

The Case of the Clark Papers

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National Archives

A LAWSUIT is pending in the United States District Court for the District of Minnesota to establish title to certain of the field notes and observations compiled by Capt. William Clark during the Lewis and Clark Expedition of 1803-6. These documents, as I am sure all of you know, were found in St. Paul, Minnesota. They were in an old desk that once belonged to Gen. John Henry Hammond, and they came to light shortly after the death of his daughter, Mrs. Sophia Foster, in December 1952.

The suit has been pending since 1953. In March 1954, on the recommendation of the National Archives, the United States Government intervened. Since the United States is a party to the suit it would be quite improper for me, speaking as a representative of the National Archives, to comment on those matters that are the particular province of the Department of Justice. I can, however, explain with propriety why the National Archives recommended that the United States assert its claim to the documents. To do so adequately and to place the case of the Clark papers in the perspective of the general policy and objectives of the National Archives, the essential facts concerning the pending suit must be set forth.

In the first place the National Archives did not initiate the contest over the Clark documents. When the Clark papers were brought to light and identified, we in the National Archives were delighted, as was all of the scholarly world. Like others we congratulated the Minnesota Historical Society on its discovery of these important documents. This was early in 1953.

In the fall of 1953 we were informed that suit to quiet title to the documents had been brought by the First Trust Company of St. Paul, executor of Sophia Foster's will. The bill of complaint identifies a number of actual and potential parties who had asserted or might assert title to the papers.

First of all there are the heirs of Sophia Foster, in whose home the Clark documents (identified as Lot B in the bill of complaint) were found together with General Hammond's personal papers

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(identified as Lot A in the bill of complaint). Sophia Foster, however, was not the only child of General and Mrs. Hammond. The general died in 1890. When Mrs. Hammond died in 1923, her heirs were her son, Ogden, and her daughters, Harriet, Margaret, and Sophia. The Hammond heirs, other than the heirs of Sophia Foster, are named as defendants in the suit. They have asserted title to the Clark documents as well as the Hammond papers, alleging that the materials are a part of the estate of their mother, Mrs. Hammond. The Sophia Foster heirs, it appears, will not dispute the claim of the Hammond heirs.

The Minnesota Historical Society, which now has custody of the papers as bailee of the plaintiff, is also named as a defendant in the suit. Originally it was announced that the society had acquired the papers. The bill of complaint states that the society "may have or assert a lien" on the papers for restoration and preservation services performed on them.

John Doe and Mary Roe are named as defendants in the suit to cover any persons who might assert a claim to the Clark papers as heirs of Captain Clark. To date, so far as I am informed, no heirs of the captain have entered a claim to the papers.

Finally, the bill of complaint raises the question of the interest of the United States in the Clark documents, stating: "The United States of America may have or assert title to Lot B [the Clark documents] by reason of the following circumstance: The documents comprising Lot B are contemporary original records of the so-called 'Lewis and Clark Expedition' . . ."

Since the United States as domestic sovereign could not be named as a defendant without its consent, counsel for the plaintiff informed the United States Attorney in St. Paul of the suit which he had instituted. The United States Government had really only two choices: (1) to ignore the whole matter; or (2) to intervene and claim title to the documents.

We recommended intervention. Why did we do so? I should like to make a distinction between the purely legal basis for our recommendation and what might be called the professional archival reasons for our action. First as to the legal basis: We agree with the executor of Sophia Foster's will that the Clark documents are contemporary original records of the Lewis and Clark Expedition. They were created as Federal records. Since we could find no evidence that they had been lawfully alienated from Federal custody we had no choice, once the issue of title was raised, but to recommend intervention. On the validity of our claim, of course, the court will have to rule.

Of more interest to this group is an explanation of the professional archival reasons for our action and what that action indicates as to our motives and intentions generally. I can put it very simply. We acted in what we believe to be the best interests of scholarship and according to the soundest principles of the archival profession. Our sole interest is in the proper preservation and general availability of Federal records specifically and of public records generally.

We do not believe that the National Archives is the only institution competent to administer properly material of national historical interest. We would be unworthy of our profession if we did not acknowledge our debt to those persons and institutions who in the years before the establishment of our institution gave a home to and have made available for use the records of the Federal Government that strayed from Federal custody.

We have known for years that the American Philosophical Society has perhaps the largest collection of Lewis and Clark journals, placed there by Jefferson in 1816-17 in trust, as he said, for the Government. We are grateful that the material was put in responsible hands and that it has been made available to scholars.

We are, however, employees of the National Archives and we have responsibilities to our institution and to our profession. The National Archives is charged by law with preserving and making available for use the permanently valuable records of the Federal Government. It is not unreasonable that we should have an interest in what has happened to Federal records before our time.

Our first interest — and this is the most basic of archival responsibilities — is that Federal records be adequately protected against loss in the physical sense; that the necessary precautions be taken to guard against the hazards of fire and theft, vermin, improper heat and humidity, and the like. The Clark documents lay unidentified in General Hammond's desk in an attic in St. Paul for no one knows how many years, exposed to almost every hazard known to archivists. No one interested in the proper care and preservation of historical material could feel happy about such a situation.

Physical loss, however, is only one type of danger to records. The archivist must also protect the integrity of his documents as historical evidence. Records of the Federal Government — or any government for that matter — are created, not as discrete items, but as organic groups of record material. The significance and meaning of each record item depends in part upon its relationship to the other items in the organic group. When this relationship is destroyed by fragmentation or by dispersal of the individual items,

scholarship is the loser, for the part cannot be fully understood when removed from the whole.

We ask then, as a second measure of protection, that Federal records be maintained as records; that they be treated not as individual pieces of paper but as organic groups, the integrity of which must be protected.

In addition to the responsibility of preserving the valuable records of the Federal Government, the National Archives has also the obligation to make them available for use and publication. All archivists are one in a desire that their records be open freely to scholars and other legitimate inquirers. We recognize that restrictions on use may be imposed by law, by security regulations, or by other demands of public policy. These restrictions are accepted, of course, but records not under restriction, we believe, should be available for public use, subject only to the demands of prudence to ensure their safety and proper handling.

Our feeling about the availability of Federal records extends to all such records. We believe that they should be in the public domain.

When Federal records that we believe were not lawfully alienated from Federal custody are found under circumstances inimical to their continued preservation and use as public records, we would be remiss in our responsibilities as Federal employees and as professional archivists if we counseled inaction. The multi-cornered legal contest over the Clark documents that existed when we recommended intervention was a situation that in our judgment called for action. We do not believe that historical scholarship would be served by permitting the Clark papers to remain in private hands. These documents belong to the Nation. They should not be regarded as merchandise nor should they be handled in any way that will expose them again to the several dangers of loss, withdrawal, and dispersal. The interests of scholarship demand that the Clark documents be published at the earliest opportunity. We are anxious that this be done, and fittingly it should be done by those who in a real sense rescued the documents from the unknown. We are willing that publication proceed even before the issues as to title are resolved. We doubt that those interested in establishing the right of private ownership are equally willing.

The case of the Clark papers involves issues that can be resolved only by judicial consideration of the facts and the law. These issues, it seems to me, need clarification. As to the intentions and motives of the National Archives, our record must speak for itself.