



New York State Archives

**New York State Supreme Court of Judicature (Utica) Motions
J0126**

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Overview of the Records

Repository:	New York State Archives
Summary:	This series consists mostly of affidavits stating the grounds for a motion and sometimes summarizing proceedings in the cause, and attached notices informing the opposing party of the motion for a court rule. The series also includes other motions, petitions, draft rules, demurrers, notices of joinder in demurrer, and other documents.
Creator:	New York (State). Supreme Court of Judicature (Utica)
Title:	Motions
Quantity:	14.2 cubic feet
Quantity:	33 boxes
Inclusive Date:	1820-1846
Series:	J0126

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Arrangement

Chronological by court term, then by attorney's name.

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Scope and Content Note

This series consists mostly of affidavits stating the grounds for a motion and sometimes summarizing proceedings in the cause, and attached notices informing the opposing party of the motion for a court rule. This series also includes other motions, petitions, draft rules, demurrers, notices of joinder in demurrer, and other documents.

This series consists mainly of affidavits and notices of motions. The affidavit states the grounds for the motion and may contain a brief summary of proceedings in the cause. The attached notice informs the opposing party that the court will be moved at a specified time and place to issue a rule. The names of the parties and of the filing attorney and the filing date are written on the dorso. The affidavit may bear rough notes summarizing the argument of the attorney

making the motion, with appropriate citations to published case reports. On the outside of the affidavit is often found a note stating whether the motion was granted or denied, and if a stay of proceedings or execution was granted. The notice of motion includes an affidavit of service by the person serving and, sometimes, an admission of service by the person served. There are only a few affidavits and briefs opposing motions.

The court was moved for a great variety of purposes, including (but not limited to) the following: to change a venue, to award or set aside an interlocutory or final judgment (usually as in the case of non-suit), to set aside a default by the defendant, to retax a party for a bill of costs, to refer a case to determine the amount of a judgment award, to amend or set aside a declaration or an inquisition, to allow a repleader (new pleadings made if the first series of pleadings failed to produce a point upon which an issue could be joined), to attach the property of a sheriff for failure to return a writ, and to place a case on (or strike it from) the calendar. Motions were also made for issuance of writs -- certiorari, error, inquiry, and scire facias being the most common types.

Other documents found in this series are motions for the appointment of commissioners to take testimony and petitions for appraisal of land taken for street openings in New York City, for the partition of real estate held jointly or in common, and for attachment of the property of absconding debtors. The motion for a commission asks the court for a rule appointing commissioners to obtain under oath written replies to interrogatories submitted by them to material witnesses residing at a distance from the place where a case was tried. The motion is sometimes accompanied by the interrogatories but only occasionally by the actual returns of testimony.

Petitions by the Mayor, Aldermen and Commonality of the City of New York for street openings were made to the Supreme Court pursuant to Laws of 1813, Chapter 86, and Laws of 1816, Chapters 81 and 160. Each petition bears the seal of the corporation and the signature of the mayor. It describes in detail the parcels of land to be taken for widening or extending steets. The outside of the petition is marked "approved" or "disapproved" by the clerk of the court. Petitions for the partition of real estate were made by joint owners, or owners in common, often minor heirs. The petition asks the court for a rule appointing commissioners to make the partition. Accompanying the petition is the report returned by the commissioners. A petition to the court for attachment of the property of an absconding debtor was submitted by a creditor. Included with the petition are the creditor's affidavit that the absconding party is indebted to him and the affidavit of two other persons stating that the debtor left with intent to defraud.

Other documents found occasionally in this series are draft rules, stipulations, petitions for the appointment of next friends and guardians, and demurrers and notices of joinder in demurrer (a plaintiff's notice that he will argue against a demurrer). Documents found rarely are writs of view (ordering a sheriff to appoint four good men to view real property and return a description of the same to the court), writs of summons (usually in cases of dower unde nil habet, ordering the heirs or assigns of a deceased man to warrant to his widow her one third dower right in his property), and minutes of proclamations of fines (notices that a conveyance of real property is to be made in court).

After about 1835 the series also contains many notices of argument, in which the attorney for one party to the action notifies the other that a motion will be argued at a stated time and place;

the notice includes an affidavit of service. There are also a few certificates of clerkships. A subseries contains lists of cases decided each term at Utica during the years 1822-1846. The lists give names of parties and attorneys for each case and notes the outcomes -- judgment granted, judgment of lower court affirmed or reversed (on writ of certiorari or writ of error), motion for a new trial granted or denied, and so on. For some court terms there are separate lists of judgments in certiorari cases. This subseries also contains a few draft rules and lists of Supreme Court counsellors from the 1830s. The main series includes the filed documents supporting enumerated motions placed on the calendar for argument. Affidavits of motions for both special rules and common rules are found in this series.

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Related Information

Related Material

J0014Series J0014, New York State Supreme Court of Judicature (New York) Writs of Commission and

J0170Series J0170, New York State Supreme Court of Judicature (Albany and Utica) Writs of Commission, contain more returns of testimony.

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Use of Records

Access Restrictions

There are no restrictions regarding access to or use of this material.

Administrative Information

Custodial History

The Court of Appeals placed these records on deposit at the Historical Documents Collection, Queens College, from 1973-1982.

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Access Terms

- Adjudicating
- Women--Legal status, laws, etc.
- Pleading
- Courts
- Judicial records
- New York (State)
- New York (N.Y.)
- Reporting
- Streets
- Appellate courts
- Motions (Law)
- Writs
- Debtor and creditor
- Lawyers
- Judgments
- Real property
- Appellate procedure
- New York (State). Supreme Court of Judicature
- New York (State). Court of Appeals