

Samuel Goady Court of appeals & circuit
27
Peter Hoyle } November Term 1815

And the defendant by his attorney comes and says
that there is no error either in the record and
proceedings of said or in the rendition of the
judgment of said and likewise prays that the
court now here may review the proceedings
as well of the record and proceedings of said
as of the matters and things shown for error
alleged and that the judgment of said may
be in all things affirmed

Pro simpliciter atty
for Dift in error

A Court
of 3 J^{rs}
D. H. J. C.

State of Tennessee
Second Circuit
Blount County

Be it remembered that at a Circuit Court begun and held for the county aforesaid at the Courthouse in Maryville on the first Monday of February 1810 a caveat was filed in the Clerk's office of said court in these words " State of Tennessee Blount County Surveyor general's office, districts South of French Broad and Holston - Samuel Gould enters a caveat, to prevent Peter Hoyal from obtaining a grant for three hundred and fifty seven acres and more more or less parcels of land situate in Blount County on Nine Mile Creek being the tract of land, wherein the said Peter Hoyal now lives beginning at corner Number one of the survey made for the said Peter by John Craig deputy surveyor, from thence to corner No. two of said survey, from thence to corner No. three and from thence running the several courses to the several courses of said survey as surveys for said Peter Hoyal, which said tract of land according to the courses and distances things as set forth in the plat of survey made for the said Peter the said Samuel Gould claims the right of occupancy and prescription to by virtue of a purchase made from John Jackson who was acted with the same by virtue of which said purchase the said Samuel Gould is vested with the right of occupancy and prescription according to the constitution and laws of the State and therefore prays that a grant may not issue unto the said Peter Hoyal until his right as herein above mentioned may be fairly tried according to law Samuel Gould by John Lowry his atty^r Accompanying which caveat was a plat and certified in this manner and made to wit Beginning at a bush, thence S. 5° W. 32 chains to a stake, thence South 80° W. 27 chains to a stake at the creek, thence South 50° W. 9 chains to a stake, thence S. 85° W. 10 chains to a hickory thence S. 30° W. 15 chains to a S. W. Oak, thence S. 75° W. 14 chains to a stake, thence S. 35° W. 16 chains to a stake thence West 34° to a stake, thence S. 70° W. 8 chains to a stake thence N. 40° W. 4 chains to a

Black Walnut, then S. 13° W 131 Chains to a B. oak bounded by
John Craig S. 55° E. 37 Chains to a W oak, then S. 72° E 70 Chains
to a stake bounded by James M. Collier, then S 25° E. 15 Chains to
a stone in the creek, and from thence S 40° E 60.20 to the
beginning of State of Tennessee Blount County District South of Great
road and Hotston, In pursuance of the laws in such case made
and provided and by virtue of a reputation from Robert Wray Esq
Surveyor General, of the district aforesaid, bearing July 29th 1804 for
Peter Boyle three hundred and fifty seven acres and two and twenty
six perches of land claimed and held by right of occupancy, situate
in Blount County in the district aforesaid, on said said creek bounded
as above described Run under my hand this twenty ninth day of
July 1804 John Craig - Which case aforesaid was continued from
day to day and from Term to Term until August Term 1812
at which time said the parties by their attys and themselves came
to jury to wit - Samuel Harris, Henry Vaughan John Waring John
Hanna, Robert Gould, Samuel M. Gaubay William Martin Isaac
Woods, John Thornbury, Henry Bond Robert Lewis David Walker and
John Fortch - who being asked and did so say that a conditional
line was agreed on between John Jackson Sr. and John Jackson
under whom the land was claimed and that the line was agreed on
after the 6th day of February 1796 and that the line was a grassy
bank and cleft of rocks on the creek to stone path - 2^o That the
caveater nor no person under whom he claims had possession of the
land in dispute on the 6th day of February 1796 - 3^o They further
find that John Jackson, under whom the land was claimed was
in possession of the land in dispute on the 6th day of February 1796
And in this case it is ordered by the Court that there be a new trial
on the issue related to the conditional line and that the following be
submitted for consideration on the final decision of the cause to wit -
Does the conditional line between them under whom the parties claim
if any was made include the land in dispute within the

claim of the curator - 2^d Does the curator claim under John Jackson
Senr. and has the right of John Jackson Senr. been transferred to the
curator - And the cause opened was again continued from day
to day and from term to term until August Term 1845 at which
term and the parties by their attorneys and themselves came, a jury
to wit - John G. Sumner, Montgomery, Andrew Miller Edward
Sart, James Lewis Alexander McMillan, Robert Rhoads, James
Hall, Alexander McClellan James Wier, of Joseph, Joseph Hart Jr
and John Williams who having been sworn tried and ^{the fact to speak} ~~found~~ upon
the issues submitted in this cause, return the following issues and
submitted to wit - 1st Was there a conditional land agreed on
between John Jackson Senr. under whom the curator claims, and
John Jackson under whom the curator claims and if so what
did said land run - 2^d Does the conditional land return there
under whom the parties claim if any and made include the tract
in dispute within the claims of the curator - 3^d Does the curator claim
under John Jackson Senr. and has the right of John Jackson Senr.
been transferred to the curator - 4th Was the Indian claim to the
land in dispute, extinguished at the time of making such conditional
5th Was the Indian claim extinguished to the land in dispute on
the 6th of February 1796. - 6th If any conditional land was made
between John Jackson Jr and John Jackson Sr. was it not made
to be binding on condition that John Jackson Sr should transfer
his right to the land in dispute to George McQuinn and if so
has John Jackson Sr complied with the condition on which said
land was to be binding and at what time was it made -
7th What kind of improvement if any had John Jackson Jr on
the land at the time or before the time of his transferring the land
to Samuel Gould, or when or how far from the land in dispute
did he reside - to which issues aforesaid the jurors aforesaid gave
the following answers to wit - 1st There was beginning at a point
on the creek thence to the end of the cliff thence ^{to the} ~~to the~~ south
- 2^d It does - 3^d It does; and John Jackson Senr. transferred his rights

to the land in dispute to the grantor & witness the date of sale - 4th We believe
it was not but we have no testimony on that subject - 5th We believe it
was not but have no testimony on that subject - 6th There was a
conditional land deed between John Jackson Jun^r and John Jackson Sen^r
but without any condition attached thereto, the above conditional land
was in 1795 or '96 - 7th It was what was called a tomahawk
improvement or some chopping, dows and brushheaps made, John
Jackson Sen^r lived there a few miles distant from the land in dispute
- And the parties agreed that the Indian deed was ^{not} extinct on the 6th
day of February 1796 or at the time said land was made -
And the matters of law arising upon the facts found by the jury before
impaneled in this cause, being read and instructed and by the Court
was heard fully understood - It is ordered by the Court, now here that
the plaintiff has no right to the land in dispute the defendant's survey
nor any part thereof and it is further ordered by the Court that the plaintiff
cannot be dismissed and that the defendant's claim against the plaintiff
his costs by him about his defense in this behalf expended from which
Judgment the plaintiff by his atty. prays and appeals to the record
of a writ of Error to the next Supreme Court of Error and Appeals
in this second circuit, to be held at Knoxville, on the fourth Monday
of November next assign errors in these words " And the plaintiff
Samuel Gould by his atty - prays and says that in the record and
proceedings in this cause and also in the rendition of Judgment
therein by the Circuit Court for the County of Blount there is manifest
Error in this That the Judgment in this cause is rendered in favor
of the defendant Stagle, When by the law of the land the said Judgment
ought to have been rendered in favor of the plaintiff Gould and for
that and other Errors in the record aforesaid appearing the
said Sam^l Gould prays that the Judgment aforesaid may be reversed
and that he may be restored to all things which he hath lost thereby
Commission for Gould - Entered into bond with approved security in
these words " Know all men by these presents that said Sam^l
Gould and Robert Houston, are jointly severally held and firmly
bound unto Peter Stagle in the sum of two hundred and fifty

dollars - To be void and in execution the said Samuel Gould acts with
 effect, proceeds as appeared by him this day prayed and obtained in
 the name of a writ of Error to the said Supreme Court of Errors
 and appeals to be holden at Annapolis on the fourth Monday
 of November next, or in case he find them shall pray and
 satisfy whatever Judgment, sentence or decree the said Supreme
 Court may award them - Witness our hands and seals August
 19th 1815, Samuel Gould Esq Robert Norton Esq Justices of the Peace
 and to him the said appeal was granted -

A Pico

County Court costs

| | |
|---------------|--------------|
| Clerk | 6.50 |
| Shiff Court | .75 |
| Alto | 6.25 |
| Silas Wallard | 13.83 1/2 |
| <hr/> | |
| | D. 26.83 1/2 |

County Court Costs

| | |
|-----------------|---------------|
| Clerk Norton | 8.23 |
| Bond | 4.62 1/2 |
| this need | 1.60 3/4 |
| Alto. Wilkerson | 6.25 |
| Shiff Court | 1.75 |
| " Rufida | 2 1/2 |
| Andrew Jackson | 17.50 |
| James Boyd | 13.00 |
| George McQuinn | 54.25 |
| James McCollins | 3.00 |
| John Wallard | 18.10 |
| Silas George | 1.50 |
| John Gould | 7.50 |
| <hr/> | |
| | D. 137.54 1/2 |
| Aggregated | 164.38 |

The State of Tennessee
Plaintiff County

I Jeph. Beard clerk of the Court of Sessions and
the Circuit Court for the County of said do certify that the foregoing
transcript is a true copy of the record and proceedings in the
suit Samuel Gould against Peter Boyd in the Court of said
now remaining in my office -



In testimony whereof I have hereunto set my
name, and affixed my seal, bearing its
public seal, at Coffey in Morganfield the
the 15th day of April 1816 -

Jeph Beard Clerk

The State of Tennessee

To the Clerk of the circuit court of the county
of Blount, Tennessee.

Whereas, in a cause, between Samuel Gault, executor, against Peter Boyle, Executor, removed into our Supreme court of Errors and Appeals for the Second Circuit, by and applied in the nature of a writ of Error, from the Judgment of the said circuit court, came the caveator by his counsel and suggested to our court a diminution of the Record in the said cause. — We therefore command you that under your hand and seal distinctly, openly and plainly you certify and transmit to us a full and complete transcript of said and singular the Record and proceedings in the said cause as the same appeared to us in the said circuit court, so that you have the same at our said court to be held at the courthouse in Knoxville on the fourth Monday of next month, together with this Writ.

Witness Thomas Emerson clerk of our said court at
Office the 4th Monday of November 1812

The Commissioner by his deputy
And Hutchinson

Carters
Sam Gould

"
Peter Stocke
Present 1816
To sell 1816.

Executed the commands of the
with by making out a complete
copy of the record in the case
Sam Gould against Peter Stocke
Sept. 16th 1816 Sam Gould Clerk

Annual Gentry Statement
of
Peter Boyle

On this case it appears from an Agreement on
the face of the ~~that~~ the land described in the caveat
on the 6th of February 1796 was a part of that Section
of country secured to the Cherokee nation of Indians
~~Spain~~ which it will be insisted that the State of Georgia
had no legitimate authority to give a right of preemp-
-tion to occupants in the Indian Country possessing
in direct violation of the Laws and treaties of the
United States if this principle should be correct it will
be insisted that it is not material whether the
Defendant has the right of Survey or not this
Survey can alone be vacated by the legal title of
the Plaintiff

again that the subsequent Recognition of the 31st
Section of the Bill of Rights providing for occupants
by the Act of Congress was not intended to give it an
operation where where it had none on the 6th of Febru-
ary 1796

again inasmuch as John Jackson Senior under whom the
caveator claims till now any person for many years in possession
of the land in dispute on the 6th of February 1796 He therefore
had no right of preemption secured to him by the constitution
of the State and if so the caveator is without title which
would preclude him by law from the benefit of a Judgment
Again the conciliatory line made between the two

Lockhart in 1795 if John Lockhart Senior sold to the Defendant
the being a purchaser without notice he cannot be affected
by it.

Again that from the incursive and uncertain manner
in which the conventional line is found by the survey no
judgment could be rendered for the plaintiff that therefore
the judgment ought to be affirmed.

McCampbell atty for
Defendant in Error.

James A. Galt
Wm. Galt
Wm. Galt

72

Perfect Record

71

Samuel Gould

(11)

Peter Hoyle

1815

June 18

71

Samuel Gault

^u
Peter Hoyle
—

Nov 2

State of Tennessee

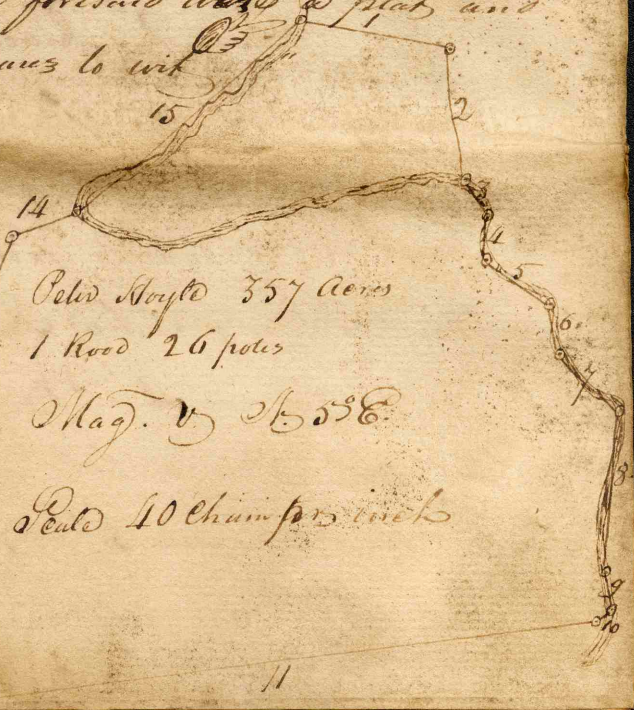
Blount County

Be it remembered that at a circuit court, began and held for Blount County at the Court house in Maryville on the first Monday of February 1810. A caveat was transmitted from the circuit court of the County aforesaid to and said circuit court in these words "State of Tennessee Blount County Surveyor's office district South of French Creek and Holston. Samuel Gould enters a caveat to prevent Peter Hoyle from obtaining a grant for three hundred and fifty seven acres and more and twenty six perches of land situate in Blount County and more mile creek being the tract of land wherein the said Peter Hoyle now lives.

Beginning at corner number one of the survey made for the said Peter by John Craig deputy surveyor, from thence to corner No. 2 of said survey, from thence to corner No. three and from thence running the several courses and distances to the second corner of said survey as surveyed for said Peter Hoyle - which said tract of land agreeably to the calls courses and distances thereof as set forth as set forth in the plat of survey made for the said Peter the said Samuel Gould claims the right of occupancy and prescription to by virtue of a purchase made from John Jackson who was vested with the same by virtue of which purchase the said Samuel Gould is vested with the right of occupancy and prescription agreeably to the constitution and laws of the State and therefore prays that a grant may not issue to the said Peter Hoyle until his right as herein above mentioned may be fairly tried agreeably to law. Samuel Gould by John Lowry his atty."

Accompanying which caveat a foresaid used a plat and certificate in these words and figures to wit

| Course | C. Length | Bound by | Corners | Remarks |
|--------|-----------|----------|------------------------|-----------------|
| 1 | 8.500 | 32 | Plots | Staked |
| 2 | 1800 | 27 | Do | Staked to Creek |
| 3 | 9.510 | 9 | | Staked same Cr. |
| 4 | 8.850 | 10 | Stakeberg | |
| 5 | 8.300 | 15 | W. Oak | |
| 6 | 8.750 | 10 | Staked | |
| 7 | 8.350 | 16 | Staked | 13 |
| 8 | 11.216 | 34 | Staked | |
| 9 | 8.700 | 8 | Staked | |
| 10 | 11.200 | 4 | Bl Walnut | |
| 11 | 11.130 | 131 | In the right of Oak | |
| 12 | 11.558 | 37 | W. Oak | 12 |
| 13 | 8.728 | 70 | In the right of Staked | |
| 14 | 8.058 | 15 | Staked | |
| 15 | 8.458 | 60.20 | Beginning | Buck |



State of Tennessee }
Blount County } District South of French broad and
Holston. In pursuance of the laws in such case made and provided
and by virtue of a deputation from Robert Mur Esq Surveyor
general for the district aforesaid surveyed July 22^d 1807 for
John Boyd three hundred and fifty seven acres and two
and twenty six perches of land claimed and held by right
of occupancy, situate in Blount County in the district aforesaid
on Mud mile Creek bounded as above described and repre-
sented by the prefixed plat given under my hand this twentieth
day of July A.D. 1807. John Craig

Which case aforesaid was continued from day to day and from
term to term until August term 1815 at which time came
the parties by their attorneys and a jury to wit John Glasz
Samuel Montgomery Andrew Miller Edward Hart
James Sloan Alexander M. Nutt Robert Rhoad James
Star Alexander McCollum John (Wife of Joseph)
Joseph Star Esq John Williams who having been
elected tried and sworn the truth to speak upon the issues
submitted in this case, which the following issues were
submitted to wit - 1st Was there a conditional line
agreed on between John Jackson Esq. toward whom
the Caveator claims and John Jackson Esq. under
whom the Caveated claims and if so where did said
line run - 2^d Does the conditional line between under
whom the parties claim, if any word made include the
land in dispute within the claim of the Caveator - 3^d Does
the Caveator claim under John Jackson Esq. and has
the right of John Jackson Esq. been transferred to the
Caveator. - 4th Was the Indian claim to the land in
dispute extinguished at the time of making such condi-
tional line. - 5th Was the Indian claim extinguished
to the land in dispute on the 6th day of February.

1796 — 6 If any conditional line was made between John Jackson Junr and John Jackson Senr, would not, made to be binding on condition that John Jackson Senr should transfer his rights to the land in dispute to George M. Glire, and if so, has John Jackson Senr complied with the condition on which said line was to be binding, and at what time was it made. — 7 What kind of improvement if any had John Jackson Senr on the land in dispute at the time ~~at~~ before the time of his transferring the land to Samuel Gould, or where or how far from the land in dispute and he resided. To which issues aforesaid the Jurors aforesaid gave the following answers to wit: Answer to the 1st Issue "There was, beginning at a point on the creek, thence to the end of a ~~cut~~ bluff, or ridge thence to the chota path — 2^d It does — 3^d No, and John Jackson Senr has transferred his rights to the land in dispute to the Caveator, ~~without~~ the bill of sale — 4th We believe it was not, but we have no testimony to that subject — 5th We believe it was not, but we have no testimony to that subject — 6th There was a conditional line made between John Jackson Junr and John Jackson Senr, but without any condition attached thereto; the above conditional line was in 1795 or '96. — 7th It was, what was called a tomahawk improvement or some chopping done and some brush heaps made. John Jackson Senr lived thro or four miles distant from the land in dispute. And the parties by their mutual consent, agreed that, the Indian claim was not extinct on the 6th day of February 1796 or at the time said line was made. And the matters of law arising

on the facts agreed, and found by the Jury aforesaid,
being seen and inspected, and by the Court now here
fully understood. It is considered by the Court now here
that the plaintiff has no right to the land in the
defendants survey, nor any part thereof; and it is
ordered by the Court that the plaintiff caveat be
dismissed and that the defendant recover against
the plaintiff his costs by ^{him} about his defense in this behalf
expended; from which judgment the plaintiff by his
attorney prays an appeal in the nature of a writ
of error to the next Supreme Court of Errors & Appeals
in the second circuit to be held at the Court house in
Moxville on the fourth Monday of November next
assigned Errors in these words " And the plaintiff
Samuel Gould by his attorney comes and says that
in the record and proceedings in this cause and
also in the rendition of the judgment therein by the
Circuit Court for the County of Blount there is
Manifest Error in this: That the judgment in this
cause is rendered in favour of the defendant Hoyle
where by the law of the land the said judgment
ought to have been rendered in favour of the plaintiff
Gould and for those and other errors in the record
aforesaid appearing the said Samuel Gould prays
that the judgment aforesaid may be reversed &
that he may be restored to all things which he
hath lost thereby Emmerow for Gould" entered
into bond in these words " Know all men by these
presents that we Samuel Gould and Robert Mauston
are jointly severally held and firmly bound unto
Peter Hoyle in the sum of two hundred and fifty
dollars - To be void on condition the said Samuel

Gould doth with effect prosecute and Appeal
 by him this day prayed and obtained in the nature of
 a writ of error to the next Supreme Court of Errors
 and Appeals to be held at Knoxville on the fourth
 Monday of November next, or in case he fail
 therein shall pay and satisfy whatever judgment
 entered or agreed the said Supreme Court may
 award therein. Witness our hands and seals Dec^r
 12th 1815 Saml. Gaule Esq^r Robt. Hariston Esq^r
 and to him the said Appeal is granted.

County Ct. Costs
 A Bill
 Clerk ————— 6.50
 Sheriff Coward — .75
 Atto ————— 6.25
 John Wallace 13.33 $\frac{1}{2}$

County Costs
 Clerk Houston 8.25
 " Bond — 6.22
 Attorney Wilkinson 6.25
 Sheriff Coward 1.75
 " Russel .24 $\frac{1}{2}$
 Andrew Jackson 17.50
 James Boyd 15.00
 George M. Chair 54.25
 James McEldum 3.00
 John Wallace 18.10
 Silas George 1.50
 John Gould 7.50

State of Tennessee
Blount County



I Jesse Beene clerk of the circuit court
for the county of Blount do certify that the foregoing
transcript is a true copy of the record and proceedings
in the suit aforesaid now remaining in
my office. In testimony whereof I have
hereunto set my name and affixed my seal
of office at of private (having no public) seal
at Office the 20th day of October 1815

Jesse Beene Clerk