

# Local US Court Records

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*This presentation focuses on local court records. Typically these materials can be accessed in the county courthouse—although in some states with independent cities those locations may have their own set of local courts. Some earlier records may be in a state or regional archives. Digital/microfilm copies of some may be on FamilySearch.*

Researchers who take the time to utilize court records may very likely reap the rewards that such records hold. The amount of information contained within a court file can vary greatly from one case to another and from one region of the country to another. Court structures can vary from one state to another (usually because of past practice and state statute). Determine the specific names of the courts and what their responsibilities were in the locations in which you are researching.

## **Major Cases of Genealogical Relevance (nothing should be overlooked however) :**

**Divorces.** While the content varies, divorce records typically provide the date and place of marriage of the couple. If there are minor children, they may be named and ages provided. The records may also contain information on previous residences of the couple. Divorces before 1900 were not as common as they were today, but they were not unheard of either.

**Separate Maintenance.** Perhaps there was never a divorce at all. Information in this type of case may provide similar information in a divorce. However, if all the children were adults at the time of the action, they may not even be named.

**Partitions.** If for whatever reason the heirs to an estate cannot agree on how the property can be divided, there might be some type of court action to "partition" the estate among the heirs.

**Adoptions.** While later records may be sealed, older records may be available. In some cases, a court order may be necessary to access these records. It should be remembered that many early adoptions were informal and that no court record of the adoption exists.

**Guardianships.** There was a time in America when women had few legal rights. If the father died with children and the mother survived, a guardianship might have been filed. Guardianship records may be filed in a separate series of records, with the probate records, or with other court records. Guardianship records may

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provide names of the children or their dates of birth. In some areas an Orphan's Court may have served a similar purpose.

**Bastardy and Fornication.** While not the topic of polite dinner conversation, these cases were pursued in some jurisdictions, especially before 1900 (some states still have laws on the books for these crimes). Records in these cases may provide the names of children's fathers that appear in no other record and are especially useful in the era before civil registration of vital records.

Cases brought before a court are legal actions. These actions can generally be classified as:

**Civil Actions** (private individuals versus private individuals)

**Criminal Actions** (basically a violation of state statute or something that threatens society at large)

**Equity Actions** (cases where there may be a more "equitable" solution outside the letter of the law)

In some counties or states there may be different names of various local courts: Court of Common pleas, Surrogate Court, Orphan's Court, Courts of Chancery, etc.

At the county level, these "courts" may all be combined into one court with one series of records. **Make certain you search all record series.** In earlier times there might have been separate courts, with entirely separate sets of records. It may be that a complete search of court records requires a search of more than one series of records. Readers are referred to the references at the end of the handout for more complete information.

### **Physical Structure of Court Records**

Whether the researcher is using the actual records or microfilm/digital copies, the research procedure is similar. The plaintiffs' index and defendants' index should be searched. There should be a separate indexing for each, although one physical volume may contain both indexes. This index provides should indicate what type of case is being pursued. The dates the action was started and completed may also be listed, along with dates of other actions and judgments. Additionally, references should be made to various court books (judge's orders, actual court journals, etc.). A reference to a packet or box number which contains actual records (subpoenas, affidavits, signed judge's orders, bill of complaint, defendant's response, etc) may be included if these records were retained. In earlier times, the only record that might be available is the various books that contain transcriptions of some documents, dates the case was brought before the court, various court appearances related to the case, and the judge's findings.

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Remember that in some places and time periods the local court may only been in session at certain times—sometimes as infrequently as four times a year. This may be part of why a case drags over many years.

### **FamilySearch Copies**

Never consider the court records that *FamilySearch* has to be the complete set of materials that were originally kept and recorded. In some locations, record books may have been filmed, but court packets (with loose court papers, depositions, filings, actual judgements, etc.) may not have been filmed. These papers may only be in the original location in their original format only. Reach out to the local records office, locals who may be familiar with the records (genealogists, historical/genealogical societies, Facebook groups for the area, etc.), and others who may have knowledge of the entire set of original records.

### **Limitations to Court Records**

The main limitation to court records center around their organization. Most cases are still filed at the county level. These records, despite the vast amount of information that they contain, are largely unindexed. While some pre-Revolution records have been printed with indexes, this is not the case with the majority of the records.

### **Indexes??**

Generally records have two indexes, an index to plaintiffs (those who bring the case to court) and an index to defendants (those who are being brought to court). Indexing systems vary, but generally if there are multiple plaintiffs or multiple defendants, the case appears in the each index only once. Others named in the records are generally not indexed.

### **Knowledge from Someone Familiar with the Location**

A broad understanding of court records in the state you are researching is an excellent start to utilizing these records. However, given that there can be variations from one county (or town if appropriate) to another, it is suggested that the researcher make contact with someone who had actually used the local records. Courthouse staff in court offices may not be familiar with the old records, even if they are generally helpful. Reach out to local genealogical/historical societies, local libraries, and other groups for names of potential individuals who may be familiar with the old records. Asking the courthouse staff if there's "someone who uses the old records" that may be able to give you some guidance. Posting such requests on Facebook genealogy groups for the county may be a good way to locate these people as well. Also consider getting a research guide to genealogical research in your state or county of interest.

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## So the case...

John SMITH and Henry JONES

Vs.

Sarah SMITH, Henry JOHNSON, and Alexander CRUZ

is indexed in the plaintiffs' index under "SMITH, John" and in the defendants' index under "SMITH, Sarah." Even though JONES, JOHNSON, and CRUZ are parties to the case, their names do not appear in the index. Researchers who are uncertain how the records are indexed should find one case and check for each plaintiff and defendant in the index, to make certain of how the case is indexed.

Even if all the plaintiffs and defendants are included in the respective indexes, there are no indexes to all the witnesses and other individuals who may be mentioned in a court case.

Given the nature of court record indexes, it is extremely important to research the complete family.

## What to Look For??

**petition of plaintiff** (or the bill of complaint, plaintiff's declaration, original bill, plea, etc.). This outlines the plaintiff's case. In a criminal case the indictment should be referenced.

**response of the defendant** (or the rebuttal, answer, etc.). This outlines the defendant's position and states why he/she is not at fault. Not necessarily filed in all cases.

**statement of findings** (or conclusions, Master's Report, summary, etc.). This summarizes the results of the case and usually summarizes the information contained in the packet.

**other intermediate reports** and findings may have been issued and may also help to summarize and understand the case.

## Getting to the Records

Court records may be accessed in one of three general ways.

**The actual location.** This would be the county courthouse for most areas of the United States (an significant exception would be those records filed in the independent cities of Virginia) Personal research is not always possible and many records facilities do not

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have the staff to perform detailed research services. In such cases, it may be necessary to hire a researcher to search the records for you.

**Microfilm.** *FamilySearch* has filmed court records for many areas in the United States. Keep in mind that not all court records may have been filmed for a specific county.

**Digital.** *FamilySearch* has digitized a significant proportion of their microfilmed copies of court records. Some can be accessed from your home—others cannot. Some state archives or other state historical agencies have digitized some early court records to preserve the originals while increasing public access.

**Published records.** Some court records have been transcribed and published. The majority of published records are east of the Mississippi and are pre-American Revolution. The *FamilySearch* Catalog, and other library catalogs should be referenced for citations to published court records. It should be remembered that post-1850 court records are largely unpublished. Researchers should also remember that some published records are abstracts or extractions and not complete verbatim transcriptions.

Court records are a vast resource. Researchers may also wish to utilize a law dictionary in order to understand some of the terminology. Words are used in legal documents in their legal sense—find out what that is. I have also found it helpful to read state statutes as well (not in their entirety, but the sections on land ownership, guardianships, probate and inheritance can be particularly helpful). Many of these older state statutes can be located digitally on GoogleBooks ([books.google.com](http://books.google.com)). Researchers wishing to learn more about court records should consult:

The *FamilySearch Wiki* for the state being researched ([https://www.familysearch.org/wiki/en/Main\\_Page](https://www.familysearch.org/wiki/en/Main_Page)).

*The Researcher's Guide to American Genealogy*, Val D. Greenwood, Genealogical Publishing Co., Baltimore, 4<sup>th</sup> edition, 2017. Its chapter “Court Records” provides an excellent summary and discussion.

*The Source*, Lou Scuzs and Sandra Luebking editors, Ancestry, Salt Lake City, 1997. Its chapter “Research in Court Records” provides another excellent summary and discussion.

Today we will look at the following cases as time allows:

- Tinsleys in Kentucky 1820s—court records prove a parentage.
- Sledd 1790 era suit over a damaged hogshead of tobacco—relationships given.
- Galloways in Maryland 1800s---relationships proven.
- Habbens in Illinois 1880s---new family members and immigration clues

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