

The Vermont Court System: An Historical Overview (Part 2)

By Scott Andrew Bartley

Vermont, as an independent state, ratified its constitution on 2 July 1777, in Windsor. The beginning of its court system was outlined in Chapter II, Section 4. It was simply stated that the "Courts of justice shall be established in every county in this State." The judicial power of the State was vested in a unified judicial system composed of a "Supreme Court, and the several courts of common pleas..."¹. This system evolved into three basic levels: Supreme Court; courts of original and general jurisdiction; and minor courts of limited or special jurisdiction.

The Supreme Court of Judicature was first called the Superior Court in the General Assembly's enacting legislation on 23 October 1778². The court held only one session in each half shire annually³. To clear up the line of jurisdiction between the Superior Court and the county courts, "an act defining and limiting the powers of the several courts within this State" was passed in 1782. According to this act, the county courts were continued (having been organized the year before), the Superior Court abolished, and the Supreme Court of Judicature established⁴.

The Supreme Court is an appeals court only, for all practical purposes, in the modern sense. By statute, it has exclusive jurisdiction of petitions that cannot be tried by jury. It may issue writs of error⁵ to courts of inferior jurisdictions⁶. The court can also order a new trial in any court⁷. Historically, this court held jurisdiction over all criminal actions, which includes adultery, polygamy, treason, counterfeiting, forgery, perjury, incest, rapes, defaming of civil authority, and all other crimes for which the fine went to the state treasury. Each session, the court moved about the state from one shire town (in other states known as the county seat) to another⁸.

The Court of Chancery was established by act on 3 March 1797; the Superior [now Supreme] Court operated as the chancery before this. It met at the same time and place, and with the same officials, as the Supreme Court. This court was considered to have all the same powers as its counterpart in England, as long as these did not conflict with the Vermont constitution. This court was what is now termed a "court of equity." Cases brought before this court were tried against justice that was deemed fair--the Supreme Court applied only the law as written. In 1839 the chancery was separated from the Supreme Court, and one judge was selected to sit at the same time as the county court in each county. This court was in existence in 1857, but I have been unable to determine when it ceased. Present-day Vermont does not have a chancery; however, archaic laws for it are still on the books⁹.

The county court was first created in 1781. These courts evolved into the modern district superior courts. This court has original and exclusive jurisdiction of all original civil actions, except those that are admissible in the justices' or municipal courts; petitions; and appellate jurisdiction of civil or criminal causes appealable to this court. This court can also grant retrials (at the county level). The superior judge is designated by the legislature to be the chancellor, in effect, making the county court the de facto chancery court. Divorce cases are handled here. Appeals from this court go directly to the state supreme court¹⁰.

The probate court was created by the General Assembly on 24 March 1778. It created probate districts and set the fees to be three times that established by Connecticut law¹¹. Each county was to have four probate districts, to be drawn up by committee¹². Probate courts were established as counties were created. (The west side of the Green Mountains was named Bennington, and the east side was named Unity--changed to Cumberland four days later--on 17 March 1778.)

The probate court is the only court that does "not proceed according to common law," but under the jurisdiction of statutes. An appeal of equity can go to the county court; however, a point of law goes directly to the Supreme Court. The probate court has "jurisdiction of the probate of wills, the settlement of estates, the appointment of guardians, and of the powers, duties and rights of guardians and wards." This includes all adoption cases and any land transfer by descent¹³.

The justices' court was the court run by the justice of the peace. It was designed to handle the day-to-day issues of a small, but legal nature. These courts had the power to try all criminal actions that would result in a fine or forfeiture not exceeding 40s and corporal punishments not exceeding 10 stripes! All civil actions went before the justices' court

except those of defamation, replevin, trespass, or where title of land was concerned¹⁴.

Special Courts

The first municipal court was created at the incorporation of the first city, Vergennes, in 1788. The mayor was selected as its judge. It is unclear whether he ever acted officially in this capacity. The next municipal court was established at Burlington in 1865, with the head of the court being called a "recorder." Similar courts were later set up in Barre, Bellows Falls, Bennington, Brattleboro, Brighton, Montpelier, Rutland, St. Albans, Springfield, and Winooski, and in the counties of Addison, Caledonia, and Orleans¹⁵.

These fourteen courts had the same power as the justices' courts; however, their jurisdiction was greater. These courts covered their entire county, with a couple of exceptions. If there were two courts in the county, each court had jurisdiction in the entire county, except for the town where the other court was located. If a county had more than one probate district, this court covered only the towns within its probate district. This meant that there were no municipal courts in the counties of Grand Isle, Lamoille, and Orange¹⁶.

A court of confiscation, one in each county, was authorized by the governor and council on 26 March 1778. Seven men were appointed as a court to confiscate and order the sale of estates belonging to the enemy. These men were actually the governor and council themselves and were on the court within the county in which they resided. The General Assembly ratified this arrangement on 12 February 1779¹⁷.

This court operated throughout the Revolutionary War. Anyone deemed a "Tory," that is, loyal to the Crown of England, had his lands confiscated and sold to the benefit of the state. The families usually moved to Boston, New York, or to Canada for the protection of the British Army. There are 152 known Tory cases in Vermont, whether their title was from Vermont or a claim from New York. Loyalists petitioned the British Parliament for their losses. Between 1785 and 1789, over 5000 cases were reviewed¹⁸.

Circuit judges were instituted by an act that took effect in the fall of 1850 as a change to the judicial system. A Supreme Court of three judges was authorized, the state was divided into four judicial circuits, and a circuit judge was appointed in each. It was his duty to preside in the county courts, the Supreme Court judges having no duties to perform in the county courts; each circuit judge was a chancellor, the Supreme Court having no jurisdiction in equity matters, except as a court of appeals. This act continued in force for seven years and was repealed by an act that took effect in 1857¹⁹.

Readers interested in this subject, or related ones, should review the works cited in the article and this list of additional works:

- Billias, George Athen, ed. *Law and Authority in Colonial America* (New York, 1965).
- Friedman, Lawrence M. *A History of American Law* (New York, 1973).
- Gorham, Alan. "Federal Court Records Pertaining to Vermont: Sources for Study," *Vermont History*. Vol. 39 (Summer/Fall 1971).
- Horwitz, Morton J. *The Transformation of American Law, 1780-1860* (Cambridge, Mass., 1977).
- Jeffrey, William, Jr. "Early New England Court Records - A Bibliography of Published Materials," *American Journal of Legal History*, 1 [1957]: 119-47.
- *Vermont Historical Society Collections* (Montpelier, Vt., 1870-1871), 2 vols.

Footnotes

1. Vermont Constitution of 1777, Ch. II, §§ IV, XXI.
2. *State Papers of Vermont*, vol. 3, *Journals and Proceedings of the General Assembly of the State of Vermont*, vol. 1 (Bellows Falls, Vt., 1924), 47.
3. William Slade, *Vermont State Papers* (Middlebury, Vt., 1823), 549-56; Russell S. Taft, "The Supreme court of Vermont," in *Vermont Legislative Directory* (Montpelier, 1910), 270.
4. Taft [see note 3], 270, 276-77; Michael A. Bellesiles, "The Establishment of Legal Structures on the Frontier: The Case of Revolutionary Vermont," *Journal of American History* 73 (1986/6): 908.
5. That is, to allow a view of a case to correct an error or to affirm the previous decision.

6. Andrew E. Nuquist and Edith W. Nuquist, *Vermont State Government and Administration* (Burlington, Vt.: Government Research Center, 1966), 233-34.
7. Harris E. Thurber, "The Vermont Judiciary: A Study in Cultural Adaptation" (Ph.D. diss., Princeton University, 1955), 107.
8. Samuel Williams, *The Natural and Civil History of Vermont* (Walpole, N.H., 1794), 353.
9. Williams [see note 8], 354; Henry Campbell Black, *Black's Law Dictionary*, 5th ed (St. Paul, Minn.: West Publishing, 1979), 321-22, 484; Frank L. Fish, "The Vermont Bar and Bench" in Walter Hill Crockett, ed., *Vermont: The Green Mountain State* (New York, 1923), 5: 18-19.
10. Taft [see note 3], 270; Nuquist [see note 6], 232-33; Thurber [see note 7], 127-31.
11. *State Papers of Vermont*, vol. 3, *Journals and Proceeding of the General Assembly of the State of Vermont*, vol. 1 (Bellows Falls, Vt.: Secretary of State, 1924), 16.
12. *State Papers of Vermont*, vol. 3 [see note 10], 8.
13. Thurber [see note 7], 187, citing Vermont Statutes, Revision of 1947, Section 2793, and *Barber v. Chase*, 101 Vt. 343 (1928); Nuquist [see note 6], 229, citing 4 VSA § 311.
14. Williams [see note 8], 352.
15. Fish [see note 9], 5: 22-23. These courts were disbanded in 1965.
16. *Ibid.*; Thurber [see note 7], 147-65.
17. E. P. Walton, *Records of the Council of Safety and Governor and Council of the State of Vermont* (Montpelier, Vt., 1873-1880), 1: 235, 248-49; *State Papers of Vermont*, vol. 3 [see note 10], 53.
18. *State Papers of Vermont*, vol. 6. Mary Greene Nye, "Sequestration, Confiscation and Sale of Estates," 9-10, 439-44.
19. Taft [see note 3], 277.