

CONFEDERATE JUDICIAL RECORDS¹

MY QUEST of the judicial records of the Confederate States began about fifteen years ago. At that time I was pursuing Confederate privateers from port to port. Their performances glamorously crossed the newspapers of 1861, and with less frequency and less glamor were found in the papers of subsequent years. But I also wanted facts and details which could only be ascertained from the proceedings before the prize commissioners and from the decisions of the Confederate States District Courts in Admiralty. No one, and no published bibliography or list, could tell me whether the Confederate Court records had survived, and if so where they were located. Naturally, one would think of the record rooms of the present United States District Courts.

My first search was at Charleston, one of the principal home ports of the privateers. Here my inquiries were coldly and even impatiently received, and no search of the record rooms was made. Later I developed a defensive against the thinly veiled hostility of clerks who didn't want to be bothered, and a persistence that often brought success. However, as to Charleston, my subsequent researches have led me to believe that searches there would have been fruitless. Next I went to New Orleans, where, after a few weeks in the *Crescent*, the two *Deltas*, and the *Bee*, I turned again from newspapers to thoughts of records. I approached the clerk of the United States court with my problem. He laughed me to scorn on Confederate records but this time I was not so easily rebuffed. I asked permission to examine the books. We went into the adjoining record room where the walls were lined with numbered volumes. In order to get a start I pulled down a volume at random; and imagine my surprise, and the even greater surprise if not chagrin of the clerk, when I opened the cost docket of the Confederate States District Court for the Eastern Division of the District of Louisiana. The clerk frantically opened the adjacent volumes but we found no more Confederate records. He sent me with one of his assistants into the attic, where thousands and thousands of original papers in small bundles were heaped on shelves and on the floor, in a disorder which could not have been much worse if they had been dropped by a propaganda airplane from an altitude of several thousand feet. And the dirt! Well, we found nothing!

¹ A paper read at the fourth annual meeting of the Society of American Archivists at Montgomery, Alabama, November 11, 1940.

But the cost docket supplied many of the missing points, and I was content.

The discovery of the cost docket inspired confidence and I went shortly to Savannah, where I received the same story of no records, but this time in the post office attic I found a dry goods box filled with Confederate record books. The box was in a corner covered with boards and dirt; but inside I found the admiralty minute book for the Southern Division of the District of Georgia, containing the prize proceedings instituted by certain privateersmen.

All of this was back in 1925 and 1926. In discussing these finds with scholars I was amazed to find a general ignorance of even the existence of Confederate States district courts; and after the fatigue and boredom of reading proof and making index for the *Confederate Privateers* was past, I decided to tell the world about Confederate courts. I began this self-imposed bit of martyrdom by sending forth a questionnaire to each and every clerk of United States Courts within the former limits of the Confederate States. Most of them returned negative replies. The courthouse had burned and all old records were destroyed was a favorite theme song. Only two or three clerks admitted any knowledge of Confederate records. Then, as opportunity presented, I visited these courts at various times during the next ten years, and in almost every instance found some Confederate records. Only in Atlanta, Richmond, and Mobile were the Confederate records so filed that the clerks could produce them instantly. The records which I had unearthed a few years before in Savannah, however, had been kept accessible by the clerk.

At Knoxville a very courteous clerk said he'd never heard of such records but called in a deputy clerk who had been in the office for many years and under several clerks. This lady remembered that the clerk who was in office when she was first employed, was always looking for Confederate records but could never find any. She was sure that if there had been any among the archives of the court, he would have located them. Nevertheless, I entered the record room and mounted the ladder to work the top shelves first, and in about an hour I found the minute book of the Confederate States District Court for the Eastern District of Tennessee. Before leaving Knoxville I decided to search the county courthouse for state and county records. The chief justice of Tennessee had assured me that no courts whatsoever sat in Tennessee during the war. However, in the Supreme Court rooms I found the minutes of that court for 1861-1862,

and in the circuit and chancery court rooms found the full records of these courts from 1861 to the summer of 1863, when Knoxville was captured.

In Tallahassee, despite negative assuredness by the clerk, a short search in the attic revealed minutes for the Middle and Apalachicola Divisions and fragmentary records for the Eastern and Western Divisions of the District of Florida. In Raleigh, North Carolina, the rough minutes of the District Court for the Division of Pamlico were found sandwiched between commissioners' record books of the 1820's. In Newbern, North Carolina, the finished minutes for Pamlico were found neatly and properly filed in the vault but unknown.

Once, when driving through Abingdon, Virginia, I smelled Confederate records as I passed the post office. The Confederate Court never sat at Abingdon and I was not on a research expedition, but I turned promptly into the curb. The post office clerk told me where to find the clerk of court. This very amiable fellow said he was sure he had no Confederate records, but agreed to visit the attic with me. There to his consternation the first book I picked up was the order book of the Confederate States District Court for the Western District of Virginia. A further look about revealed twenty-six boxes of original case papers. In passing the capitol in Washington I smelled Confederate records, and in the attic of the Senate wing found the record book of the District Court for the Middle District of Tennessee in the package of papers introduced in the impeachment trial of Judge Humphreys. This package had no appearance of having been opened since the trial in 1862.

Some books and loose records of the Districts of Alabama, Mississippi, and Louisiana in the Manuscript Division of the Library of Congress, were, of course, produced instantan. After some digging in an old index, I found quite a volume of court records for South Carolina in the Old Records Division of the Adjutant General's Office in the Munitions Building in Washington. Here also were found great quantities of Congressional papers, which were very helpful to me in developing the history of territorial government in Arizona and in explaining some hitherto obscure phases of the Supreme Court controversy.

This was all before the federal archives surveys were undertaken. The dirt, dust, and oblivion of decades had settled over these records. No one appears to have disturbed them save perhaps to kick or wheelbarrow them from one corner of an attic to the other, or from

the basement to the attic. It is then no wonder that nothing was ever obtained by writing for it. To this statement there is one shining exception. Letters addressed to the history department at the University of New Mexico and to the historical societies of Arizona and New Mexico arrived upon a field already interested in the territorial affairs of the Confederate territory of Arizona, and brought me a wealth of data on the district and probate courts at La Mesilla, the seat of territorial government.

The first draft of my work on the Confederate Courts was finished in 1930 and underwent its last complete rewriting in 1936; but the process of revision has continued by piecemeal to the last page proof, which, by the time this is read to you, I trust will be in the hands of the publisher. The manuscript as submitted to the Harvard University Press contained, as appendices, registers of the state supreme, circuit, chancery, and municipal courts; and of the Confederate States Supreme Court, district, territorial, and military courts. These registers summarized all of the personnel and much of the statistical data I had developed; and showed the act under which the court was organized, the names of the judges and principal officers, the time and place of holding court, and the location of reports and records. The press decided that the registers would have to be omitted in order to bring the book within reasonable bounds, and *Justice-in-Grey* is expected to arrive in January, 1941, with information as to Confederate records worked into the innumerable footnotes of its approximately seven hundred pages.

Wishing to check my researches against the discoveries of the WPA surveys, I wrote to our friend, Dr. Hamer, who very generously sent me a special report on the location and contents of Confederate court records found by the Survey of Federal Archives. This calendar of records was very complete, listing not only records known to be Confederate but also those which might contain Confederate entries sandwiched between United States records. In general, I had already seen the records listed; in a few instances it seemed desirable to revisit certain courts, where loose records had been uncovered that I had not seen. Here I found a fly in the ointment. The workers identified the papers and their filing locations as well as could be expected of them; but when attempt was made by me, with some help from the assistant clerks, to relocate the listed papers, they could not in many instances be found. This was probably the result of office shifting after the survey was made. The court clerks are busy

with current affairs and dead records interest very few of them. The old books and case papers form no part of their daily business, and naturally take on the character of excess baggage to be bandied about according to convenience.

Whether the answer for this is the extraction of obsolete records from the court files and their concentration in the National Archives, or not, I shall not presume to determine. I can see good argument for maintaining them *in situ* and also for herding them together in Washington. But if the judicial records are to stay in the court files, I think that they should be cleaned, placed in definite order, filed in proper containers, and kept so. This situation is not going to be generally achieved, in my opinion, until federal maintenance funds are made annually available under the inspection, if not supervision, of the National Archives.

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