

## **The Work of the Country Court on Settlement of Land Disputes in the First Half of the 19th Century in Russian Empire ( based on the Simbirsk Province materials)**

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**Abstract:** This material is based on the case files of Russian Empire Country Courts about settlement of land disputes in the first half of the 19th century. The problem has a few studies and it is almost unknown. We focused on the settlements of land disputes among different segments of population during the reign of Alexander 1 and Nikolay 1. In the modern historical and historical-legal science the activity of civilian departments of Country Courts was in the shade of criminal offices till the famous judicial reform in 1864. A lot of researches were written about criminal offices of Country Courts because of differences in the content of theirs work before and after the reform. This article is about special features of the civilian departments of Country Courts. We disclose the process of taking and appealing judicial decisions and legal basis for the delivery of judgment. Based on the certain Court cases we find the substance, features and character of cadastral (land) relationships and legal basements for Court's decisions. Moreover, we explored social circumstances of the judicial reform. Authors tried to show the main directions of the reformation of Country Courts during the reign of Alexander 1 and Nikolay 1. We opened that the way they worked was successful and proofed that by solving conflicts very effectively in the time of landed proprietorship and serfdom.

**Key Words:** Country Court, body of law, Court decision (judgment), claimant, defendant, lawsuit, enforcement of judicial decisions, governmental control, noble custody.

### **Introduction.**

The history of land relationships in Russian is a problem of statehood because of land's value. It is confirmed by the modern land reform in Russia. The content of it is development and improvement of landed proprietorships, settlement of land disputes between business entities, government, and private individuals.

The Constitution of Russian Federation (part 2, article 8-9) and Civil Code of Russian Federation (article 212) not only established the ownership for the land, but it is connecting it with other subjects of law in the country.

The history of settlement of land disputes in pre-revolution Russia and the experience accumulated during that time are very important for our modernity. As it is known the Civil Code of Russian Federation applies the principle that the land is the basis for human's life. A right for owning a land has all civilians and establishments, which realize it. There are a lot of

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conflicts because of outstanding issues in laws. As a result, Russian Federation solves such problem with the help of the Court.

According to the modern jurisprudence, all these problems are usually unsolved. In our opinion, these negative trends are caused by the land laws. They generate some potential conflicts what can be solved difficultly. Also, solving land disputes, Courts often face troubles in taking justified decisions. So, using pre-revolutionary Russian experience can be not only justifiable, but also relevant. The urgency of the problem is the improving of Courts' work in the settlement of land disputes.

In every Russian region there were some features. The exploration of such features can save the way of reformation and modernization in the Courts' activities. Also we use not only foreign experience, we explore state experience of Courts' work.

The evidence of the problem. Historians, legal scholars, sociologists researched the work of Country Courts. So, in 2006, in Saransk E. E. Panina took his doctorate "Country Courts in Russian Empire in the first half of the 19th century". The author had done a great work, explored all the archives and found a lot of literature about Country Courts' work. However, his research was about general issues in Courts' activities. The main attention was focused on Courts' content, the role of Courts in country's judicial system and public authorities in the first part of the 19th century. The organization of lawsuit and case handling (civilian and criminal) were few-studied.

If the problems of Country Courts' work were explored in common, some parts of its work are beyond the research. Talking about pre-revolutionary time, we can mentioned K. E. Troitsin, S. P. Shilov and F. M. Dimitriev's works. They did not work with civil cases. F. M. Dimitriev explored appeal related judicial activities. K. E. Troitsin worked with common history of Russian Courts till 1842, so did S. P. Shilov. They paid attention to relationships between Courts and organs of power, noting their separation from the authorities.

In common, authors lighted up pre-revolutionary times to assess historical and legal events. So, V. A. Linovski published a work about criminal lawsuit in Country Courts in 1849. He explored the process from gathering evidence in the context of preliminary investigation till enforcement of judicial decision. But he did not explore civilian cases. G. A. Janshiev focused on comparing pre and after revolutionary Courts.

In the Soviet Union times historians' works depended on ideological preferences of the Soviet government. Pre-revolutionary Court was announced as a Court of strict regime, which protect

only the interest of rich and powerful groups. As a result, no one remember about Country Courts, especially civilian ones.

In the Soviet time works highlighted that judicial system had served landowners, nobles and officials, but not public interests. After 1864 Courts started to served bourgeoisie primarily. For example, I. D. Shahnazarov talked that after the reform in 1861 the delivery of the judgment was in favor of lowlanders, even when the peasants were announced as a free. A. A. Friman appraised this period in such way. The obvious merit of that period was using a lot of different resources. It helped to explore the question analyzing social, economic and political development in the country in pre-revolutionary times.

In USSR after war some interesting works were published. We can allocate such researchers as R. S. Mulukaev, B. V. Vilenskiy, P. A. Zaionchikovskiy. They only mentioned Country Courts. Moreover, they called them very ineffective and corrupted in civil and criminal cases.

Only after the collapse of the USSR and nationalization of Russia scientists started to explore Country Courts and Courts before judicial reform. In 2016 publishing house "Prospect" published an interesting book "Syd and Pravosydie v Rossii vo Vtoroy Polovine 19 Veka v Rossiyskoy Provinccii" (Court and Justice in Russia in the Second nPart of the 19th century in Russian Province) by V. A. Voropanov. The author wrote about foundation and work of Country Courts. But researcher focused on criminal Courts and civilian ones were only mentioned.

Some authors wrote about local Courts in their provinces and republics. Particularly, we found out that N. G. Tarakanova and O. M. Savin wrote about Penza Oblast. They also explored Crime Courts.

In science fiction there are a lot of criticism and negative opinions about Country Courts' work. They are blamed for bribery, low judges competence and politicization. But this opinion is very far from reality. So, we draw the conclusion that this part of Russian Courts' history has mostly unexplored.

Writing this article, we based on different sources: as published as unpublished. The most interesting for us was a 6 volume-collection "Sydebnaya Vlast' v Rossii: Istoria, Documenti" ("Judiciary in Russia: History, Documents") which was published in 2003. Volumes 2 and 3 devoted to judicial system in Russia in the first part of 19 century. We focused on circular letters from royal government and Ministry of Justice and other documents

connected with civilian departments of Country Courts, with a collection of legislations and comment to it released in 1991.

We used unpublished (archive) sources and materials about civilian cases from Ulyanovsk District (Oblast) State Archive. Also our research contained protocols of the administrative meetings, reports to the local Court ("Verhniy Zemskiy Syd" (Supreme Zemskiy Court)), reports from the chairmen of the Country Court to local nobles' leader and the governor. To be more particularly, we used the materials of fund 64 (The Saransk's Country Court of Penza Province), fund 24 (Ardatovskiy Country Court), which were a part of the Simbirsk Province in this time) and materials from the District Court's archive ("Vipusk 2, Gragdanskie Dela Buinskogo Uezdnogo Syda"(part 2, Civilian Cases of Buinsk Country Court) edited by famous Simbirsk's historian and) legal scholar P. L. Martinov)

The main purpose of the article is to explore the work of civilian department of Country Courts in Penza and Simbirsk Province. The object of our research is Country Court. The subject is judicial process connected with land use, ownerships and rights to use it.

Among the main problems of our exploration we found features of civilian lawsuit, special authorities and competence of civilian department of Country Court and its dependence on Country Courts and other organs of power.

The novelty of research is that a lot of materials have not published before. We tried to explore the work of Country Courts settlements of land disputes in an integrated way. We found out their competence in judgment of civil cases, the system of financing judicial activities and features of civil lawsuit. Also we paid attention for the main direction of governmental control over Courts' work and enforcement of judicial decisions' mechanism.

A methodological basement for this article was the principle of historicism, exploring our problem in its genesis and dynamic, the principle of specifically-historical conditionality and personality, the principle of objectivity, lighting up all the information and finding out its meaning using all possible methods.

Such approach means using all methods. We use historical-genetic method, revealing properties and functions of our research problem. Using historical-comparative method, we found and compare the essence of our items. Also we have historical-typological and historical-systematic method to compare Courts and identify patterns and their dependence on certain situation in every region.

The theoretical and practical value of this work. Formulating our provisions and conclusions, we enlarge our opinion about Country Courts' work before reformation. We

enlarge scientific knowledge by seeking new inputs and synthesis knowledge from historical and legal disciplines. The materials of the article can be useful for specialists, which are interested in history of state institutes and Russian laws. Practically, it is can be useful in judicial process. Also this historical and legal experience can help with legislative activity.

### **1. Organization of Work of Civil Department of Country Court on Authorization of Land Transactions.**

The structure of judicial system in Russia had been organized by "Ucheregdeniem dlya Ypravleniya Guberniey" (The Department of Administrating the Province) since the reign of Ekaterina 2. The structure of nobles' class-Court consisted of "Verhnego Zemskogo Syda" (The Supreme Zemskiy Court) (13) and "Yezdnogo Syda" (Country Court)(18) and "Nizhnego Zemskogo Syda" (Lower Zemskiy Court) (22). In 1796 Country Court was integrated with lower zemskiy Court. This combination was working as a Court till 1837. When Pavel 1 took over power, active judicial system was reformed because of difficult financial situation. According to the decree from September 4, 1800 the system was simplified. But it was lasting till the decree from September 9, 1801 "O Vostanovlenii Pyati Guberniy i o Podchinenii Pogranychnih Gyberniy Voennim Gubernatoram" (About the Reconstruction of 5 Province and Subordinate to Military Governors). It had extended the Empress's decree. So new Courts were created and class-Courts continued their work.

During the first part of 19 century the main Court for nobles was Country Court. Members (chairman and 2 deputies) were elected by nobles in the special meeting in the Province. The term lasted 3 years. Until the judicial reform of 1864, it was the lower court for civil and criminal matters for the nobles. The composition of the Court was approved by a governor and regulated by article 196-197. The Court was duty to delivery the judgment in civil and criminal cases.

After abolition of lower Courts in 1801 peasants cases were referred to Country Courts. The number of juror had become 4 because of state-owned peasants which were included in that system. The competence of Country Courts in civil cases was handling civil cases which were initiated under private individuals and solicitors and Nobility Assembly or government administration's applications. The decision was final if the amount of dispute was not more than 30 rubles. In other cases claimant could get as cassation as appellate decision.

Country Courts' work was controlled by Supreme Zemskiy Courts, which situated in the province's city or in province's Nobility Assemblies. The Supreme Zemskiy Court had rights to appellate cases and make revision in countries' lawsuit.

Supreme Courts were also with elected representatives. They consisted from 2 presiding judges (one for civil cases and one for criminal) and 10 assessors (5 for each house). Chairmen were elected by Emperor's decree for three years among local nobles in province's Nobility Assembly .It is important to mentioned that there was no clear separation between civil and criminal departments neither in Supreme Court nor in Country ones.. If there were a lot of criminal cases, both departments had worked in that issue. So it was with civil cases. In province's Zemkiy Court final decision about civil cases was made only if the claim was not more than 100 rubles. Checks by the Zemsky Court were carried out on complaints or trifles. Country Courts had tried 35448 cases (includes 15173 civil) since 1790 to 1870 (shown in table 1).

**Table 1: Criminal and Civil Cases Proceedings in the Country Courts of the Simbirsk's Province from 1790 to 1870.**

The Name of Country Court	The Number of Cases		
	Civil	Crime	Total
Karsunskiy	2961	3809	6770
Alatirskiy	1452	3794	5246
Ardatovskiy	2640	2304	4944
Sizranskiy	1898	2502	4400
Buinskiy	1292	2899	4191
Kurmishskiy	2779	1323	4102
Singileevskiy	1471	2475	3946
Simbirskiy	680	1169	1849
Total	15173	20275	35448

In Simbirsk, Penza and Kazan's provinces Country Courts had existed till 1870. As a meter of fact, Country Courts were for all classes. They tried cases against nobles, merchants (if they did not live in that place) and serfdom peasants. But cases connected with city dwellers, military personel, clergy and city merchants were beyond the Country Court's power. In the questions of land disputes, there was a special procedure for claiming the ownership for estate no matter how a person go the property: by inheritance or by buying. New owner should show the deed in the Court. Before confirming the ownership, a judge

ordered to put up an information about buying in the well-seen place. So did the Supreme Court and Senate published it in the statements of two capital (Saint Petersburg and Moscow). It is important to say that ATA Carnets and books have saved in the Country Court. That was why copies of original deeds were in the archives of Courts.

A case №182 in Buinsk's Country Court is a good example of ownership approval transaction. V. A. Vsevolzhskiy by the proxy of his sister E. A. Pushina , who bought 10 quarters of land showed deed and power of attorney to the Country Court. As a result, the information was sent to the second and sixth department of the Senate and published in the statements.

There was another procedure if the process was between peasants. In the Court hearing there were two jurors elected by state peasants. If land dispute was between nobles , juror were chosen from other nobles. In case if it was a conflict between peasants and nobles there were 4 jurors in the hearing. When there were disputes between rural and city population, by governor decree was created special committee (Vremennoe Prisutstvie (Temporary Precense) includes as Country Court representatives as members of city magistrate.

In 1831 there was a modernization of Country Courts. It was made for enlarging its importance and authority. Special preferences were created to attract nobles. Firstly, the term was increased to 6 years (previously it was three).Secondly, the status of juror was equated to 4 class and the chairman was assimilated to the 6 class according to the Rank Chart (Tabel o Rangah). Thirdly, was created a special noble's custody with a big staff. The employees of the County Courts was Court recorder, country surveyor and workers of Courts chancellery: 2 chief clerks, accountant and three scribes.

The competence of the Country Courts were very wide. The most common cases were connected with sailing land owners estates and mortgaging it to the National Loan Bank. As a rule, the loan was brought to enlarge the estate. Of course there was a special procedure for getting such loans. Someone who would have liked to get it went to the Loan Bank and wrote an application to the administrator of the bank. After it the administrator sent it to the County Court. His duty was to check the material and financial status of the borrower and his lack of doubts. Only after it the bank had an opportunity to lend some money, but no more than 10 000 rubles. If the amount of borrowing was more than 1000 a Loan Bank applied for permission to the Civil Department of Zemskiy Court and they re-sent the application to the County Court.

There were a lot of examples of such process. For example, V. P. Apraskin got his 2000 rubles - borrowing from the State Loan Bank only after mortgaging his heir's estate - Mihailovka and Rodinovka villages. The captain Apraskin got the permission when the Civil Department of Zemskiy Court and Tribunal de Police confirmed that the captain hadn't got any doubts and got the estate by inheritance. So, an ensign S. Durov got his loan of 600 rubels only after Country Court confirmed the mortgage of his hereditary estate.

The Court gave special certifications about having loans, estates, operation over it and so on if government agencies or private individuals asked for it. It means that Court was serve not only for judicial functions but for registration ones. If a landowner bought an estate, he was obliged to inform County Court about it. It was important to do during 10 days before trade and show the original deed. The jury should made a copy from original deed and found full information about previous owners and other transactions. Only after thorough inspection and checking all documents County Court gave the original deed back and authorized operation.

It was a County Court which organized estate sales, sailed some of them because of doubts and organized bidding. So, in Simbirsk Province Ardatovsky's County Court auctioned Knyaz Tekmeev's estates in Mochkazerovo village because of delayed payback.

As a rule, sailing nobles' estate of such a high range was by order of higher Court authority. So, decision about Knyaz Babichev was taken by Simbirsk's Supreme Zemskiy Court. After taking a decision, Ardatovskiy's Country Court was ordered to take inventory of the Knyaz Bobichev's property and set its market value. Beside his estate it included 2 factories and a manufacture. Only after these actions the property was up for bid.

Another point of the Country Court was Nobles' Custody. It was headed by a special official elected from the Nobility Assembly. The chairman also had a group of helpers. He prepared Court proceedings to address the destiny of young nobles whose parent were died or left them for some reasons. Such estates were found, taken inventory of the property and accounts, unpaid promissory notes other financial documents. After Court process guardians were appointed by Court's decision. Sometimes guardians were ought to give information about business and

Among that cases we can show Roskanskaya's case who died and left her 3 little children in 1850. Nobles' Custody in Simbirsk's province had known information about the death and sent a request to Country Court to take inventory and find guardians for her kids.

The process of solving civil cases connected with custody was described by E. P. Rostrigina. She became an orphan in the epidemic time. The Nobles' Custody sent a request to Ardatovsk's Country Court asking to find information about the amount of peasants, size of the land and doubts which her parents could have been. Country Court sent writing appeal to Ardatovsk's Police Office and Treasury. After it the Court appointed a conservator.

## **2. Special Features of Civil Proceedings in Cases Connected with Land Tenure and Use in Country Courts.**

Civil lawsuit was organized in contentious and indisputable cases. There were a lot of regulatory documents which regulated this process. It is important to mention that these documents, like chapter 10 of the Sobornoye Ulozheniye of 1649 (Council Code) and other ones contradicted each other. Civil proceedings began with the filing of an application on the prescribed form. A presiding judge seized of the request and had to subpoena a defendant by mail or courier. Firstly the case was reviewed in absentia. After it the defendant heard the claim and answered in writing during so-called "Written Objections".

A judge examined the case and sent requests in different country's departments including the police which presented written replies and attestations. It was required for Courts not to start a case if there were not enough information or documents about it. Also, it was important to determine the validity of lodging a complain and opportunity of a pre-trial decision.

In analysing civil cases of Ardatovsk's Country Court in Simbirsk's Province, for example, we can point land-cases in the category of the most common cases. In that point sales cases were really popular. For example, a lieutenant Masov bought a little estate from a lieutenant Nezdiiin by his proxy Peter Ivanov. The estate costed 95 rubles with meadow. After it Ardatovsk's Country Court sent the case for seizing to the Supreme Zemskiy Court in Simbirsk. Simbirsk's Court confirmed the transaction and Masov had become a legal owner. Country Courts examined a lot of transactions. They also watched the deal worth not be excessive or underestimated. Lands were valued by Court's surveyors. The cost depended on geographical location, forests, water sources, proximity of cities and land itself. For example, captain Apraskin bought a parcel of land of 50 acres costed 400 rubles from lieutenant N. P. Umatov.

The prosecution was caused by large amount of documents, unstructured legislation and contradictions in statutory acts. N. G. Tarakanova in her book described A. Bahmetieva's

inheritance case which lasted 6 years. Her grandson could not take possession because of a conflict with deceased's distant relative. The Court tried to delay the procession and referred to incorrect claims or the amount in dispute. The case was full with identical applications. As a result Court adjudicated contradicted decisions.

Quick decisions making often depended on financial stimulation for Court's members. Litigants used to pay bribes. For example, the inheritance case of collegiate secretary A. F. Barabanov lasted many years. Meanwhile, knyaz Vereyskiy got his property in some weeks without property valuation, examination of witnesses and going to the estate.

Many cases were dissolved by termination, when sides of the process gave up in justice Court decision. The process of taking decision was very long and sometimes decided on their own. For example, in Krasnoslobodskaya country in Penza Province a landowner Isaev had to agree on the division of disputed land plot with his neighbour Baroness Kotz. As a result, the estate was given to her husband.

Disputes about land grabbing by ordinary people were not rare. It was connected with enlarging peasant agriculture in the province's territory. Peasants were native or yard (state). The most common cases were connected with ownership rights, not setting borrows. In the demarcation ownership became obsolete according to the real status of tenure in 1756. The proof of ownership rights were guidebooks, plans, survey books from survey departments, fort, letters patent for land and evidence by strangers.

It is important to mention that during hearing the civil process counted information about survey in the territory of the Simbirsk's Province by manifesto from September 19, 1765. The survey was lasting since 1798 to 1821. After it the process came to Perm Krai (Permskiy Kray).

Case №291 is a good example of violation of Catherine's 2 decree about recognizing ownership in the 1756's and Boundary Office's reluctance to take autonomous decisions. The case was in Buinsk's Country Court and showed an unjustified refusal to recognize ownership. Simbirsk's Treasury Chambers asked the Buinsk's Court to establish ownership for a part of the forest (20 arches) belonging to an individual. Owner had supporting documents for owning the land (extract from Scribe Book) but the Boundary Office had not been able to make a decision about that question from 1803 to 1815. It was only Buinsk's Court which examined all documents and ruled in favor of owner.

Because of legal system's imperfection, legal relationships governing land tenure between government and owners were characterized by unsustainable status of legal entity.

The existing order allowed to encroach lands and use it for a long time. There was a legal uncertainties because of dividing peasants community's land reckoned by head. Yasash peasants could not sale his allotment without community's consent. A case № 289 was focused on a sale transaction which had been declared illegal after the appeal to the Simbirsk's department. As a result the land was given to Peasants' Community back.

In the inheritance questions the Court used not only Sobornoe Ulozheniye (Council Code) "about lands' claims litigation", which were used in practice till 1864. In the case №284 the Court used article 2,4 chapter 17 of Ulozheniye (code) establishing the right of matrilineal succession.

Despite the fact that the ownership could be confirmed only by a deed, or extract from a Scribe Book the imperfection of judicial system allowed to stretch the case for a long time. Also there was an opportunity to disobey judgment because of changing geographical jurisdiction.

For example, a case № 278 about returning to armies Tatars a part of land with neighbour landowners. The positive decision had not been enforced for 17 years. The lack of control from Senate and unlimited duration of judicial process allowed to disregard the decision. Finally, the differences between Siberia and Volga region's lands were the main feature in examining land disputes. The opportunity to use it had officers and nobles whose had got it during the resettlement from other regions.

## **Conclusions**

The above material let us count that Catherine's 2 government efforts established Country Courts which were able to solve civil cases connected with social and economical parts of provinces' life. Courts were focused on nobles and state (free) peasants.

With economic development the number of cases was enlarging and becoming more difficult. In 1801 Court proceedings increased to 4 (early 2). That was why Country Courts became for all-classes and assessors were elected from peasants.

The work of the Country Courts were controlled by higher judicial authority (Supreme Zemskiy Court) and government: country solicitors and members of Nobility Assembly They controlled not only judicial process but observance of the rules and lawsuit. Country Courts were really effective. There was no strict separation between civil and crime cases. These departments were for all-classes, for nobles, merchants (if they had not live in the town) and

state peasants. City dwellers, town-merchants and clergy had not got an opportunity to use this Court.

After the modernization of Courts' work in 1831 their effectiveness became higher. Members of judiciary wanted to have a new chin (rank) as an incentive to work better. An opportunity to get a rank had peasants. It helped them to become hereditary nobles. Nobles Custody had improved the situation with young nobles, which lost their parents or close relatives. The chairman for that aim was elected from the nobles and had its own staff of helpers. He prepared Court's hearing about young nobles' destiny. Custody found out their estate, made an inventory of the property and financial situation (debts, bank accounts and so on). After these steps there was a Court hearing , where appointed a guardian from orphan's relatives or other people. Sometimes guardians used to give information about a financial situation of estate and its young owner. Moreover after modernization Courts as a public registration service used to give statements and certification.

Also was enlarged Court's competence in civil cases. Country Courts should have registered all land's transactions and check if traders and buyers' had any debts. It was the Country Court who organized sales of estates because of owners' debts and auctions connected with property, estate and other lands' realization.

Civil process was conducted under contentious and indisputable cases. The process was regulated by a lot of normative documents which contradicted each other. It was necessary to assemble all documents and certificates before judicial process. Also the Court determined the validity of the process and tried to find an opportunity to solve it in advance. The inevitable legal hassle was caused by importance of finding a lot of documents, haphazard law system and normative documents which contradicted each other.

The proofs of ownerships were: Scribe Books, plans, Survey Books, Letters patents and other people's evidence.

This research let us claim that the speed of decision-making depended on financial incentives for Court's members. People paid bribe. A lot of cases disintegrated after many years or decided by their own. Sometimes sides of the process, which had not believed in justice in the Court came to the solution without judicial process.

Legal relationships in the land disputes between government and owners were not stable because of laws' imperfection. The existing arrangement allowed to capture lands and use it for a long time. To draw the conclusion, the work of the Country Court in civil cases

was in need of modified because the system didn't conform to the rapid economic development in Russia in 19th century.

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