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The Case of the Stanly Will

Ryan Speer

Introduction

The case covered in this paper, concerning the state of Georgia's 1927 attempt to secure the will of Joseph Stanly, points out a particular complication of replevin: the difficulty of proving title when archivists cannot conclusively demonstrate previous custody of a record. When the precise circumstances of a record's alienation are unknown, one legal option is to attempt to prove universal ownership of all public records through recourse to contemporary recording laws. In the case of *Manning v. Anderson*, in which the Georgia Department of Archives and History (presently the Georgia Archives) sought the return of material which had not been described while in state custody, the state's recourse to colonial law was not successful. This examination of Georgia's experience in the *Manning* evaluates the state's difficulty in proving title, with reference to the specifics of archival control in the early history of the Georgia's state archives program. The state's adverse result presaged recurring difficulties for other states employing replevin to recover colonial records, raising an issue which could benefit from further historical investigation and analysis.

Examining Legal Strategy in Replevin Cases

Notable public records controversies, such as the cases of the Lewis and Clark expedition notes in the late 1950s, the George Washington letter at the center of *N.C. v. B.C. West, Jr.* in the 1970s, and the battle for North Carolina's original copy of the Bill of Rights in the 2000s, have encouraged a slow but constant process of replevin law adoption. The precedent for such laws extends back to an 1836 New Hampshire law, but state governments have only adopted archival replevin statutes sporadically over the course of the twentieth century and beyond; presently 31 states have replevin laws designed for the use of state archives.¹ Generally these laws

¹ The New Hampshire law is noted in Ernst Posner, *American State Archives* (Chicago: University of Chicago Press, 1964): 14. For the total count of replevin states, see George W. Bain's "State Archival Law," *American Archivist* 46:2 (Spring 1983): 158-74. Bain's total of 24 states with replevin statutes is supplemented by the author's own count of states with replevin laws added since

empower the state, usually in the person of the attorney general, to demand custody of public records in private ownership prior to a legal process for determining proper custody, to a replevin action proper. The states continue to favor and pass such laws to the present day, with California and Maine adopting replevin laws in the past ten years.

As a well-established component of the government archives toolkit, replevin often receives careful treatment in archival monographs devoted to the legal environment of archives. Menzi Behrnd-Klodt provides legal theory along with detailed coverage of several notable cases in her *Navigating Legal Issues in Archives* (2008). That book's predecessor, Gary and Trudy Peterson's *Archives and Manuscripts: Law* (1985), also devoted a brief section to replevin, but did not attempt to provide comprehensive coverage of historical cases. Examinations of specific replevin cases are uncommon, and there has been no substantive analysis of the assumptions or strategies underlying the use of replevin in certain historical cases. The most thorough survey of the historical development of archival replevin is found in Eleanor Mattern's 2014 dissertation "The Replevin Process in Government Archives: Recovery and the Contentious Question of Ownership."² Her coverage is quite thorough, encompassing seemingly all known recorded replevin cases, with the notable exception of *Manning*. This paper offers the first retrospective examination of that case, with attention to Georgia's legal strategy and its implications for current replevin practice.

The Manning Case

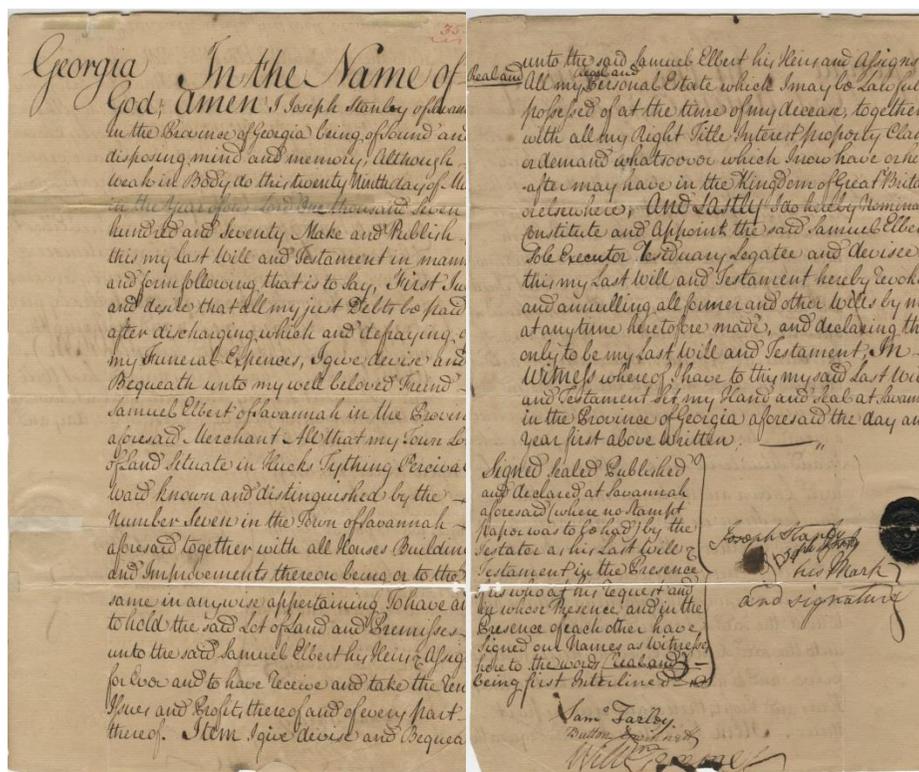
The document at the center of this case was an original manuscript copy of the will of one Joseph Stanly, dated May 29, 1770. According to archivist Ruth Blair, Georgia first learned of the sale of the Stanly will on the front page of the *New York Times*.³ The

that survey, which are: California (2009), Connecticut (1984), Delaware (1988), Maine (2009), Minnesota (1982), Tennessee (1989), and Texas (1997).

² Eleanor Mattern, "The Replevin Process in Government Archives: Recovery and the Contentious Question of Ownership" PhD diss., University of Pittsburgh, 2014, http://d-scholarship.pitt.edu/21919/1/Mattern_Dissertation_2014.pdf.

³ "Highest Price for Autograph, \$22,500, Paid For That of Gwinnett, Signer of Declaration," *New York Times*, January 20, 1926.

will was one of two documents signed by Button Gwinnett sold during 1926 and 1927, which arguably were official records of Georgia government. The Stanly will was putatively an official probate court document, and the other document was a fiscal record signed by Gwinnett as the governor of Georgia. Gwinnett, who later was one of the three Georgia signers of the Declaration of Independence, had signed the will as a witness. The will was recorded in 1771, but the original copy had been verified as missing from the state collection since at least 1920 when Blair noted its absence while reconciling the will books and loose will collections.⁴



Courtesy of the Rosenbach Museum and Library

The Stanly will was unusually interesting to American

⁴ Contemporary press accounts, the published judicial decision, and later secondary sources have all erroneously used the name “Stanley” when it appears on the will and in the record book as “Stanly.” Blair states that she first learned of the sale in the newspaper article in “Fight Started for Gwinnett Will.”

autograph collectors, many of whom were interested in completing sets of documents penned by all of the signers of the Declaration of Independence. The concept of the "signers set" had been around as long as American autograph collecting itself. Autograph collecting grew into a popular genteel pastime during and shortly after the Civil War; the wartime Sanitary Fairs often used autograph and historical document sales to raise funds for field hospitals and the late 1860s saw increasing auction activity and the establishment of the first full-time dealers in collectible manuscripts. By the time of the 1926 sesquicentennial of American independence, which brought about a renewed wave of public interest in signers' autographs, a well-developed private autograph market was in place to bring both private and public old papers.⁵ In an unlikely turn, due to intense competition at auction between well-financed collectors, Button Gwinnett autographs became the object of feverish speculation. The Stanly will was the first of eight Gwinnett autographs sold for prices as high as \$51,000 during the auction seasons of 1926 and 1927. That peak price of \$51,000 translates to some \$700,000 in 2015 terms. Such gaudy prices ensured that media interest was especially high in New York City, the center of the book and manuscript trade, and home to the Anderson Galleries which was the auction venue for the will.⁶

Georgia's claim to title was based on the presumption of long possession of the document. The will presumably was part of the group of colonial records transferred to the present-day Georgia Archives by the Secretary of State's office.⁷ The probate records included in that collection are contained in two bound volumes of recorded wills produced by the colonial probate court (the Court of Ordinary) between 1755 and 1779. These ledgers contain the transcribed text of wills. There is also a loose will collection

⁵ Josh Lauer, "Traces of the Real: Autographomania and the Cult of the Signers in Nineteenth-Century America," *Text and Performance Quarterly* 27 (April 2007), 143-63 provides a thorough analysis of the "signers set" phenomenon.

⁶ For contemporary accounts of these particular market conditions, and as evidence of the significant public appeal and reach of the craze, see Evans Clark, "Signers' Autographs Soar in Price," *New York Times*, June 28, 1925; and "Obscure Gwinnett Flickers into Fame," *New York Times*, January 31, 1926.

⁷ Josephine Hart Brandon, *Pages of Glory: Georgia's Documentary Heritage* (Savannah: Georgia Historical Society, 1998) covers in depth the travels of the colonial records.

consisting of the majority of the original copies provided to the colony for transcription into the ledgers. In addition to keeping the will books, Georgia also systematically retained original loose will copies. Those loose wills are uniformly folded and are docketed in a seemingly contemporary hand; each bears the date of recording and the page numbers in the corresponding will book. A loose will does not exist for every recorded entry in the books, and a few loose wills were never officially recorded in the books, but the collection is substantially complete.⁸ However, none of the state's inventories listed the Stanly will, and in the absence of such documentation the official record status of these loose wills would be the decisive issue of the *Manning* case.

Georgia founded its Department of Archives and History in 1918, after a long period of agitation by journalist and historian Lucian Lamar Knight. Knight had served the state as a historical editor, in the process becoming convinced of the need for organized documentary preservation. He would become the first director of the institution now known as Georgia Archives.⁹ The Georgia Department of Archives and History at first was housed in the state capitol, also the location of the state's major inactive records storage rooms, which held a variety of bound and loose records. We know more about the keeping of the bound volumes over the years than we do of storage conditions for manuscripts. The state commissioned several different record surveys prior to the establishment of the archives; they provide detailed lists of bound volumes in various offices but omit details on loose papers.¹⁰ The process of describing the unbound historical records did not begin in earnest until the

⁸ Court testimony would establish that only 10% of the official entries in the colonial will books did not have corresponding loose copies of the wills; see "Fight Started for Gwinnett Will." The filing practices and completeness of the loose will file can be seen firsthand at Georgia's Virtual Vault, <http://cdm.georgiaarchives.org:2011/cdm/>. The original papers are Will Books, Colony of Georgia, RG 49-1-5, Georgia Archives; and Wills, Colony of Georgia, RG 49-1-2.

⁹ Knight's annual reports to the governor as compiler and later as archivist provide concise documentation of the events leading up to the archives' founding; Evelyn Ward Gay, *Lucian Lamar Knight: The Story of One Man's Dream* (New York: Vantage Press, 1967) is a useful supplement.

¹⁰ Such surveys took place in 1792, 1812, 1816, 1841, and 1894-1897; each one is included as an appendix to Brandon's *Pages of Glory*.

establishment of the Department of Archives and History.

Ruth Blair, who later succeeded Knight as head the department, carried out the first comprehensive survey of the colonial will collection in 1920.¹¹ At that time, she noted that the Stanly will was recorded in the will books but not present in the loose files. Blair's survey was the first such inventory. The only specific information on the loose will collection before Blair's 1920 census is U.B. Philips' 1903 archival survey of Georgia for the American Historical Association, in which he specifically mentions the "disappearance" of the loose wills at that date.¹² The wills reappeared, but the absence of an earlier finding aid to verify previous public custody of the Stanly will complicated the state's ability to prove ownership in court.



Ruth Blair

Courtesy Georgia Archives, Small Print Collection, spc18-005c.

¹¹ For her account, see "Fight Started for Gwinnett Will Signature," *Atlanta Constitution*, April 14, 1927.

¹² Jared Sparks did visit the state capitol of Milledgeville in 1826 as part of his own tour of southern archives, but he examined the governor's records only.

Georgia did not bring its own suit, but interceded in the case of *Emma A. Manning and Another, Plaintiffs, v. Anderson Galleries, Inc., and Another, Defendants* in a New York state court in April 1927 into.¹³ Presumably, Georgia made its claim to the document to these parties, thus precipitating the case of *Manning v. Anderson*. The Mannings were the family of the late James H. Manning, an autograph collector of Albany, New York. Anderson Galleries was the auction house which handled the sale of Manning's collection in January 1926. Anderson sold the will to the highest bidder, Philadelphia bookman Dr. A.S.W. Rosenbach, an adept salesman who promoted his bookselling exploits through regular articles in the *Saturday Evening Post* and *Atlantic Monthly*. He played a leading role in the inflation of rare book and manuscript values during this period.¹⁴ Georgia's intercession into the transaction caused Rosenbach, at the time enjoying six months credit from Anderson and had not yet paid for the autograph, to surrender the document back to the auction firm. The Manning family sued Anderson for the amount of the original purchase price. At this point, the state of Georgia interceded in the case, making its own presumptive claim of title which was accommodated by the court. The judge and all parties agreed to strictly limit the action to determining who held the rightful title to the Stanly will.¹⁵

¹³ See "Three-Cornered Legal Fight For Signature of Gwinnett," *Atlanta Constitution*, April 10, 1927 and "Open Suit for Will Signed By Gwinnett," *New York Times*, April 14, 1927.

¹⁴ Edwin Wolf's biography of Rosenbach contains specific, if brief mention of the conflict over the Stanly will; see *Rosenbach: A Biography* (Cleveland: World Publishing Company, 1960): 266.

¹⁵ *Manning*, 1927 N.Y. Misc. LEXIS 924 at *133.



A.S.W. Rosenbach

Courtesy of Rosenbach Museum and Library

Considering Georgia's Strategy

The state attempted to justify its claim of title by referring to a Georgia colonial act of 1755 requiring the registration in the colonial record books of all wills and testaments conveying properties within the colony. Georgia was unable to describe the actual circumstances of the law's implementation. In the eyes of the court, the case ultimately hinged on the question of whether or not the colonial recording law required the retention of loose wills. While the law did require the recording of wills by the colony, it did not include specific instructions on how to keep those records.

As far as the media and case reports tell, Georgia never attempted to prove that the document had been kept or wrongfully removed. The state certainly could have, and why they did not attempt to describe the colony's formal docketing procedures about retaining the wills is a mystery. By neglecting to document how the colonial court system extensively collected and managed the original loose wills, Georgia did not prove that a will was a government record. Further, Georgia could not specifically demonstrate that someone took the record. On that point, the opposing side aptly

demonstrated a long private chain of custody for the will: James Manning purchased the document at the auction of the autograph collection of Elliot Danforth in 1912, and witnesses asserted that Danforth acquired the document through private sale in Georgia 1901.¹⁶ It only added insult to injury when a member of the Manning's defense team pointed out in open court that Button Gwinnett's own manuscript will currently resided not in the archives in Atlanta but in the J.P. Morgan collection in New York City.¹⁷

With the possibility of the Stanly will's theft negated as a major issue during the trial, the outcome of the case hinged on the status of the will as a public record. The state could prove the will's public nature either by referring to statutes requiring that the record be kept or to common law defining it as a public record. Georgia did not attempt to prove a common law definition, but opted to prove instead that the Stanly will was an official record by referencing colonial laws requiring that certain legal processes be documented through the maintenance of official records. The state first cited the requirement of the 1783 Treaty of Paris to transfer colonial records to the United States; fulfillment of the treaty meant that colonial records became state records., However, the court declined to consider this claim seriously due to the state's inability to prove exactly which records were transferred officially to the new state at the time of the treaty.

In the end, the judge disagreed that the act required the deposit of an original copy of the wills transcribed in the record book, stating that the law's "purpose primarily is to have a record in the public office . . . The statute is silent as to the retention of any original documents required to be registered."¹⁸ Many of the fully litigated and reported replevin cases have been borderline cases where records creation is not explicitly required by statute. In these borderline cases, it can be necessary to employ questionable legal

¹⁶ Previous ownership attested to in court is from *Manning*, 3. And while it was not reported in court, the Stanly will was also owned by early collector Lewis J. Cist and sold in the auction of his autographs in 1886. See Joseph Fields, "Known Signatures of Button Gwinnett," *New Colophon* 3 (1950): 143.

¹⁷ "Open Suit For Will Signed By Gwinnett," *New York Times*, April 14, 1927.

¹⁸ *Manning*, 1927 N.Y. Misc. LEXIS 924 at *135. See also "Georgia Loses Suit for Gwinnett Relic," *New York Times*, June 11, 1927 and "Signature Fight Lost by Georgia," *Atlanta Constitution*, June 12, 1927.

claims to justify the pursuit of state custody for such materials. Colonial-era treaty and recording laws, the crux of the *Manning* case, have been repeatedly tested as a means for identifying public records, and the results are something of a patchwork quilt of positive and negative results for state archivists. The following table identifies four replevin cases, out of the eleven fully reported by the courts, involving the same legal strategy of reference to those laws.¹⁹

Table 1²⁰
REPLEVIN CASES INVOLVING COLONIAL-ERA
RECORDS LAW

	DOCUMENTS AT ISSUE	OUTCOME
Manning v. Anderson (1927)	colonial-era manuscript will	Treaty of Paris and GA colonial record laws <u>unsuccessfully</u> cited in proving public nature of records
North Carolina v. West (1976)	two colonial-era bills of indictment	Treaty of Paris and NC colonial records law <u>successfully</u> cited to prove public nature of records

¹⁹ For a broader inquiry into all known archival replevin cases, see Eleanor Mattern, "The Replevin Process in Government Archives: Recovery and the Contentious Question of Ownership" PhD diss., University of Pittsburgh, 2014, http://d-scholarship.pitt.edu/21919/1/Mattern_Dissertation_2014.pdf.

²⁰ The complete citations of the cases in the table are: Manning et al. v. Anderson et al., 1927 N.Y. Misc. LEXIS 924 (Sup Ct, Albany County April 1927); North Carolina v. West, No. 761SC288, 1976 N.C. App. LEXIS 2016 (August 24, 1976); Willcox et al. v. Stroup et al., No. 06-1179, 2006 U.S. App. LEXIS 26818 (4th Cir. October 27, 2006); and Adams v. Maine, CH 2005-5034, 2008 Va. LEXIS 17 (Va. Cir. Fairfax County February 22, 2008).

Willcox v. Stroup (2006)	papers of two Civil War era South Carolina governors	Colonial public records statutes and SC case law <u>unsuccessfully</u> cited in proving public nature of records
Adams v. Maine (2008)	broadside printing of the Declaration of independence	Colonial law and contemporary ME public records law <u>unsuccessfully</u> cited in proving public nature of records

Further research into the efficacy of replevin laws in this type of case suggest potential improvements in statutes or approaches to asserting title to more strongly contested classes of historical records.

Conclusion

The *Manning* decision must have seemed a harsh and unexpected outcome for the state archives, considering their knowledge of the state collections, the evidence of the docketing procedures, and a strong belief based on those circumstances that the will had been removed from state custody. But the state chose not to appeal, and with the final conclusion of *Manning* ownership of the Stanly will reverted to the book dealer, Rosenbach, who eventually sold it to autograph collector Roderick Terry of Newport, Rhode Island. It also happened that Rosenbach purchased the document a second time, at the sale of Terry's collection in 1934. The will remained in Rosenbach's personal collection, which formed the nucleus of what is now the distinguished public research collection at Philadelphia's Rosenbach Library and Museum.²¹ The Stanly will is available for public examination at the Rosenbach today. Interested patrons will note that, unlike the contemporary colonial wills held at the Georgia Archives, it bears no evidence of docketing.²² Assuming

²¹ *Rosenbach: A Biography*, 267.

²² Kathy Haas, assistant curator of Rosenbach Library & Museum, email message to author, July 14, 2014. Standard docketing practices for those colonial wills held by the Georgia Archives can easily be viewed by accessing images of those documents online at Georgia's Virtual Vault.

that the colonial probate court's filing docket was not removed to facilitate its sale, it is remotely plausible that the will was a private copy never even submitted to state custody at creation.

Possession and control are central concerns for archivists, and especially for those actively seeking to recover public records from private ownership. The market for collectible books and manuscripts shows no signs of diminishing, and the theft from archival institutions is a continuing problem. In June 2015, the British Library hosted a meeting titled "The Written Heritage of Mankind in Peril," an unprecedented gathering of information professionals, lawyers, and booksellers called together to address what the organizers describe as a "global epidemic" of theft.²³ One of the topics considered was the legal framework for retrieving stolen material. As the urgency of addressing archival thefts continues to grow, the utility of replevin suits for enhancing archival security requires greater research interest. Records conflicts are also settled out of court, but there are enough reported archival replevin cases to enable a continuing and reasonably informed analysis of the American framework for recovering stolen archives. Further research into the replevin trend suggested here will inform and enhance the ongoing utility of such a vital method of asserting and maintaining archival control.

Ryan Speer is currently Assistant Professor and University Records Manager at Virginia Tech. He has also worked for the Georgia Archives and Georgia Tech Archives, and received a Master of Library and Information Science from the University of Southern Mississippi. His research and professional interests include replevin and the ethics of access to public records.

²³ This was a one-day meeting held on June 26, 2015 by the British Library, the Union Internationale des Avocats, and the Institute of Art and Law devoted to issues related to the theft of written cultural heritage materials.