

Nineteenth-Century Supreme Court Resources in the California State Archives

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There are many golden nuggets of California Supreme Court history in the California State Archives, a division of the Secretary of State's Office.¹ The Supreme Court collection includes more than 8,500 cubic feet of textual records dating from the 19th through the 21st centuries — more than six hundred bound volumes, about a hundred maps, and several photographs and artifacts. There is a wealth of information about the administrative and legal history of the Court. In addition to providing evidence of the Court's procedures, activities and functions, these records contain fascinating and revealing details about individuals and historical events of interest to lawyers, teachers, historians, genealogists, and other researchers. The goal of this brief article is to introduce the resources available at the State Archives and to provide a glimpse at three of the "nuggets."

A large portion of Supreme Court records in the State Archives date from the 19th century. The largest single series of records within these 19th century materials are case files. The docket numbers of the civil and criminal case files in the collection reflect the variety of numbering systems employed by the Court during the 19th century. According to the collection's inventory (finding aid), "prior to 1895 the numbering system . . . involves two series: numbers 1-4182 (1850-1863), which includes both civil and criminal actions, and numbers 1-21201 (1864-1895) . . . [T]he latter numbering system is complicated by the fact that at different dates blocks of numbers were set aside to distinguish between civil and criminal actions."

Among the Archives' nuggets are materials contained in the file for *In re Perkins* (1852) 2 Cal. 424. That case brings to life the struggles that some African Americans faced after passage of California's Fugitive



IMAGE 1: Certificate, signed by Mississippi Governor Henry S. Foote — part of the case file *In re Perkins* (1852) 2 Cal. 424, WPA No. 3285, Supreme Court of California Records, California State Archives, Office of the Secretary of State, Sacramento.

Slave Act in 1852. The petitioners in *Perkins* were three slaves who had been brought by their owner, C.S. Perkins, from Mississippi to California before the adoption of the state Constitution in 1849. Article I, section 18 of that Constitution declared that "[n]either slavery nor involuntary servitude, unless for the punishment of crime, shall ever be tolerated in this state."

Perkins returned to Mississippi, leaving an agent in charge of the slaves. At this point, the slaves asserted their freedom and opened a business together. But when the Fugitive Slave Act was passed, Perkins demanded that the slaves be arrested and turned over to him. He granted Albert G. Perkins of Sacramento — presumably a relative — his power of attorney to act in his place and have these three individuals sent back to Mississippi. After they were arrested by a sheriff, the slaves sought a writ

of habeas corpus contending that the 1852 statute was invalid because it conflicted with the constitutional prohibition on slavery. The Supreme Court, however, concluded that the constitutional provision was merely "directory" and required implementing legislation to become effective. It ordered the three men remanded to their owner. IMAGE 1 is a certificate signed by the Governor of Mississippi attesting to the legality of the power of attorney document submitted to the California authorities by Albert G. Perkins.

Other types of 19th century Supreme Court records in the State Archives include minute books, civil and criminal registers of actions, calendars, stipulations, a roll of attorneys certified to practice before the Court, and several miscellaneous receipt and cash books used by the court clerks. Thirty-three volumes of judgment books dating from 1855 to 1885 contain entries complete with docket numbers, names of litigants and decisions. The State Archives' collection of civil and criminal opinions, both bound and unbound, contains many

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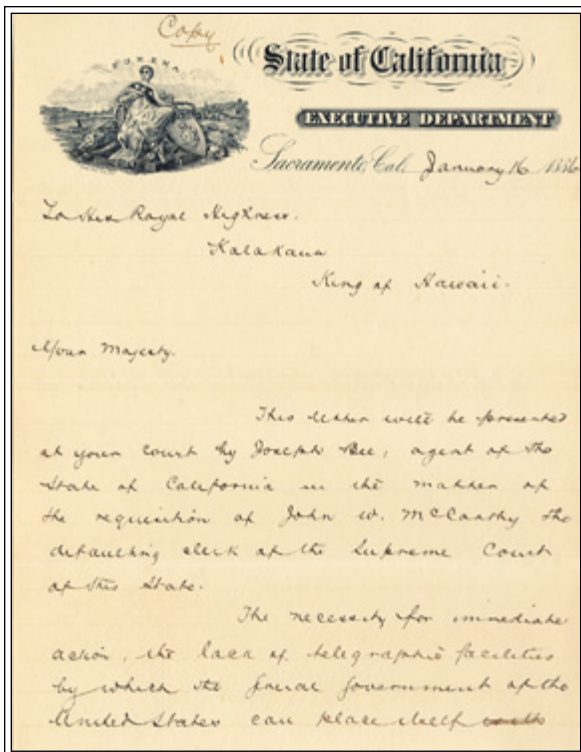


IMAGE 2: This is a “secretarial copy” of a portion of a letter sent by California Governor George Stoneman to King Kalākaua of Hawaii regarding the extradition of the notorious fugitive, and sometime Clerk of the Supreme Court, John W. McCarthy, January 16, 1886. (Extradition Case Files, WPA No. 1985, Governor’s Office Records, California State Archives, Office of the Secretary of State, Sacramento.)

opinions that were never officially published in *California Reports*. Twenty-three volumes of analytical indexes in the collection were compiled in response to Statutes 1877-1878, chapter 650, which directed the court clerk to make “a full and complete general analytical index of all cases filed in said Court, and the action thereon, from the organization of said Court to date.” One volume of manifolds from the Court’s San Francisco office dating from 1887 to 1892 contains daily notations of orders, filings and actions that were later used to generate entries in the registers of actions.

Many records in the State Archives created by the executive and legislative branches of state government also provide information about the history of the Court during the 19th century. The records of the Attorney General’s Office, for example, contain many registers of actions, bound docket volumes and case files for cases in which the Attorney General acted as the plaintiff’s or defendant’s counsel. Many of these cases were heard in the Supreme Court of California, and occasionally these Attorney General case files contain information that cannot be found in the Supreme Court records. Among the legislative papers in the State Archives are hearing transcripts and exhib-

its that comprise an Assembly Special Committee report concerning the case of John W. McCarthy,² who was elected Clerk of the California Supreme Court in 1882 (the position was elective at that time).

On January 15, 1886, McCarthy was indicted by a San Francisco grand jury for embezzling state funds. Anticipating that possibility, McCarthy had departed for Hawaii a few days earlier. An arrest warrant was issued and a fortunate San Francisco police detective assigned to take the next steamer to Honolulu to seek his arrest and return. IMAGE 2 is a copy of a portion of a letter dated January 16, 1886 sent by California Governor Stoneman to King Kalākaua in support of the efforts to have McCarthy extradited. McCarthy was arrested in Honolulu, but challenged the power of Hawaiian authorities to extradite him. His petition for habeas corpus was pursued to the Supreme Court of the Hawaiian Islands, which unanimously upheld the propriety of the Island’s executive branch honoring the request for extradition.

On his return McCarthy was convicted and sentenced to five years in prison. After about two and a half years, however, the new Governor pardoned him. The State Archives also has the file containing his pardon application. Astonishingly, his request was supported by the Superior Court judge who presided at his trial, 11 of the 12 jurors who convicted him, as well as the Chief Justice and three of the four associate justices of the California Supreme Court.³

The relationship between the Court and the State Archives goes back many decades. Supreme Court records were transferred to the State Archives as early as 1937, and in the Minutes of the Court from November 8 of that year appears an order signed by Chief Justice William H. Waste, directing the Clerk of the Court to transfer “transcripts and other records of the Court” to the State Archives, and noting that “[t]he Secretary of State, through the State Archivist, Mr. Bart C. Greer, who is a member of the staff of the Secretary of State, has offered to provide space and to carefully and permanently index all records and safely keep the same.”⁴

A few years after Mr. Greer’s offer, the State Archives’ collection of Supreme Court case files were indexed as part of a federally funded Work Projects Administration program. Approximately 30,800 civil and criminal case files comprising more than 1,400 cubic feet were indexed and assigned new identifications known as WPA numbers. The entries in the indexes themselves are arranged alphabetically by the names of both plaintiffs and defendants. Almost all 19th century Supreme Court case files in the State Archives and many early 20th century case files are listed in these WPA indexes. Consequently, researchers typically do not need to provide the original 19th century docket

number in order for State Archives staff to locate the desired case file.

IMAGE 3 is a map, assigned a WPA number, which was originally included in the Supreme Court case file of *Eldridge v. Cowell* (1854) 4 Cal. 80. The plaintiff, Mr. Eldridge, owned a waterfront lot in downtown San Francisco bounded on the east by Battery Street. Directly across Battery Street was the Bay. The Bay lands, however, had been subdivided by the City into “water lots.” The one across the street from Mr. Eldridge was owned by Mr. Cowell, who had anchored several permanently-moored ships that he had converted into shops and businesses. According to Mr. Eldridge these “improvements” were preventing his access to the water and depriving him of his rights to commerce and navigation. “Store-ships” were a common sight in old San Francisco and the map offers detailed information about the names and locations of some of these ships.

The California Supreme Court ruled in favor of Mr. Cowell, relying on state legislation passed in 1852 that approved development of water lots shown on San Francisco city maps, despite the fact that they were submerged. The Court’s decision upheld the state’s author-

ity to waive the public trust in navigable waters when justified by the public interest.

Interested in exploring the fascinating collections at the State Archives? Visit www.sos.ca.gov/archives for more information. ★

ENDNOTES

1. For a closer look at the history of and collections in the California State Archives, see John F. Burns and Nancy Lenoil, *The First California Statute: Legal History and the California State Archives*, 4 *California Legal History* (2009), pp. 443–476; and Laren Metzger, *State Archives Digitizes Constitutional Convention Papers*, *CSCHS Newsletter* (Fall/Winter 2008), pp. 22–23. [Editor’s note: John Burns is a former State Archivist of California and currently a member of the Society’s Board of Directors. The Society provided a grant to assist the State Archives in digitizing the 1878–1879 Constitutional Convention papers.]
2. Assembly Special Committee Report, 1885, Legislative Papers, LP7:27–37, California State Archives.
3. Application for Pardon File, 1890, Governor’s Office Records, WPA No. 4618, California State Archives.
4. Minutes, November 8, 1937, Supreme Court of California Records, California State Archives.

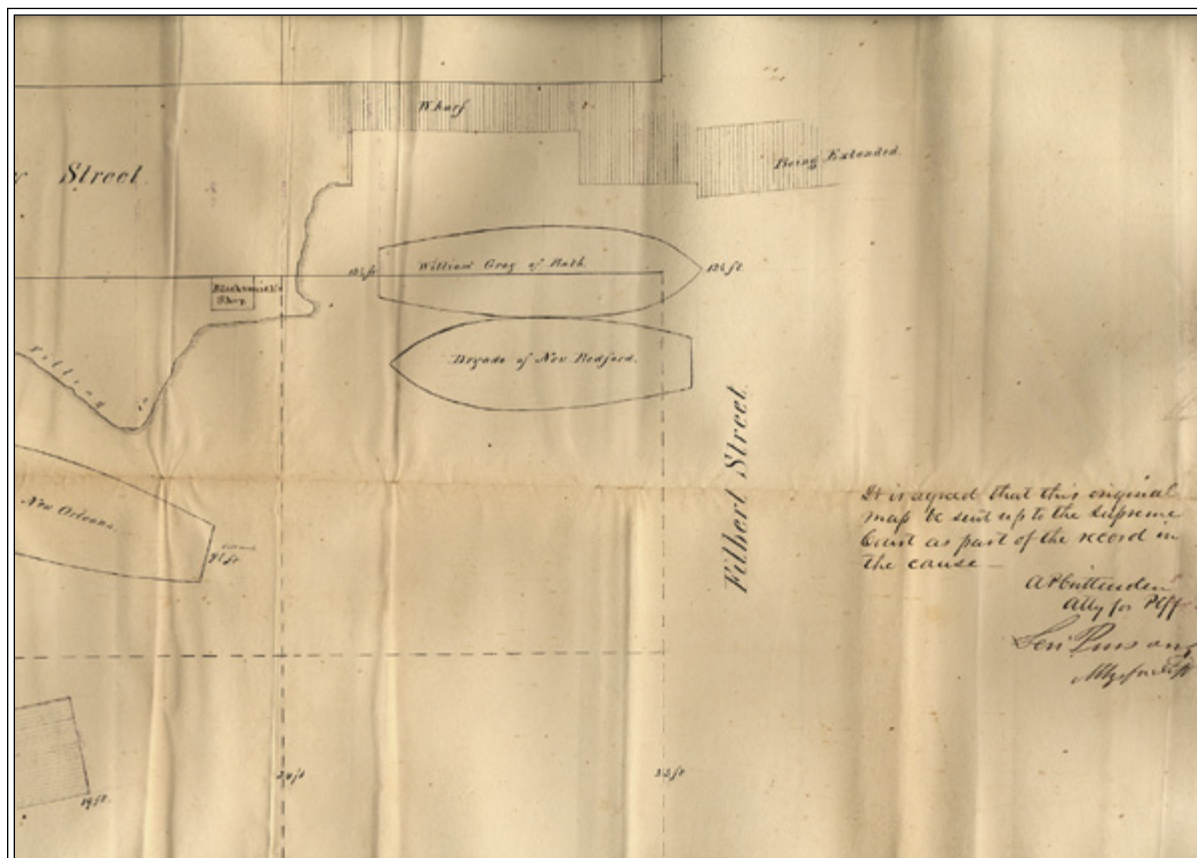


IMAGE 3: Map (detail), *Eldridge v. Cowell* (1854) 4 Cal. 80, WPA No. 7221, Supreme Court of California Records, California State Archives, Office of the Secretary of State, Sacramento.