

Trimble
vs. Plea
Miller

filed May 29th
1811

Back

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John Trimble Junr

vs

In Error

Andrew Miller

And the said Andrew Miller
by Enock Parsons his attorney comes and
says that neither in the record and
process nor in the condition of the Judgt
in this cause is there any ~~error~~
he prays that the Court here may
proceed to examine the said record
and also the matters by the said John
above for error assigned and that
the Judgment aforesaid may be
in all things affirmed

Parsons
for Deft

State of Tennessee

Blount County } Be it remembered, that at a
Court held for
the County of Blount at the Court
House in Maryville on the first Monday of February
1810 A Cause wherein John Trumble is Plaintiff &
Andrew Miller is Defendant was returned to Court
together with the proper proceedings which are as
follows to wit.

State of Tennessee

Blount County }

Caucas.
To the Surveyor General of
the District South of French.

Broad Bottom River

John Trumble Senior enters a
Caucas against Andrew Miller to prevent him from
obtaining a Grant for two hundred thirty acres
of land a part of a Survey of two hundred &
thirty acres and three quarters of a acre of land made
for said Andrew on the 18th of March 1807
by John Craig a Deputy of Robert Dean Surveyor
General which said two hundred thirty acres of land
in the County State of said is described as follows
to wit Beginning at a pine tree
number 2 on the part of said Survey made
for said Andrew Miller thence to number 3 on
said plat thence to number 4 on said plat
thence to number 5 on said plat thence to
number 6 on said plat thence to number 7
on said plat thence to number 8 on said
plat thence to number 9 on said plat thence to
number 10 on said plat thence to number 11 on
said plat thence to number 12 on said plat
thence

to number 13 on said plat thence down the said
River, thence as it meanders to a stake standing
on the bank of the same at Martin Cooks old
conditional line, thence with said conditional across
the bottom through the upper end of a pond
to a black oak tree standing on the point
a large ridge thence a direct line to the
beginning near corner number 2 on said plat
which said part of said Survey the said
John Trimble claims as a part of a tract of land
containing six hundred forty acres of land situated
lying being in the County of State aforesaid
bounded and described as follows to wit Beginning
on Martin Cooks old conditional line at a
stake standing on the bank of Trumper River
across the bottom thro' the upper end of a
pond to a black oak tree standing on the
point of a large ridge thence along said
conditional line to a pine tree standing on
the flat ground thence along said conditional
line to a corner of James Hogans old Claim
thence along James Hogans back conditional
line or near the line now known by Nelsons back
conditional line through a long narrow Valley to the
back line of a Survey known of the name of the
said Survey made for Alexander Kelly & Alexander Lachry
thence along said line up the river thence
including the improvements owned by said John
Trimble for complement which said tract of six
hundred forty acres of land the said John Trimble
claims by virtue of an improvement made by John
Lewden for Samuel Handley an improvement made
by

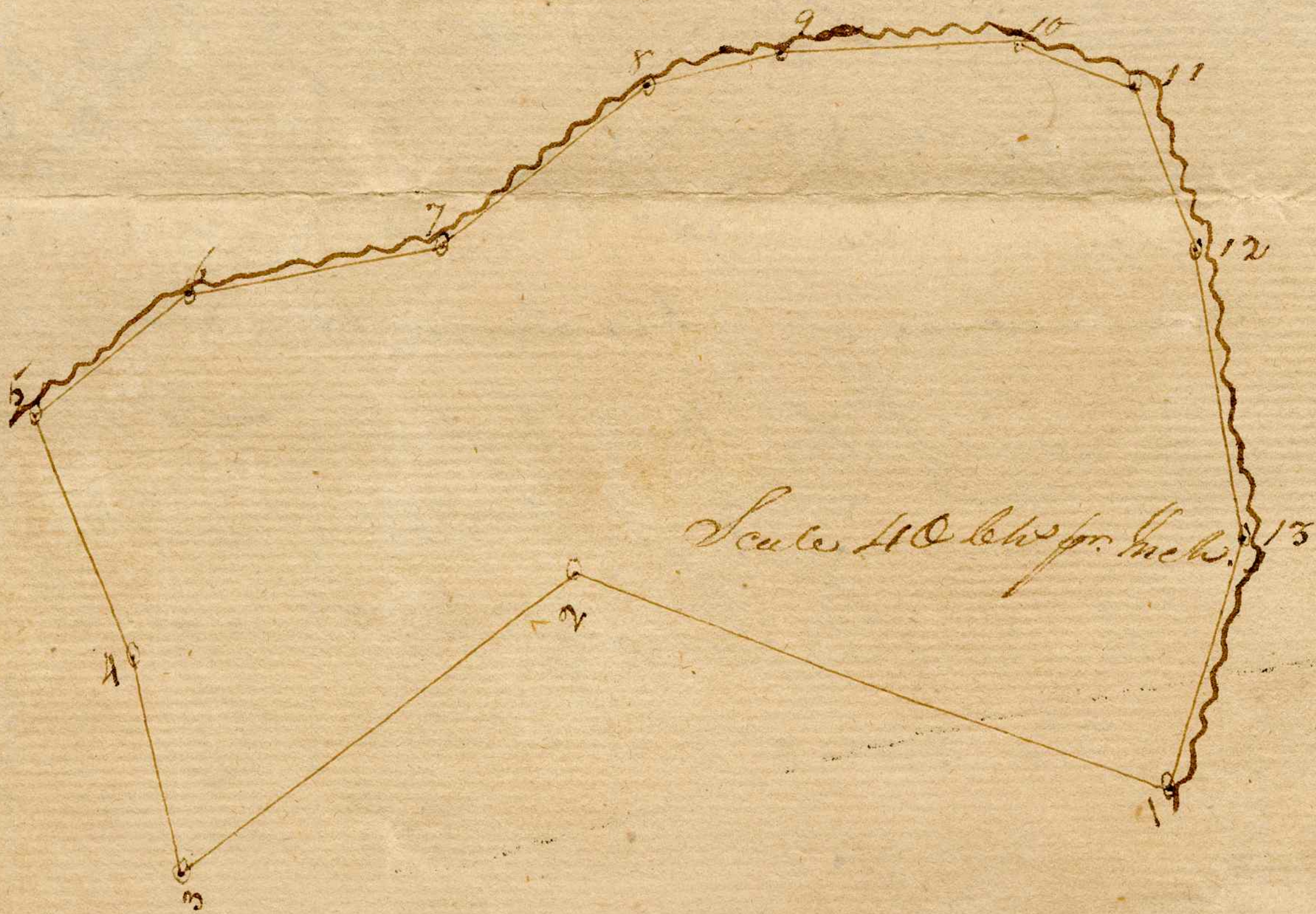
by John Walker an Improvement made by David
Montgomery which said Improvements were purchased
by Alexander Kelly and Archibald Laethy and
by a Sale of an Moiety of said tract of Land
made by said Kelly on a contract made by
James Barr with said Kelly by Samuel Kerr, by
Samuel Kerr to James Barr by Samuel Thomson
to William Laethy and by a Sale of the ^{other} moiety made
by said Archibald Laethy to James McLaethy &
by said ~~James~~ Laethy to William Laethy & by
a purchase of the whole of said tract of two hundred
forty acres of Land made by said John Trimble
when said tract was sold as the property of the
said William Laethy by the Sheriff of St. Louis
County by a purchase made by the said John
Trimble of said two hundred forty acres of Land
by said James Barr with said James Barr,
in his own right and afterwards by said James
Barr as tenant of said James McLaethy & by
virtue of owning the best Improvement showing the
right of occupancy to said tract of Land agreeable
to the Constitution Laws of the State of Tennessee to
which said tract of two hundred forty acres of Land
& any part thereof the said John Trimble claims
the Right of preemption & occupancy & prays that
he may be permitted to obtain a Grant therefor
according to the laws of said State that the said
Miller may be prohibited from obtaining any
Grant for said two hundred forty acres of Land
the part of his Survey herein before specified

October 26 1807.

John Trimble Senr.

Andrew Miller

No	Course	Distance	Remarks	Beginning	Pass Water Course
1	S 71 1/2 E.	56. 16	George Davis	State Survey land	
2	N 46 E.	68. 40	76 Subso.	Black Oak.	
3	S 71 1/2 E.	50.	"	Black Oak	
4	S 27 1/2 E.	51. 8	Mary Lachry	Black Oak.	
5	S 45 W.	26.	Timber		Down Timber.
6	S 72 1/2 W.	34.	ditto		
7	S 11 1/2 W.	31.	ditto		
8	S 68 W.	20.	ditto		
9	S 45 W.	31. 37	do.		
10	N 76 3/4 W.	16	do.		
11	N 24 3/4 W.	23.	do.		
12	N 14 1/2 W.	41.	do.		
13	N 8 E.	32.	do.	Marberry Digging	



And thereupon a summons issued in the following
words to wit.

State of Tennessee

To the Sheriff of Blount County Tennessee
We command you to summon Andrew Miller
personally to be and appear before the Justices of
our County Court of Pleas & Quarter Sessions on the
fourth Monday of November next to answer
John Trimble in a Cause he has obtained against
him for the land formerly occupied by said
Miller on Tumpkin River which land said Trimble
claims by reason of an Occupant's Prescription
rights that he has then that way to defend his
rights if any he has than you that there this writ
Witness James Houston Clerk of said Court
at Office the fourth Monday of August
1808 of 32^d Year of American Independence
J. Houston C. C.

John Trimble

Cause Court

Andrew Miller

Cause file 30th of October 1807

Summons for the defendant returned to November 1807
Executed at which time on motion of the defendant the
Plaintiff was put under a Rule for Security the cause
was continued from Session to Session until August Session
1808. At which time on motion of the Plaintiff a
Commission was awarded him to the Mississippi Territory
to take the deposition of John Lackey to be read in
evidence times again continued from Session to Session
until August Session of our said Court at which
time it was ordered that Josiah Pally go on the land
in dispute & make a correct survey of the same &
return

returns two fair plats of the same to our next Court
It is hereby understood that the expense of said
Survey be at the cost of the Plaintiff & again
continued to November Session of said Court.

At which time to wit January Term 1810 the cause
aforesaid was ordered to be continued

and now at this day to wit at August Term 1810
until which time this cause was continued came
the parties aforesaid by their Attornies Thompson
came a Jury to wit Samuel Thompson, George
Tinsie, John Singleton, Joseph McRaynor, Patrick
Cutton Benjamin Pillsbury, Olaus Alexander, James
Bayer, James Price, Samuel Price, John Duncan &
John Martin who being elected tried and sworn well
truly to try the facts which are or may be submitted
to them during the trial of this cause do say they
find for the Defendant do not find by any testimony which
John Trumble or any person under whom he claims, or
for him, had possession of the said six hundred
forty acres of tract in dispute the tenth day of
February 1796 that James Carr was in possession of
said land in dispute in November 1796
and possession continued ever to the present
Plaintiff and that the land in dispute is in
the hands of said Claimant of six hundred forty
acres - But because the Court will advise before
they render their Judgment day is given the
parties to unite tomorrow

At which time came the parties aforesaid
by their Attornies the Court having fully advised
in this cause on the facts found by the Jury
yesterday It is therefore considered by the Court that the

Plaintiff cannot be compelled that he pay
the costs of the same.

And now at this time to wit the first Monday
in February 1811 came the plaintiff by his Attorney
J. Peck and said that in the Record and proceedings
in said cause, as also in the giving Judgment
there is manifest Error in this that the Evidence
of James W. Buckley was excluded by Court as
apparent upon said Record. When the Law
by Law should have been admitted and because
the Court did not within ten days from giving
Judgment file reasons and that Judgment was
given for the Defendant who by the Law of
the Land it should have been for Plaintiff
J. Peck Atto -

And entered into the following Order for the prosecution
of said Error with effect to wit

I now all men by these presents that we John
Trimble, Rufus Charles, & Jacob Frohman all of the
County of Plout in the State of Vermont and
John Humley learned unto Andrew Wells in
the sum of five hundred Dollars for the
payment of which we bind ourselves each of
our heirs Executors & Jointly & severally jointly
by these presents Sealed with our Seals &
dated this 8th day of February 1811

The condition of the above obligation is such
that whereas the above named John Trimble
had on the 10th day of August 1810 had a
Judgment obtained against him in a certain
cause

causes this judgment in the Circuit Court of
Blount County in favor of Ananias Miller for
costs of suits and whereas the said John Trimble
hath the day of the date of this present prayer
for and obtained a Writ of Error to the Court
of Error & Appeals - Now if the said John
Trimble shall prosecute his said ^{Writ} writ effect
or in case the said Thomas pay ^{to} satisfy unto
the said Ananias Miller all costs & charges
that may have accrued thereon then the
above Obligation to be void & Thomas
to remain in full force & virtue in
Law

Wiley Carter

John Trimble

Richard Charles

Scott Fisher

Whereupon the Court granted a Writ of Error as
follows to wit

State of Tennessee

Shelton Liberty Esq. To the Judges of the Second Circuit.

At a Circuit Court held for the
County of Blount in the State of Tennessee

For as much as in the Record of process
also in the giving of judgment in a suit
before myself held in the aforesaid Court
held for the County aforesaid wherein John
Trimble Senior is Plaintiff & Ananias Miller is
defendant (as it is said) manifest error hath
appeared & returned to the damage of the said
John Trimble the Plaintiff as by his complaint

J.

I am informed I being willing that said Error (if any)
annulled and full and speedy Justice should be done
to the said parties in this behalf do command you
that if Judgment be given thereon you do send to the
Supreme Court of Errors & Appeals Openly & distinctly the
Records & process & proceedings of the ~~said~~ ^{plaint} ~~plaint~~ ^{plaint} aforesaid
which Court of Errors &c is to be held for the Circuit
aforesaid at the Court House in Knoxville on the
fourth Monday in May next that by inspection
of the Records & process &c aforesaid the said
Supreme Court may cause further to be done
thereupon for annulling the said Error & of
Right & according to Law ought to be done.

Witness Robert Houston Clerk of said
Court at Office the first Monday in
February 1811 of the Year of American
Independence
R. Houston Clk

Bill of Costs.

Clerk of County Court	\$10	25
J. J. Cowan	3	22
J. King	"	25
Looney	"	25
Francis	"	50
Attorney in County Court	6	25
Clerk of Circuit Court	9	"
J. J. Cowan	1	14
J. King	"	50
J. Crayson	"	50
Attorney in Circuit Court	6	25
Samuel Laporte King	52	8 1/3
John Cowan	66	8 2/3
Saml. Buckley	14	49
Saml. Kerr	7	50
Alex. Kelly	17	95
Samuel Spruwood	28	99 1/2
Samuel Cowan	6	8 2/3
Volunt. Mayo	2	"
Thomas Montgomery	5	50
David Montgomery	4	"
Hugh Gibson	1	"
James Mackey	1	"
John Hanna	1	"

\$255 66 1/2

21. 42
232. 24 2

State of Tennessee
Blount County

Seal

I Robert Houston, Clerk of
the General Court for the
County aforesaid do certify
the foregoing Transcript to
be a true & perfect copy of
the Record in the Cause
between John Trimble Sumner against
Andrew Miller

In testimony whereof I have hereunto set my name
and Office my private Seal having no Seal of
Office this 11th day of April 1811

Robert Houston Clerk

5.

Transcript

André Miller

John Trumble

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Transcript

John Trumble Esq.

Esq. in Error

Andrew Miller

Filed in Office
19th April 1811

Thos. Emmerton
Att. C. L. Esq.

Tomble
vs
Miller } Caveat, in Pleintient
Court

The plaintiff instituted this action
in the Court below, and in his caveat
stated that he was entitled to an right
of occupancy, or presumption, equally
to the laws and constitution of the State

No questions were submitted to the
jury in form, but it shews the record
shews that a finding of the jury, who say
that they do not find any testimony
which the plaintiff produced to them
that he or any person under whom
he claims, or for him, had possession
of the tract in dispute on the 6th day
of February 1796; that ~~James~~ James
Carr ^{under whom the plaintiff claims} was in possession of it in the
month of November 1796. The court below
gave judgment for the defendant

No exceptions to evidence appear
on the record. The assignment of errors
stating that the circuit court erred in
appointing James W. Larky who was
offered as a witness for the plaintiff
secondly that the judge below had not
stated any reasons for his opinion in
~~the case~~ ^{stating} a general assignment
of errors

The plaintiff in error insists that
equally to the laws and constitution

persons settled south of Frank Broad and
Holston & west of Big Pigeon rivers,
where the land in dispute is situated, were
entitled to rights of occupancy and preemp-
tion, though they were settled subsequent
to the 6th of February 1796, when the
Constitutional provision in favor of settlers
there was made: That the record does
not show that the defendant had any
right of occupancy, and consequently
as the finding of the jury shows the
plaintiff made his improvement in
December 1796, he must prevail.

We are of opinion that the decision
of this question must be referred to
a construction of that part of the constitution
which relates to this subject Art. 11. § 31
Schedule 58. The compact with the U States
May. 20. 1804. and act 1806. make the
Constitutional provision the criterion
of occupant preference in that tract
of country. It is clear to us that
the constitution designed to include
only such settlers as had then
made their improvements, and is
not prospective. It therefore
results that the Caveator has
shown no title, or right to a preference
and it is not material whether
the defendant has shown any

or not? It was incumbent on
the plaintiff to make out his
case, and if he failed the maxim
onus est conditio dependente
applied. There is nothing in the
word to which the first error appears
applies, we therefore cannot notice
it. The second error appears has
not been mentioned, nor would
it seem to us be cause of reversal
if it were.

It is the general assignment
which brings the whole record
into view, and which we have
noticed as above. The judgment
of the circuit court must
be affirmed.

Wm. Overton

Wm. Coakley

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Trimble
vs
Miller

Reason of the
Judges

1811

E.T.

BOX
224

Per Bond	D: 20
Filing T.	1. 00
Copy. error	40
Cont. ed.	40
Judg. to	2: 00
	4: 00

Attorney Parsons	6. 25
	<u>D. 10. 25</u>

7th 20th Dec 1811