

## **An Analysis of the Joseph Story Collection at Southern Illinois University Law Library**

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Established in 1972, the Southern Illinois School of Law began with a surprisingly rich library collection, the foundation of which was built with the purchase of a large portion of the Chicago Bar Association library and the law items transferred from the main university library which dates from 1874. In 1985, the collection gained additional breadth and depth through a donation of almost one hundred and fifty volumes from the Illinois Fifth Appellate Court located in Mount Vernon, Illinois. This gift contained not only early American treatises, but an extensive collection of early English common law reports, spanning the seventeenth through nineteenth centuries. Those from the 1600s were described and recorded by SIU catalog librarian Elizabeth Matthews soon thereafter and published in a book now held by most academic law libraries<sup>1</sup> but, for the most part, the items were boxed, stored, and forgotten for thirty years. But a recent inventory and shifting project of the library's rare books room revealed an exciting discovery. Several items in that collection bear the signature of Joseph Story, and other evidence suggests the entire gift was part of Justice Story's personal library.<sup>2</sup>

This discovery presents a number of fascinating bibliographic questions. How do we know the signatures are those of *the* Joseph Story? What about other books in the gift collection – although unsigned, can we also associate these with Story? Why did an Illinois state appellate court own such an extensive collection of early English law reports and, if indeed they belonged to Justice Story, how, when and why did the court acquire them? Finally, what importance do such books hold for an academic law library?

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<sup>1</sup> Elizabeth W. Matthews, *Seventeenth Century English Law Reports in Folio: Description of Selected Imprints* (Buffalo: W.S. Hein, 1986).

<sup>2</sup> For an interesting discussion of serendipity in the historical research process, see Michael H. Hoeflich, *Serendipity in the Stacks, Fortuity in the Archives* 99 *Law Lib. J.* 813 (2007).

As with research about historical books, the lack of living witnesses requires a forensic examination of the textual artifacts to answer such bibliographic questions. In this instance, the questions were addressed through evidentiary protocol (evidence, inference, argument and omission) applied to the collection as a whole as well as a single Story-signed item. Chosen for examination was the first American edition of *Yelverton's Reports*, printed in Andover, Massachusetts, in 1820.<sup>3</sup>

The principal task of verifying Story's signature was relatively straightforward. It appears almost identical to the signature beneath his engraved portrait on the frontispiece of the two volume biography produced by his son.<sup>4</sup> In addition to the many images found freely online, particularly the *Joseph Story Digital Suite* at Harvard Law Library,<sup>5</sup> we examined and compared several books and letters in the Yale Law Library collection containing Story's writing and signatures. Not only are all signatures quite similar to the one found in SIU's *Yelverton*, all books examined have Story's signature in the same location: the upper right hand corner of either the title page or front free end page.

The imprint date and location of Andover may seem immaterial but in fact they do offer some corroboration. It is important to understand that books printed in the United States until the mid-1800s tended to remain regional. Books printed in Boston, or Philadelphia, or New York, tended to remain around those metropolitan areas. There are several market and cross cultural reasons at play, but primary reason for the locality of printing and book migration derives from the simple fact that until 1851, books were not allowed to be sent through the U. S. Post Office.<sup>6</sup> Applied to the copy of *Yelverton*, it is well recorded that in 1820 Story was dividing his time between Washington, D.C. and Salem, Massachusetts. The title would be of obvious interest to him and

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<sup>3</sup> Henry Yelverton, and Theron Metcalf, *The Reports of Sir Henry Yelverton, Knight and Baronet ... Of Divers Special Cases in the Court of King's Bench* (Andover [Mass.]: Printed by Flagg and Gould, 1820).

<sup>4</sup> William Wetmore Story, *Life and Letters of Joseph Story, Associate Justice of the Supreme Court of the United States, and Dane Professor of Law at Harvard University* 2 vol. (Boston: C.C. Little and J. Brown, 1851).

<sup>5</sup> <http://library.law.harvard.edu/suites/story/>.

<sup>6</sup> Michael H. Hoeflich, *Legal Publishing in Antebellum America* (New York: Cambridge University Press, 2010), 45, citing *Laws and Regulations for the Government of the Post Office Department* (Washington D. C.: C. Alexander, 1852), Sec. 15, p. 74.

there is no reason to think he would not have the ability and means to purchase it for his personal library. Additionally, many of the nineteenth-century imprints in the Mount Vernon, Illinois gift bear a seller's label for the New England law publisher and bookseller, T. & J. W. Johnson, which operated in Philadelphia from 1823 through 1865 and produced catalogs for customers throughout the northeast.

To better understand how books from Story's library have found their way into academic institutions, court libraries, and those of collectors, one must understand the importance of books to Story and how his library was dispersed both during and after his death. It is in understatement to say that Joseph Story was book man. An omnivorous reader at a young age,<sup>7</sup> he was also a legal scholar from early on, preferring analysis to the daily routine of the practice of law. Writing to his friend Thomas Welsh, a twenty-year-old Story explains, "[l]aw I admire as a science; it becomes tedious and embarrassing only when it degenerates into a trade."<sup>8</sup> Story's pursuit of his science was symbiotic with avid collecting and reading of law books. He not only authored several treatises now considered foundational to understanding early American law, he read, collected, and cared for the books in his library. He also was a bit of a librarian, frustrated by the defacing and wear and tear that occurred when he loaned his books to others, but unwilling to deprive them from access to knowledge.<sup>9</sup>

Although it is well known that Story surrounded himself with books throughout his life, when we speak of "Joseph Story's library," we should, in fact, think of him as having two libraries – one which was sold in 1829, and another he rebuilt after the 1829 sale, which was dispersed after his death in 1845. As difficult as it is to now imagine, when Story became Dane Professor of Law at Harvard in 1829, the twelve-year-old law school had a very small library collection and students were expected to use the law titles shelved in the main college library. The first Harvard law library catalog, issued in 1826, nine years after funds were first appropriated for a separate collection, shows the law school as holding only 1,326 volumes.<sup>10</sup> When Story arrived, he brought with him his library which was frequently used by students as the school's primary collection.<sup>11</sup> In his words, "[t]here was no

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<sup>7</sup> Story, *supra* note 5, v. 1 at 48.

<sup>8</sup> *Id.*, at 83.

<sup>9</sup> *Id.*, v. 2, at 40.

<sup>10</sup> John H. Arnold, *The Harvard Law Library and Some Account of its Growth*, 5 *Law Libr. J.* 17, 17 (1912-13).

<sup>11</sup> Story, *supra* note 5, v. 2, at 40.

Law Library, but a few old and imperfect books being there.”<sup>12</sup> In 1829, with the school still relying on the insufficient law titles shelved in the college library, Story grudgingly sold his library to Harvard Law School.<sup>13</sup> The exact number of volumes that Harvard acquired from Story is unknown, but the collection must have been sizable. According to the first and second catalogs of the Harvard Law Library, their collection more than doubled in size between 1826 and 1834 (jumping from 1326 volumes to more than 3500).<sup>14</sup> Story, realizing he would need to replace his personal library, sold rather than donated (as he would have preferred) the collection to the school. Nevertheless, according to his son, Story priced it well below market value so that the school would be able to obtain the entire collection.<sup>15</sup>

Story’s voracity to collect and accumulate did not diminish with the sale to Harvard and he soon began building his second library, the pursuit of which continued for the next seventeen years until his death in 1845. It was then that this second library was disbursed through two public auctions; the first seven months after his death, and the second, ten years later. We are fortunate that throughout the years a cadre of bibliographers, librarians, collectors, and book historians have had the foresight to not only gather and retain seemingly disposable commodities, such as auction catalogs, but to preserve, annotate, and index them for use by future scholars. It is not surprising then that there exists a union list of American book auction catalogs,<sup>16</sup> and indeed there exists an indexed and annotated modern facsimile catalog of the first sale of Justice Story’s library.<sup>17</sup> This sale, held April 3 and 4, 1846, offered almost one thousand titles on a variety of legal and nonlegal topics. It is not known what happened to those titles on an individual basis, but we know that the auction would have generated great interest not only from lawyers but also from collectors and individuals seeking an item belonging to a noted public figure. Although there exists no individual sale records, we do know that some books found their way into institutional collections as one Story-signed item found at Yale Law Li-

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<sup>12</sup> *Id.* at 532.

<sup>13</sup> Arnold, *supra* note 11, at 17.

<sup>14</sup> *Id.*

<sup>15</sup> Story, *supra* note 5, v. 2, at 40-41.

<sup>16</sup> George Leslie McKay, *American Book Auction Catalogues, 1713-1934; A Union List* (New York: New York Public Library, 1937).

<sup>17</sup> Michael H. Hoeflich & Karen S. Beck. *The 1846 Auction Catalogue of Joseph Story's Library* (Austin: Jamail Center for Legal Research, University of Texas at Austin, 2004).

brary bears the penciled inscription, “Purchased at the sale of Judge Story’s Library April 4, 1846.”<sup>18</sup>

Those attending the 1846 sale likely believed that they were vying for the Justice’s *entire* library, yet ten years later hundreds more titles from Story’s library appeared on the auction block. As with the 1846 sale, it was held in Boston and a catalog was issued. Although not subsequently reproduced and annotated like the 1846 catalog, there does exist a single extant copy of this 1856 sale catalog at Harvard’s Houghton Library.<sup>19</sup> Described by the auction house as the “Select and Most Valuable Portion of the Law Library of the Late Judge Story,” the catalog lists 564 titles (mostly law reports) and “[a]bout 100 volumes not enumerated.” It is not known why these titles were not sold at the prior auction or where these books had been hiding during the intervening years. Michael Hoeflich in his introduction to the reissue of the 1846 catalog suggests they might be remainders, unsold from the prior auction, but an examination of the two sales reveals little overlap in the titles offered.<sup>20</sup> It seems more likely that, as Hoeflich also suggests, it was perhaps the last of the father’s belongings to be sold off by the son, William Wetmore Story, as he prepared to leave the country to pursue a life of letters in Rome.<sup>21</sup> A physical examination of the volumes donated to SIU show them to be in fair condition at best. If their present condition was not a result of heavy use while housed at the Illinois court library but rather the condition they were in when sold, perhaps they were held back from the first auction because they were considered to be of marginal auction value and would garner little in commissions as well as detract from the trophy volumes offered in 1846.

Applying the foregoing evidence to the Southern Illinois University collection, the Story-signed titles clearly derive from this second

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<sup>18</sup> The compleat clerk, containing the best forms of all sorts of presidents, for conveyances and assurances, and other instruments now in use and practice: with the forms of bills, pleadings and answers in chancery, as they were penned and perfected by eminent lawyers, and great conveyancers, both ancient and modern: whereunto are added divers presidents ...: with alphabetical tables of the whole contents of the said book (London: Printed by G. Sawbridge, T. Roycroft, and W. Rawlins, 1677).

<sup>19</sup> *Valuable Law Library: Catalogue of the Select and Most Valuable Portion of the Law Library of the Late Judge Story ... To Be Sold by Action, on Tuesday and Wednesday, February 19 and 20, 1856* (Boston: Printed by Alfred Mudge & Son, 1856).

<sup>20</sup> Hoeflich and Beck, *supra* note 18, at 9.

<sup>21</sup> *Id.*

sale. They bear the Justice's signature, they are listed in the 1856 auction catalog, and they do not appear in the prior sale listing. But what about the remaining titles in the gift collection? Many of the unsigned items are also listed in the 1856 catalog. Can we infer that these too were part of Story's library? Fortunately, although an inventory of the gift does not appear to have survived, the volumes have been retained as a discrete collection and not integrated with the other common law reports held by SIU. Additionally, each item bears an "Illinois Law Library" brand on the spine, and all of the reports volumes were measured for and fitted with acid free boxes and shelved together in single location.<sup>22</sup>

One might argue that this is rather thin evidence upon which to associate the *unsigned* volumes to Story via the 1856 sale, but an examination of the 1846 sale catalog reveals that Story was neither systematic nor thorough when signing items in his personal library. Of the 597 titles listed for that sale, only 289, or 48 percent, are noted as "autographed." Unfortunately, Leonard & Company, the auctioneers responsible for the 1856 sale, did not annotate their catalog as Phillips & Sampson did for that earlier sale. Nevertheless, because Story was not a methodical autographer of his library books, it strengthens the conclusion that the SIU titles which are unsigned but listed in the auction catalog were also purchased at the auction.

Addressing the remaining volumes in the gift collection – those that are unsigned and not listed in the sale catalog – might we also associate these with Story? It is important to recall the auctioneers' note regarding "[a]bout 100 volumes not enumerated." Why were they not listed? Surely it would be in the interest of the auctioneers, who were to receive a percentage of the sale or at least a commission, to take the small amount of effort needed to provide a brief title, imprint location, and date. Quite possibly these hundred or so were omitted because of undesirable condition and may have been intended to be sold en masse or as lots rather than individually. Indeed, most of the "unlisted" titles in the SIU gift collection are in rather coarse condition with detached boards, missing portions of spines, and loose signatures.

Although today it is difficult to fathom why *any* seventeenth-century title might be considered marginal and not worth the effort to list in an auction catalog, it is important to remember that the 1856 market value of those items was not great. An examination of T. & J. W. Johnson's 1857 sale catalog reveals that the market preference was clearly for current American treatises, not the older English reports. For example, Joseph Story's sixth edi-

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<sup>22</sup> Matthews, *supra* note 2 at 1.

tion of *Commentaries on Equity Jurisprudence* (Boston, 1853) was offered at eleven dollars while a 1682 London folio edition of *Popham's Reports* fetched only one dollar and fifty cents.<sup>23</sup> Given the lack of market interest in early English reports and the probable deteriorated condition of the items, it is likely that most, if not all, of the "100 items not enumerated" were early English reports in poor condition. It then can also be assumed that these titles would be offered as a lot or a series of small lots and could be obtained for a small price.

Having established that at least some, if not all, of the items in the SIU collection are indeed from Story's personal library, it remains to be discussed how the books journeyed westward and how they became a part of a state appellate court library. To answer this, one needs first to understand a bit of Illinois court history. The appellate court building in Mount Vernon from which the Story collection was donated, was not always an appellate court. In fact, until 1877 there was no intermediate appellate court in Illinois – circuit court decisions were appealed directly to the Supreme Court in Springfield. By the mid-nineteenth century it became impractical to have all statewide appeals heard in a single location. In 1848, the newly ratified Illinois Constitution divided the state into three divisions to which circuit court cases were directly appealed and to which the Supreme Court travelled during designated terms.<sup>24</sup> The First Division heard cases arising out of circuit courts in the southern portion of the state and was located in Mount Vernon. The Illinois Supreme Court met there and heard arguments from 1848 to 1897. In furtherance of the constitutional provision, the Illinois General Assembly passed an act authorizing funds to purchase law books for use at that location.<sup>25</sup> The budget for the purchase of books was five hundred dollars annually<sup>26</sup> which was later increased to one thousand.<sup>27</sup>

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<sup>23</sup> J. Warner Johnson, Thomas P. Parry, and William S. Johnson. *T. & J. W. Johnson & Co.'s Law Catalogue* (Philadelphia: Johnson, 1857), 157, 120.

<sup>24</sup> Illinois Constitutional Convention. *Constitution of the state of Illinois, adopted by the Convention, assembled at Springfield, June 7, 1847, in pursuance of an act of the General Assembly...entitled "An act to provide for the call of a convention."* (Springfield: Lanphier & Walker, 1847). Art. V, sec. 30, 31, pp. 16-19.

<sup>25</sup> *Laws of the State of Illinois, passed at the first session of the sixteenth general assembly*, "An act to authorize the purchase of books for the use of the Supreme Court" (Springfield: Charles H. Lanphier, 1849), 57.

<sup>26</sup> *Laws of the State of Illinois, passed by the sixteenth general assembly at the second session* "An act to authorize the purchase of

This collection, though, lived a somewhat transitory life until 1856. Six years after the constitutional edict, the Illinois Supreme Court still did not have its own quarters in Mount Vernon, and held sessions at the city's Odd Fellows Hall until 1852 and then at the local Masonic Hall.<sup>28</sup> The funds to build the courthouse and a "library room" were finally authorized in 1854.<sup>29</sup>

Unfortunately it is not possible to positively tie the auction sale directly to the Supreme Court library at Mount Vernon. A shelf list of the appellate court's library printed in 1935 contains those titles given to SIU, so we know that the court acquired them before that date, but that is about all that can definitively be shown.<sup>30</sup> There exists no record of purchasers for the Story auction, and a haystack search of receipts at the Illinois State Archives would be likely be needless, as the level of detail for purchases for that period were generally not very detailed. Nevertheless, it seems entirely reasonable and likely that in 1856 the Supreme Court librarian at Mount Vernon with a large budget and a permanent home, charged with building a law collection, and likely using as a model the court library in Springfield, would seek to acquire a collection of early common law reports.

In the mid-nineteenth century, retrospective collection development of out of print materials was not an easy feat, and auctions of the libraries of attorneys or law firms were an effective way of obtaining a large collection of otherwise unavailable law books. Perhaps the Illinois court bid directly or through an agent, or perhaps a reseller purchased a large portion of the sale and quickly resold the items to a growing law library market, which included not only a rising number of new law schools but also the new court building at Mount Vernon. It is likely that the court,

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law books for the libraries of the supreme court" (Springfield: Charles H. Lanphier, 1849), 12.

<sup>27</sup> *Laws of the State of Illinois, passed by the twentieth general assembly, convened January 25, 1857*, "An act authorizing the purchase of law books for the libraries of the Supreme Court" (Springfield: Lanphier & Walker, 1857) 44.

<sup>28</sup> Database of Illinois Supreme Court Terms and Locations, in possession of Illinois Supreme Court Historic Preservation Commission, Springfield, IL

<sup>29</sup> *Laws of the State of Illinois, passed by the eighteenth general assembly at its second session*, "An act to appoint commissioners to build a court and library room at Mount Vernon, for the use of the Supreme Court" (Springfield: Lanphier & Walker, 1854), 146.

<sup>30</sup> Waller M. Buckham, *Index of Appellate Court Law Library, Mt. Vernon, Illinois* ([Mt. Vernon, Ill.]: [The Court], 1935).



with available funds and shelves to fill, was able to add a great amount of depth to its still growing collection relatively easily through the 1856 Story library auction.

So what can we conclude from all of this? In 1856, the court in Mount Vernon, Illinois had the funding, a legislative directive, and a permanent location to retrospectively build and house a law library for the state Supreme Court to access during its First Division terms. In that same year, an opportunity arose to purchase a large number of law titles (including early English reports) which certainly fit the needs of the court. Because unsigned volumes from Story's library would not be desirable to the contemporary collector, and even less so if they were in poor condition, we can reasonably assume that many of the items were within the reach of the Illinois Supreme Court without much competition. Given the presence in the SIU/Mount Vernon collection of Story-signed items, the number of titles which appear in the auction catalog, and the existence of the Philadelphia bookseller's labels, the physical evidence suggests that it is likely the Illinois court, on its own or through an agent or reseller, acquired a large number of volumes from this sale.

Finally, regarding the importance of this find, on one level, as trophy or museum pieces, it is nice for a small regional law school to claim ownership of items owned by an eminent American legal scholar and the signed items provide students with a tactile connection to the history they are tasked with learning. On a broader level, even though bibliographic work often results in questions being presented but not fully answered, what is gained through such analysis is a broader understanding of objects in their contemporary context and how they are thereby given meaning. The recording of these processes and their results, as has been done here, has the effect of presenting new opportunities for further analysis and scholarship by bibliographers, book historians, and legal scholars.

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