

Order Books

Order books provide considerable information about the county, local leaders, and a fair amount of gossip unavailable in the more formalized document registers such as will books and deed books. Because will and deed books offer a “quick fix” for finding lineage, the order books are often ignored. Another reason for their limited use is that they are poorly indexed if indexed at all. They must be read entirely, day by day, in order to locate critical clues. Read together with a basic knowledge of the law of the time, brief entries may yield significant information.

The County Court in Virginia

The County Court as an institution in Virginia began with the creation of counties in 1634. To understand the court as it existed for more than two centuries, it is necessary to look at the effects of the Civil War. This refers not to the war of the 1860s, but to the civil war in England in the first half of the 1600s.

Charles I succeeded to the throne in 1625 and had repeated disagreements with Parliament. In January 1641/42, the king entered the House of Commons with troops, and ensuing tension became armed conflict between forces supporting Parliament (called “Roundheads”) and those supporting the king (called “Cavaliers”). England descended into chaos and over the next six years the Parliamentary forces gradually prevailed. Charles was beheaded 30 Jan 1649/50.

As the outcome of this struggle became apparent to wealthy royalists, many reduced their assets to cash and sailed for Virginia, where the Governor was a staunch royalist. They used their wealth to acquire vast tracts of land from the colonial government and quickly moved into dominance of the political structure. Governance of the colony was by the Governor and council, with input from the House of Burgesses. The office of Burgess was the only elected office in Virginia for 150 years, and quickly came to be held only by the Cavaliers. All other positions were appointed by the Governor. Local authority rested with the County Court and the Parish Vestry. The Vestry, likewise dominated by the large landowners, itself selected replacements for members who died or resigned. The Parish handled all welfare matters and conducted the processions of landowners’ boundaries.

The County Court members, called “Justices,” “Magistrates,” and “Justices of the Peace,” were referred to as “Gentlemen,” and addressed as “Your Worships.” They were appointed by the Governor, but the Governor chose members from a list provided by the Court itself. The Sheriff served for a term of one year with a maximum of two terms, and was a member of the Court (who could not vote while Sheriff). The common practice was for the Court to send a list of three names to the Governor with the preferred choice listed first. The Governor almost always appointed the first choice of the Court. For a county, the Court was the judicial authority and also the executive and legislative (within limits set by the colonial government) as well.

The court granted licenses for ordinaries, to operate ferries, and set the rates to be charged. The court assigned persons to build and maintain the roads (generally called “road orders”), the foreman being called the “surveyor” and the work crew (“gang” or “hands”) coming from the tithable males in the named households. The road order helps to define the location of property, and shows who were neighbors. Processions, or the marking of boundaries between adjoining property owners, was required to be done every four years. Those orders also serve the purpose of locating property and neighbors. The order book will merely direct the parish Vestry to conduct the processions. Orders to bind out orphans provide information about ages and relationships. If an orphan chose his or her

guardian, he was 14 years old but under 21. When the entry says the guardian was appointed, the child was under 14.

The Court appointed commissioners, administrators of estates, and appraisers, all of whom were entitled to a fee. These functions and other appointments made the Court the center of patronage for the county.

Understanding and Using Order Books

The order book consists of a series of entries in chronological order showing the actions taken by the Court. The types of entries vary, the county court having been the judicial, legislative and administrative authority in the county.

The court held a special session each year to “lay the levy,” which meant to authorize payments to be made by the county and to raise sufficient taxes to cover those payments. Taxes were set in terms of pounds of tobacco per tithable (white males and all slaves age 16 or more). The number of tithables in the county was given annually, allowing a rough estimation of the population to be made. Payments would list the payee, the reason for payment and the amount.

The order book records the presenting of documents to be recorded, such as deeds, wills, and other legal instruments. It may or may not include more information than is found with the recorded document. Where there was no will, the order book records the granting of administration on the estate of the deceased. This type of order often gives the name of a spouse which is not found elsewhere.

Suits at law or in chancery are often considered too mundane to be studied. Yet each suit chronicles a relationship (albeit a broken one). Taken as a whole, these suits provide a picture of the family and financial relationships among county residents. It can be seen who was sued frequently for not paying debts, and who sued often to collect debts or to complain of injuries.

The orders relating to suits also include persons (as witnesses, plaintiffs, defendants, securities, bails, etc.) who never appear in a deed book or will. Suits typically were an “Action of Case” (suit for damages due to an alleged injury) or “Action of Debt” (suit to collect a debt due).

In either type of suit, the plaintiff sued the defendant. In nearly every case, both parties were of age at the time the suit was filed, but also at the time the transaction was entered into. If a bond was dated 1 Aug 1711, it is relatively certain that the maker of the bond was born before 1 Aug 1690 because he had to be of age (21) to make a valid and enforceable agreement. Likewise the dates of accounts. The reason for the transaction may sometimes be discerned from the information in the entry. It is useful to remember that a large amount of business (particularly loans) was transacted among members of an extended family. Thus the persons mentioned in a suit, even those with different surnames, may provide clues as to family relationships.

When a suit involved an account, the entry refers to the practice of a person keeping a ledger (or a collection of loose papers) of amounts he owed and that were owed to him. Periodically there were disputes about the net balance and whether the person had included every transaction. This practice was used to compensate for the lack of money in the colony, and often was convoluted. If A owed B for a horse, and C owed A for crops delivered, then A would write out an order for C to pay B for the price of the horse (in whole or in part).

Law violations offer the tabloid view of the county. The grand jury would meet and issue “presentments” for misfeasance or malfeasance. Women were presented for having illegitimate (“base born” or “bastard”) children, men for being drunk and for uttering oaths. Surveyors of roads were presented for not keeping the road in repair. Laws, such as those regulating the killing of hogs, were enforced by private suit. Slaves were tried by courts of Oyer and Terminer, but serious crimes by whites were sent to the General Court for trial.

In the absence of land records for the period, ownership may be shown by the roles shown in court order entries. In order to vote and to serve on a jury (grand or petit), a man had to be a freeholder. Only landowners held that status. Thus, where the names of jurors are given it is an indication that on that date they were landowners. Likewise, the task of appraisal of estates, or the holding of any office (e.g., constable, tobacco inspector, coroner), was reserved to freeholders. Renters could be witnesses, or parties to an action at law or suit in chancery, and could be assigned to assist the surveyors of the roads in their districts.

Entries in the order book often establish that a person was living, where no other source gives anything but a large date range. Where a person appeared in court (“in his proper person”) it is evidence that he was alive and able to travel to Court. A suit would abate with the death of a party. An example is found in the Ligon family. Simon Ligon first appears in records on 18 Apr 1682, where he is mentioned working as a “hand” of Richard Ward. (W&D 1677-92, p. 220) In the books of deeds and wills, the last entry for him was proving a power of attorney on 1 Aug 1702. (D&W 1697-1704, p. 293) In the book of wills and deeds for 1710-1714, there is a nuncupative will dated 1 Feb 1711/12 of a Mary Ligon who was a widow and mentioned a son named Simon. (p. 138) In this order book, as will be seen, the entries clarify both dates and relationships. Simon Ligon appeared personally in Court on 1 Oct 1711, but on 7 Jan 1711/12 the case was dismissed because he was dead. On 3 Mar 1711/12, Edward Heathcot (a witness to the will of Mary Ligon) reported that “Mary the widow of Simon Ligon” died at his (Heathcot’s) house after a long illness. The record shows that the Court appointed the Sheriff as administrator of Simon’s estate, “he being dead above three months.” From this it is learned that Simon died between 1 Oct and 3 Dec 1711, and that his widow died between declaring orally her will on 1 Feb and 3 Mar 1711/12.

In using a court order book there is no escape from legal jargon. It is suggested that when reading an order book, a person obtain and keep handy three references: (1) Tucker’s *Commentaries on the Laws of Virginia* (several editions between 1830 and 1850), which explains Virginia variations on English law; (2) an early edition of *Black’s Law Dictionary*; and (3) Henings *Statutes at Large of Virginia*. The first two may be downloaded from Google Books, and the last is online at www.vagenweb.org/hening/. It can be seen from Tucker that the law in Virginia changed very little over time and his explanations of the law in the early to middle 1800s was generally the same as a century before, and he generally pointed out changes with citations to the Acts of Assembly which made them.

Presentation of the Order Book

This is not a transcription of the order book, reproducing in type the entire manuscript. Nor is it a bare abstract, summarizing the entries with minimal information. All entries will be presented in some form, including those continuing the case until the next session of the Court (for which the term “Referd,” i.e., referred, was used). The objective of each entry is to provide the reader with the facts necessary to understand what was going on. The type of the case, the persons involved and their respective roles, the amount sued for and the reason that it was claimed to be due, and other facts all provide an insight into the litigants, the Court and surrounding circumstances. Following the case

through its twists and turns informs as to the judicial process and the personalities involved.

The original language, albeit archaic, repetitive and often stilted, presents the rhythm of writing and conversation at the time. Spelling and word choice, now 300 years old, is quaint and flavorful. Be aware that an apostrophe was rarely used to denote the possessive. By reading this version, one can become familiar with terminology and the way the court worked. Other entries will follow the original wording but omit certain conventions which should be assumed by the reader unless otherwise noted.

Entries will usually reduce spelled-out numbers (amounts, dates, etc.) to numerals. After establishing how the entries were written, they will be abridged by dropping out unnecessary language. An example is the phrase "current money of Virginia." Most suits were for amounts in pounds (£), shillings (s) and pence (d) in current money of Virginia. Twelve pence made a shilling, and 20 shillings was a pound. An amount expressed as £10.14.9 would be 10 pounds, 14 shillings and 9 pence. After establishing the difference between current money of Virginia and Sterling, all amounts of money will assume that they are current money of Virginia and the phrase will be dropped. Thus a claim for £6 would be presumed current money of Virginia, and if in Sterling it would so state.

The plaintiff or complainant is listed first and the defendant, second. Plaintiff may appear as Plt or Pltff, and defendant as Dft or Defendt. The word "against" may be replaced with the abbreviation "v." The term "depending" is often used, meaning that the case, in modern terms, is pending. The term may or may not be included in the presentation. Excess lawyer's verbiage will be dropped. Where a description states that there are involved 100 acres of land being, situated, and lying in Henrico county, the words "being, situated and lying land in Henrico County" are not needed, since acres measure only land and if recorded in Henrico County Court would be located in that county (unless specifically stated otherwise).

Executor (Exor.) and Executrix (Extr. or Extx.) are specific terms meaning only the person(s) named in a will to act in that capacity. Thus the phrase, "Executor of the estate (or will) of Sam Smith deceased," may be shortened to Exor of Sam Smith. For there to be an executor, Smith must be deceased and the executor obviously handles the estate. The terms administrator (Admr.) and administratrix (Admx.) are applied in the same way. The term is used only for the estate of a person who is deceased, usually without a will (intestate), but also in instances where no executor named in the will agrees to act and another person is appointed to act as administrator "with the will annexed." Persons were appointed by the Court to appraise (app.) the estates of deceased persons, and their act was called an "appraisement" (App.) It should be noted that the term "estate" referred to any person's assets, not just a deceased person.

At the time of this book, the "and so forth" or "etcetera" was denoted as &c. Words were often abbreviated. In most cases the meaning is obvious, the last letter being raised above the line (which is not done here) with a period.

Justices present at the convening of the Court were listed as present after the language stating that Court was opened. After these names always appeared "Gentlemen Justices," which phrase is omitted in this presentation. It is likewise omitted when a justice came late and took the bench, which is denoted with parentheses at the place where it was noted by the clerk, as well as when a justice left the session (using "absent").

Judgments normally were entered for the amount of the judgment "with Costs." For this reason any judgment reported should be presumed to be with costs unless otherwise stated specifically.

When a suit was filed a writ was issued to the Sheriff to physically arrest the defendant. In lieu of waiting in jail for the case to be heard, a defendant could post bond. If the Sheriff served the papers and let the defendant go without bond, the Sheriff would pay the judgment if the defendant failed to appear. When a defendant failed to appear to answer the suit, an order to attach his property would issue so that a judgment could not be thwarted. Typical language found in an order would be ordering that “an Attachment do issue to attach So much of the Defendant’s estate as shall be Sufficient to pay the said debt with Costs, returnable to the next Court.” Here, that will be presented as “attachment to issue.”

Order books also noted the recording of documents, most often deeds. Deeds were either acknowledged in open court by the maker or were proved by witnesses. In the latter case, the general rule for deeds conveying land was that three witnesses had to swear in court that they saw the grantor sign the document before it would be recorded. This might take place over a number of years and sometimes the deed was never recorded because only one or two witnesses proved it. A deed being proved by witnesses could mean that the grantor had died, was ill, had moved away, or just did not want to travel to court to acknowledge the deed. If the deed was acknowledged, it shows that the grantor was alive and able to get to court. The phrase “in his proper person” was another way to say “personally” (as opposed to an appearance by his attorney). The memorandum of “livery and seisin” refers to a written acknowledgment that the grantee had received possession of the land, and appears only with deeds for land (not slaves). Such an order might read as follows:

“Robert Burton appeared personally and acknowledged one Deed Indented (dated the Second day of April 1711) from himself to William Cox to be his act and Deed, and thereupon Ordered that the Same be Recorded together with the livery and Seisin thereon endorsed which he also acknowledged. Then Mary the wife of the said Robert Burton appeared in her proper person and Relinquished her Right of Dower in the lands by the said Deed Conveyed which is also Ordered to be Recorded.”

This entry may be presented as:

Robert Burton ack. his deed dated 2 Apr 1711 to William Cox, and Mary his wife rel. dower.

Where a deed was proved by witnesses, or a will or other document, the orders used phrases like “made Oath,” meaning that the witness swore in open court. Where a document was presented or proved, those words here will presume that they were under oath. Specific notation will be made where testimony is given with “Solemn Affirmance,” indicating that the witness was a Quaker (whose religion forbade swearing oaths).

Suggestion

The order book should first be read straight through. Regard it as a volume of short stories, each entry constituting its own drama (and occasionally, comedy). Contemplate the circumstances of each entry and how the court handled the matter. This approach will give the reader a sense of the flow of events, a picture of the social and economic structure of the county, and a growing understanding of how the law of the time worked. Having done so, researching a particular subject matter or family will both be easier and be better understood in the context of the times.