

Everyday Justice in Pre-Confederation Canada: The Ledger of Thomas Burrowes, JP of Kingston Mills

Amy Kaufman

Volume 58, 2020

Ouvrer ensemble. Les rouages collectifs dans la chaîne du livre
Working Together. Collective Mechanisms in the Book Circuit

URI: <https://id.erudit.org/iderudit/1076245ar>
DOI: <https://doi.org/10.33137/pbsc.v58i0.33253>

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Publisher(s)

The Bibliographical Society of Canada/La Société bibliographique du Canada

ISSN

0067-6896 (print)
2562-8941 (digital)

[Explore this journal](#)

Cite this article

Kaufman, A. (2020). Everyday Justice in Pre-Confederation Canada: The Ledger of Thomas Burrowes, JP of Kingston Mills. *Papers of the Bibliographical Society of Canada / Cahiers de la Société bibliographique du Canada*, 58, 121–144.
<https://doi.org/10.33137/pbsc.v58i0.33253>

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Everyday Justice in Pre-Confederation Canada: The Ledger of Thomas Burrowes, JP for Kingston Mills

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Abstract

This essay combines close bibliographical analysis of the 1856–66 ledger of Thomas Burrowes, Justice of the Peace for Kingston Mills in what is now Ontario, with a wide-ranging discussion of what the document can reveal about its owner and about the practice of everyday justice in a small mill town in the years leading up to Canadian Confederation. It considers the effect of reading about law in manuscript versus printed form. It follows the intriguing evidence contained within the ledger to consider its possible uses by subsequent owners after Burrowes's death, tracing the ledger in its circular journey from Kingston Mills to the Queen's University Archives in Kingston via Detroit and Indiana.

Résumé

Cet article unit une analyse bibliographique approfondie du grand livre de Thomas Burrowes, le juge de la paix pour le village de Kingston Mills à l'actuelle province d'Ontario entre 1856 et 1866, avec une vaste discussion sur ce que le document peut révéler au sujet de son propriétaire et de la pratique de la justice quotidienne dans un petit village industriel au cours des années précédant la Confédération canadienne. L'article examine les effets du format manuscrit sur la lecture de documents juridiques comparativement aux formats imprimés. Il présente également une analyse des preuves figurant dans le manuscrit afin de considérer les usages possibles du grand livre par ses propriétaires subséquents après le décès de Burrowes, en suivant le parcours circulaire du document de Kingston Mills aux archives de l'Université Queens en passant par Détroit et l'Indiana.

Introduction

This essay will examine the 1856–66 ledger of Thomas Burrowes, a Justice of the Peace (JP) for Kingston Mills, Canada

West.¹ Because magistrates administered justice at its lowest levels, this ledger gives a rare glimpse into the everyday concerns of people living in a village on the Rideau Canal in the years leading up to Confederation in 1867. Taking as its starting point D. F. McKenzie's definition of bibliography as "the discipline that studies texts as recorded forms, and the processes of their transmission, including their production and reception,"² this essay will explore the contents of the ledger along with its characteristics and provenance to provide a fuller picture of this historical legal object. Unlike the experience of reading printed law reports and legal treatises, which direct the reader to the outcome of cases and how they contribute to the development of the common law, reading Burrowes's ledger refocuses the reader on the individual human participants and the contingencies of the legal process. The ledger records an ancient, more intimate form of justice where all the actors are part of the same small community.³

Provenance

Thomas Burrowes (1796–1866) is known for his contribution to the construction of the 202-kilometre Rideau Canal from Ottawa to Kingston as part of Britain's military infrastructure for the defence of Canada.⁴ Born in Worcester, England, Burrowes trained as a military engineer and came to Upper Canada with the Royal Sappers and Miners in 1818. After a short sojourn in England, he returned to Canada in 1826 as a civilian Overseer of the Works for building the Rideau Canal. Upon promotion to Clerk of the Works of the project's southern section, he moved to Kingston Mills, where he continued to live after his retirement in 1846, when he was appointed JP and Postmaster. At the time, Kingston Mills was a village of about

¹ Ledger of Thomas Burrowes, Justice of the Peace, F3 E9, 2015-34, Queen's University Archives (hereafter cited as Burrowes MSS). Prior to Confederation, colonial Ontario was called Upper Canada (1791–1841) and Canada West (1841–67).

² D. F. McKenzie, *Bibliography and the Sociology of Texts* (Cambridge: Cambridge University Press, 1999), 12.

³ See: Michel de Certeau, "Reading as Poaching," in *The Practice of Everyday Life*, trans. Steven Rendall, 3rd ed. (Berkeley: University of California Press, 2011), 165–76 (168).

⁴ UNESCO, "Rideau Canal," World Heritage List, accessed 26 October 2020, <https://whc.unesco.org/en/list/1221/>.

150 people with saw and lath mills, two taverns, a general store, and a blacksmith. It was the location of the final lock station before the Rideau Canal reached Kingston and Lake Ontario, about six miles distant.⁵

Burrowes is best known to Ontario archivists and historians for his 115 watercolours of the Rideau Canal, which the Archives of Ontario has declared “some of the most famous images in Ontario history.”⁶ The Archives of Ontario received the paintings from Alexander Ross, one of Burrowes’s grandsons, whose aunt had found them in the attic of her Detroit home in 1907 along with “some of the original fieldnotes, maps, plans and copies of official correspondence relating to the construction of the Rideau Canal and the founding of Bytown.”⁷ Missing from this list is Burrowes’s ledger, even though it contains notes dated 1876 at Detroit. At some later point, it evidently parted ways with the rest of Burrowes’s legacy. By 2015, an Indiana judge had donated the ledger as part of a collection of local judicial records to the state’s Yorktown–Mt. Pleasant Township Historical Alliance. It was the Alliance that properly identified the ledger and donated it to Queen’s University Archives in Kingston, where they felt it belonged.⁸

It is not unusual for ledgers such as these to go astray. Because they were at the periphery of the administration of justice, they often fall on the side of “private legal documents”⁹ and may not form part of judicial archives. Even when legislation provides that such ledgers form part of the official record, their owners have not always complied with the requirement to surrender them.¹⁰ In addition, the preservation of colonial-era legal records was unsystematic in Ontario.¹¹ The reappearance of Burrowes’s ledger in its county of origin offers significant new evidence on the local practice of the administration of colonial justice in pre-Confederation Canada.

⁵ *The Canadian Directory for 1857–58* (Montreal: John Lovell, 1857), 221, 248.

⁶ Archives of Ontario, “Eyewitness: Thomas Burrowes on the Rideau Canal,” accessed 26 October 2020, <http://www.archives.gov.on.ca/en/explore/online/burrowes/index.aspx>.

⁷ A. H. D. Ross, *Ottawa Past and Present* (Ottawa: Thorburn & Abbott, 1927), i.

⁸ Becky Monroe, president, Yorktown–Mt. Pleasant Township Historical Alliance, email messages to author, 27–29 July 2019. Unfortunately, the judge has since relocated, so the provenance cannot be traced further.

⁹ C. J. Shephard, “Court Records as Archival Records,” *Archivaria* 18 (1984): 124–34.

¹⁰ See, for example: M. H. Hoefflich, “An Unknown Notaries’ Ledger from Douglas County, Kansas,” *Kansas Law Review* 66, no. 4 (2017), 673–83.

¹¹ Louis A. Knafla, “‘Be It Remembered’: Court Records and Research in the Canadian Provinces,” *Archivaria* 18 (1984): 105–23 (111).

The Role of a Justice of the Peace

As a JP, Burrowes could try summary offences. In general terms, that meant low-level criminal matters, such as minor assaults and property offences. He was also responsible for trying regulatory offences, such as evading statutory duties. The two most common were failing to attend the yearly muster day, which was required of every man aged 18–40, and neglecting to perform statute labour, which was generally two days of road work per year for every man aged 21–60.¹² Burrowes could also hear minor civil matters, such as suits regarding property damage or non-payment of wages. Criminal and civil matters were not sharply delineated at this time, as the prosecution of criminal matters often required the initiative of a private citizen.

In practice, this meant that a person called the *prosecutor*, or sometimes the *complainant*, would bring a matter before Burrowes. The person against whom the matter was brought was the *defendant*. A matter could be brought at any time; there were no set times for Burrowes to hear cases. Like most JPs in rural areas, his home was the courtroom, and he was required to “throw open his doors” to interested observers.¹³ Witnesses might be called and, after hearing the evidence, Burrowes would render a decision. As this scene unfolded, Burrowes made notes in his ledger. His convictions could be appealed to the Court of Quarter Sessions in the county town of Kingston, to be heard by two or more JPs sitting together.

Magistrates’ Manuals

There were few manuals which Thomas Burrowes could have consulted for guidance in performing his duties as a JP in 1856. One was *A Treatise on the Law and Practice of Summary Convictions and Orders by Justices of the Peace, in Upper and Lower Canada*, written

¹² W. C. Keele, Esq., *The Provincial Justice, or Magistrate’s Manual, Being a Complete Digest of the Criminal Law of Canada, and a Compendious and General View of the Provincial Law of Upper Canada: With Practical Forms For the Use of the Magistracy*, 3rd ed. (Toronto: H. Rowsell, 1851), 472, 619–20.

¹³ Edward Carter, *A Treatise on the Law and Practice of Summary Convictions and Orders by Justices of the Peace, in Upper and Lower Canada, with Numerous References to English Decisions and Judgments of the Superior Court, and on the Remedy By Appeal and Certiorari; Together with Practical Forms* (Montreal: John Lovell, 1856), 61.

by Montreal lawyer Edward Carter and printed in Montreal in 1856 by the pre-eminent nineteenth-century printer-publisher John Lovell.

Carter judged the colonial experience with JPs to be “in its infancy” compared to the “progress and perfection” of the system in England.¹⁴ This book was an attempt to help guide those magistrates whose appointments had been “unavoidably made from a class of men whose education and whose opportunities for improvement but little fitted them for the proper discharge of their duties.”¹⁵ If Carter’s judgment is accurate, Burrowes’s background rendered him exceptionally fit for the appointment. It could also have been that Burrowes was one of the few in Kingston Mills who fit the statutory requirements to be a JP. Only “the most sufficient persons” in a district, determined by a property ownership requirement, could be magistrates.¹⁶

The role of JP was not an easy one. Beyond the general difficulty of interpreting statutes without legal training, there was also new legislation to apply and lingering questions about precisely which parts of English law had been received into the colony. JPs also had to contend with changes to their own powers in a shifting legal landscape. Most pertinently, the Summary Convictions (Upper Canada) Act of 1834 had expanded their jurisdiction to try cases of common assault and petty trespass by themselves, rather than referring them to the Court of Quarter Sessions.¹⁷

This act required that “a Minute or Memorandum” of a conviction or order be made, so that afterward the actual conviction or order could be drawn up “in proper form” to be “lodged with the Clerk of the Peace” by which it would become part of the Records of the General of Quarter Sessions of the Peace.¹⁸ However, the legislation was silent as to the form of this minute/memorandum. Magistrates’ manuals also focused more on the requirement than the form. For instance, on this point, Carter quoted an English case from 1800: “It is a matter of constant experience for magistrates to take minutes of their proceedings, without attending to the precise form of them, at the time they pronounce their judgment, to serve

¹⁴ Ibid., xiv.

¹⁵ Ibid.

¹⁶ Keele, *The Provincial Justice*, 339.

¹⁷ An Act to provide for the Summary Punishment of Petty Trespasses and Other Offences, S UC 1834 (4 Wm 4), c 4.

¹⁸ Summary Convictions (Upper Canada) Act, S UC 1853 (16 Vict), c 178, s 13.

as memorandums for them to draw up a more formal statement of them afterwards to be returned to the Sessions.”¹⁹

Another manual that Burrowes could have consulted, *The Provincial Justice, or Magistrate's Manual* by Toronto lawyer W. C. Keele, explained that the common law requirement to keep accurate notes would help JPs comply with the statutory rule that evidence must be stated “as nearly as possible in the words used by the witness”²⁰ when they drew up the form for conviction.²¹ Keele also called “the attention of the magistracy to the statute of 4 & 5 V. c. 12, which requires justices of the peace to make a return of all convictions and fines had before them to the next general quarter session, under a penalty of £20. The accidental neglect of this duty,” he warned, “has sometimes exposed magistrates to vexatious *qui tam* actions.”²²

There had also been the recent introduction of a general right of appeal from “convictions before individual magistrates,” a change Keele noted with approval, for it would “stimulate the presiding justice to a vigilant and impartial discharge of his duty on the one hand, and, on the other, afford just and proper relief in those cases which, through some error in judgment, may require revision.”²³ At the same time, JPs were protected from irregularities or defects “in the form of their proceedings” as long as they were “grounded upon good causes, and where [JPs] have acted without malice.”²⁴ These measures allowed people not trained in the law to vary in their individual practices as long the more formal written aspects of their administration of justice, such as sending in returns of convictions, conformed to prescribed forms and rules. There is nothing to indicate that those initial records of proceedings were anything but Burrowes’s own property and for his own use, so it appears to have been up to Burrowes to create them in the form he chose.

¹⁹ *R v Barker* (1800), 1 East 186, 102 ER 73 at 74.

²⁰ An Act to Facilitate Summary Proceedings before Justices of the Peace, and to afford such Justices reasonable protection in the discharge of their duty, S UC 1832 (2 Wm 4), c 4, s 1.

²¹ Keele, *The Provincial Justice*, 405, 42. First published by the Upper Canada Gazette in 1835, later editions, including the third edition from 1851 cited here, were published by Henry Rowsell, a prominent bookseller and publisher in Toronto.

²² *Ibid.*, iv. A *qui tam* action is one in which a private citizen enforces a civil law and is entitled to a share of the fine. See: Jonathan Law, *Oxford Dictionary of Law*, 9th ed. (Oxford: Oxford University Press, 2018), s.v. “*qui tam* action.”

²³ Keele, *Provincial Justice*, iv.

²⁴ *Ibid.*, 417.

The Ledger

The ledger is a folio almost one inch thick with foolscap-size leaves approximately eight inches across and twelve inches tall, and bound with paperboard covered in leather that is worn and scratched. It has been blind-stamped to create a dentelle border on the front and back covers and fillets on the spine.²⁵ Its pages display two watermarks: seated Britannia and the words “HARRIS & TREMLETT 1840.”²⁶ The seated Britannia, a very common watermark, indicates that the paper came from England but offers no more specific information.²⁷ The countermark, a millmark, is much more helpful, indicating the paper came from Countess Weir Mills, Topsham, Devon, a partnership that lasted until 1844.²⁸

While the paper for the blank book may have been imported, Burrowes would have been able to purchase it locally: an 1855 directory of the City of Kingston, printed by a local bookseller and stationer, lists four business that could have supplied such a book to him. One of those same businesses has an advertisement in an 1865 directory explicitly listing “ledgers, journals, and blank books of all kinds” for sale.²⁹

It appears there were once about 130 leaves in this book in gatherings of ten that have been sewn together, but it is difficult to confirm because the binding is tight and damaged. The endpapers are marbled. The pages Burrowes used for recording his magistracy work account for fifty-three of the leaves, most of which he has paginated in the upper left corner of the versos. Most of the rest of the leaves are blank, while a few contain words of obscure intent that appear to be in different hands from Burrowes’s, including one that looks like the tentative hand of someone learning to write.³⁰ There are fingerprints,

²⁵ See image 1 in the Appendix.

²⁶ See images 2–3.

²⁷ W. A. Churchill, *Watermarks in Paper in Holland, England, France, etc., in the XVII and XVIII Centuries and Their Interconnection* (Amsterdam: M. Hertzberger & Co., 1935; Nieuwkoop: B. De Graaf, 1985), 42–43. Citation refers to the De Graaf edition.

²⁸ “Notice,” *London Gazette*, no. 20399 (1 November 1844), 4583.

²⁹ *A Directory of the City of Kingston and the Villages of Waterloo, Portsmouth, Williamsville and Barriefield* (n.p.: John Duff, Bookseller and Stationer, 1855); *Mitchell & Co.’s General Directory for the City of Kingston, and Gazetteer of the Counties of Frontenac, Lennox and Addington for 1865* (Toronto: Mitchell & Co., 1865).

³⁰ See image 4.

shadows of pressed tree leaves, and shading indicating where loose documents were once positioned.³¹ Thirteen leaves have been partially or fully excised, and a number of loose leaves have been tucked into the ledger. These aspects suggest that the ledger has had more than one life, and that it may have followed a path typical of household albums that after their initial use were “deployed as recycled paper” or “transferred within their nineteenth-century household from the parlor to the nursery, furnishing the surfaces on which small children might practice their penmanship.”³²

Burrowes transformed his blank book into a ledger by creating a particular structure on each opening. In ink varying from brown to black, Burrowes carefully hand-ruled the pages. He created two types of entries. The first type are openings headed with a variation of “Memoranda of Fees and Charges as a J.P. with the Fines Imposed, Orders, &c.” (hereafter Memoranda) with the date of the quarter, in which he listed elements of the cases before him. He typically wrote across the opening, starting with the verso of one leaf on the left and then onto the recto of the next.³³ This precise structure could cause Burrowes problems, particularly if the volume of information was greater than space allowed. One solution was to use pencil to annotate or overwrite earlier notes.³⁴ Burrowes also used pencil to record initial findings that he might later trace over in ink. He had a small, tight hand, with a slight slope to the right. There are few ink blots, errors, or evidences of hesitation. Given the descriptions of proceedings from the magistrates’ manuals, Burrowes likely wrote his Memoranda entries as the parties argued before him at his house, Maplehurst, which still stands. This aspect of the ledger reminds the reader of the central place of orality in the administration of justice, which written reports obscure: these are contemporaneous recordings of a scene unfolding before Burrowes, in which he hears the participants’ pleas and ultimately renders a decision. Michel de Certeau has asserted that “reading is preceded and made possible by oral communication, which constitutes the multifarious ‘authority’ that texts almost never cite.”³⁵ The ledger succeeds in capturing this elusive authority on the page.

³¹ See image 5.

³² Deirdre Lynch, “Paper Slips: Album, Archiving, Accident,” *Studies in Romanticism* 57, no. 1 (2018): 87–119 (113).

³³ See image 6.

³⁴ See image 7.

³⁵ de Certeau, “Reading as Poaching,” 168.

The second type of entry consists of openings headed with variations of “Return of Convictions made by me” (hereafter *Return*) with the date of the quarter and Burrowes’s location, in which he made an official summary copy of the convictions from the previous quarter’s Memoranda pages. For these openings, he turned the book ninety degrees and wrote from top to bottom, starting with the verso of one leaf and continuing down onto the recto of the next.³⁶ He signed his name fully after each quarter’s returns. These pages have a more self-conscious, ceremonial quality, in contrast to the workaday appearance of the Memoranda.

The Memoranda pages are more interesting to read, as they contain layers of information not included in the written Return pages. A typical Memoranda opening will be ruled into columns containing party names, charges, fees, fines, other procedural notes, and a disposition. Each entry is discrete and separated by horizontal lines. This method allowed Burrowes to organize both his notes and his own mind by prompting him to identify the legally relevant elements of the matters that came before him. However, his ledger also reveals how unpredictable the course of justice could be. Matters might be settled or appealed; defendants might pay fines in installments or abscond. These contingencies required him to read and alter his own text, and they did not always fit within the organizational structure by which Burrowes presented his work on the page. They required him to develop new strategies to revise and enhance his original notes, like Sherman’s “marking readers” who devised “systems of signs” and ways to signal “key subjects and claims at a glance.”³⁷ The techniques he chose are remarkably consistent.

As both the ledger’s author and reader, Burrowes could have altered his initial organizing structure for the Memoranda once its limitations became evident. However, he did not, keeping the roles of author and reader distinct. First, as author, he set up his opening’s structure and filled it in as cases came before him. Then, as his ledger’s reader, Burrowes wandered through his own imposed system and remade its text, the separate work of *lectio*.³⁸ He added notes and recorded fine payments in pencil or a different ink, allowing a reader to distinguish between the original disposition and new information at a glance.

³⁶ See image 8.

³⁷ William H. Sherman, *Used Books: Marking Readers in Renaissance England* (Philadelphia: University of Pennsylvania Press, 2008), 25.

³⁸ See: de Certeau, “Reading as Poaching,” 169.

Most strikingly, he wrote the ultimate disposition, such as *Settled*, *Paid*, *No Appearance*, or *Withdrawn*, diagonally with a slight flourish across the fees entry. *Appealed* meant one of the parties had appealed Burrowes's decision to the Court of Quarter Sessions, and *QS* meant he had referred a case there himself. This manner of highlighting the final disposition encourages reading the case backward, with the reader knowing the outcome before ascertaining the charge or even the people involved. It would also allow Burrowes to quickly determine a previous case's outcome.

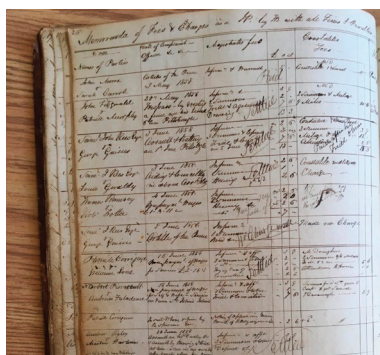


Figure 1. The prominence of diagonal notations, p. 26.

Since Burrowes set up his page before hearing cases, he sometimes lacked space to finish an entry. One strategy in such a case was to use a manicule. For example, on 15 July 1857, Burrowes had convicted "Martin Fowler & Mary his Wife" of "Malicious Trespass to Property" for damaging an apple tree with an axe. Later Burrowes overwrote his record of the fees at a diagonal with the words "Conviction Quashed" in a larger hand, crosshatched the original fines, added "See note," and drew a manicule to point to the next column.³⁹

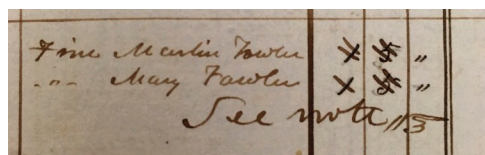


Figure 2. Detail of manicule, p. 13.

³⁹ Burrowes MSS, 12–13.

There he wrote: “Appealed to Q.S. 9 Sep 1857...—The conviction quashed—the Words Wilfully + Mischievously having been used instead of Unlawfully and Maliciously.”⁴⁰ This entry is interesting for several reasons. First, the existence of the notation suggests that Burrowes followed appeals attentively. Second, the ground for quashing Burrowes’s conviction is technical and thus the level of legal acumen expected of him is high. Third, Burrowes describes being overruled dispassionately without any defensive comments. Fourth, he employs a manicule to refer to a note that provides more detail, in line with the old practice of using that mark to highlight particular passages.⁴¹

Along with manicules, Burrowes often used an asterisk variant, “a small cross with a dot at each angle,” to develop his use of the available page space.⁴² One example appears in an entry noting that Robert Cearus had indicated he would appeal Burrowes’s ruling that Cearus was liable to Elizabeth Cawley for non-payment of wages. The asterisk leads to new information marked by a matching symbol within a little box that Burrowes had sketched: “In Cearus’ case, appeal not tried—the Bail not having been entered into he came and paid the Amount of Order + costs two days after.”⁴³ Throughout the ledger, Burrowes used this symbol to point to sections that he had set off.

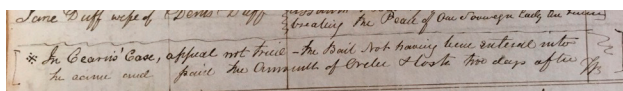


Figure 3. Detail of second asterisk in box that has been set off, p. 25.

The only other mark that Burrowes uses is a fletched arrow to bring information together.⁴⁴ There are no symbols or little drawings that a person might be expected to make in his personal book as he sat through hearings over many years. Given that Burrowes was an accomplished draftsman, surveyor, and painter, it is surprising how rarely he departs from script.

⁴⁰ Ibid.

⁴¹ Sherman, *Used Books*, 29, 37.

⁴² Peter Beal, *A Dictionary of English Manuscript Terminology: 1450 to 2000* (Oxford: Oxford University Press, 2009), s.v. “asterisk.”

⁴³ Burrowes MSS, 25.

⁴⁴ Ibid., 55. See image 9.

A Window into the Processes of Local Justice

As other studies of magistrates' ledgers have noted, these documents record the everyday concerns of people, issues of such small significance that they usually escape higher court records.⁴⁵ Burrowes's ledger reveals not just the issues that drew his neighbours into the legal system but also how they, and he, negotiated that system. Throughout the ledger, he records the physical location of that justice as Maplehurst, his house, at the top of his openings. While a JP had authority throughout his county of appointment,⁴⁶ Burrowes only records one instance of dispensing justice by himself outside of Kingston Mills. The Return of 20 April 1860 lists his location as Barriefield, a nearby village, where he convicted six people of selling alcohol without a licence.⁴⁷ Why Burrowes records himself travelling with his ledger just once remains a mystery.

Alongside his decisions, Burrowes recorded issuing search warrants and summonses, setting fines, and determining how long people had to pay them. He recorded when fines or fees were paid, added remarks, and sometimes wrote on top of earlier notes. The effect of all these pieces of information added to the ledger at various times is to convey justice as an ongoing process rather than a judgment simply handed down, as printed law reports from higher levels of the justice system might imply. The ledger's palimpsestic corrections and overwriting shows justice as something flexible, with new knowledge altering old conclusions. On a human level, the ledger also reveals that Burrowes was concerned with both justice and mercy. In an 1861 entry, he noted that he had fined a woman for setting her dogs on some cattle, but then writes in a different ink, "not exacted. She is very poor."⁴⁸ The different ink suggests there could have been an interval of time before that decision, allowing Burrowes time for reflection or for the woman to plead poverty before him.

McKenzie has described how in seventeenth-century England, "Acts and proclamations might be printed and widely dispersed ... but most of the executive actions taken to implement them were initiated

⁴⁵ See, for example: Tom Semmerling, "The John Marshall Clemens Law Ledger: A Legal Vestige of the American Frontier," *Western Legal History* 21, no. 1 (2008): 55–82 (79).

⁴⁶ Keele, *Provincial Justice*, 403–4.

⁴⁷ Burrowes MSS, 52.

⁴⁸ *Ibid.*, 66. See image 10.

in writing.”⁴⁹ This combination of print and manuscript remained true in nineteenth-century Canada. The inclusion of a fragment of a Return written by Burrowes, perhaps a rough draft, provides the link that lets us see how the legal process went from print to manuscript and back to print. Burrowes recorded enforcing the printed statutes in his ledger and then, once a quarter, copied all convictions into a Return for the Clerk of the Peace.⁵⁰ The Clerk compiled and printed all the county’s Returns in one document, titled *Schedule of Summary Convictions and Orders*, showing all quarterly convictions. A copy of this printed document was folded, addressed on its verso, and mailed to Burrowes. Six of these are tipped into the ledger and one is tucked into its pages.⁵¹ Two other types of printed material have been laid in. Calendars printed by newspapers from 1860 and 1866 are pasted on top of the marbled front endpapers, perhaps to keep track of dates; someone, presumably Burrowes, has numbered each week for 1866. On an unfinished page from 1863, he has pasted in the quarter session terms and county courts’ sitting dates for 1866. The inclusion of all steps in the judicial process in the ledger suggests a man who consciously situated himself within the larger justice system. It also underlines the importance of this volume to Burrowes’s judicial praxis.

The ledger allows for both broad and deep examinations of the administration of justice. One can identify broad trends as well as analyze specific case notes to consider how the people of Kingston Mills navigated colonial law. Based on the frequency of entries, the most common charge before Burrowes was assault in its many variations. Women assaulted women: Alice Moore charged Mary Harrington with “Assault by tearing cap and hair of her head.”⁵² The sawmill was a common location for violent conflict in the village, as when William Robinson accused James Macdonald, “both of Kingston Mills, Sawyers,” of “assault + battery at + in Sawmills.”⁵³ Families were able to intervene to de-escalate legal proceedings: Burrowes noted that this assault had been settled at the request of Robinson’s father, with “Def^t paying costs.”⁵⁴

⁴⁹ D. F. McKenzie, “Speech-Manuscript-Print,” in *Making Meaning: “Printers of the Mind” and Other Essays*, ed. Peter D. McDonald and Michael F. Suarez (Amherst: University of Massachusetts Press, 2002), 237–58 (244).

⁵⁰ See image 11.

⁵¹ See image 12.

⁵² Burrowes MSS, 14.

⁵³ Ibid.

⁵⁴ Ibid.

Indications of kinship abound. People with the same last name, or a man and “his wife,” appeared on the same and opposite sides of a conflict. For example, on 24 June 1857, Burrowes convicted Robert Martin and Mary Cearus of “trespass and mischievous injuries to Trees, cutting and taking Hemlock Bark,”⁵⁵ perhaps for tanning.⁵⁶ The charges had been brought by John Cearus. In another matter, Margaret Donoghue was charged with assault and battery by Daniel Donoghue and also with resisting the constable on duty, Matthew Donoghue, on 6 July 1857.⁵⁷ Private matters—men willing to bring female relations up on charges of assault and trespass—comingled with public ones, since people also acted in official capacities against family members in enforcing statute labour duties and keeping the peace.

With the passing of the Petty Trespass Act in 1834, JPs were given the power to handle summary offences. This in turn opened the justice system “to ‘marginalized’ elements of society,” observes Susan Lewthwaite in her study of nearby Newcastle district, finding that “Native people, women, and poorer individuals went before magistrates to make complaints against others, where they might have been reluctant to risk the expense and inconvenience of taking a case to the higher courts.”⁵⁸

It is not immediately apparent if Indigenous people were appearing before Burrowes, but it is possible to tell from his noting of people’s occupations, such as “sawyers,” that poorer people were. And it is clear that many women brought actions before Burrowes, against both men and other women.

For example, in August 1857, Mary Donnelly brought a suit against Robert and Hannah Dunlop for “detaining wearing apparel as a Boarding House Keeper after Failure of Payment.” In the fees column, Burrowes overwrote “Settled in Full.”⁵⁹ From his notes, it appears that while Burrowes fined the Dunlops, he also ensured they received the amounts owed to them. That same day, Hannah Dunlop was also accused by Mary Moore of “Having possession of a stolen

⁵⁵ Ibid., 11.

⁵⁶ Campbell Morfit, *The Arts of Tanning, Currying, and Leather-Dressing* (Philadelphia: Henry Carey Baird, 1852), 320.

⁵⁷ Burrowes MSS, 14.

⁵⁸ Susan Dawson Lewthwaite, “Law and Authority in Upper Canada: The Justices of the Peace in the Newcastle District, 1803–1840,” (PhD thesis, University of Toronto, 2001), 140, <http://hdl.handle.net/1807/15979>.

⁵⁹ Burrowes MSS, 14.

Quilting frame the property of Anastasia Millet borrowed by daughter of Complainant.” Burrowes noted that he had issued a search warrant. On this charge, Dunlop was luckier: Burrowes overwrote that the charge was dismissed because there was “no evidence to Convict.”⁶⁰

The ledger records many attempts to evade statutory duties. Answering a charge of “Nonperformance of Statute Labour 2 Days,” Patrick Prendergast brought an affidavit from his mother that persuaded Burrowes that Prendergast would not be twenty-one until “8th August next,” and was therefore underage.⁶¹ Burrowes recorded officers coming before him with lists of people to charge with failing to attend the annual muster of the 2nd Frontenac Militia regiment. On 29 September 1857, Captain Daniel E. Grass charged twenty-one men from the nearby village of Portsmouth with non-appearance at the May muster. Burrowes fined fourteen, though he then wrote “Dead” over one fine, noting that the man had subsequently been killed by sunstroke.⁶² That Burrowes heard matters about men from Portsmouth could suggest that Burrowes’s district extended beyond the vicinity of Kingston Mills or that magistrates from around the county each processed part of a larger list of men who did not appear for militia duty, regardless of specific district.

On another occasion, Hugh Lyons successfully argued that he was too old for militia duty by bringing his father to swear that Lyons was “41 years of age. Case dismissed.”⁶³ Most of the rest of the men charged with not appearing at the muster were fined, including Robert Sunderland, who, Burrowes noted, “paid in full after having been on his way to gaol,”⁶⁴ as a sentence of six days to a month could be substituted when fines were not paid.⁶⁵

The fact that people could argue successfully that they were slightly too young or too old for statutory duties suggests that reliable records of births were not easily available, as it only took a parent attesting to a child’s age for Burrowes to accept it. It could also indicate that Burrowes was relaxed about enforcing these duties. However, that attitude only went so far; after all, when Robert Sunderland finally paid his fine “on his way to gaol,” it was likely Burrowes who had sent him there.

⁶⁰ Ibid.

⁶¹ Ibid. See images 13–14.

⁶² Ibid., 18. See image 15.

⁶³ Burrowes MSS, 8.

⁶⁴ Ibid.

⁶⁵ Keele, *Provincial Justice*, 472.

The Ledger's Afterlife

This essay has focused on the book as a judicial ledger, but it also contains elements that are less clearly related to the administration of justice at Kingston Mills. These include letters and fragments of letters, a map of the area signed by Burrowes, pressed tree leaves, a contract, records of financial dealings, and words written on otherwise blank pages. The dates of some of these elements indicate that the ledger had left Kingston Mills by 1876 and was used after Burrowes's death. Taken together, these elements complicate the history of the ledger, suggesting that beyond its initial use, the book appears to have been treated as both a container for important records and a source for paper. That its intended purpose changed after an important life event—in this case a death—is not unusual. Many “home-made” books found in archives are not easily categorized as one type of book and have “merged formats.”⁶⁶

As a leather-bound book containing judicial proceedings, Burrowes's ledger connotes serious business. Perhaps this is why it appears to have been used as a place to store important records both during and after his death. For example, there is an 1843 contract, in a different hand, between Burrowes and two other men at Kingston Mills regarding sheep. Other leaves are less easily understood because they are fragments, like the poignant note from Vincent Oakley, dated 1863 at Kingston Mills, addressed only to “Sir,” begging the recipient to settle an account that “has already extended far beyond the time my means allows me to give.” Had Burrowes been in debt, or was this tendered evidence that he had retained?

Among many blank leaves, there is a page of records all dated 1876, ten years after Burrowes's death, in which John Gibson acknowledged receipt of money from “Mrs. Burrowes” toward a building contract in Detroit. There is also a loose note dated 1876 in which Thomas Brady acknowledges payment from “Mrs. Marg^t Burrowes,” Thomas Burrowes's widow, for work on Detroit land. There is evidence that a rusty pin once attached the note to a blank page in the ledger, which shows matching pin marks.

Loose matter was added to the ledger and leaves were taken away. Most significantly, because the first page of the written portion

⁶⁶ Ronald J. Zboray and Mary Saracino Zboray, “Is it a diary, commonplace book, scrapbook, or whatchamacallit? Six years of exploration in New England's Manuscript Archives,” *Libraries and the Cultural Record* 44, no. 1 (2009): 101–23 (102, 107–13).

of the ledger is torn, judicial information from 1856 is incomplete. It is unclear if the page was torn during or after Burrowes's lifetime, but it is the only page missing from the judicial portion of the book. The other significant page to be excised is the rear free endpaper; this was likely Burrowes's doing, as the endpaper's stub is then used to anchor his tipped-in printed Returns.

Conclusion

In his ledger, Burrowes created a manuscript record of justice in Kingston Mills, one he continually altered as new cases came before him and the status of existing cases changed. He pasted in printed materials that would assist him. He used reading marks to point to critical information. He kept important records within it. The ledger was created to be consulted, reread, copied from, and refined. In this way, it was somewhere between a commonplace book and a scrapbook created for a specific purpose and within strict bounds. These bounds were expanded after his death, though the ledger's affect as a serious legal book continued to influence some of its diffuse uses: material recording business transactions was added while other leaves were neatly removed or torn out.

The added materials leave tantalizing questions about their origins. How tempting to think that Burrowes, for all his discipline, might have pressed some tree leaves in his ledger one summer day. More likely candidates are his widow, a descendant in Detroit, or someone else entirely as the ledger made its mysterious way to Indiana. The ledger's physical richness—its additions and excisions, its evidence of diverse uses by various agents over time and space—expand far beyond its first intended function.

This essay has examined how Burrowes's ledger can cast new light on the administration of justice at a particular time and place. As McKenzie has argued, "forms effect meaning," and studying legal matters in manuscript is necessarily different from legal records in print, which connote objectivity and finality.⁶⁷ Burrowes's manuscript reveals the human scale of the process of justice, from his initial notes in the Memoranda pages, to more polished and brief notes in his written Returns, to the even briefer printed Returns that were sent back to him. Burrowes's multiple layers of writing and overwriting destabilize any sense of conclusive, unquestionable legal authority.

⁶⁷ McKenzie, *Bibliography*, 13.

Not only does the ledger provide a window into a small community in pre-Confederation Canada, its form allows a different relationship to reading about the law.

Appendix

All images provided by the author.



Image 1. Detail of decorative border on cover.



Image 2. Britannia watermark.



Image 3. Harris & Tremlett 1840 millmark.

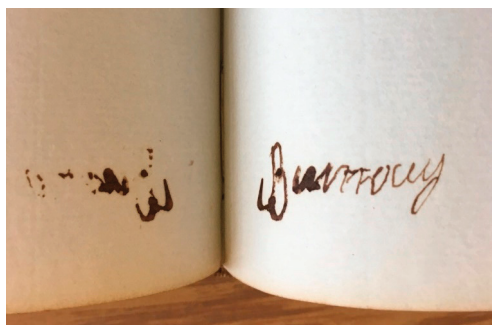


Image 4. Word written in ledger in tentative hand.



Image 5. Pressed leaves and their impressions.

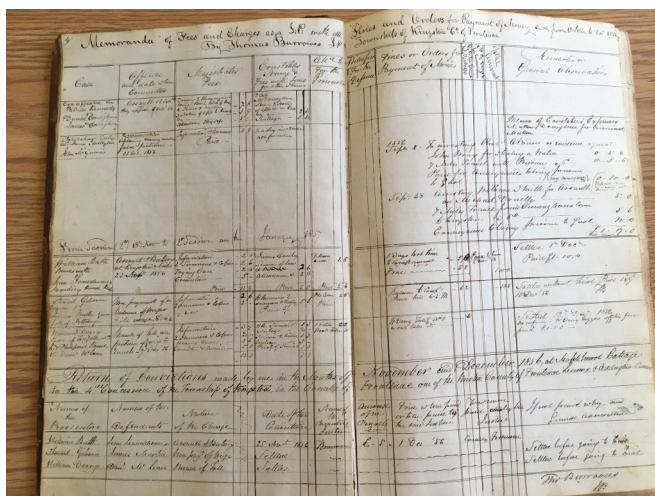


Image 6. Example of Burrowes's Memoranda structure, pp. 4–5.

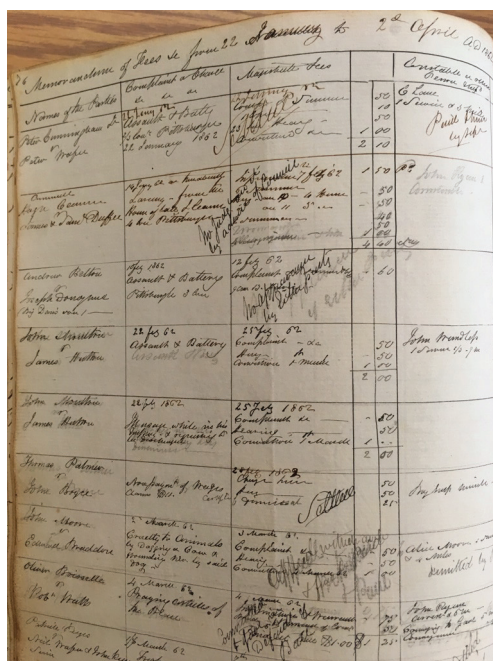


Image 7. Pencil overwriting earlier notes, p. 76.

[illegible]

Image 8. Example of Burrowes's Return structure, pp. 30–31.

Particulars	Dr	Cr	Balance	Particulars	Dr	Cr
His Case was dismissed in court about 3 PM. Said he didn't like the outstanding parties entirely, not back by me as a P.O., and they didn't see reason even told to send Harris home	50			no appearance of Campbell and long as he is being treated on a promise to turn his case greatly changed on his appearance on 10 May arrested. 22 Harris (Harris) 27		20
Dismissed by party of costs as more appropriate; circumstances			1 25	appears		
✓ Order			2 00	paid		
			2 75	paid		
			3 00	paid		
				paid 30 on a bill of exchange & 20 on a bill. One said he was paid the 1st day discharge for the 4 of 4 of 1860. He said he was in court 1 day		

Image 9. Fletched arrow, p. 55.

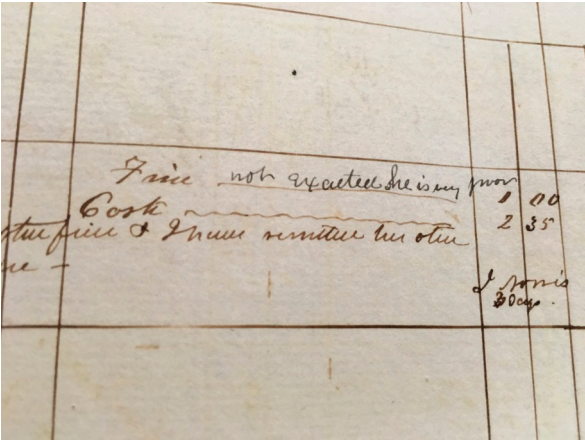


Image 10. Detail of notation on forgiving fine, p. 66.

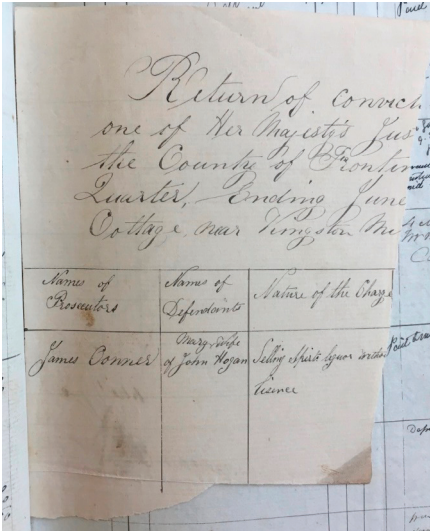


Image 11. Fragment of Return.

[illegible]

Image 12. Printed Schedule of Summary Convictions.

Arthur Donoghue.	19 Aug '57	Information re	
Patricia Donoghue	for purchase of	Inventory of 1st 1/2 1850	
	Statute Labour	Consent	
	3 Deco.		

Image 13. Detail of Patrick Prendergast's case, p. 14.

his Mother's affection
affection, taken before Dr. Nozime that
his mother's eye, with Dr. Nozime and Dr. Nozime

Image 14. Detail of Patrick Prendergast's acquittal, p. 15.

Dr	Dr	Ditto	29 Feb 1857		
			Expenditure	-	2
			Feb 1	-	1
			2 nd March	-	2
			10th June	-	7
			Samuel 15 July	-	13
			58 Oct 1857	-	1

Image 15. Detail of “Dead” notation, p. 18.

Acknowledgements

The author would like to thank Dr. Ben Higgins for supervising an earlier version of this paper, Deirdre Bryden and Heather Home at the Queen's University Archives for their expertise and kind assistance, and Becky Monroe and the Yorktown–Mt. Pleasant Township Historical Alliance for identifying the ledger within their collection and donating it to the Queen's University Archives.

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