

The Vermont Court System: An Historical Overview (Part 1)

By Scott Andrew Bartley

The early history of Vermont reflects the political turmoil of eighteenth-century America. The first permanent settlement within present-day Vermont was at Fort Dummer, now in Dummerston, near the province of Massachusetts Bay, by whose laws Vermont was then governed. King George settled a long disagreement over the border between Massachusetts and New Hampshire in 1740 -- the same border exists today. The king's decision placed Fort Dummer in the province of New Hampshire. This province exercised its right to grant a number of towns for settlement.

Migration into Vermont was hindered by the outbreak of the French and Indian War in 1755¹. By the end of the war, in 1760, there were only 17 towns along the southern border with Massachusetts and up the Connecticut River. Peace in the area brought another 63 towns granted in 1761, nine in 1762, 37 in 1763, and only six in 1764². This activity brought to a head the border dispute with New York. Then in the politic good graces with the crown, New York took its grievance to the king. His Majesty ruled that this area, by will of the people (and not by any pre-existing charter) would best be served by the province of New York. Unknown to the people, their case was argued in London. The decision created great tension between the settlers and the government of New York³. It is here that I begin to outline the development of the courts of Vermont.

The province of northern New York had no defined borders. With the king's pronouncement, all the land that would become "Vermont" fell within the jurisdiction of Albany County, whose seat of government was at Albany. A year earlier, Lt. Gov. Colden recognized this was really New York's land and issued a proclamation that the judges and other civil authorities exercise control over the western banks of the Connecticut River. Petitions from the area immediately followed, pointing out that one could not travel from the settled banks of the Connecticut River without going through the province of Massachusetts! A meeting of the many appointed justices of the peace at Rockingham in 1766 appointed constables for the towns⁴.

The first county erected in "Vermont" by the New York government was Cumberland County in 1766, with its seat of government at Chester. This county was eliminated in 1767 and recreated with almost the same borders in 1768. The county of Gloucester was formed in 1770, being the northern half of eastern "Vermont" above the northern border of Cumberland County. Charlotte County was formed in 1772 and covered all of western "Vermont" except for the southern half of present-day Bennington County (which remained in old Albany county). These jurisdictions were eliminated with the declaration of independence of Vermont on 15 January 1777⁵.

These counties operated under New York law (not detailed here) for the brief time they cover. Their system was evidently inefficient or incapable. Gloucester County recorded 121 cases; however, only 18 reached any judgment. Most of the cases involved debt⁶. The original records for this area of the frontier are seemingly incomplete. What is known to exist is described as follows.

For Cumberland County, the surviving original records are at the Windham County Courthouse, Newfane. Some of the record books have been microfilmed. These records include the Court of General Sessions of the Peace, 13 Sept. 1774 (3 pages); the Court of Common Pleas, 13 Sept. to 16 Dec. 1774 (25 pages); and Vol. 1, Court of Common Pleas & a Court of General Sessions of the Peace, June 1772 to December 1773⁷. Some of the original case files exist, too⁸.

Gloucester County's surviving original records are just as scarce. They were kept for many years at the Orange County Courthouse, Chelsea, but may be with the earliest records turned over to the General Services Center, Public Records Division at Middlesex⁹. These records are contained on 20 leaves of paper. They have been published in the *Proceedings of the Vermont Historical Society* for the years 1923, 1924 and 1925 (Bellows Falls, Vt., 1926), pages 141 to 192, and reprinted as *The Upper Connecticut: Narratives of its Settlement and its Part in the American Revolution*, Vol. 2 (Montpelier, Vt. : Vermont Historical Society, 1943), with the same pagination.

For Charlotte County, the surviving originals are with the New York State Library's Manuscripts Division. What is extant here is the Court of General Sessions of the Peace, Vol. 1, and the Court of Common Pleas, Vol. 1, both from 19 Oct. 1773 to 20 June 1775. The records for the county should have resided with Washington County, N.Y., and the remnant of the extinct county.

These New York counties no longer exist. In the case of Cumberland and Gloucester, the counties set up by the independent country of Vermont assumed their jurisdictions. By 1784, the remaining portion of Charlotte County was carved up and renamed, leaving these three names just a footnote in history. The story of the records since 1777 begins here.

Vermont modeled its judicial system and state law on Connecticut's¹⁰. Vermont's first constitution was established by convention on 2 July 1777. It provided that the people had a right to trial by jury, and that Courts of justice shall be established in every county. The Supreme Court and the several courts of common pleas shall have the usual powers of such courts and the power of chancery that are not inconsistent with this constitution¹¹.

A court system was already functioning on 17 March 1778, when the general assembly addressed the issue of providing attorneys and regulating fees¹². From the end of the New York courts' sessions in June of 1775 to the legislation enacted by the general assembly in 1778, there was effectively no legal court system in Vermont¹³. Temporary courts were created by the assembly on 24 March 1778 with five judges for the "shires" of Newbury, Westminster, Bennington, and Rutland. The nature of these courts was clarified on 5 June of that year and stated that these courts were not county courts¹⁴. Later that year the following courts were created:

- Supreme Court of Judicature
- Court of Chancery
- County Court
- Probate Court
- Justices' Court
- Court of Confiscation

Part 2 of this article will explore the particulars concerning each of the courts referred to above, with notes on changes through 1850. A quick survey of record locations will also be provided.

Footnotes

1. Samuel Williams, *The Natural and Civil History of Vermont* (Walpole, N.H., 1794), 211-12.
2. Esther Munroe Swift, *Vermont Place-Names : Footprints of History* (Camden, Maine: Picton Press, 1996), 571-75. The first towns were Bennington (1749); Halifax (1750); Marlboro and Wilmington (1751); Rockingham and Westminster (1752); Brattleboro, Dummerston, Newfane, Putney, Stamford, Townshend, and Woodford (1753); Chester, Grafton, and Guilford (1754); and Pownal (1760).
3. Williams [see note 1], 213-16.
4. Russell S. Taft, "The Supreme Court of Vermont," founded in many annuals of the Vermont Legislative Directory as early as 1906. For this article, the 1910 edition was used.
5. John H. Long, ed., *New Hampshire-Vermont: Atlas of Historical County Boundaries* (New York: Simon and Schuster, 1993), 78 [chronology]; 112, 121-23, 138 [detailed maps].
6. Michael A. Bellesiles, "The Establishment of Legal Structures on the Frontier: The Case of Revolutionary Vermont" published in *Journal of American History*, 76 [1986-1987]: 901-902.
7. Personal inspection by the author on location 14 May 1993.
8. Beth T. Muskat, "Windham County Court Records, 1766-1974" (typescript, Jan.1991), some material is stored in the county jail and the rest in the court house vault.
9. Personal inspection by the author on location 22 Dec. 1988.
10. Taft [see note 5], 276.

11. William Slade,
12. Vermont State Papers (Middlebury, Vt., 1823), 241-55.
13. *State Papers of Vermont*, vol. 3, *Journals and Proceedings of the General Assembly of the State of Vermont*, vol. 1 (Bellows Falls, Vt.: Secretary of State, 1924), 7, before the establishment of the counties later that sessions.
14. Taft [*see note 4*], 265.
15. *State Papers of Vermont*. Volume 3 [*see note 12*], 15, 22.