

HOW TO FIND AND USE MAINE'S PUBLISHED LAW COURT OPINIONS

In 1898, a new trestle located in Washington County, Maine, was built in clear violation of a provision in the railroad company's charter that its trestles not obstruct navigation. A wharf owner, whose business was destroyed by the trestle, thought he had an easy case. Yet Maine's highest court, the Maine Supreme Judicial Court sitting as the Law Court, upheld the railroad, commenting

"We regret that the plaintiff has been damaged by this new railroad being lawfully built across the channel he was wont to use, but he is only one of many thousands who are being individually damaged every day by the frequent lawful changes in the means and methods of manufacture and commerce, and yet cannot be said to be wronged by illegal acts."¹

A representative of another growth industry — tourism — had better luck in convincing the court to assess damages against a lumber mill for blocking access to his summer camp (by using Presque Isle stream as a log storage pond). The court justified its decision by stating:

"The existing conditions which create the purposes of the public use of the Presque Isle Stream are subject to change, and the driving and temporary storing of logs now of principal importance, may become secondary in importance to the travel of summer residents and the transportation of merchandise for their accommodation. In this State, recreation is assuming features and incidents as valuable to the public as trade and manufacturing."²

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These appellate cases, and hundreds more like them, provide interesting evidence of Maine's changing social and economic relations. They are readily available in a published series entitled the *Maine Reports*, located in the reference areas of general and academic libraries throughout the state.³ Yet this easily accessible primary source remains the domain of lawyers and legal historians, and is generally ignored by historians and teachers focusing on social, economic and political topics.⁴

Researchers and teachers contemplating use of the *Maine Reports* as a rich source on a wide variety of historical topics face two basic barriers: finding interesting and relevant material; and then understanding the formal literary style of legal opinions. This research note is designed to assist historians in overcoming these two barriers. With a few hours effort, historians and teachers can have access to a readily available, exciting new source of information about change and continuity in Maine.

While each volume of the *Maine Reports* contains an index, the preferred means of access to specific cases is through the "Digests" published approximately every ten years from 1835 through 1952 (see Appendix). The Digests were (and still are) published as aids to practicing lawyers and judges in "finding the law," and are therefore organized by classification headings relating to traditional legal topics. Some of these headings are obvious, such as "Constitutional Law," "Intoxicating Liquors" and "Married Women's Property," while others take some getting used to: "Master and Servant" for employment relations; "Infants" for children; and "Negligence" for accidents and injuries. Within each subject heading and subheading, the author lists all of the published cases which provide legal precedent upon that subject, together with a brief statement of the legal rule itself. While historians will have little direct interest in the precedential value of any given case, these statements provide valuable hints about the kind of controversy involved. An hour or so reading a digest and listing 25 to 100 case citations should lead to 5 to 25 usable cases on any one of a wide variety of possible topics. For example, the two cases cited at the beginning of this note were located during a search for evidence

of rural social and economic conflict at the turn of this century. The first was listed in a digest under "Constitutional Law," and both were listed under "Watercourses."⁵

Perhaps the most valuable aspect of the digests is the fact that many of them pertain only to cases decided during a particular decade. If the research or lecture topic concerns the 1860s, for example, the best place to begin would be with William W. Virgin's *Supplemental Digest* published in 1870 and covering the period from 1857 through 1869. The only real problem with this approach is that some of the digests are fairly rare (as distinct from the *Maine Reports* themselves, which are readily available).⁶

Once the researcher has used digests to compile a list of potentially useful case citations, the next problem is understanding the literary structure of particular opinions. An endemic feature of law is that judges and lawyers tend to verbosity. This very feature, however, provides a rich data base for historians. Appellate judicial decisions are much more than the announcement of a result — they are first and foremost "opinions" designed to persuade, to rationalize, and to instruct.⁷

Fortunately, judicial opinions follow hallowed literary formats, always beginning with a "statement of the facts" of the particular case, followed by a discussion of the relevant "law" (legal precedents from prior cases, Constitutional and statutory provisions) and the announcement of a result. As published in the *Maine Reports*, opinions are commonly preceded by abstracts of the case and summaries of the litigants' arguments, prepared by the official court reporter. While lawyers search the reports primarily for precedents, historians will be much more interested in the statements of facts and the court's attempts to persuade and to rationalize the result. (A sample analysis of a Maine appellate opinion is provided in appendix B.)

If the researcher wishes to pursue a particular result forward in time, either to determine its value as precedent in subsequent cases or to locate subsequent, similar litigation, he or she has only to consult the tables in *Shepard's Maine Citations*.⁸

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Finally, published opinions represent only “close” cases which were appealed because a losing litigant believed that some error of law had occurred, and that it was economical to pursue the appeal. Accordingly, the opinions cannot provide a scientific sampling of all of the controversies which were administered through formal legal processes. Nevertheless, Maine’s published opinions remain particularly valuable to historians because of the close proximity of the state’s judges to the everyday life of the state’s people and economy. Prior to 1930, all of the members of the Maine Supreme Judicial Court “rode circuit” as trial judges for a portion of the year, only coming together as the “Law Court” for limited terms. Their sensitivity to the realities of Maine’s social, economic and political life comes through loud and clear in their opinions; the court’s relative accessibility to ordinary citizens is evident in the wide variety of cases and sometimes small amounts in controversy which appear in the *Maine Reports*.

APPENDIX A. LIST OF MAINE LAW DIGESTS

- 1820-1832. *A Digest of Greenleaf’s Reports*, by Simon Greenleaf
(published in Volume 9 of the *Maine Reports*)
(Portland: William Hyde, 1835)

- 1820-1847. *Digest of the Decisions of the Supreme Judicial Court*,
by Philip Eastman (Hallowell: Masters, Smith
and Co., 1849)

- 1847-1857. Same title and publisher as Eastman, by William
Wirt Virgin (1859)

- 1857-1869. *Supplemental Digest of the Decisions*, by William
Wirt Virgin (Portland: Loring, Short and Harmon,
1870)

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- 1869-1879. *Digest of the Decisions*, by George C. Hopkins (Portland: Loring, Short and Harmon, 1879)
- 1820-1879. *The Maine Digest*, by Harris M. Plaisted and Frederick H. Appleton (Portland: Dresser, McLellan and Co., 1880)
- 1879-1889. *Supplemental Maine Digest*, by Edward P. Coffin (Portland: McLellan, Mosher and Co., 1890)
- 1820-1896. *An Index-Digest of the Reports*, by Albert R. Savage (Portland: Loring, Short and Harmon, 1897)
- 1896-1908. *Supplemental Index-Digest*, same author and publisher as Savage (1909)
- 1820-1915. *The Maine Digest*, by Fred F. Lawrence, 2 volumes (Boston: Little, Brown and Co., 1916)
- 1915-1924. *Maine Digest, Facts and Law*, by Charles H. Bartlett and Harry Stern (Bangor: Jordan-Frost Printing Co., (1932)
- 1924-1935. Same title, authors and publisher as Bartlett and Stern (1936)
- 1915-1951. *Maine Digest Supplement*, by Office of the Attorney General (Farmington: Knowlton and McCleary Co., 1952)
- 1820-current. *Maine Key Number Digest*, 18 volumes with annual cumulative pocket parts and interim pamphlets (St. Paul, Minnesota: West Publishing Co., 1967, plus supplements)

APPENDIX B. HOW TO READ A JUDICIAL OPINION — AN EXAMPLE

Assuming you are in Maine, proceed to the reference section of your local library and locate the 250 or so volumes of the *Maine Reports*. Take down Volume 100, blow the dust off the top, and open it to page 351. You are now looking at the case of a farmer from Benton who is taking on the latest economic powers, the pulp and paper industry and their close allies, the developers of hydroelectricity.

As with most published cases, the actual court opinion is preceded by the reporter's list of legal categories touched upon in the decision. These categories correspond fairly well with the categories listed in the digest(s) for the volume in question (see Appendix A). The opinion is also preceded by the reporter's abstract of the case, including his interpretation of the "holdings," or parts of the opinion that will be legally binding on future courts. Finally, the opinion is preceded by a brief description of the procedural manner in which the case has come before the appellate court. (While omitted in this case, the reporter often provides a summary of the facts and arguments of counsel at this point.)

At page 353, we learn the names of the justices who participated in the decision, as well as the name of the justice who has written the opinion — Maine's most literary jurist, Justice Albert R. Savage. The first several pages of the opinion provide a statement of the "facts" of the case. We learn immediately that the plaintiff is a farmer who wants the court to prevent a local hydroelectric developer from using eminent domain powers (obtained under a Private and Special Law) to erect a power line over the farmer's land. At page 355 we learn that the developer has contracted to sell its entire output for ten years to a Winslow pulp and paper company. Beginning at page 356, it begins to become clear that David is going to defeat Goliath, at least in this case. The "facts" which Justice Savage chooses to focus upon all support the farmer's argument, that the power line is for the sole use of one manufacturer, and is therefore not a "public use" for

which eminent domain can be employed. Following this statement of facts, at page 360 begins a long review of case law on the subject of “private” versus “public” uses for which eminent domain will be deemed valid under Maine’s Constitution, with particular focus upon power derived from flowing water. At page 374, the statement of the principal “holding” of the case finally appears: supplying hydroelectric power for manufacturing is not a public use for which private property may be taken against the will of the owner. Finally, at page 378, the result is announced — the farmer is entitled to a “perpetual injunction” against the installation of the power line across his property.

NOTES

¹*Frost v. Washington County Railroad Co.*, 96 Me. 76, at 86 (1901). This citation is in the common legal form for judicial opinions, and provides the name of the case, the volume number of the report series (“96”), the name of the report series (“Me.” for “*Maine Reports*”), the page number of the case in that volume (“76”), the page number of the material quoted (“86”), and the date of the opinion (“(1901)”).

²*Smart v. Aroostook Lumber Co.* 103 Me. 37, at 48 (1907).

³After 1965, the series are published as the *Maine Reporter*, taken as excerpts from the West Publishing Company’s *Atlantic Reporter*.

⁴Leading works on the importance of judicial decisions in the process of economic change include Morton Horwitz, *The Transformation of American Law, 1780-1860* (Cambridge: Harvard University Press, 1977); and, Lawrence M. Friedman, *A History of American Law* 2d. edition (New York: Simon & Schuster, 1985).

⁵Albert R. Savage, *Supplemental Index-Digest of the Reports of Cases Decided by the Supreme Judicial Court of Maine* (Portland: Loring, Short and Harmon, 1909).

⁶Probably the best places to locate the older digests are in law libraries, including the County Law Libraries located in each of Maine’s county court-houses.

⁷Another reason for verbosity is that appellate decisions, even though they are written by a single justice, are the work product of the entire court, and thus must reflect consultations, compromises and extraneous materials insisted upon by dissenting justices. For an informative description of the

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process by a Maine Chief Justice, see Raymond Fellows and Edward J. Conquest, *William Robinson Pattangall of Maine: Lawyer, Judge and Politician* (Bangor: printed privately by Edward J. Conquest, 1954).

*This process is known as "shepardizing" a case. The latest volume of *Shepard's Maine Citations* (Colorado Springs, Col.: Shepard's/McGraw Hill, Inc. 1989) will be found adjacent to the multivolume set of West's *Maine Key Number Digest* in any law library.

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