

*Excerpt from:*

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*Courtroom formalities*

Law in British colonies was local and dispersed as, although based on English common law, each colony adapted law to its own circumstances. “Law,” however, did not mean simply statutes enacted by colonial elites. Law was written locally, significantly so in New England with its strong local township rule and town meetings. Law was also made in the courtroom. Under common law, juries not only engaged in fact determination, they ruled on legal interpretation. By these means, colonists believed, the law recognized local contingencies and kept the peace. Over the eighteenth century in Massachusetts, more legally knowledgeable justices and attorneys wrested some of this authority away from juries through their expertise in the use of common law’s arcane procedures. Yet it was still within the jury’s prerogative to determine what the law was.<sup>1</sup> Levi Lincoln argued to the *Walker vs Jennison* jury in 1783 that natural law overrode government law; the same argument that John Lowell and N.P. Sargent made to Essex County juries a dozen years earlier in Essex County.

When Massachusetts Bay colony received its new charter in 1692 and formally became a royal province, the legislature received limited authority to reorganize the court system. The structure established in 1692 was continued, with a name change, by the 1780 constitution and lasted until 1859. A local Justice of the Peace handled minor criminal case and courts of General Sessions of the Peace saw to larger offenses. Courts of Common Pleas (CCP), sometimes

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<sup>1</sup> William E. Nelson, *Americanization of the Common Law: The Impact of Legal Change on Massachusetts Society, 1780-1830* (Athens, GA: The University of Georgia Press, 1994), 3.

referred to as “inferior courts” heard civil cases. Appeals of inferior court judgments went to the Superior Court of Judicature (SCJ) which met semi-annually in each county. The 1780 constitution retained this structure changing only the name of the superior court to Supreme Judicial Court (SJC). Panels of four justices presided over inferior court sessions; superior court panels included a fifth judge who held the position of Chief Justice. The Essex CCP met quarterly for a week during March in Ipswich, July in Salem, September in Newburyport, and December in Salem again. The Essex SCJ (and the SJC) heard appeals met twice a year during June in Ipswich and November in Salem. Appeals of CCP awards were almost always heard at the following SCJ session; the appealing party and two supporters each had to put up a £5 bond that the appeal would be filed. Each Essex town received an order to select freeholder to serve either on a CCP jury or an SCJ jury.

An appeal of an CCP award meant an entirely new trial in front of an SCJ jury. Jury trials were expensive, so over time, lower court jury trials became uncommon. Attorneys and judges at the lower court level would mutually agree upon sham pleas or upon pleas with reservations which were heard only by the judges. Their rulings were then appealed to the higher court where a complete jury trial would be held.<sup>2</sup>

A lawsuit began with a writ of trespass that was a standard type of writ suitable for accusations of wrongful enslavement since it had some flexibility to it that other types of writs did not. Witnesses received summons to come and testify for a specific hearing. Exact formal phrasing was required. A poorly written writ would result in a plea by the defense that the charge could not be plead to and the case could be dismissed. The only aspects of a writ that were not

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<sup>2</sup> Nelson, *Americanization*, 73.

fully standardized were the names of the litigants; their titles e.g. “gentleman”, “laborer”, “singlewoman”, “Negro man”; and their town of residence. A deputy sheriff delivered the writ, usually the same day it was written. The deputy sheriff was required to have the recipient sign it and also had to sign it himself. The return of an endorsed writ was required for the deputy’s payment.

Clerks of the court would issue the writs and summonses and enter the case into the docket. Clerks retained signed writs and summonses, sworn depositions, other written evidence and court awards in a file. The judges’ and/or juries’ decisions would be set down in the court’s record book. If a litigant defaulted, it would be noted in the docket but no case file (even the original writ) would be kept and no record entry made. Summonsed witnesses who travelled to court and stayed overnight would be reimbursed a standard amount for their travel and lodging cost. The Clerk of the Court was responsible for keeping the court schedule in the docket, collecting and saving the paper records and writing down the court’s decision in the record book. The Clerk was also responsible for keeping track of the court costs including reimbursements to witnesses. No transcripts of the court proceedings or witness testimonies were made.<sup>3</sup>

By the 1760s, most of the week-long sessions of the CCPs were spent calling out cases in which the defendant failed to appear. The vast majority of the cases were for debt collection that the litigants might have already settled before court met. During a week-long CCP session, 150 to 300 cases would be on the docket, most of them ending in defendant defaults.

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<sup>3</sup> As a result, the trial archives are collections of official documents, generally the signed writs, on small slips of paper along with witnesses’ requests for reimbursement and the clerk’s accounting notes for calculating court costs.