

# Local History in Legal Records

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RESEARCH in legal records can be fascinating and also frustrating for the historian who quickly realizes, that in order to use them, he has to master new techniques. When this is accomplished he still faces the problem of sifting the material and putting it into an intelligible form. This might be a thesis, an article for a historical publication or even a bibliography of various records. Whatever it becomes, his contribution will aid other scholars and perhaps encourage them to tackle further research in this field.

Let me say at the outset, there are no short cuts, for either you know what you are doing or you don't. This is true in any research work but it is more so in working with legal records because you have to be very meticulous. At the start it will be confusing but as you master the terminology and procedures they will fall into place. There are different methods of learning. Undoubtedly the best is to work with a lawyer who specializes in probate work. Another is to go to the courthouse, look up cases, and hope you will be able to figure things out yourself or find someone to give you hints. Whichever method you use, it's important to learn the terms before tackling any specific problem. It takes practice for a layman to remember that the plaintiff is the party who initiates the action and the defendant is the one who is expected to reply. The grantee is the person who buys the property and the grantor is the seller. An executor is selected by the deceased to settle his estate and, if he has not appointed one, then the

probate court will choose an administrator. In an inventory you will find the deceased's property listed and in the executor's accounts you will discover his worth. In the will the heirs are mentioned and what they are to inherit, and in what proportion. There are other terms and nuances used in legal research which will become familiar to you. Here, let me add a word of caution! If you are easily bored with deciphering illegible handwriting, or the tedious task of unfolding small pieces of paper depresses you, don't attempt this work. The majority of the records are in good condition but there are always exceptions to the rule.

You must master the printed sources before you start work with actual records. It will surprise you to learn that many court records are printed and, if you know this, you can save hours of tedious labor. The majority were edited and published in the nineteenth century by skilled scholars whose research was often subsidized by public funds; a unique situation that would be hard to imagine today. In Massachusetts the records of the General Court were printed in 1853 by order of the legislature, and though they are legislative documents there are some court cases in them. Those of the other New England States, as well as New York, are also valuable; the latter may seem unimportant to anyone working in New England History but they contain references which illuminate relations between New York and New England during the seventeenth and eighteenth centuries. Historical Society publications

must not be neglected; often in those of small societies you will find an isolated article or digest of a court record, but more important are those of the Massachusetts Historical Society and the Colonial Society. In the latter, you will find the "Records of the Suffolk County Court 1671-1680" edited by Samuel E. Morison, with an excellent introduction on the function of the court by the late Zachariah Chaffee, Jr. The American Legal Record Series contains similar records each with an introduction by a competent legal historian. Perhaps the best way to master these is to become familiar with the *Harvard Guide to American History* and *Early New England Court Records*; the latter is a bibliography prepared by William Jeffery, Jr., and published by the Harvard Law School.

To master the location of the records, several books should be consulted, but nothing takes the place of going to the courthouse and actually checking the files for the dates at which they begin and end. The best guide for Massachusetts is Carroll D. Wright's *Report on the Custody and Condition of the Public Records* which was printed in 1889 and is now out of print but still invaluable. Connecticut has two: *The Report of the Examiner of Public Records*, printed in 1904 and again in 1916. These should be used with caution, for some of the material they refer to is now located in the State Library at Hartford instead of where it was when the report was published. Articles which appear in the *American Historical Review*, the *William & Mary Quarterly* and the *New England Quarterly* should be checked. Many of these provide leads for further research and their book review sections should be consulted. Unless you are planning to study

some piece of legislation, you will find Law Reviews too specialized, but on occasions they will have articles that might be of interest.

To return to the main purpose of this discussion. The first question is, where are the records located? This isn't easy to answer for it depends on where you work. Land records in most New England states are in the Registry of Deeds and wills in the Registry of Probate. Massachusetts still follows the county system and the deeds and wills for each county are in the Registry in the county seat, generally located in a special building near the courthouse. At one period most of western Massachusetts was incorporated into Hampshire County with the court holding sessions in Springfield and Northampton. In 1812 the county was divided and Hampden County created as a separate entity. Then all the deeds from 1673 to 1812 for Hampshire County were deposited in the new Registry in Springfield, and the wills for the same period remained in Northampton. From 1812 to date land records for Hampden County are found in the Registry in Springfield. At the same time, deeds in certain towns which were part of Franklin County until its separation from Hampshire County in 1811, were placed in the Springfield Registry, and also material relating to Somers and Suffield, now part of Connecticut. This sounds most confusing, and is, until you have mastered it. To complicate matters, the probate court has jurisdiction over wills, but through an oversight, some are found in the Superior Court files in Hampden and Hampshire Counties and also in the Supreme Judicial Court in Boston. Because of this tangle, it is wise to check each court to make sure you

have not neglected any lead, especially if you don't find the estate probated in the county where it should be.

Any scholar who assumes, once he has examined papers relative to the estate he is interested in and decides that is all there is, makes a grave error. Other documents, under different headings, will help to fill in the picture and often he will think they aren't useful. Divorce papers, adoptions and insolvencies are under the probate court's jurisdiction, also guardianships and conservator's accounts for minors and those unable to handle their own affairs. Often you will have to work backwards to gather the information on a particular case. This means investigating records in other probate courts or examining several estates before you determine if you have all the material.

The most interesting case I know of, in this category, is one I worked on many years ago. The research resulted in the discovery of new material about the birthplace and background of the nineteenth-century architect, Asher Benjamin. It was assumed for years that he came from Greenfield, Massachusetts, and what this was based on is lost. When I started to do research for what I hoped might be a biography (but as often happens other things intervened and the project was dropped) I checked probate records. In the State Library in Hartford were the guardianship papers taken out by Elishama Porter for Asher Benjamin, a minor of about seventeen years of age. It was known that Benjamin's mother married a second time and that husband's name was Porter. Still more proof was required. It came when Porter's will, probated many years later, named his stepson, Asher Benjamin of Boston, as executor of his estate. This evidence proved

that the Asher Benjamin baptized in Hartland, Connecticut on July 4, 1784, whose mother remarried Elishama Porter of the same town, was the distinguished American architect.

During the eighteenth century the Connecticut Valley was the scene of a religious revival which had repercussions throughout the colonies. The estate of Jonathan Edwards, the leader of the movement, is in Northampton and includes a long inventory besides the will. The latter states that his three sons should receive 638 oz. of silver paid out of the estate and "a part of this as is necessary should be used for bringing them up to learning or to some trade if my executrix should think fit that they shall be so brought up." He willed some of his library to his widow but the remainder was to be given to "such of his sons brought up to learning as soon as they have taken their first degree." The inventory lists 290 books of varying sizes and 25 published books "by the owner lately deceased" as well as 536 pamphlets. There were 30 volumes of manuscripts and 1,074 manuscript sermons. It's unfortunate the titles aren't listed individually for it would be interesting to know the type of literature Jonathan Edwards was interested in. His real estate consisted of land in Stockbridge and was valued at over £540, and he had a silver tankard, can, porringer, dish and server, plus, the usual assortment of pewter dishes, tea cups, plates and candlesticks. Though he was not as wealthy as Solomon Stoddard, whose estate was valued well over £1,500, Edwards did not lack for the necessities of life.

Two other estates of prominent men in the Connecticut Valley are those of John Pyncheon, Sr., and Edward Tay-

lor. One, the son of Springfield's founder, William Pynchon, and the other a leading minister in Westfield; both lived in the Valley during the seventeenth century. In Taylor's estate his library is inventoried by volume, and contained such diverse publications as Walter Raleigh's *History*, a treatise of surgery, Culpepper's *London Dispensary* and a book on Public Oratory. There were some theological works as befitted a man of God. Pynchon's inventory reflects his wealth and standard of living which was commensurate with his position in the community. He had a "Trooping scarf with Gold lace, a pair of gloves with silver lace" and he arrayed himself in a "light coloured doublet with gold twist and sad coloured britiches." He must have presented a splendid figure in this attire. His personal plate included 2 silver tankards, 1 silver-footed bowl, 2 salt cellars and 1 porringer. There were the usual household furnishings and when he died, in 1702, his whole estate came to over £8,000 with the majority of assets in land holdings. Though probate records help to reconstruct how a man or woman lived, they only give us one part of the picture. If the deceased was well known, then diaries, letters and business records, if they survive, will help to fill in the gaps. Those who didn't make a will, whose assets were too small, or who became famous after their death present a tantalizing problem. If Emily Dickinson had left a will, which she didn't, it would undoubtedly be used as a springboard for endless discussions and new interpretations of her poetry. The fact that she neglected to do so is our loss.

There are many questions we can ask as we examine probate records. Sometimes the answers are easier to find than expected. How is the economic development of a community shown during a

certain period? Is its growth reflected in the estates of prominent manufacturers? How did they distribute their fortunes? Did they found educational institutions, as did Sophia Smith and Samuel Williston, or establish a charitable trust, which still functions today, as did Oliver Smith? Were their securities in local companies or did they put capital into ventures in other parts of the country? It has been suggested that it would be an interesting project to scrutinize inventories for a given period to see what type of silver is found. This would give an inkling of how much plate was privately owned in the colonies. Other ideas will, I'm sure, occur as you mull these suggestions over, but we have to turn our attention elsewhere and discuss the most complex and least understood of legal records, land transactions.

Recording land is an American practice, for it was not officially done in England. There is a strong influence in our present system that may be traced to the English custom of recording conveyances in special books, but the practice belongs to the New World. In 1634 Massachusetts passed a law which established Registries of Deeds as we know them today. This makes it easy to work with land records in this state, for they are filed in the Registry in each county. There are exceptions but those are few.

The historian using land records faces the same problems he did in using probate records. Terms will be new, but by now it's assumed he is familiar enough with legal terminology to master them. It's a good idea to devise a form which can be mimeographed and used to record the pertinent facts. It should include the registry where the deed is recorded, volume, page, date and a space for a description of the property with any restrictions on it such as mortgages, liens or encumbrances.



The buildings' descriptions and their locations with the number of acres involved. The price is important and the type of currency used when land was bought or sold. An important item on the form should be the mention of other tracts incorporated in the property with references in previous deeds. In essence, the form is simple to create and is something you will find useful in your research which can be modified if you wish.

What will you find in land records? There is no simple answer as it depends on what you are looking for. In the seventeenth century you should be prepared for descriptions which are hard to follow with none of the colorful language used in wills. Unless you are fascinated by boundaries or have a knowledge of surveying techniques you will be lost if you try to reconstruct property lines. How far could one go in discovering William Pynchon's millsite from the deed of 1651. The description states it is "to say 17 acres more or less of upland lying about the mill, 20 rod in breadth northward from the mill river abutting against the great river at one end from thence running eastward up by the mill river. Also ten acres more or less of meadowland in the neck over the great river lying at the mouth of the Agawam River bounded by said river on the south and by John Lumbard on the north." If you tried to reconstruct these facts today you would be involved with part of Route 91 and several shopping centers. Rivers have a habit of changing their courses and the Connecticut is no exception. Trees, stumps and rocks referred to as being in specific places 300 years ago have disappeared, and it can be a shattering experience to attempt to find them. Remember, the historian is not expected to be a title examiner. That func-

tion should be left to the experts, and if you want an accurate survey then hire one and prepare for a shock when you get his bill. Your aim is to discover as much as possible about buildings on a piece of property, if you can. The judicious use of deeds often helps to demolish legends which have grown up around the erection of well-known buildings. A good example of this is found in a booklet, published several years ago, on the D. B. Wesson house in Springfield, known to most people as the Colony Club, which burned several years ago. Different stories placed the cost of the land as astronomical; the amount mentioned was absurd when compared with the total spent on construction in the entire city during the same period. An examination of the deeds to the property determined that Mr. Wesson bought it in 1889 for \$35,000, a smaller figure than expected. The disappointment was not as great however, to some members as when they learned the building which was thought to have cost over \$1,000,000 was built for \$225,000.

One value of land records for research was in the fact that you can often identify people's occupations; often they are referred to as a carpenter, blacksmith, yeoman or gentleman, which helps to place them in their niche in the community. It is important for anyone studying the growth of a city to use them, and by following the holdings of certain landowners the development of different sections is noted. Springfield is a good example. Here is a city which in the nineteenth century was a small town, but grew quickly after the Civil War, a process which lasted well into the first quarter of this century. If you look at certain sections of it and examine the land transactions you will learn a good

deal about its growth and decline. The most striking example is Court Square with its church, which most of you have visited. In 1835 this was the center with the residential section stretching from it north and south. Today, if you look at it, the change is drastic. No longer are there private houses and well-designed public buildings, in fact, the only surviving example from the early nineteenth century is the church. An examination of land records would help to answer the question. Was this accomplished gradually or swiftly? When did the sections north and south of the Square cease being residential and become business districts? A more interesting pursuit would be to follow the fortunes of the families who owned the land. In the colonial era, and for a time afterwards, a good proportion of a man's wealth was based on property. The prominent men in Springfield, and also the Valley, were the Pynchons, Dwights and Worthingtons. How long did their monopoly continue? When did new wealth begin to acquire land, and were these holdings in the cities or surrounding countryside? What families created real estate trusts that developed large sections of Springfield, and are these still functioning today? These are a few questions which might be answered by a selective study of land records.

Mortgages must be mentioned if for no other reason than they are referred to in the title of this article. They are of little importance to the historian. You will find them as encumbrances on property but they should not be of concern. What are called chattel mortgages will be of interest for in these a person gives his tools, farm implements or other effects as security for a bad debt or loan. One of the most fascinating entries in Pynchon's accounts is a mortgage he took

from a Springfield blacksmith. The items which are individually listed give an idea as to the equipment that a blacksmith in the seventeenth century needed to ply his trade.

In this article I've tried to stress the importance of legal records as an untapped source for local history. I have confined myself to probate and land records but others should not be neglected. The Superior Court files are filled with cases involving craftsmen who tangled with the law. The files of insolvency and bankruptcy in the probate court should be checked to determine how many craftsmen were forced to resort to this court to satisfy their creditors when the going got rough. Examination of these records would also yield information on industries long since vanished or merged with other companies. I can't stress enough the importance of using other court records to provide missing pieces to complete a picture. Don't be afraid to venture into them for though at first they may seem formidable you will often discover a piece you never expected to find.

In conclusion, let me quote from a writer whose works influenced the underwriting of English colonization in the New World, for what he says is very apt to what we have been discussing. He writes, "Every new enterprise is in the beginning burdensome, chargeable and heavy: which is the cause that many good men much affected to their country in whitty excellent enterprises, sink and faint under their burden." I don't suggest you will sink or faint but before you are through you will have redeemed from obscurity many old records, patents, privileges and letters which help to bring to light for future historians material "smothered and buried in dark silence."