HISTORICAL RESEARCH
WITH
VERMONT COURT RECORDS
COURT RECORDS REFERENCE GUIDE

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INTRODUCTION

People often think of court records as the place to discover their family black sheep — and there are certainly some shady ancestors to be found. But the great majority of legal actions were non-criminal disputes between ordinary people over money, real estate, personal property, injury, and social or domestic relations. Men and women, old and young, rich and poor -- everybody looked to the courts to correct wrongs or enforce rights.

The records resulting from their legal actions provide rich detail about peoples’ lives, personalities, and relationships. A woman petitions for divorce after her husband deserts her. A family loses their farm to foreclosure. A butcher sues a livestock dealer for selling him sheep with foot rot. A boarding house owner is fined and imprisoned for violating liquor laws. A farmer publicly accuses his neighbor of stealing a sheep and is sued for slander. One mill owner claims another uses too much water and seeks an injunction to make him stop. Every case tells a Vermont story, set in a particular time and place, with a unique cast of characters.

From a broader point of view, court records document the larger society — laws, economic systems, cultural norms and values -- and how it changes over time. How were offenders punished? What were grounds for divorce? How did people earn a living? Why did people go unto debt and, how were debtors treated? How did Vermonter take care of their poor and elderly? How did Vermont’s judicial system develop? There is abundant material here for all kinds of researchers — genealogists, local historians, students, economic historians, social historians, military historians, legal historians — whether their focus is on a single individual, a family, or a larger historical theme.

“Court records” is a general term for all the documents created by the legal process of taking a case through the court system, and by the administrative process of court operations. Records fall into three functional, archival categories: docket books, record books, and case files. The three are distinct information sources that complement one other.

This guide defines the types of court records, describes their contents and organization, and discusses changes over time and variations from court to court. Lastly, it provides a glossary of simplified, non-technical legal definitions to help the researcher interpret archival court records.

For a look at individual Vermont court cases, and types of cases, also see VSARA’s court records web exhibit:
DOCKET BOOKS

Docket books are calendars in which the court clerk recorded cases in order for each court term, assigning a number to each. If no other record exists for a legal case, the docket at least provides a sort of executive summary. Dockets also record information about court operations and administration. An individual docket volume may cover one year’s worth of court terms (usually one or two terms per year), or multiple years.

19th-century dockets are hand-written, or are a combination of print and manuscript. Volumes are of various sizes and bindings. Post-1900 dockets may consist of individually typed sheets collected in ring binders. There may also be index cards for later docket records.
Docket numbering practices changed over time, and differed somewhat from court to court. In most courts:

- Up to the late 1800’s, each case was assigned a new docket number for each court term in which it appeared.
- In the early 1800’s, old entries and new entries were given separate number sequences in each court term.
- Later, old entries and new entries had one continuous number sequence in each court term.
- Starting in 1895, cases kept the same docket number throughout, assigned by the clerk at the beginning. The number sequence was extended each court term, so each case had a unique number. Generally, each case was still entered in every court term, under that number, until its conclusion.
- The loose-leaf docket book system, adopted by some courts in the 1910’s or later, did not record every case for each court term, but only included a summary sheet of each case at its end term. Some courts used different colored sheets for county, supreme, and chancery court cases.
- After 1900 some courts began to use index cards, usually in addition to loose-leaf dockets.
Docket entries include plaintiff, defendant, their attorneys’ names or initials, jury members, and a summary of action up to that term. In the last entry, final judgment (or discontinuance) and costs are also recorded. Case entries may include a cause of action, but this is often omitted. Every single case, whether it reached judgment or not, was docketed. The clerk almost always recorded the resolution of a case in its final entry. Cases may end in:

- **A judgment** (or decree) after trial by judge or jury
  - A judgment is distinct from a verdict in that it assesses damages or punishment and court costs; a verdict determines guilt or innocence
  - **default judgment** (very common) is one in which the defendant or his legal representative did not appear, and the plaintiff won by default
  - **nonsuit judgment** usually means the plaintiff or his attorney did not appear, and charges against the defendant(s) were dropped

- **A discontinuance** is a case that ended before reaching judgment. A civil case may have been settled by both parties out of court, or discontinued by the plaintiff. The clerk might use the entries “settled”, “settled and discontinued”, “discontinued”, or “discontinued without costs” (DWC). Criminal cases might also be discontinued, as “nolle prosequi” or “not to be brought forward.”

- **A dismissal** occurred when the court found fault with the plaintiff’s case and it was not heard. A dismissal may be “with prejudice” (permanent dismissal) or “without prejudice” (technical faults could be corrected and the case brought again).

- Cases not ending that term were noted as **continued** (often abbreviated). They might also be designated as “with the court,” awaiting decision.

- **A misentry** means the case was docketed by the clerk in error. Sometimes the case had actually ended the previous court term, and there are case files in that term. But other misentries refer to cases that never took place, so there will be no case files.

- Some courts use the docket entry **nonappearance** in the early 1800’s. This seems to indicate that neither plaintiff nor defendant appeared and the case was dropped from the docket.

Judgments were often appealed, and docket entries reflect that. In different eras, county court decisions could be appealed one or two times. A county court appeal might be referred to as a **review**. An appeal to the supreme court required filing of exceptions. The **bill of exceptions** was prepared by the presiding county court judge. The supreme court could accept or decline the appeal based on the exceptions.
19TH CENTURY CIVIL & DIVORCE DOCKET ENTRIES

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19th Century Civil & Divorce Docket Entries

[Handwritten documents showing various legal entries, including
- 1874 September Term entries,
- 1875 August Term entries,
- 1876 February entries,
- 1819 February entries,
- Various court records and legal documents,
- Handwritten text and numbers.

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19TH & 20TH CENTURY CRIMINAL DOCKET ENTRIES
**20TH CENTURY LOOSE-LEAF DOCKET ENTRIES**

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**T. J. McGoey v. Napoleon Desaule and Anne Desaule**

**SHERIFF**

**FORECLOSURE**


Dec. 9, 1926. "Deed granted with thirty days equity of redemption". Costs taxed at $46.78 Master's Report filed.

Dec. 19, 1926. Decree filed.

Jan. 6, 1927. Decree recorded.

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**Helen H. Brown v. Eugene H. Brown**

**DIVORCE**

Nov. 8, 1926. Libel filed and served.

Nov. 7, 1926. Libel filed and served.


**ORDER DISSOLVED**

Dec. 30, 1926. Order and Decree filed. Carried forward to June Term, 1927.

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**State of Vermont v. Robert Cleveland**

**SENTENCE**

June 7, 1933, Ind. and copy filed in open Ct. by leave of Court, copy delivered responsibility A. H. Hunt, assigned Hill, R. H. filed "PETITION" to the Ind. SENTENCE: That the defendant Robert Cleveland be confined at hard labor at the house of correction at Williston, County of Chittenden, State of Vermont, for the term of not less than 10 months and not more than 1 year and that he serve until sentence be complied with. Execution stayed, respondent placed in charge of Probation Officer for the county of Chittenden, with special terms regarding the use of intoxicating liquors.
Docket books also include miscellaneous information unrelated to case entries. This may include:

- Opening and closing dates of court term
- Judges and court officials
- Grand and petit jury members
- Court administrative expenses
- Changes in court rules or procedures (rarely)
- Liquor licenses issued to innkeepers and tavern owners (early to mid-1800’s)
- Lists of naturalizations (1800’s)
- A few early dockets describe boundaries of the jail yards
Docketing Variations

Individual docket volumes are usually indexed by plaintiff, but indexes may be incomplete or faulty. Sometimes they only include old entries or new entries, and sometimes the clerks omitted cases by mistake. Note that in cases in which the plaintiff was a bank, railroad, or insurance company the index entry may be under those general terms rather than the specific corporate name. For example, “First National Bank of St. Albans v. Smith” would be indexed under “B” as “Bank v. Smith.”

Chancery cases were generally entered within county or supreme court dockets, (although there are a few individual chancery dockets in some county court records). They are usually indexed and recorded in their own section, except in the very early years of the supreme court sitting in chancery, when they are intermixed.

State cases and divorces may have separate sections in later county court docket books, but are usually part of one overall docket number sequence and index. Sometimes, in post-1900 dockets, the clerk assigned different number ranges to civil, criminal, and divorce cases.

Docketing methods varied from court to court. Some, such as Franklin County, used a more complicated system. Each case kept the same docket number from beginning to end, but the clerk did not extend the number range with each new court term. New entries would begin again with number one. This means that instead of one number sequence of old entries, and one of new entries, there are several sequences of old entries with the same numbers. The docket for each court term is arranged chronologically in order of the oldest court term up to the current court term, and case entries are in docket number sequence for each court term. Docket book indexes key to page number, not docket number.

Most clerks docketed only cases, but others docketed everything that came through the court – including inquests, bar admissions, and jail reports.

Docketing affected how the courts organized case files, so it’s useful to observe and understand the variations when trying to locate individual cases or other court documents for a particular county.
RECORD BOOKS

The second record type, record book volumes, contains entries summarizing cases that reached judgment. It usually omits cases settled out of court or discontinued.

Depending on the era, and on the individual court clerk, an entry may be highly detailed, giving the entire history of a case, or it may be a brief summation (sometimes not even indicating what the case was about.) Each record volume covers several years. Cases are generally arranged chronologically by court term, with or without docket numbers. Individual record book volumes are usually indexed by plaintiff name.

A general index or indexes covers all of the record books for a county. General indexes may provide references to the recorded judgments of all three courts, or just the county and supreme courts. They most often cover the period from the beginning of the court through the late 1800’s or early 1900’s. Lamoille County is an exception; its index extends to 1947 for county and supreme court, and to 1966 for chancery. Lamoille county also records discontinued cases in its general indexes, even though they are not included in individual record books. General index entries may be arranged by both plaintiff and defendant, or just by plaintiff.

The general index is the first place to look for a case, because it can save a lot of hit-or-miss effort with individual docket and record books. It’s important to keep in mind that, even if there is no general index entry, there may still have been a docketed case, but it didn’t end with what the court technically defined as a judgment. This is especially true of chancery court, where only decrees, not injunction decisions, were recorded.

There are often separate divorce record books, but divorces may also be recorded in general record books – or they might be in either, at different times! Because of inconsistencies, when looking for a divorce it’s always wise to check both kinds of record books covering the appropriate time period.

As with docket books, there are likely to be variations in record books and their indexes from court to court. The series database entries capture individual details and should be used as a guide.
Record Books

Caledonia County Court
General Index with
Entries by Plaintiff and Defendant
CASE FILES

Case files consist of all of the papers generated during the course of a court action. Surviving case files may be extensive, minimal, or nonexistent for any given case. 19th-century records are especially likely to be fragmentary, or missing altogether for some years or court terms.

Case files represent the formal, sequential process of a legal action – the plaintiff’s complaint, the delivery of the complaint to the defendant, the defendant’s answer, the responses and counter-responses of plaintiff and defendant, supporting documents, the final disposition of the action, and the assessment of court costs. (See the appendix for definitions of legal terms)

Legal documents and processes were highly standardized. Up until the early 1900’s Vermont court records reflect the forms and language of 18th and 19th-century English common law pleading. In his 1912 Manual of Vermont Court Procedure (p. 409), Henry Harman defines pleading as “those written or oral statements which set forth the respective claims of the parties before they go to trial,” and describes them as “an exact science.”

In this era, civil cases almost always began with a writ of attachment, which served both to declare the plaintiff’s claim or complaint against the defendant, and to identify and hold assets to satisfy the claim or damages. The writ of attachment combined the plaintiff’s declaration, the summons to the defendant, and the officer’s return of service, which listed the property attached.

These lists can be remarkably detailed. They may include real estate holdings, livestock, agricultural products, tools, business inventory, and personal possessions. In a 1904 case against Citizens Telephone Company, the serving officer recorded every company telephone, telephone pole, and telephone wire in the towns of St. Johnsbury, Lyndon, Burke, Concord and Barnet. If the defendant had no property to attach, and no one was willing to post bond, he might be jailed to await trial. This would also be recorded on the officer’s return.
State of Vermont, Caledonia County, ss.

To my Sheriff or Constable in the State, BE IT

Know, that in virtue of the authority of the State of Vermont you are hereby commanded to attach the goods, chattels or estate of Alfred Cushman, of Montpelier, in the County of Washington, to the value of Ten Thousand Dollars, and him notify thereof according to law and for want thereof his body take, if to be found within your precinct, and him may keep so that you have him, and also notify him to appear before the Caledonia County Court, at St. Johnbury, within and for the County of Caledonia, and also to notify him to cause his appearance herein to be entered with the Clerk of said Court on or before the expiration of forty-two days from the date hereof, then and there in said Court to answer to Charles Keopka, of St. Johnbury, in the County of Caledonia, and State of Vermont.

In a plea of tort for that whereas the defendant, contriving and wrongly and unjustly intending to injure the plaintiff and to deprive him of the comfort, fellowship, society, aid and assistance of Martha Keopka, the wife of the plaintiff, and to alienate and destroy her affection for the plaintiff hereunto, to wit, on the 1st day of September, 1839, at St. Johnbury, in the County of Caledonia, and State of Vermont, and on divers other times and at divers other places between that day and the day of the commencement of this suit, unmercifully and unjustly did make love to the said Martha Keopka, maligned, injured and destroyed her reputation and other things of a similar nature, and thereby alienated and destroyed her affection for the plaintiff, then and there being the wife of the plaintiff, and thereby the affection of the said Martha Keopka for the plaintiff was thereby wholly lost and been deprived of the comfort, fellowship, society, aid and assistance of the said Martha Keopka, his said wife, in their domestic affairs, which the plaintiff ought to have had and otherwise might and would have had, to wit, at St. Johnbury aforesaid.

Also in a further plea of tort for that the defendant contriving and wrongly, viciously and unjustly intending to injure the said plaintiff and to deprive him of the comfort, fellowship, society, aid and assistance of Martha Keopka, the wife of the plaintiff, and to alienate and destroy her affection for the plaintiff, then and there being the wife of the plaintiff, and thereby the affection of the said Martha Keopka for the plaintiff was thereby wholly lost and been deprived of the comfort, fellowship, society, aid and assistance of the said Martha Keopka, his said wife, in their domestic affairs, which the plaintiff ought to have had and otherwise might and would have had, to wit, at St. Johnbury aforesaid.

To the damage of the plaintiff Ten Thousand Dollars, for the recovery of which, with just costs, the plaintiff brings suit.

FALLOUT, but service and return made within twenty-one days from the date hereof.

Dated at St. Johnbury, in the County of Caledonia, this 16th day of January, 1839.

David E. Porter, Henry W. Sitters and Julian A. Longmore recognized to the defendant in the sum of Fifty Dollars as security for the costs of prosecution as the law directs.

Before me, the Clerk.

[Signature]

Writ of Attachment for 1932 Alienation of Affection Case
The plaintiff’s declaration would be answered by a defense plea, which would either respond to the complaint or challenge its legal validity with a demurrer. In complex cases there might then be a series of exchanges—replications, rejoinders, motions to the court—before judgment was rendered or the case was discontinued.

Case files may also include supporting documents provided by plaintiff and/or defendant: affidavits, depositions, subpoenas, bonds, promissory notes, specifications for claims or damages, stipulations, exhibits, findings of fact, master’s or referee’s reports, receiver’s accounts, testimony, deeds, maps, poor debtors oaths, correspondence. In a jury trial, case files often include a verdict and jury list.
Deposition for Defendant in 1832 Slander Case

1878 Specifications for Damages & Jury Verdict

Receiver’s Inventory for 1905 Business Dissolution

Plaintiff’s Verdict.
In order to assess costs charged to the losing party, the court kept careful account of charges for serving subpoenas, recording affidavits and depositions, attendance of jury and witnesses, and other standardized court fees. After a civil case reached judgment, if damages and costs were due and unpaid, a writ of execution would be issued for seizure of the defendant’s property in payment.
Writ of Execution & Account for Ruth Carr’s Wages. Defendant Carroll was jailed for nonpayment.
In cases appealed to the supreme court, the lower court judge signed a bill of exceptions, upon which the appeal was based. Cases might go through multiple appeals, and usually all case files were collected and filed in the concluding court term. It is important to note that case files may not indicate the outcome of a case; it is often necessary to refer to the docket and/or record book entry. If those are missing, a bill of costs for either plaintiff or defendant indicates who prevailed in court.

**Bills of Exception for Supreme Court Appeals**

**STATE OF VERMONT**

**SUPREME COURT IN ORLEANS COUNTY.**

**AUGUST TERM. 1860.**

**EXCEPTIONS BY DEFENDANT.**

**DAVID CLOUGH,**

**ADVER OF MONS. CLOUGH, ORLEANS COUNTY COURT.**

**THE TOWN OF JAY.**

December Term, 1859.

This was an action on the case brought to recover damages of said town of Jay, for causing the death of said Moses Clough, by the insufficiency of a highway in said town. The plaintiff prayed the general issue, and also a plea to say that the plaintiff was not the legal administrator of said Moses. This latter plea was overruled, and the case was tried by jury. The declaration and pleadings are referred to.

The said Moses Clough at the time of his demise, and for several years preceding, resided in Potter, in Canada, west of said town of Jay, and but a short distance from the boundary line. He resided on a lot in said city, which was not a quartering lot, so that he had but little use of one of his lots, and could not walk, except with the aid of a cane. He manufactured flax and hemp, and was not, as some have stated, and believed about the country selling the same, and had thus supported his family for many years, while living in Canada, at the time of his decease of his wife and five other children. The plaintiff gave evidence that since the decease of said Moses, a deed of one dollar, for a balance said by said Moses to a man in Orleans county, had been paid in kind; that said Moses, after the decease of his wife, married a person residing in the town of Jay, who said Moses formerly lived, alias, that a brother of said Moses, living in said Addison, had informed the plaintiff he had an unsettled account with said Moses, and that there was a balance due to said Moses thereon. There was no evidence given in contradistinction, nor was it claimed that said debt was not satisfied and paid. It was concluded that the probate court of Orleans county granted letters of administration in this form by the plaintiff upon the estate of said Moses. The court decided that the regularity of the proceedings of the probate court granting administration could not be examined collaterally in this action, but that the letters of administration were evidences of the plaintiff’s right to sue, and admitted an answer to the jury upon this part of the case. The plaintiff then gave evidence tending to prove that in the morning of the 5th day of October, 1859, the said Moses Clough was found lying dead in his wagon, half-dressed, about three fathoms from a tree on the north line of the road, and a short distance from the roadside. The wagon had been drawn against a rock, by which the defunct was broken; and the horse unhitched from the wagon; said Moses lying dead under the wagon; said Clough upon the ground, with one leg over one of the wheels of the wagon; and with a part of the tree on his body. The order was that negative, and both were buried. Said Moses’ horse was broken, and there was a noose hanging up flat on the back of his head. The clothing indicated that he had been drawn upon the ground upon his back or abdomen, with his head in some way kept up so as not to touch the ground, so that his body and clothing presented an appearance of having been drawn upon the ground for a considerable distance; and that there was an appearance upon the ground of his body having been dragged under the wagon; said trail or mark was followed, and could be distinctly traced from where his body lay, into the public road, and then south to the road in a point about 50 yards over the boundary line into said town of Jay; said trail was just inside the track made by the off wheel of said Moses’ wagon. It was proved that said Moses left Storrs about 10 days before to return home; that he was not in any way.

** Plaintiff’s Costs Indicate that Lovewell Won His Case.**
Criminal cases tended to generate far fewer case files than civil actions. There is always a grand jury bill of indictment (“true bill”) or state’s attorney information, which serve the same purpose: formally charging the respondent (defendant) with a crime. There may also be warrants, mittimuses, verdict, request for legal counsel, bail documents, inquests, depositions, subpoenas, affidavits, and testimony. Criminal case files after 1899, when probation was established in Vermont, may include probation documents.
STATE OF VERMONT
CALFORNIA COUNTY, No.

County Court, under the seal of St. Johnsbury, whose seal
and for the County of California, on the first Tuesday of December, in
the year of our Lord, one thousand eight hundred and twenty-six.
In the name of our Lord, John Barrymore, President of the
County Court, in the proper person come unto Court, and
upon the oath ofitches, and know it to be just and true, and do affirm and
The Day of September, in the County of California, was the Second Day of
October in the year of our Lord, sixteent
Tho. Kirby, a merchant, of the City of
and bar of the County of California.

Value of One Hundred Dollars, of
Wages of the value of ninety dollars, and
Our Devisees, and all and every
To the%s of the

St. Johnsbury, and the County of California, at the

Wednesday in the month of June

Day of December

State of Vermont,
CALIFORNIA COUNTY, No.

Mittimus to State Prisoner.

STATE OF VERMONT

CALIFORNIA COUNTY, No.

COUNTY COURT,

Dec. 1, 1826

Term of Justice

Mittimus to State Prisoner.

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CALIFORNIA COUNTY, No.

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Lastly, there are case files for various specialized legal actions. These include petitions for divorce and foreclosure, injunctions, decertal orders, and writs of scire facias, audita querela, replevin, and habeas corpus.
Habeas Corpus, Injunction
Order & Replevin Writ
Included with case files for docketed cases are miscellaneous records, sometimes called “promiscuous papers.” These are primarily financial documents, and jury venires and accounts. Miscellaneous papers also often include jail reports, bar admissions, 20th-century probation reports, and early-19th-century documents on licensing of tavern keepers (approbations, remonstrances, petitions for license).
Miscellaneous papers may also contain case files for legal actions that weren’t docketed, like inquests, poor debtors oaths, and bills of indictment not found by the grand jury (as opposed to “true bills”). Sometimes papers from docketed cases were separated by the clerk and placed with miscellaneous papers. Depositions, affidavits, subpoenas, witness certificates, and criminal case invoices might be filed separately. Some courts also filed discontinued cases (those that did not reach judgment) with miscellaneous papers.

**Arrangement of case files**

Arrangement of case files by the courts varied, and can be confusing. Moreover, court records often became disorganized during years in storage or during microfilming. The case files of Orleans, Caledonia, Lamoille and Franklin County courts have been fully processed and arranged, and their organization is described in the online series database notes. The records of other county courts may be more disorganized, and they lack this level of descriptive detail.

During the 1800’s clerks usually filed cases that ended in the same court term together. After permanent docket numbers were assigned to cases, ca.1895, cases were often filed in docket number order, without regard to the ending court term. However, some clerks continued to arrange case files by court term. To make matters more confusing, case files may be arranged generally by docket number, but cases that went on for several terms are out of sequence because they were filed with later, higher-numbered cases that ended at the same time.
Until around 1900 case files for each term were usually folded and bundled together. Within a bundle, the clerk may have carefully gathered all the papers for each case together, or he may have mixed together papers of various cases. Cases may be in docket number order, alphabetical order, or random order.

By the 1870's, individual sets of case files are typically placed together inside a cardboard jacket with a cover recording docket number, plaintiff and defendant, court, and date. After the introduction of permanent docket numbers, courts usually stopped bundling cases from the same court term together.

19th-century judgments and discontinued cases may be bundled together or separately. Discontinued cases may also be filed with miscellaneous court documents. Bundles of miscellaneous or “promiscuous” papers may cover a single court term or several court terms. Civil executions and chancery decrees may also be bundled separately, and include multiple court terms.
THE THREE COURTS: COUNTY, SUPREME, CHANCERY

Until the late twentieth century, three courts operated at the county level in Vermont: the county court, the supreme court, and the court of chancery. Even though the supreme court no longer met at county locations after 1894, each county’s supreme court cases were still docketed and filed locally. The pre-1945 records of all three courts are included in VSARA’s court records collections. A basic knowledge of the history of Vermont’s three courts is important in understanding where specific kinds of cases would have been heard at a given point in time. Archival court records are organized by county, and within each county, by court.
County Court History

The first Vermont Constitution of 1777 provided for establishment of county courts, but they did not begin holding sessions until 1781. The legislature defined the jurisdiction of justice of the peace, county, and supreme courts in 1782. County courts were to hear civil cases involving sums over forty shillings, cases involving land title, and all criminal matters “except such cases are cognizable only in the supreme court.” The right of appeal was also established. A 1787 act created the county court judicial structure of one chief judge and two side judges, which was maintained into modern times.

In 1791 the legislature specified that the supreme court was to have “original exclusive jurisdiction” over almost all criminal matters. Divorce cases were also relegated to the supreme court; divorce jurisdiction did not shift to county courts until 1870. The county court docket was dominated by civil cases, mostly land and debt disputes.

In 1824 the role of county courts expanded to include all criminal and civil matters except petty cases for justices of the peace, divorce, and civil suits in chancery. At the same time, the legislature limited the role of voters in electing judges. Only the two side judges would now be elected by local vote. In each county court a supreme court justice, acting as a circuit judge, would preside.

In 1849 supreme court justices were relieved of county court duties; four circuit judges were now elected by the legislature. The act was repealed in 1856. In 1906 a circuit judge system was again instituted. Six superior judges, elected biennially by the legislature, served as chief judges, assisted by the locally elected side judges.

This basic structure remained in place into the twenty-first century. Meanwhile, the county court caseload changed significantly. Beginning in the late 1800s, an increasing number of minor criminal cases shifted to municipal courts. County courts handled almost all major criminal trials until the 1960’s, when district court, created in 1965, gradually took on this function. Family courts were established in 1990, and also heard criminal cases. The county court eventually came to be an essentially civil court.

A 1974 amendment to the Vermont Constitution replaced the county court with the superior court. In terms of court function, this was a change in name only. But it removed the constitutional requirement to maintain county courts, and placed all courts under Supreme Court administrative control. A judicial nominating board now handled selection of all judges except the two elected side judges in each county. Vermont’s court system was restructured into a unified system in 2010. The superior court now has civil and criminal divisions reflecting the former superior and district courts, as well as family, environmental and probate divisions.
Supreme Court History

During its first year of sessions in 1778 the Vermont General Assembly provided for “inferior courts,” with judges elected by freemen, and a “superior court” of judges elected by the legislature. In 1782 the superior court was replaced by a “supreme court of judicature,” which met in each county once a year. Supreme court powers were broadly defined, and included civil and criminal causes brought by appeal or by original process. By 1787 the yearly one-week session in each county had proved to be insufficient, so the legislature added more sessions at additional locations.

In early years the supreme court was the highest appeals court, but it also held jury trials, heard the same kinds of civil cases as county courts, and handled almost all criminal matters. The legislature defined crimes in which the supreme court was to have “original exclusive jurisdiction” in 1791. These were adultery, polygamy, treason, counterfeiting, forgery, perjury, incest, rape, “defaming the civil authority of this State and all other crimes and misdemeanors where a fine or penalty is going to the State treasury or where the punishment extends either by common or statute law to the loss of life, limbs or banishment.” Corporal punishment ended after the 1808-09 erection of a state prison in Windsor.

The legislature restructured Vermont’s courts in 1824. The supreme court would now consist of one chief judge and three assistant judges who, in additional to supreme court duties, served as presiding judges in county courts. At the same time, full criminal jurisdiction was extended to the county court. In 1828 the number of assistant judges increased from three to four. Chancery suits moved from supreme court to county court in 1840.

In 1849 supreme court judges were relieved of county court duties by four circuit judges elected by the legislature. This lasted only until 1856, when they resumed their county court role, and the bench was expanded to six. A seventh judge was added in 1870. Beginning in 1892 a general supreme court term was held in Montpelier, and by 1894 supreme court sessions no longer took place in each county.

In 1906 the legislature again replaced supreme court judges with circuit judges in county courts. From 1907 on, they had no role in county courts. Supreme court terms were held in Montpelier by one chief judge and three assistant judges; increased to a total of five in 1908. This structure has continued to the present and is now mandated by the Vermont constitution. Beginning in 1912 supreme court judges were called “justices.”

The legislature elected supreme court judges until 1974. They were almost always drawn from the ranks of superior court judges in a seniority system. A constitutional amendment ended this practice. Supreme and superior court judges are now appointed to six-year terms by the Governor from a list submitted by a judicial nominating board and confirmed by the Senate. A unified judiciary, under the central administrative control of the Supreme Court, was created in 2010.
Court of Chancery History

The origins of Vermont’s chancery court date back to the 1778 superior court. In 1779 the legislature passed an act “for constituting the Superior Court a Court of Equity, and declaring their power:”

Whereas, from the universality of the law, many cases will arise, wherein it is necessary that some further provision be made for relief in equity, than can be obtained by the rules of common law. To the intent therefore, that justice and equity may be jointly administered; ... the superior court shall be... constituted a court of equity, and impowered to hear and determine all cases in equity ... wherein the demands, due, cause or cause in dispute is above twenty ponds and doth not exceed the sum of four thousand pounds, lawful money...

This law assigned chancery jurisdiction in cases over 4,000 pounds to the governor, council and house of representatives. The superior court was replaced by a supreme court with the same powers in 1782. Vermont’s council of censors objected to usurpation of judicial powers by the executive and legislature. The situation was addressed in the Vermont Constitution of 1786, which states:

A future Legislature may, when they shall conceive the same to be expedient and necessary, erect a court of chancery, with such powers as are usually exercised by that court, or as shall appear for the interest of the commonwealth. Provided they do not constitute themselves the judges of said court.

The Laws of 1788 contain “An Act Constituting a Court of Chancery”:

Whereas it appears interesting to the Legislature that a Court of Chancery should be erected within this State with such powers as are usually exercised by that court in the Kingdom of Great-Britain, and the neighboring States, and not repugnant to the Constitution. ... hereby is constituted, a Court of Chancery within and for the State, to be holden in the several Counties within this State, at the several times and places appointed by law for holding the Supreme Court of Judicature ... And that the Judges of the Supreme Court of Judicature ... are constituted and appointed judges or chancellors of said Court...

1797 legislation elaborated upon the 1788 law in defining the powers of the court. In addition to establishing a court of chancery, the legislature acted to permit judges flexibility in determining financial penalties. Both supreme court and county court judges were empowered to “moderate the vigor of the Law and on consideration of such cases according to equity and good conscience to chancer such forfeiture and to enter up Judgment for the Just Debt and Damages and to award Execution accordingly...” This power to “chancer forfeitures and penalties” applied to both civil and criminal cases. It was frequently used to reduce the penalty owed by a bondsman whose client failed to appear in court.
The supreme court handled equity cases as part of their sessions until 1839, when the two courts were separated and an independent court of chancery was established. Chancery court was to be held twice a year during county court terms, and the presiding supreme court judge of the county court would add chancery duties to his judicial circuit rounds.

It appears that all of the supreme court judges participated in chancery cases before 1839, but cases in the newly-defined court would be handled by a single chancellor. Under certain conditions chancery cases could be appealed to the supreme court. The 1839 act formalized the powers and procedures of the court of chancery. When the county court role passed to superior judges in 1906, the latter took on chancery court duties as well.

The jurisdiction and practice of the court of chancery was distinct. Chancery court was where a citizen could seek a legal remedy outside the strict bounds of common law and statute law that applied to the county and supreme courts. Chancery heard cases which could not be readily decided by applying written law, but which required judgments of fairness or “equity.”

For example, the ending of a business might require untangling complex finances and assigning debt or assets to all partners. In Vermont, foreclosure proceedings, which required determination of real estate equity, took place in chancery court. Foreclosures made up the majority of its caseload. This court also operated outside of written law in issuing injunctions requiring a party to cease an action, such as selling property in dispute, cutting timber on mortgaged property, or dumping mill waste in a stream. In chancery court a single judge, called a chancellor, presided. He could appoint special experts to prepare reports, audit accounts, or act as receivers for businesses.

Vermont’s court of chancery was abolished by a legislative act of 1969, which stated that “… all rights, powers and duties of a chancellor shall vest exclusively in the presiding judges of the county courts and the powers and jurisdictions of the courts presently vested in the courts of chancery shall vest in the county courts.” These powers passed to the superior court which replaced the county court in 1974: “The Superior Judges in their capacities as Presiding Judges will act in equity matters with the same flexibility with which they previously acted as chancellors.”
THE COURT RECORDS PROJECT

For over 200 years, Vermont’s historic court records have been piling up in courthouse basements and attics around the state, difficult for the public to access and threatened by deterioration. In 2011, the Vermont State Archives and Records Administration launched a project to begin to address the archival needs of court records. The project, funded in part by a grant from the National Historical Publications and Records Commission, initially focused on the pre-1945 records of Orleans, Caledonia and Lamoille counties. The grant was extended into 2014, permitting the addition of Franklin County court records. VSARA has built on this effort to bring in more of Vermont’s archival court records. With the 2013-2014 addition of Essex, Rutland, Windham and Windsor counties, the records of eight out of fourteen county courts are now open for research.

The NHRPC grant enabled hiring of a project archivist to process the county court, supreme court, and chancery court records of the four selected counties. Docket books and record books were fully inventoried. Case files were restored to docket order, flattened, and placed in acid-free folders and boxes. Deteriorated, fragile documents were encased in mylar sleeves. Database entries with box lists and descriptions of the organization and content of the records were prepared. Lastly, a court records web exhibit has been created to highlight types of cases and examples from Orleans, Caledonia, Lamoille, and Franklin counties.

The Essex, Rutland, Windham, and Windsor court records have not been processed as fully. Most case files are still folded and bundled, and records of the three courts within each county may be intermixed. Database entries include box lists, but series entries are not as detailed as those of the other four courts.
DATABASE SERIES ENTRIES FOR CALEDONIA COUNTY COURT
CASE FILES & DOCKETS; LAMOILLE COUNTY SUPREME COURT
DOCKETS & RECORD BOOKS

Vermont County Court (Caledonia County).
Case files, 1798 - 1945.
Series ID: CACO-003 (Click for Index) Location: State Archives
Extent: 98 cubic feet. Access: Open
Scope: Case files include all documents generated during the process of a civil or criminal court trial, and may be extensive, minimal or nonexistent for any given case. They may include writs, affidavits, depositions, subpoenas, verdicts, pleas, motions, warrants, indictments, recognizances, notizines, bonds, bills of costs, witness certificates, transcripts, documents relating to appeals, and supporting documents such as deeds, promissory notes, statements and inventories. Case files are arranged in docket order by court term. Prior to 1895, a case which continued over several court terms was assigned a different docket number for each term, but should be filed under the docket number assigned for the term in which the case ended. After 1895, each case kept the same case number from term to term. Within a given court term, files may be divided into cases which reached a judgment or verdict, and cases which ended before judgment. Judgments in docked order are followed by discontinuities in docked order. The court clerk did not separate the two types of cases there will be one docket sequence of case files for that term. Miscellaneous files include court administration documents such as jail reports, jury venires, vouchers for costs from court officials or witnesses, financial accounts, documents related to licensing of public houses, and bar admission recommendation. There may also be letters, poor debtor orphans, and cases files unrelated to docked cases. From 1900-1917 probation reports are included in miscellaneous court documents.

Vermont County Court (Caledonia County).
Docket books, 1797 - 1974.
Series ID: CACO-001 (Click for Index) Location: State Archives
Extent: 273 volumes. Access: Open
Scope: The series consists of court dockets, one judge's docket and one bar docket. Court dockets, kept by the court clerk, are court termini which record cases in order for each court term, assigning a unique number to each case. Docket numbers change from term to term until 1895, when each case retains its original number through all court terms. Docket entries include plaintiff and defendant, attorneys, jury members, and a brief summary of action and placing that court term. Entries often include court costs for a case. Dockets also record other information for each court term, including jury lists, admissions to the bar, appointment of county officials, granting of liquor licenses, court administrative costs, and non court procedural rules. All dockets except the first volume are indexed by plaintiff. Beginning in 1860 the separate chancery court docket comprises a section of the county court docket books. Beginning in 1909, divorce and criminal cases have their own dockets sections, but civil, criminal and divorce cases continue to be combined in one docket number sequence. Judge Adolphus Holten's 1866 docket includes a calendar of cases and brief notes on some of them. The printed June 1969 Caledonia bar docket lists judges, lawyers, court officials, court rules, and each docked case for that term.

Vermont Supreme Court (Lamoille County).
Dockets, 1837 - 1933.
Series ID: SUPR-LA-001 (Click for Index) Location: State Archives
Extent: 2 cubic feet. Access: Open
Scope: The series consists of court dockets kept by the court clerk. Court dockets are court calendars which record all cases in order for each court term, assigning a unique number to each case. Docket numbers change from term to term until 1906, when each case retains its original number through all court terms. After the supreme court moved to Montpelier in 1906, ending county sessions, docket numbers are inconsistent because the county clerk and supreme court clerk assigned different docket numbers to the same case. Docket entries include plaintiff and defendant, attorneys, and a brief summary of action taking place that court term. Entries often include court costs for a case. Dockets usually record the names of judges and clerk and note court term dates. They may also include admissions to the supreme court bar and court administrative costs. Most early supreme court dockets are not indexed. Chancery cases are intermingled with regular supreme court cases in the 1837 docket, but are indented as chancery in docket entries. Chancery cases are docketed separately in 1838-1840 supreme court dockets.

Vermont Supreme Court (Lamoille County).
Record books, 1839 - 1909.
Series ID: SUPR-LA-002 (Click for Index) Location: State Archives
Extent: 4 volumes. Access: Open
Scope: Record books contain entries by the court clerk summarizing each case that ended in a judgment. Lamoille supreme court record cover the years 1840-1909, with some gaps. The recording of supreme court judgments was highly irregular. Only 1886-1909 entries are arranged consistently in chronological order by court term, in volumes exclusively limited to the supreme court. Because of the scattered nature of these records, and the lack of indexes, some volumes, the researcher must rely on the master General Index of County and Supreme Court Records to locate judgment entries for individual cases. The two master index volumes cover county court cases between 1036 and 1947, but post-1900 supreme court entries are incomplete. Index entries are arranged alphabetically by plaintiff for each court term, and include record book volumes, page numbers, case beginning and ending dates, and docket numbers. The indexes also include entries on discontinued cases, which are not included in the record books, but which may have case files. In addition to the two index volumes arranged by plaintiff, there is a set of index cards recording 1936-1966 county and supreme court cases by defendant. The cards are arranged alphabetically, but within each letter there is no alphabetical or chronological order of cases.
RESEARCH TIPS

For each county, records of the county court, supreme court, and court of chancery were divided into three chronologically-arranged archival series: docket books, record books, and case files. It’s important to look at all three kinds of records, when applicable, for the most complete information about a case. Bear in mind that there are usually gaps in archival records, so often all three record types will not have survived for a given case. Court records are complicated and lack comprehensive indexes, so research is intensive and takes time.

It is especially challenging to research cases that were appealed from the county court to the supreme court. Case files should be located with the last court to act on the case; if the supreme court remanded back to the county court for further action, the records should have been filed there. But there are inconsistencies. Records may have ended up divided between the courts, or located with the “wrong” court, and diligent searching is often required to locate and pull together case files.

After 1894, when Supreme Court cases were no longer heard in county locations, filing became even more erratic. Docket numbers were often assigned by both courts, and used inconsistently in surviving records. Case files were supposed to be returned to county courts, but in many cases records are incomplete. In general, it is useful to consult the published Vermont Supreme Court Reports when researching cases. The published material may be more extensive than surviving case files for late 19th-century and 20th-century cases.

Chancery cases, too, present a unique research challenge. Pre-1840 chancery cases were heard by the supreme court, so their case files are located with supreme court case files, but identified as chancery. Post-1840 chancery case files are kept together. Handling of chancery dockets and record book entries varies from county to county, so it’s necessary to consult series database entries and box lists to pinpoint their location for specific counties and years. Since chancery record books exclude injunctions, only case files and dockets offer guidance in finding injunction cases.
Finding Cases

- A researcher must have a date (or date range) and a county location to look for cases.

- If you have a plaintiff’s name, the first place to look is the general index (or indexes) to the record books of judgments for the county. One index may cover county, supreme, and chancery courts, or there may be several indexes. Check the series database for guidance, and to see if the index covers the appropriate years. Note that some indexes also have entries by defendant’s name, which broadens search possibilities.

- If a case does not appear in the record book index, there may still have been a court action which did not reach a recorded judgment. All cases, no matter what their conclusion, were docketed, so docket books covering the years of interest are the next place to look. If the case went on for several court terms, it may have multiple docket book entries. The last entry, when the case ended, is the most informative.

- Record book and concluding docket book entries pinpoint the court term(s) in which case files may be located.

Notes on Orleans, Caledonia, Lamoille & Franklin County Court Records

- Case files are placed in folders and boxes and arranged by court term, and within each term the order reflects individual court practices.

- Case files of Orleans, Caledonia, and Lamoille courts are arranged in docket number order by court term. The Franklin county clerk docketed and arranged cases differently, so case files are in alphabetical order by plaintiff by court term. Franklin County was unusual in another respect — the court filed naturalization papers with case files, and entered naturalizations in judgment record books. They will be found within the alphabetical sequence of case files for each court term, and within the name indexes of record books.

- If judgments and discontinued cases were filed separately, that organization is maintained, and for each court term judgments are followed by discontinuances. If they were not filed separately, the case types are intermixed as “cases.” Folders of case files from the early 1800’s are usually subdivided further into a sequence of “Old Entries” and “New Entries,” reflecting the court docketing system.

- Note that Orleans County court records, the first set to be processed, have slightly different case file terms and arrangement. The archivists were able to apply what they learned from the Orleans records to better identify and describe case files for the other courts. Many of the case files placed in Miscellaneous folders for this county are probably discontinued cases.
For all four courts, miscellaneous case files for a given court term follow folders of cases.

Miscellaneous records were further subdivided into “Court Administration Documents” and “Case Files.” The former consist primarily of invoices and other financial accounting documents, jail reports, bar admissions, documents related to licensing of liquor sales, and jury venires and lists.

Miscellaneous case files may include bills of indictment not found, subpoenas, jail bonds, poor debtors’ oaths, accounts for state (criminal) cases, affidavits and depositions separated from their cases, and unidentified case files. Whenever possible depositions and affidavits have been restored to the cases that generated them, rather than left in miscellaneous case files, where they are less accessible to researchers.

An important type of case file often found with miscellaneous court records from the early to mid-1800’s is the inquest. When there was an unexplained death, a special grand jury would be called to examine the body and issue a report on cause of death. Some inquests were docketed, and those are placed in the sequence of case files from their court terms. Undocketed inquests are filed with miscellaneous case files for the court term. Inquests may be found in both county court and supreme court case files, up to around 1850.

Another highly informative miscellaneous court record is the probation report. Probation was administered by the county courts in Vermont from ca. 1900 - 1917, and probation officer’s reports on their clients are often available for those years. The Caledonia and Franklin County reports are especially detailed and revealing. After 1917, when probation was removed from the courts, there may be detailed reports on individuals included with their case files.

Note that for Franklin County Court, there are no docket books for the years 1919 - 1944, and no record books for 1920 - 1941. The only surviving records for those years are case files. For the supreme court in Franklin County, there are no surviving record books for 1898 - 1942.

Case files of Lamoille County divorces are missing for the years 1919 - 1931. Docket and record book entries are available, as are microfilmed copies of the case files (FILM F-19484). Note that the microfilmed cases are arranged differently than archival case files.
APPENDIX: LEGAL TERMS

SOURCES:
http://legal-dictionary.thefreedictionary.com/
http://www.lectlaw.com/
Henry Harman, Manual of Vermont Court Procedure, 1912

NOTE: These definitions are simplified, informal explanations to help the researcher in interpreting court records. They are not intended to be complete or correct by legal standards.

- **Abatement, Plea in** — Defense plea that seeks to postpone or stop an action based on a procedural defect by the plaintiff.
- **Action** — A lawsuit.
- **Appellant** — A person who applies to a higher court for a reversal of the decision of a lower court.
- **Appellee** — The respondent (defendant) in a case appealed to a higher court.
- **Approbation** — Official approval or sanction. (In this context, approbations are usually citizens’ recommendations for liquor licenses, or attorneys’ recommendations for bar admissions.)
- **Assumpsit** — An unofficial oral or written agreement between two parties; an informal contract or promise. In a legal action, the plaintiff seeks damages for nonperformance. In simple assumpsit cases, the contract is implied. In special assumpsit cases, the plaintiff claims an express promise was made.
- **Arrest judgment (motion)** — A motion asking the court to overrule judgment in a legal case, on the grounds that it was granted in error.
- **Attachment (writ)** — A court order for a law enforcement officer to seize property of a defendant in a civil lawsuit as security. It prevents him from using or disposing of the property pending legal judgment, or without posting bond. In Vermont a writ of attachment typically permitted the officer to seize the body of the defendant -- put him in jail -- if there was no property to attach.
- **Audita querela (writ)** — A writ used by a defendant to prevent execution of a judgment won by the plaintiff, on the grounds that the execution would be unjust. It does not claim error on the part of the court in making the judgment, but claims a new defense that did not arise until after judgment. For example: bankruptcy of the defendant absolves him of debt, discovery that plaintiff’s evidence was fraudulent.
- **Bail** — The promise in writing to the court that the defendant will either appear in court or that the signers of the bond will pay a specified amount. The person who guarantees the appearance.
- **Bench warrant** — see warrant
- **Bill not found** — A bill of indictment in which the grand jury has not found sufficient grounds for prosecution. Also called “no bill.”
- **Bill of exceptions** — A statement of exceptions to a court decision, made for the purpose of bringing them before a superior court to be reviewed for appeal. In Vermont the judge of the lower court which issued the decision signed the bill of exceptions.

- **Bond** — A bail bond secures the release of a criminal defendant and guarantees his future appearance in court. Civil bail has the same function in civil proceedings. An appellant's bond in a civil case ensures that the appellee’s costs will be paid if the appeal is dropped or does not succeed.

- **Bonds called out** — When a defendant who had posted bail did not appear in court, his bonds would be called out. The bondsman then had to produce the defendant or forfeit the bond, unless he successfully had it reduced. (See *chancer.*

- **Book account** — An account of debits and credits between parties. Debt cases were often based on disputes over what was owed, and were termed *actions on book*, or book account.

- **Capias (writ)** — A writ commanding an officer to take a specified person into custody.

- **Certiorari (writ)** — A writ from a higher court directing a lower court to send all the documents in a case so it can review the lower court’s decision.

- **Champerty** — A sharing in the proceeds of a lawsuit by an outside party who has promoted the litigation.

- **Chancellor** — Judge in a court of chancery.

- **Chancer** — To adjust according to principles of equity or fairness. In Vermont court cases this most often applied to a request by a bondsman to reduce the amount of bail forfeited when a defendant in a criminal case did not appear for trial.

- **Chattel Mortgage** — A mortgage secured by tangible personal property rather than real estate.

- **Covenant** -- An agreement between two parties to do or refrain from doing something.

- **Covenant of quiet enjoyment** — A right to the undisturbed use and enjoyment of real property by a tenant or landowner.

- **Covenant of seisin** — An assurance to the purchaser that the grantor owns the property and has the right to convey title to it.

- **Decree** — Judgment of a court of chancery, or judgment awarding a divorce.

- **Decree nisi** - A conditional judgment that does not take effect until certain conditions, such as a period of time, are met. In Vermont, this typically refers to a divorce decree, which has a three-month waiting period. Formerly it was six months. Then it becomes a *decree absolute.*

- **Default judgment** — A judgment in favor of a plaintiff when the defendant has not responded to a summons or has failed to appear in court. The default judgment is the relief requested in the party’s original petition.
• **Defendant** — The party against whom complaint is made in a civil lawsuit, or the person accused of violating the law in a criminal case.

• **Demurrer** — A response (pleading) by the defendant seeking dismissal of the case on the grounds that the plaintiff’s complaint, even if true, has no legal basis.

• **Deposition** — A witness’s out of court testimony recorded in writing.

• **Discontinuance** — The ending of a legal case by the plaintiff before it reaches judgment; may be a settlement between the parties or a decision to cease proceedings by the plaintiff.

• **Divorce from bed and board ("a Mensa et Thoro")** — A legal separation in which the parties do not live together but are still married.

• **Dower** — The portion of a deceased husband’s real property allowed to his widow for her lifetime.

• **Ejectment** — An action to regain possession of real estate unlawfully held by another who claims the right of possession.

• **Equity** — A body of law that addresses problems falling outside of the strict bounds of common law or statutes. A single judge, the chancellor, reached a decision based on fairness, or equity. In Vermont equity cases were heard in the Court of Chancery, and included foreclosures, injunctions, and complex disputes.

• **Equity of redemption** — The right to pay off a mortgage and regain ownership of property, after one has defaulted but before the foreclosure sale.

• **Error (writ)** — A writ directing a lower court to submit the record of a legal action to a higher court for review, in order to ascertain if errors were made. The judgment may be reversed, corrected, or affirmed.

• **Execution** — The carrying into effect of the sentence or judgment of a court. In a criminal case, the infliction of capital punishment; in a civil case, a **writ of execution** authorizes seizure and sale of the defendant’s property.

• **Forms of action** — Classes of civil lawsuits. 19th-century Vermont divided actions into two classes: for money judgments, and for recovery of specific property. The latter were **replevin**, to recover personal property, and **ejectment**, to recover real estate. Money judgments further subdivided into those based on breach of contract, and those based on a civil wrong (tort) causing damage. Contract actions included **debt, covenant, assumpsit, note, and book account**. Tort actions included **trespass** (direct injury to person, land, or property), **trespass on the case** (indirect injury such as negligence, slander, libel, nuisance), and **trover** (wrongful appropriation of another’s property). The other two forms of action were **scire facias** and **audita querela**. See individual definitions of actions.

• **Grand jury** — A jury of inquiry that reviews evidence and decides whether to indict -- to prosecute a criminal case. In 19th century Vermont grand juries also reported on the county jails and were called for inquests in suspicious deaths.
- **Habeas corpus (writ)** — A court order demanding that a person be brought before the court, usually to determine if a prisoner is being held legally. In Vermont there were also habeas corpus cases in which the court demanded that a child in a custody dispute be brought before a judge.

- **Indictment, Bill of** — A document issued by a grand jury charging a person with committing a crime. The grand jury will find either a “true bill,” to prosecute, or “not a true bill” or “no bill,” to decline to prosecute.

- **Information** — Formal statement of criminal charges by a state’s attorney.

- **Injunction** — An order issued by a court of chancery to halt the commission of a particular act, or to require a specific action.

- **Inquisition** — An inquest; inquiry held by a grand jury or physician to determine cause of death.

- **Interlocutory injunction or order** — A temporary order issued by the court during the course of litigation.

- **Judgment** — The final decision of a court in a particular action which awards damages and/or costs in a civil suit and directs the defendant to be discharged or specifies punishment in a criminal case.

- **Jurisdiction** — A court’s power, right, and authority to act in a particular matter.

- **Jury (Petit)** — A group of persons selected according to law and given the power to decide questions of fact and return a verdict in a civil or criminal case. See also grand jury and struck jury.

- **Libel** — To defame someone in writing; *slander* was verbal defamation.

- **Libel for divorce** — A divorce proceeding. The plaintiff is the libellant, the defendant is the libellee.

- **Mandamus (writ)** — Court order requiring a lower court, public officer, or government body to perform an act required by law.

- **Mittimus (writ)** — A court order directing a sheriff or other police officer to escort a convict to prison.

- **Motion** — An application made to a court or judge to obtain an order directing that some act be done in favor of the applicant.

- **Next friend** — A person who acted on behalf of an incompetent or minor plaintiff, but who was not a party to the lawsuit and was not appointed as a guardian. Married women and children could require a next friend in order to sue in court.

- **Nolle prosequi** — A declaration made to the judge by a prosecutor in a criminal case, either before or during trial, meaning the case against the defendant is being dropped. Abbreviated as *nol. pros.* or N.P.

- **Non assumpsit** — Defendant’s plea in an assumpsit case denying the plaintiff’s charge.

- **Non est inventus** — The return of a sheriff on a writ, when the defendant is not found.

- **Nonappearance** — In early Vermont cases this docket entry meant that neither party appeared in court.

- **Nonsuit** — A judgment against the plaintiff when it neglects to proceed to trial.

- **Nulla bona** — If a sheriff tries to enforce a *writ of execution*, but can’t find any property that can be seized to satisfy the judgment, he returns the writ nulla bona.
- **Orator** — Plaintiff in a chancery case (a female orator is an oratrix).
- **Plaintiff** — The party who sues in a civil action; the prosecution (a state or the United States, representing the people) in a criminal case.
- **Plea** — Defendant’s answer to the plaintiff’s declaration.
- **Pleading** — The written or oral statements which set forth the claims of the parties before they go to trial. In Vermont the series of pleading was: declaration, plea, replication, rejoinder, surrejoinder, rebutter, surrebutter.
- **Possession (writ)** — Court order to enforce a judgment to recover the possession of land. It commands the sheriff to enter the land and give possession of it to the person entitled under the judgment.
- **Pray Oyer** — A prayer or petition to the court that the party may have the pleadings of the opposite party read to him.
- **Promissory Note** — A written promise by a person to pay a specific amount of money to another, usually to include a specified amount of interest. Notes often substituted for paper money. Banks issued their own notes, which were used as currency. A legal case based on nonpayment of a promissory note was termed an action on note.
- **Quash** — To annul or set aside. A motion to quash asks the judge for an order setting aside an action, such as a defective indictment.
- **Recognizance** — An obligation recorded in a court to do a particular act, such as to appear in court in a criminal trial. A recognizance is a type of bond.
- **Rejoinder** — Defendant’s answer to plaintiff’s replication.
- **Remand** — To send a case back to a lower court with instructions about further proceedings.
- **Replevin** — A legal action to recover personal possessions.
- **Replication** — Plaintiff’s answer to defendant’s plea.
- **Respondent** — The defendant in a chancery case. In Vermont, the defendant in a criminal case might also be called the respondent.
- **Scire facias (writ)** — Court order requiring a defendant to appear in court and prove why an existing judgment should not be executed against him. Commonly used to revive a judgment after a length of time, it is a continuation of the original action.
- **Seisin** — Legal possession and title to real estate.
- **Sequestration (writ)** — A court order for seizure of property to be maintained under court supervision, until the court determines otherwise. The purpose of the writ is to preserve the named property pending outcome of the litigation.
- **Struck jury** — A special jury called to serve for a particular case.
- **Subpoena** — An order to a witness to appear before the court, with a legal penalty for failure to comply.
- **Summons** — An order to the defendant to appear before the court.
- **Supersedeas (writ)** — An order by a higher court commanding a lower court to suspend a proceeding.
- **Tort** — A civil wrong. In early Vermont tort cases included trespass, trespass on the case, and trover.
- **Trespass** — An action brought to recover damages from a person whose actions have directly resulted in injury to person, property, or real estate. This might include assault and battery; damage to buildings, land, crops, or timber; personal injury or vehicle damage in a road accident.
- **Trespass on the case** — An action brought to recover damages from a person whose actions have resulted, indirectly, in injury to person, property, or real estate. The damage might be caused by negligence, carelessness, fraud, libel or slander, or alienation of affection.
- **Trover, Trover and conversion** — A civil lawsuit (tort) for recovery of damages for wrongful taking and use of personal property. Plaintiff seeks recovery only for the value of what was taken, not for the recovery of the property. In early Vermont, many trover cases concerned disputes over seizure of property by law officers in relation to other lawsuits.
- **True bill** — An indictment brought by a grand jury.
- **Venire** — A writ issued by a judge to a sheriff directing the summons of prospective jurors; the panel of prospective jurors from which a jury is selected.
- **Warrant** — An official court order authorizing a specific act, such as an arrest or the search of someone's property. An **arrest warrant** is issued by a judge upon the sworn complaint of a crime to have a suspect arrested for probable cause. A **bench warrant** is for immediate arrest of a person who has not appeared in court as required or is in contempt of court. A **search warrant** permits search of property for evidence.
- **Writ** — A court order requiring that something be done or giving authority to do a specified act.