constitutional courts, and whatever was said in the opinion beyond that point is, therefore, dicta. His remark that the 1894 Constitution continued "four great courts" does not indicate that they are the only four State courts. Justices of the peace were surely continued and were statewide. The four that he speaks of, namely, the Court of Appeals, the Supreme Court, the

Surrogates and County Courts exist in every part of the State. As the revised form of the oldest court in the State, this court, which has its statewide counterparts, would seem to be just as much a great court as the County Court, which is separate in each county from the County Court of every other county.

The Municipal Court of City of Buffalo

This court was created by L 1880 c. 344.[311] The following appears in *Heath v Kyles*, 1 N.Y.S. 770, 771-772 (1888) a decision of Superior Court of New York, General Term, Buffalo, to which the appeal from the Municipal Court of Buffalo was brought:

Section 6 of the act establishing the municipal court of Buffalo (chapter 344, Laws 1880) provides, among other things, that "the process, pleadings, practice, trial by the court or by jury… shall be the same as are now provided by law for justices' courts, except as otherwise provided in this act."

Some city courts go back well before the Uniform City Court Act. The Mayor's Court of the City of Hudson was established with the granting of the charter of the city in 1785.[312] The City Court of Yonkers dates back to L. 1873, c. 61.

The City Court of Long Island City, by L. 1871, c. 460.[313] Court decision mention city courts as early as Auburn in 1892, Binghamton in 1912, and Albany in 1894, meaning that those courts existed then, and may well have been established years or even decades before.[314]

Listing the dates of establishment of every city court in New York is possible, but beyond the scope of this work.

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[311] Henry W. Scott, *The Courts of the State of New York,* (1909);477, online at https://babel.hathitrust.org/cgi/pt?id=uc2.ark:/13960/t9k35sq1w&seq=463&q1=%22+special+sessions%22&start=1.

[312] *History of Columbia County* online at https://archive.org/stream/historyofcolumbi00ever/historyofcolumbi00ever_djvu.txt; The Court of Common Pleas of Columbia County was opened at Claverack, Jan. 9, 1787, with Peter Van Ness, first judge, Peter Silvester, Peter R. Livingston, Henry I. Van Rensselaer, William B. Whiting, judges; Stephen Hogeboom, Samuel Ten Broeck, assistant justices. *See*, also L. 1791, ch 352.

[313] *See*, *Harris v. People*, 59 N.Y. 599, 601 (1875).

[314] *Hennesy v Murdock*, 17 NYS 276 (1892) (Auburn); *Platz v Burton and Cory Cider and Vinegar Co.,* 7 Misc. 473 (1894) (Albany); *Severson v Macomber* 153 AD 482 (3d Dept 1912) (Binghamton).

Appendix One

Petrus Stuyvesant, on behalf of the High and Mighty Lords States General, his Serene Highness the Prince of Orange and the Honble Directors of the General Incorporated West India Company of the United Netherlands, Director general of New Netherland and the Curacao islands, Captain and Commander in Chief of the said Company's Ships and Yachts in this Northern part of America; together with the Honble Council.

To all those who shall read, or hear these Presents read, Greeting:

Whereas We, pursuant to Our Commission and general Instruction, desire, wish or require nothing else but that this government of New Netherland entrusted to Us, and especially this Our Capital and residence, New Amsterdam, may grow and advance in good order, justice, police, population, prosperity and mutual peace and improvement; be provided and furnished with a proper and strong Fort, a Church, School, Sheet-piling, Pier and similar highly necessary public and common works and buildings, whereunto We, in pursuance of our concurrent Instruction, are commanded to solicit the cooperation of the Commonalty, as such concerns their own welfare and defence, and is customary in all well-ordered Governments, Colonies and Places; Yet, however, being disinclined to burthen and oppress, by virtue of our granted Commission and Instruction, the good and peaceable Commonalty, our dear Vassals and Subjects, by exactions, impositions and intolerable taxes, but rather to induce and solicit them, by a more reasonable manner of consent, to lend a helping hand in such honorable and most necessary works; And whereas it is difficult to bring so many heads under one capoch, or so many votes into one voice, We have, by the advice of our Council, heretofore proposed and submitted to the Commonalty that they, without passion or hatred or envy, select twice the number of Nine persons from the most notable, most reasonable, most honorable and most respectable of our Subjects, in order that a single number of Nine persons may be chosen and appointed from them to confer, as Selectmen, with us and our Council, on the subject of such approval and cooperative means, and to assist, to the best of their knowledge and information, in promoting and forwarding the welfare both of the Commonalty and of the Commonwealth; whereunto, then, on the day aforesaid, a double number being selected by our dear subjects, the good Commonalty, are by Us and our Council therefrom chosen, to wit:

From the Merchants—Augustyn Heerman, Arnoldus van Hardenberch, and Govert Loockermans;

From the Burghers—Jan Jansen Damen, Jacob Wolphertsen and Hendrick Kip;

From the Farmers—Machiel Jansen, Jan Evertsen Bout and Thomas Hall, as Spokesmen for the Commonalty, who having taken the oath of fidelity to Us and the Honble Council to regulate and govern themselves in conformity to reason and the Orders and Instructions yet to be given, are hereby confirmed in their abovementioned quality, under the following Rules:

First. That they as good Spokesmen and Agents of the Commonalty will aim at, and as far as lies their power, help to promote the honor of God and welfare of our dear Fatherland, the greatest advantage of the Company and the prosperity of the worthy Commonalty here, and the advancement of the pure Reformed Religion as taught at this day in the Church here and in Netherland.

Second. That they shall not set up and form any private Conventicles and Meetings, much less consultations and resolutions, without the knowledge and advice of the Director General and his Council, or without his special and particular Order, except only, when legally convened and having heard the proposals of the Honble Director General and Council, they can adjourn and take a recess in order to confer with each other upon, and to consider such proposals and thereafter to give advice: Provided, nevertheless, that the Director General retains the power to commission himself or some one of the Council to act as President at such our consultations and deliberations, to collect the votes and to make a report to the Council.

Third. Whereas in consequence of the increase of the Inhabitants, Lawsuits and disputes which parties bring against each other, are multiplied, and also divers questions and quarrels of trifling moment, which can be determined and disposed of by Arbitrators, but, in consequence of matters of greater importance, frequently remain over and undecided, to the prejudice and injury of this place and the good people thereof, and also to the great expence, loss of time and vexation of the contending parties, three out of those chosen shall have access once a week, on Thursday, the usual Burgher Court day, to our general Council as long as civil cases are before the Court in order to obtain a knowledge of the cases and parties who might be referred to them as Arbitrators and Good Men; to wit, one from the Merchants; one from the Burghers; one from the Farmers, which shall regularly rotate every month. And if one of them be indisposed or absent, he may subordinate another of the elected in his place; And parties referred by the Council to them as Arbitrators and Good Men and being judged shall remain bound to submit without opposition to the pronounced decision, or in default thereof be fined One pound Flemish for the first time, to be paid before the aggrieved party can appeal, or obtain a hearing before our Council from the decision of the Good Men.

Fourth. The number of the Nine elected Select Men shall continue until further Order and circumstances, saving that Six shall retire annually, and 12 picked out from the most qualified Inhabitants, which names shall be returned to us by the Nine Men assembled collegialiter without its being necessary to convene the entire Commonalty hereafter, which Meeting shall take place on the last of December following the next New Year's day and so every year afterwards.

Thus, done and enacted in Council, 25 September 1647. (Signed) P. Stuyvesant, L. Van Dincklage, La Montagne, Brian Newton, Paulus Leendersen van die Grift and A. Keyser.[315]

[315] Nine Men – Of the Director and Council of New Netherland establishing a Board of Nine Men. Passed 25 September, 1647. [N. Y. Colonial MSS. IV. 334]. https://www.trans-lex.org/605900/_/laws-and-ordinances-of-new-netherland-1638-1674/.

Appendix Two

Resolutions by the States General of the United Netherlands granting exploration rights in America/ New Netherland, 1614[316]

Resolution in favor of those who discover New Countries.

March 20, 1614 On the Remonstrance of divers Merchants wishing to discover New unknown Rivers, Countries and Places not sought for (nor resorted to) heretofore from these parts, it IS, after previous mature deliberation, resolved that the Generality shall accord and grant, that whoever shall resort to and discover such new Places, shall alone be privileged to make four Voyages to such Lands and Places from these Countries, exclusive of every other person, until the aforesaid four Voyages shall have been completed ; it being well understood, that on the return of the first discovery or exploration, a pertinent Report shall be rendered to the Lords States General, in order that their High Mightinesses may then order and determine, according to the distance and circumstances of the Countries or Places, within what time the aforesaid four voyages must be concluded ; and also with this understanding, that whosoever shall find, discover and explore the same Countries and Places about the same time or season, shall be admitted, at the discretion and on the decision of the Lords States General, to prosecute the aforesaid voyages in company; provided also that this concession shall not prejudice previous concessions or grants.

March 27, 1614 Read the petition of divers Traders, inhabitants of the United Provinces, requesting liberty freely to make use of, for the first six Voyages, the passages, countries and islands, as yet undiscovered or unfrequented, and which shall through God's Mercy and help be discovered by them; without any other person, except the Petitioners, having power to sail or resort thither from these United Provinces, either directly or indirectly before and until, they, the Petitioners, shall have fully completed and finished the aforesaid six Voyages, etc.

After deliberation it is resolved and concluded, that this solicited charter or concession shall be, as it is hereby, granted to the Petitioners, for four voyages, on condition that the Petitioners having completed the first voyage, shall render a pertinent report to their High Mightinesses of their progress and discovery, in order that their High Mightinesses may then adjudge and declare in what time the four voyages shall be made. On condition also, that this concession shall not prejudice other their High Mightinesses' previous charters and concessions; and provided, in case two or more Companies shall find out such lands or passage in one year, they shall then enjoy this benefit and privilege in common. And in case any difference hereupon, or otherwise, should occur, the same shall be left to the decision of their High Mightinesses.

Those of Zealand declare, that they intend to refer this matter to their principals.

General Charter for those who Discover any New Passages Havens Countries or Places.

From the Act Book of the States General in the Royal Archives at the Hague.

The States General of the United Netherlands. To all those who shall see these presents or hear them read. Greeting. Be it Known, Whereas We understand it would be honorable, serviceable

[316] https://archive.org/details/documentsrelativ01brod/page/8/mode/2up.

and profitable to this Country, and for the promotion of its prosperity, as well as for the maintenance of seafaring people, that the good Inhabitants should be excited and encouraged to employ and occupy themselves in seeking out and discovering Passages, Havens, Countries and places that have not before now been discovered nor frequented; and being informed by some Traders that they intend, with God's merciful help, by diligence, labor, danger and expence, to employ themselves thereat, as they expect to derive a handsome profit therefrom, if it pleased Us to privilege, charter and favor them, that they alone might resort and sail to and frequent the passages, havens, countries and places to be by them newly found and discovered, for six voyages as a compensation for their outlays, trouble and risk, with interdiction to all, directly or indirectly to resort or sail to, or frequent the said passages, havens, countries or places, before and until the first discoverers and finders thereof shall have completed the aforesaid six voyages:

Therefore, We having duly weighed the aforesaid matter and finding, as hereinbefore stated, the said undertaking to be laudable, honorable and serviceable for the prosperity of the United Provinces, And wishing that the experiment be free and open to ail and every of the Inhabitants of this country, have invited and do hereby invite, all and every of the Inhabitants of the United Netherlands to the aforesaid search, and, therefore, have granted and consented, grant and consent hereby that whosoever any new Passages, Havens, Countries or Places shall from now henceforward discover, shall alone resort to the same or cause them to be frequented for four voyages, without any other person directly or indirectly sailing, frequenting or resorting, from the United Netherlands, to the said newly discovered and found passages, havens, countries or places, until the first discoverer and finder shall have made, or cause to be made the said four voyages, on pain of confiscation of the goods and ships wherewith the contrary attempt shall be made, and a fine of Fifty thousand Netherlands Ducats, to the profit of the aforesaid finder or discoverer.

Well understanding that the discover, on completion of the first voyage, shall be holden within fourteen days after his return from said Voyage, to render unto Us a pertinent Report of the aforesaid discoveries and adventures, in order, on hearing thereof We may adjudge and declare, according to circumstances and distance, within what time the aforesaid four voyages must be completed. Provided that We do not understand to prejudice hereby or in any way to diminish our former Charters and Concessions: And, if one or more Companies find and discover, in or about one time or one year, such new Passages, Countries, havens or Places, the same shall conjointly enjoy this Our Grant and Privilege; and in case any differences or questions concerning these, or otherwise should arise or occur from this our Concession, the same shall be decided by Us, whereby each shall have to regulate himself. And in order that this Our Concession shall be made known equally to all. We have ordered that these be published and affixed at the usual places in the United Countries. Thus done at the Assembly of the Lords States General at the Hague the XXVII"" of March XV1and fourteen. Was parapheered — J. van Oldenbarnevelt. Understood — By order of the Lords States General,

Signed, C. Aerssen.

July 18, 1614 On the Remonstrance presented on the part of divers Traders of this country for the formation of a general Company for the promotion of the Commerce, Navigation and Interest of the Country, to carry on Trade on some Coasts of Africa and America where the same may be prosecuted according to the Truce, Africa and America. some from Dordrecht, Delft, Amsterdam,

Rotterdam, Hoorn and Enckhuyzen are appointed to examine the Remonstrance, to hear those who have sent it in, and the circumstances being well considered and deliberated on, to render a Report to the Assembly

Which done, and the project being considered laudable and advantageous for the Country and Inhabitants, It is ordered that the matter be promoted in the General Assembly of the States, in a Memorial from some thoroughly versed in the subject, on behalf of the Provinces of Holland and Westfriesland.

Monday, 25’” August, 1614 Resolved, That the business of forming a General West India Company shall be Undertaken tomorrow morning; moreover, that to this meeting may come those deputed from the provinces, those who will request to promote this work, those who act on orders, as well those who appear and have seats in the Assembly and at Extraordinary Meetings of other Chambers, and at the meeting of their High Mightinesses. And for this business are deputed Nicasius Kien and Wilhem Eusselincx

Resolution of the States General on the Report of the Discovery of New Netherland

From the Register of the Resolutions of the States General, in the Royal Archives al the Hague.

Present — President, Mr. Ghiessen.

Mess” Biesmau, Westerholt, Brienen, Oldenbernevelt, Berckenrode, Driel, Teylingen, Magnus, Moesbergen, Ayloa, Hegemans.

Saturday, October 11, 1614 Appeared at the Assembly the Deputies from the United Company of Merchants who have discovered and found New Netherland, situate in America between New France and Virginia, the sea coasts whereof lie in the Latitude of forty to forty-five degrees. And who have rendered a Report of their said Discovery and finding, requesting, in consequence, the Grant promised by their High Mightinesses’ published placard. Deliberation being had thereon, their High Mightinesses have granted and allowed, and hereby grant and allow, the Petitioners that they alone shall have the right to resort to, or cause to be frequented, the aforesaid newly discovered countries situate in America between New France and Virginia, the sea coasts whereof lie in the Latitude of from forty to forty five degrees, now named New Netherland, as is to be seen by a Figurative Map hereunto annexed; and that for four Voyages within the term of three years commencing the first January XVl and fifteen next coming, or sooner, to the exclusion of all others, either directly or indirectly sailing, resorting to, or frequenting the said Newly discovered and found Countries, harbors or places, from these United Netherlands, within the said three years, on pain of Confiscation of the ships and goods wherewith the attempt shall be made contrary hereunto, and a fine of Fifty thousand Netherland Ducats for the benefit of the aforesaid discoverers or finders; provided, that their High Mightinesses do not hereby intend any prejudice or diminution to their previous Charters and Concessions; And their meaning also is, that in case any difference or misunderstanding happen to arise or proceed from this their Concession, the same shall then be decided by them. Therefore, they order and command &c.[317]

[317] For the Seabury Report, *see The investigation of the Magistrates' courts in the First Judicial Department and the magistrates thereof, and of the attorneys-at-law practicing in ... Department (Criminal justice in America) by New York (State) and Samuel Seabury*, Jan 1, 1974,

https://babel.hathitrust.org/cgi/pt?id=umn.31951002583285t&seq=14. *See*, also *Handler v Berry*, 138 M. 584, 247 NYS 2d 46 (1931).