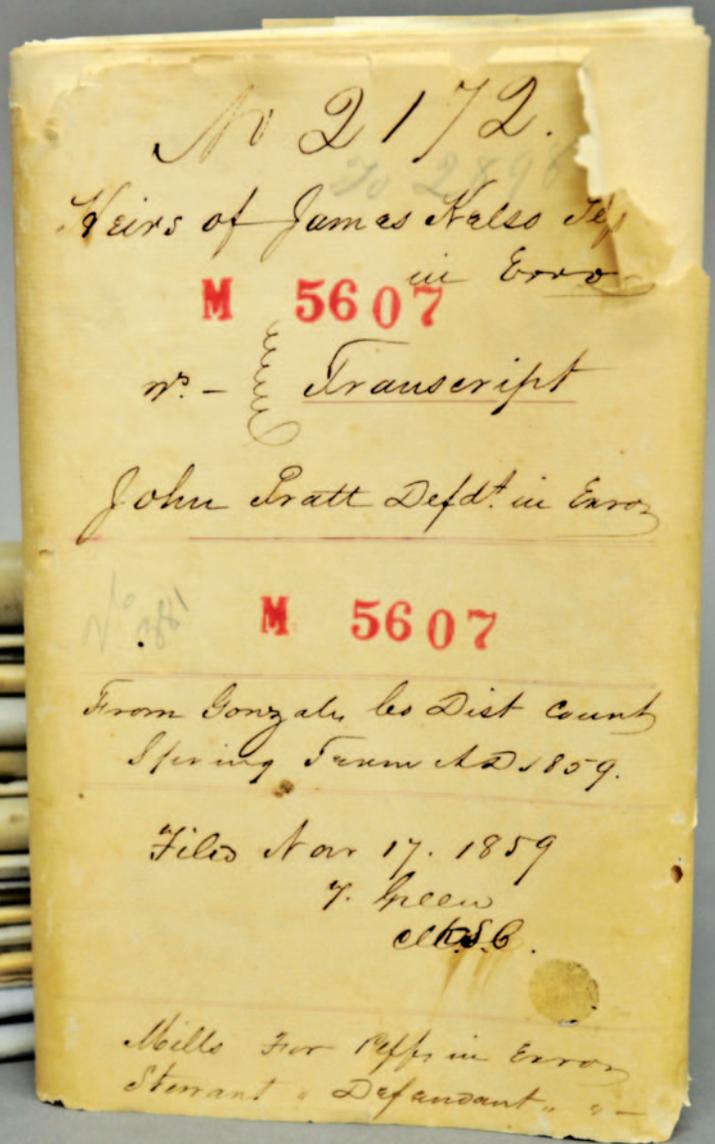


A collection of recovered stolen court case files.



Photos courtesy of the Texas State Library and Archives Commission

# Recovering Stolen Texas Court Documents

By Laura Saegert and James W. Paulsen

The theft of historic documents, including court records, is a serious problem. The Texas State Library and Archives Commission (TSLAC) maintains a list of known missing Republic-era documents; TSLAC currently identifies 846 items. This list, however, does not include court records, many of which are maintained in the counties of origin. Nor does the TSLAC list include historical records of the Supreme Court of Texas, many of which have been stolen.

In 1970, authorities broke up a theft ring that had been looting Texas courthouses and other record archives. When

arrested, one thief was carrying a note reading: "Easy to get stuff out of here. In the Clerk's office you can get a brief case full but it'll take a couple of hours."<sup>1</sup> Two years later, a Texas Supreme Court janitor systematically removed more than 1,000 case files dating from the 1840s through the 1860s.

TSLAC is charged with securing, preserving, and providing public access to government records. Since the discovery of major thefts in the early 1970s, TSLAC has maintained records in secure storage, with access limited to select staff and public use closely monitored. TSLAC has assumed responsibility for non-current Supreme Court records.

TSLAC also engages in continuing efforts to recover stolen documents. Since the 1980s, stolen Texas court records and other documents have begun to appear for sale in auction catalogs and on commercial websites such as eBay. Section 441.192 of the Government Code gives TSLAC the right to recover illegally removed records, even if subsequent buyers or sellers do not know the documents are stolen. Under this replevin statute, TSLAC also can collect attorney's fees and court costs incurred. Local Government Code Section 202.005 empowers local authorities to do the same.

In addition, State Archives staff check major Texana auction sites and eBay frequently. When stolen documents are identified, TSLAC and the Office of the Texas Attorney General work with dealers to return these documents to the state. In some cases, individuals in possession of documents have contacted TSLAC voluntarily if they suspect their documents may be stolen state records.

The last two years have proved particularly productive. Two large caches of Texas Supreme Court documents were identified and recovered with the help of the Attorney General's Office while others were returned voluntarily. In 2011, the state recovered documents from 86 case files; unfortunately, more than 700 court cases are still missing.

While some Texas Supreme Court cases do involve historically important individuals, including early settlers or business men with *Handbook of Texas* biographical entries, many of these recently recovered records involve minor matters or appeals that never resulted in a published decision. Nonetheless, these records have considerable historical value. Even if a court case does not involve famous litigants or lawyers, the records of these controversies often shed light on the lives of ordinary people during an extraordinary time in the state's history.

The most intriguing document reclaimed in recent months doesn't seem like much at first glance. It's a two-page filing in *Mitchell & Mitchell v. Wright*, 4 Tex. 283 (1849), setting out the major points on appeal. The case raised a technical question: Could a married woman in the process of divorcing her husband bring suit as administratrix of an estate without her husband's joinder? The Texas Supreme Court's answer was ambiguous, but generally favored Mrs. Margaret (or Marguerite) Wright's right to proceed.

The comparatively liberal rulings of the first post-statehood Supreme Court on women's issues are of particular interest to modern historians. Several scholarly articles and at least two recent books have drawn heavily on the court's decisions. So the recovery of even one document in this case is welcome



A recovered stolen Texas Supreme Court case document, dated 1858

news. Wright's legal travails are especially interesting. Her efforts to obtain a divorce and settle her son's estate generated at least a half-dozen decisions from the Texas Supreme Court. Moreover, the underlying facts — though not reflected in this particular court opinion — are the stuff of high drama. Wright's estranged husband not only refused to join her lawsuit on behalf of the estate; he signed as surety on her opponents' appeal bond. Wright actually was trying to administer the estate of her son by a previous marriage, shot from ambush by parties unknown. Wright was divorcing her husband in part because she believed he was the killer.

As if all this were not enough, Margaret Wright is famous in her own right. Sam Houston even called her the "Mother of Texas." She earned the respect of early Texans by her extraordinary courage during the Texas Revolution. Left alone on her property while Mexican forces advanced (her husband having fled the area earlier to avoid creditors), Wright smuggled food and medicine to several men who had escaped the Goliad massacre and were hiding nearby. When Mexican

troops camped on her land, she promptly stole a gun, which she also delivered to the fugitives.

Though one document in Margaret Wright's appeal has been recovered, many other important stories have been lost when court records were stolen. Members of the State Bar of Texas can provide vital assistance in recovering missing files. Accumulated documents should be evaluated to determine if they may be missing court files or archives. Members can also help recovery efforts by reporting suspicious articles offered for sale.

Stolen documents sometimes can be identified by distinguishing marks like case numbers and handwritten filing notes. Others are more difficult to identify. Unscrupulous sellers sometimes remove cover sheets, unbind documents, and razor

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out other identifying information. In one large batch of recently recovered documents, someone had systematically cut apart appellate fact statements in slave-related cases to create odd-sized documents mimicking bills of sale or deeds. Sellers sometimes cut out signatures for their autograph value and discard far more important historical material.

There are ways to tentatively identify early Texas Supreme Court records, even if obvious identifying information has been removed. Until the 1870s, the Texas Supreme Court was the state's only appellate court. So early documents that recite the events at trial, copy several documents filed at trial, or use words such as "appeal," "petitioner," and "error" are suspect. Additionally, documents sometimes are offered for sale in batches. A group of documents from different cases — especially cases filed in counties a good distance from one another — more likely comes from the only court of statewide jurisdiction than from a single lawyer's office.

One bit of irony deserves mention. Signatures of Confederate generals are highly prized on the autograph market. So thieves who discard filing information to conceal the source of an early Texas Supreme Court document may throw away a more valuable autograph than the one they are trying to sell. The "T. Green" whose signature as clerk appears on many doc-

uments filed from 1841 to the very eve of the Civil War is the same Gen. Tom Green who led Texas forces to victory at Val Verde, Mansfield, and Pleasant Hill.

More information can be found, and suspect documents reported, on the TSLAC website: <https://tslac.tsl.state.tx.us/arc/missingintro.html>. TSLAC Archivist Laura Saegert can be contacted directly at [lsaegert@tsl.state.tx.us](mailto:lsaegert@tsl.state.tx.us) or (512) 463-5500. The State of Texas and everyone with an interest in Texas history will thank you.

#### Notes

1. The quotation is from John M. Kinney, *Archival Security and Insecurity*, 38 *Am. Archivist* 493-497 (1975).

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