The MIDDLE TENNESSEE Journal of Genealogy & History



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Volume XIX, Number 4 Spring 2006

Middle Tennessee Counties

Bedford

Cannon

Cheatham

Clay

Coffee

Davidson

DeKalb

Dickson

Fentress

Franklin

Giles

Grundy

Hickman

Houston

Humphreys

Jackson

Lawrence

Lewis

Lincoln

Macon

Marshall

Maury

Montgomery

Moore

Overton

Perry

Pickett

Putnam

Robertson

Rutherford

Smith

Stewart

Sumner

Trousdale

VanBuren

Warren

Wayne

White

Williamson

Wilson

MARK YOUR CALENDAR

All meetings
(unless otherwise noted)
2:00 P.M. at the

Edmondson Pike Branch Library

5501 Edmondson Pike just north of Old Hickory Blvd. at Nippers Corner

Check our website for last-minute change: www.mtgs.org

May 20, 2006
Downstream to Natchez
and Back Home on the Trace
Bob Duncan
2:00 at Edmonson Pike Library

Join Maury County Historian Bob Duncan as his band of frontier farmboys float their flatboats down the Natchez. Duncan unfolds an adventure in commerce and travel that was crucial to our Tennessee ancestors.

July 16, 2006
On Solid Ground:
Finding Ancestors in Tennessee
Land Records

Chuck Sherrill 1:00 at Metro Archives, Green Hills

Chart a course through the complex records of Tennessee land grants, using examples of original grants, entries, surveys and warrants to see the variety of genealogical information they contain. (Location TBA)

16 Sept. 2006
Print-on-Demand
Publishing Your Genealogical Work
Hugh Daniel
2:00 at Edmondson Pike Library

18 Nov. 2006 MTGS Fall Seminar featuring Dr. John Colletta (at the Brentwood Library)

MTGS meets on the third Saturday of January, March, May, July, September and November, unless otherwise announced.

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Journal Policy and Information
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Middle Tennessee Genealogical Society, Inc.

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Middle Tennessee Journal of Genealogy & History

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Kitty Durham Mayo

Shirley Wilson

From the President . . .

Dear Fellow Members,

With my term as your president fast drawing to a close, I look back on all we have done and am truly impressed. We have had two successful all-day seminars, both well attended and praised by all who were there.

We staffed a table at the Rutherford County Heritage Day in 2004. We have had interesting and informative bimonthly programs. So far this year we have already sponsored both a trip to the Nashville Room of the Metro Public Library and the "Sharpening Your Skills" workshop that Chuck Sherrill leads so well at the Tennessee State Library and Archives.

And on top of all that, we hosted the National Genealogical Society annual meeting and did an impressive job of it! Your society received rave reviews from everyone who participated, both attendees and the NGS staff.

I want to offer sincere thanks to everyone who has helped make the past two years as wonderful as they were.

First of all, grateful appreciation to a wonderful Board of Directors. Without your support and guidance, I could have done nothing. I especially appreciate Sue Smith, as past president, taking me by the hand and leading me through my first year as president. Chuck Sherrill continues to make our *Journal* an example to other publications. We are still featuring regular programming scheduled by Tom Potter before his untimely death.

And special kudos both to Vance Little, who chaired our NGS meeting, and to all of you who stepped up and helped staff it. There must have been a couple of hundred of you, running all over the convention center, wearing your flashing flags and handling the multitude of details needed to make a meeting run so smoothly that most people don't even realize they're there.

We have a very impressive society. I know all of you will be as supportive to your incoming Board as you have been to me. Thanks a bunch!

Martha Gerdeman MTGS President

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Yearly memberships include four issues of the *Middle Tennessee Journal of Genealogy & History*. Make check or money order payable to MTGS. Dues are \$25.00 per membership year, beginning of fiscal years on June 1. See back cover for details and application form.

Printed by Miami Systems, Nashville, Tennessee 37209. Cover design by Dorothy Williams Potter. Indexed in the PERiodical Source Index (PERSI).

Our website: http://www.mtgs.org/

Middle Tennessee Supreme Court Records

Third Series

by Gale Williams Bamman, CG



Featuring the 1841 Case: Beck vs. Ledbetter & Runnels

Introduction to the Third Series

Since 1989, this journal has published short extracts of Middle Tennessee Supreme Court case files. These extracts have included the names of the plaintiffs and defendants and, usually, a brief description of the nature of each case. Beginning with this issue, there will be a different approach, using paraphrasing along with extracts—so as to include more data, the decisions of the Supreme Court (if found in surviving records), definitions of pertinent legal terms, and, occasionally, additional information from county records. At times, historical and sociological features of various cases will be emphasized. The series' main goal, however, will not change—that of identifying families and providing genealogically-important data.

Case files for the Middle Tennessee District of the State Supreme Court are housed in the Manuscripts Division of the Tennessee State Library and Archives (TSLA). A card file indexes both plaintiffs and defendants, but often lists only the first party named on each side, followed by et al or "and others." These files are "loose" papers containing clerk transcriptions of lawsuits heard in lower courts—chancery or circuit—that were appealed to the Tennessee Supreme Court. The files may also include transcribed wills, deeds, subpoenas, depositions, affidavits, and other information significant to the genealogist.

As to the Supreme Court's decision or opinion, that is rarely found in the case files. The researcher must go to that court's bound volumes, available mainly in Record Group 191, "Tennessee Supreme Court Clerk's Records 1810-1955." On microfilm, this set of records contains opinion books and volumes labeled minutes, enrollments, dockets, record books, and journals. Not all volumes are indexed, and there are major gaps in the early records of the court. The register for this record group, in paper format in the Manuscripts Division of TSLA, details what is available and the time frames covered.

Brief Background on the Tennessee Supreme Court

Tennessee's constitution at statehood (1796) provided for lower courts, but not for a Supreme Court. In 1809, the legislature created the Supreme Court of Errors and Appeals, and various subsequent Acts detailed and/or modified the duties of this court. It was not until 1834, with the state's second constitution, that the Tennessee Supreme Court, as we know it today, came into existence; i.e., as a court of appellate jurisdiction only.²

¹ The register can also be viewed online at: http://www.state.tn.us/tsla/history/state/recordgroups/findingaids/rg191.pdf

² Vincent G. McGrath, "Historical Sketch," 1992, Preface to Register, Tennessee Supreme Court Clerk's Records, 1810-1955, Record Group 191, Tennessee State Library and Archives, Nashville. McGrath cites Sketches of the Bench and Bar of

For further reading, see:

- Ely, James W., Jr., editor, "A History of the Tennessee Supreme Court," (2002). Tennessee Supreme Court Historical Society. An excerpt is available online at http://www.ipscoagency.com/tschs/pdf /booksexcerpt.pdf http://www.tschs.net/. [The "History" section of this site was under construction when visited in March 2006.]
- "A Guide to Tennessee Courts." Tennessee Court System. http://www.tsc.state.tn.us/geninfo/education/kidguide.htm.
- Sherrill, Charles A. "Tennessee Court System Prior to 1870." TNGenNet, Inc. http://www.tngenweb.org/law/courtsys.htm: posted 1998.
- Sherrill, Charles A. Tennesseans in Court: 2,500 Settlers Found in Supreme Court Reports, 1791—1820. Mt. Juliet, Tenn.: Charles A. Sherrill, 1999.
- Williams, Samuel C. Phases of the History of the Supreme Court of Tennessee. No place of publication: Watauga Press, 1944.

Following a lawsuit through the Chancery or Circuit Court

The fundamental parts of a cause presented in a chancery or circuit court are usually:

Bill of Complaint

or Declaration: a document laying out the claims that the plaintiff (often referred to as the orator or oratrix)

has against the defendant, and typically prepared by a lawyer.

an order by the presiding judge to the sheriff of the county where the case is being tried, Writ of Summons:

containing a concise statement of the cause of complaint and requiring him to notify the

defendants named therein as to the date they are to be in court.

the process whereby the parties exchange documents and other information about the Discovery:

issues relevant to the litigation.

a formal written statement by a defendant that responds to the complaint and sets forth the Answer:

grounds for defense.

the court's final ruling or decision. Final Decree:

Other elements are often present:

Writ of Injunction: a court order requiring a person to do or refrain from doing a particular thing, and

considered as more a preventive than a remedial process.

Interlocutory Decree: a non-final decree issued during litigation of a case.

Additional items may be included:

Subpoenas: order for individuals to appear at a certain place and time to give testimony.

voluntary statements of facts given by subpoenaed witnesses without questioning. Affidavits: **Depositions:**

transcribed testimonies of subpoenaed witnesses given upon questioning, but not

in open court.

Tennessee, by Joshua W. Caldwell (Knoxville: Ogden Brothers & Co., 1898), Ch. III and XIII; and Phases of the History of the Supreme Court of Tennessee, by Samuel C. Williams (No place of publication: Watauga Press, 1944), pp. 75-86.

Exhibits:

transcripts of deeds, plats, wills, receipts, etc. Some of the early files contain original

surveys and/or grants.

Dockets:

records containing styles (headings) of the cases, along with summaries of proceedings and

details on court costs.

If a case is appealed and the appeal is granted, the following should also be in the clerk's transcription:

Bill of Exceptions:

a formal statement in writing of the evidence presented in a case, including depositions and affidavits taken, any rulings of the court, and the charge of the court to the jury, in order for those to be reviewed by the appellate court. The statement is required to bear the signature of the Chancellor (or circuit court judge).3

Note: In other words, the above represents the data brought forth during a trial, but which was not included in the clerk's abbreviated minutes in the bound volumes at the county level. If a county has loose chancery or circuit court papers surviving, there may be among those the data described in the Bill of Exceptions.

When a lawsuit is appealed to the Supreme Court

The judges of the Supreme Court review transcripts sent from the lower court, as well as any other documents relating to the case. Sometimes the court listens to oral arguments by lawyers for both sides, but there are no witnesses and there is no jury. Instead, the judges decide which side is legally correct. When they make that decision, they write an opinion explaining why they ruled the way they did, sometimes called a ruling. The ruling could be an affirmation of the decision of the lower court, a reversal of that decision, or a remanding (sending back) of the case to the lower court. A reversal is often followed by a remand.⁴

Sources for information on legal terms and court procedures

Legal terms can be daunting to the family historian, especially words and phrases dating from usage in common law; however, one needs a grasp of their meanings in order to correctly interpret the records being studied. The following are the major books and online sources being consulted for this series:

Ballentine, James A. Law Dictionary with Pronunciations. Rochester, N.Y.: The Lawyers Co-Operative Publishing Co., 1930.

Black, Henry Campbell. Black's Law Dictionary, 4th edition. St. Paul, Minn.: West Publishing Co., 1951.

Bouvier, John. A Law Dictionary Adapted to the Constitution and Laws of the United States of America, 6th edition. Philadelphia: Childs & Peterson, 1860. Electronic edition. Constitution Society. http://www.constitution.org/cs refer.htm: posted 2005.

Gibson, Henry Richard. Gibson's Suits in Chancery. 3rd edition.

Cleveland, Tenn.: Baldwin Law Book Co. 1929.

Gilreath, Sam B. and Bobby R. Aderholt, Caruthers' History of a Lawsuit, a Treatise on Procedure

³ Christian J. Kolbe, "Chancery Cases," Archival and Information Services Division, Library of Virginia (http://www.lva.lib.va.us/whatwehave/notes/rn22_chancery.pdf): accessed 14 January 2006.

[&]quot;A Guide to Tennessee Courts." Tennessee Administrative Office of the Courts.

⁽http://www.tsc.state.tn.us/geninfo/education/kidguide.htm): accessed 10 February 2006.

⁵ The standard reference work for legal definitions states, "Common Law: As distinguished from law created by the enactment of legislatures, the common law comprises the body of those principles and rules of action, relating to the government and security of persons and property, which derive their authority solely from usages and customs of immemorial antiquity ... and, in this sense, particularly the ancient unwritten law of England." Henry Campbell Black, Black's Law Dictionary, 4th edition (St. Paul, Minn.: West Publishing Co., 1951), 345-46.

in the Courts of Tennessee with Forms and Rules of Practice. 8th edition, 1888. Reprint, Cincinnati: W. H. Anderson Co.: 1951.

FindLaw. http://public.findlaw.com/library/: 2006.

LawyerIntl. http://lawyerintl.com/modules/dictionary/: 2006.

Arrangement of data found in the case files

Supreme Court case files are too lengthy for transcriptions or even major extracts, given the limited space available here. The following key explains the format for the data presented in this series.

Italics: selected extracts from the clerk's transcription, Latin phrases, and

pertinent legal terms.

Regular font: this writer's paraphrasing.

Square brackets in paraphrasing: hypotheses and/or comments by this writer.

Square brackets in extracts: implied words and/or undecipherable portions along with a question mark.

Quotation marks: quotes from books and online sites.

Supreme Court Records, Box 68, Middle Tennessee 1841

John R. Beck & others vs Arthur Ledbetter & William Runnels

Original Bill heard in Overton County Circuit Court

This is a case in *Ejectment*, a legal action brought by someone to recover possession of land being held by someone else. In early ejectment suits, terms from English common law were often used, such as the fictitious names of *John Den*, listed as the plaintiff, and *Richard Fen* as the defendant. Other names sometimes used were *John Doe/Goodtitle/Holdfast* and *Richard Roe/Badtitle/Thrustout*. The term *Lessee* usually followed the name of the plaintiff, purporting that *John Den* had obtained a lease from the actual, or real

plaintiffs; however, the lease was also fictitious. This scenario was used because there was a question as to who had the legal right to the land, and the artificial terms were used to set the trial in motion.

[Declaration of John Den]

John Den stated that on 1 January 1837 in Overton County, John R. Beck, Andrew Cowan and his wife, Elizabeth Cowan; David Cowan and his wife, Mary Cowan; Samuel Cowan and his wife, Rachel Cowan; Elizabeth Cowan; Rachel Cowan; Elizabeth Cowan; John Cowan; Thomas Cowan; Andrew Young; and James Cowan leased land to John Den in Overton County on the west fork of Obed's River containing 311 acres for ten years, and that Richard Fen entered in upon said land ... and ejected the said John Den therefrom his time thereon not being expired to the damage of the said John Den five thousand dollars ... therefore he sues. [dated 1 April 1840] Isaac Stockton made bond of \$500.00 for the plaintiffs.

[Writ of Summons]

A writ was issued 1 April 1840 by the Overton County

⁶ "Ejectment: A bill ... (1) to recover land when the title of the complainant is disputed, or (2) to recover the possession of houses or land when the complainant's right of possession is denied or disputed." See Henry Richard Gibson, Gibson's Suits in Chancery, 3rd edition (Cleveland, Tenn.: Baldwin Law Book Co., 1929), 850-51.

⁷ Raymond A. Winslow, "Land Records," in *North Carolina Research*, Helen F. M. Leary, editor (Raleigh, N.C.: North Carolina Genealogical Society, 1996), 228.

⁸ "Lessee: The person who conveys is termed the 'lessor,' and the person to whom they are conveyed, the 'lessee'; and when the lessor conveys lands or tenements to a lessee, he is said to lease, demise, or let them." Black's, 1035-36.

Circuit Court, directing the sheriff of that county to summon Arthur Ledbetter and William Runnels to appear in court in June to answer the plaintiff John Den, Lessee of John R. Beck and others [the list of names is identical to the one above, except that Andrew Young's name does not appear], in a plea of trespass in ejectment with force and arms to his damage \$5,000.00.

[Statement by Richard Fen]

A statement made by the fictitious Richard Fen, and directed to Arthur Ledbetter and William Runnels, informed them they must appear in court on in June [1840] and have yourself made defts. in my stead. The statement of Richard Fen also bears the date of 1 April 1840.

[Answer of defendants]

At the June Term of 1840, the attorney for the defendants, Arthur Ledbetter and William Runnels, said they plead not guilty and agreed to confess lease entry and ouster... and rely upon their title only. They were then admitted as defendants in the room and stead of [instead of] the fictitious Richard Fen. Bond for them was made by Preston Robbins.

[Verdict of jury]

At the February Term of 1841, a jury rendered its verdict in favor of the plaintiff, and the court assigned the damages as one cent, plus court costs. In addition, the plaintiffs were to recover of defendants their term yet to come of and in the lands ...mentioned... and on

motion of plaintiff's attorney a writ of possession 11 is awarded them in this cause.

[Answer of defendants to the verdict]

The defendants moved for a new trial, but were overruled. They presented their bill of exceptions to be made a part of the record and moved the court in arrest of judgment, ¹² which was overruled. They then prayed an appeal in the nature of a writ of error¹³ to the Supreme Court to be held in December 1841, which was granted. Theophales M. C. Allred made bond as their surety.

[Bill of Exceptions]

This bill asked that the evidence presented to the court during the trial be made a part of the clerk's transcription in order for the judges of the Supreme Court to have a written copy of all proceedings at hand for their review.

- 1) Plaintiff read a grant to Stokely Donelson and William Terrell for 40,000 acres of land, granted by the State of North Carolina on Roaring Spring Creek, a large branch of Obed's River, signed by the governor and secretary on 4 January 1795. The grant was read as having been registered in Knox Co., Deed Book A, p. 210, 15 February 1797. The grant was admitted to include the land in dispute.
- 2) Plaintiff then read a bond from John McIver to James Cowan with the certifs. thereon which he proved included the land in dispute. The bond stated that on 19 September 1817, John McIver of Fairfax Co., Va., bound himself to James Cowan then of Cumberland County, Kentucky for \$1,500.00 that he would sell Cowan a certain tract of land in Overton Co., Tenn.

⁹ "Trespass: Force and violence ... when implied, refers to a peaceable but wrongful entry upon a person's land ... when actual, it would mean assault and battery." Black's, 1674.

10 A classic nineteenth-century legal dictionary discusses

[&]quot;lease, entry, and ouster" under the term *Ejectment* (part 3): "This action has been made, substantially, a fictitious process. The defendant agrees, and is required to confess that a lease was made to the plaintiff, that he entered under it, and has been ousted by the defendant, or, in other words, to admit lease, entry, and ouster, and that he will rely only upon his title." See John Bouvier, *A Law Dictionary Adapted to the Constitution and Laws of the United States of America*, revised 6th edition (1856), OCR electronic edition, Constitution Society (http://www.constitution.org/bouv/bouvier.htm: posted 25 September 1995), unpaginated, terms alphabetically arranged.

[&]quot;Writ of possession: This is the writ of execution employed to enforce a judgment to recover the possession of land. It commands the sheriff to enter the land and give possession of it to the person entitled under the judgment." Black's, 1786.

based on some defect in the record or pleadings which aids in distinguishing it from a motion for a new trial." *Ibid.*, 141. "Writ of Error: The distinction between an appeal and a writ of error is that an appeal is a process of civil law origin, and removes a cause entirely, subjecting the facts, as well as the law, to a review and revisal; but a writ of error is of common law origin, and it removes nothing for reexamination but the law." *Ibid.*, 124-25.

containing 311 acres. Cowan executed five notes to McIver, each for \$300.00 and payable annually, beginning 1 November 1818. The condition of the bond was that after the payment of the five notes, McIver would execute to the said James Cowan a deed of conveyance in fee simple, at which time McIver's bond would be void. Witnesses were Robert L. Ferrill and John Thurman. The Register for Overton Co., John Kennedy, stated the bond was registered 30 October 1832 in book F, pp. 311-312.

The defendants objected to the bond—for want of proof, but the bond was permitted to be read on the certificates¹⁴ of probate¹⁵ and registration.¹⁶

- 3) Plaintiff then produced Ferrell as a witness who proved¹⁷ all the Lessors of the plaintiff¹⁸ to be the heirs of Andrew Cowan except John R. Beck. He also proved that James Cowan took possession of the land in dispute in 1817 and lived there until he died. His death took place between 1822 and 1825.. He also proved that Polly Cowan was his widow and that she continued to live on the place until she died, which was in the year 1838, and that her son Andrew J. Cowan was a lawful heir of James Cowan being his son by said Polly [and] lived with her until he died which was in the year 1835 and that said Andrew J. Cowan rented the land in dispute from his own guardian for some years.
- 4) Plaintiff then read the record of Overton County Court, showing that dower¹⁹ had been laid off to the

widow of James Cowan, dec'd. out of land in which her husband had equitable²⁰ interest²¹ at the time of his death ... containing 311 acres. On 8 April 1833, the commissioners allotted to Polly Cowan a dower of 103 1/3 acres. John Kennedy, Register, certified, that the dower ... was with the certif. of the clerk registered in Deed Book F, pp. 414-415, on 3 September 1833.

[James Cowan was stated as having equitable interest in the land he died possessing. This term differs from the terms seisin²² or right.²³ If John McIver executed a deed of conveyance to James Cowan, it was not brought forth in the trial, nor has this writer found any registration of it in the Overton Co. deed books. However, a dower to the widow, Polly Cowan, had been laid off in 1833 out of that land. This was one of the exhibits brought forth by the plaintiff, as above noted—perhaps to prove James Cowan had died with a legal right to the land, since dower had been laid off out of it.]

5) Plaintiff then read two leases:

On 2 March 1837, Polly Cowan leased land whereon she lived to Arthur Ledbetter for eleven years. [Neither the acreage nor the fee was stated, but there was a full description of the boundaries, one of which was to the upper dower line.] The witnesses were L. C. Stenson, John Ledford, Isaac Robbins, and John W. G. Stenson.

On 10 March 1837, Polly Cowan leased land to William Runnels for eleven years. The witnesses were J. Roberts and Arthur

[&]quot;Certificate: A written assurance, or official representation, that some act has or has not been done, or some event occurred, or some legal formality been complied with." *Ibid.*, 285-86.

^{15 &}quot;Probate: Originally, relating to proof." Ibid., 1365.

¹⁶ "Registration: Recording; inserting in an official register." *Ibid.*, 1449.

¹⁷ "Prove: To establish a fact or hypothesis as true by satisfactory and sufficient evidence." *Ibid.*, 1388.

^{18 &}quot;Lessor of the Plaintiff: In the action of ejectment, this was the party who really and in effect prosecuted the action and was interested in its result. The reason of his having been so called arose from the circumstance of the action having been carried on in the name of a nominal plaintiff, (John Doe,) to whom the real plaintiff had granted a fictitious lease, and thus had become his lessor." Ibid., 1048.

19 "Dower: The life estate to which every married woman is entitled on death of her husband, intestate, or, in the case she

dissents from his will, one-third in value of all lands of which her husband was beneficially seized." *Ibid.*, 580.

²⁰ "Equitable: Just, fair, and right." Ibid., 632.

²¹ "Interest: Any right in the nature of property, but less than a title; a partial or undivided right." Ibid., 950.
²² "Seisin: At common law, it imported a feudal investiture

²² "Seisin: At common law, it imported a feudal investiture of title by actual possession. With us it has the force of possession under some legal title or right to hold. This possession ... if it is intended to show possession under a legal title, then the title must be shown by proper conveyance for that purpose." *Ibid.*, 1524.

²³ "Right: Where the party has the legal title to a thing, and in that case, his remedy for an infringement of it, is by an action in a court of law." Bouvier, A Law Dictionary. Electronic Edition, unpaged.

Ledbetter. [The bounds were also stated in this lease, but, again, not the acreage or the fee.]

[This writer has found neither of these leases in Overton Co. deed books, nor was a date of registration stated when the leases were read in court.]

The clerk then wrote: It was proved that these leases were in the bounds of the land specified in the bond from McIver to James Cowan but it was not proved that any part of the land leased was within the bounds of the dower [it was proved] that defts. set up no claim to the land except that they wished to live on the land long enough to get pay for their improvements [that] there was a continued possession under the title bond from McIver to James Cowan from the time he first took possession till the death of Polly Cowan [that] Polly Cowan and her son A. J. Cowan lived together on the land, that Andrew J. Cowan died a minor without wife or children, that the lessor of the plaintiff except John R. Beck are the brothers and sisters children of James Cowan the father of A. J. Cowan his brothers and sisters being dead

The lessor of the plaintiff proved that they demanded the possession in March before the suit was brought. It was proved that defendants were in possession when the writ issued and was served.

[At this point in the Bill of Exceptions, details of another lawsuit were presented, the outcome evidently considered as possibly affecting the right of the Cowans to the lands in dispute.]

6) Defendants read a recovery of a judgment in favor of Andrew J. Marchbanks vs John McIver heirs.

[Summons, Declaration, Answer, Agreement, Sale of Land]

In March 1832, the sheriff of Overton was commanded to summon Daniel Graham, Administrator of John McIver, dec'd., to appear at court and answer Andrew J. Marchbanks of a plea of trespass on the case.²⁴ Marchbanks stated John McIver became indebted to him for \$110.00, for Marchbank's services as an

attorney in several cases involving McIver, and for which Marchbanks had not been paid.

Defendant Daniel Graham, Administrator, denied the charge and added that he had fully administered²⁵ all the goods and chattels of John McIver's estate before the issuance of this cause.

In July 1832, the defendant confessed judgment in favor of plaintiff for \$110.00, and the plaintiff admitted the plea of fully administered by the defendant. It was considered by the court that plaintiff was to recover against the defendant the sum of \$110.00 to be levied of the goods and chattels which were of the estate of the said John McIver, dec'd. at the time of his death.

On 26 September 1832, the plaintiff sued out²⁷ a writ of scire facias²⁸ to the sheriff of Rutherford County, Tenn., to summon John McIver, Junior, Daniel Graham, and his wife, Mariah Graham, the only heirs of the said John McIver, dec'd., to appear at the next court of Pleas & Quarter Sessions in Overton County. The defendants failed to appear, and it was considered by the court that the plaintiff was to have execution of damages and court costs out of the land which descended to John McIver's heirs.

On 19 November 1832, a scire facias was issued to the sheriff of Overton Co. to be made the sum of \$110.00 debt and the further sum of \$10.47, court costs, out of the lands which were of the estate of John McIver, dec'd., and that descended to his heirs. The sheriff levied on 125 acres reconveyed²⁹ by Solomon

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²⁴ "Trespass on the case: The form of action, at common law, adapted to the recover of damages for some injury resulting to a party from the wrongful act of another... Commonly called, by abbreviation, 'Case.'" Black's, 1675.

²⁵ "Fully administered: Being a plea by an executor or administrator that he has completely and legally disposed of all the assets of the estate, and has nothing left out of which a new claim could be satisfied." *Ibid.*, 801.

²⁶ "Levy: to levy an execution, i.e., to levy or collect a sum of money on an execution." *Ibid.*, 1051.

²⁷ "Sue Out: To obtain by application; to petition for and take out." *Ibid.*, 1601.

²⁸ "Scire facias: The most common application of this writ is as a process to revive a judgment, after the lapse of a certain time, or on a change of parties, or otherwise to have execution of the judgment in which cases it is merely a continuation of the original action." *Ibid.* 1513.

continuation of the original action." *Ibid.*, 1513.

29 "Reconveyance: Takes place where a mortgage debt is paid off, and the mortgaged property is conveyed again to the mortgagor or his representatives free from the mortgage debt." *Ibid.*, 1437.

Albertson to John McIver, and on all the unsold lands in the bounds of Overton Co. which lay in the bounds of the 40,000 acre tract granted by the State of North Carolina to Stokely Donelson and William Terrell ... not sold by reason of the same not being inserted for sale in the newspaper the length of time required by law before the day of sale.

On 4 January 1834, a writ of venditioni exponas³⁰ was issued to the sheriff of Overton Co. to sell the said lands to satisfy the judgment. He sold the lands on 23 March 1834 to Jacob Dillon for \$35.00— the 125 acre tract for \$10.00 and the other for \$25.00. [The other is not identified as to location, acreage, or boundaries.]

The clerk then wrote that in the following endorsement³¹ the whole amount of the judgment had been satisfied by Willis Huddleston who redeemed³² the lands sold. [See brief notes relating to this deed, from Deed Book G, p. 99, appended.] A deed of conveyance from the sheriff of Overton Co. to Willis Huddleston was admitted to include the land in dispute. The plaintiffs' attorney objected, but was overruled.

Added at this point to the Bill of Exceptions and relating to the cause of Beck and others vs Ledbetter & Runnels, the judge charged the jury, saying Polly Cowan did not have the right to withhold from the heirs of James Cowan, dec'd., the lands that lay outside her dower, and she also did not have the right to lease the said lands to Ledbetter and Runnels. The date of the charge was 25 February 1841.

On that same day, Arthur Ledbetter, William Runnels, and Theophales M. C. Allred made a bond of \$200.00 that they would prosecute the writ in the Supreme Court.

"Venditioni Exponas: The name of a writ of execution, requiring a sale to be made, directed to a sheriff when he has levied upon goods under a fieri facias, but returned that they remained unsold for want of buyers." Ibid., 1726.

James Maxwell, clerk of Overton Co. Circuit Court certified this was a full transcript of the record and proceedings, and signed the transcription on 17 March 1841.

Decision of the Supreme Court

On 10 December 1841, the Supreme Court affirmed the judgment of the lower court, and the clerk wrote in his minute book: It seems to the court here that neither in the record and proceedings afsd. nor in rendering the judgment afsd. in anything is there error. It is therefore considered by the court that the judgment rendered in this case in the court below be in all things affirmed.³³

Selected data from Overton County records

Further can be learned on the Cowans from the county records. The following selected records, presented chronologically, reveal important details.

- 1) In 1817, John McIver of Fairfax Co., Va. made a title bond to James Cowan now of Cumberland Co., Ky., for 311 acres in Overton Co., Tenn. The deed was not registered until October 1832. [Deed Book F, p. 311.]
- 2) At the February Term 1833 of the Overton County Court, Polly Cowan, widow of James, requested that dower be laid off to her of the abovementioned land. The laying off was done in September of that year. [Deed Book F, p. 414]
- 3) In a deed of 17 June 1835, Jacob Dillon claimed title to land purchased at a sheriff's sale in 1834 of land sold by virtue of a scire facias and judgment that A. J. Marchbanks recovered against the heirs of John McIver, dec'd. for \$110.00, and that Willis Huddleston as a bona fide creditor of said McIver, dec'd., claimed the right of redemption and paid Dillon the full amount of the judgment, for which Dillon did release and quitclaim to Huddleston all his right to the two tracts of land sold at the sheriff's sale. No

incumbrance." Ibid., 1443.

^{31 &}quot;Indorsement: The act of a payee ... or holder of a bill, note ... or other negotiable instrument, in writing his name upon the back of the same ... whereby the property in the same is assigned and transferred to another." Ibid., 914-915.

32 "Redeem: To buy back ... To repurchase in a literal sense; as, to redeem one's land from a tax sale ... It implies the existence of a debt and means to rid property of that

³³ Tennessee Supreme Court Clerk's Records 1810-1955, Record Group 191, TSLA (209 rolls), Roll 3, Series I, Middle Tennessee Supreme Court Minutes, Vol. 3 (1840-1845), p. 44.

boundaries were stated in the deed. [Deed Book G, p. 99] [This is the deed that would be objected to in 1840 by the Cowan heirs when it was read in court in their trial against Arthur Ledbetter and William Runnels.]

- 4) On 28 February 1840, in a suit by Arthur Ledbetter, Executor of Andrew J. Cowan, dec'd. vs the heirs of James Cowan, dec'd. [these are individually named in this record], a jury found the paper writing produced by the plaintiff is not the last will and testament of Andrew J. Cowan as to the real estate therein devised but that it is the last will and testament as to the personal estate therein bequeathed, and that the plaintiff was to recover against the defendants the costs of the suit. [Overton Co. Circuit Court Minutes 1839-1844, p. 109.]
- 5) On 7 August 1840, the heirs of James Cowan, dec'd., appointed John R. Beck, Esq., of Overton Co., their attorney to prosecute any suit against Arthur

Ledbetter or William Runnels separately or Jointly, for the purpose of removing them from the trespass they had committed. [Overton Co. Deed I:254-255]

6) On February 25, 1841, in a suit of John Mongold, guardian of Andrew J. Cowan, against John R. Beck, the court considered that the plaintiff was to have execution against the defendant for the sum of \$80.67, the debt in the scire facias mentioned, and the sum of \$17.40, the interest accrued since the 30th day of June 1837, the day of the rendition of said judgment and also the costs of said original suit together with Mongold's costs in prosecuting the scire facias. [Overton Co. Circuit Court Minutes, 1839-1844, p. 235]

[This action was brought into court and settled the same day judgment was made on the suit of John R. Beck & the heirs of James Cowan, dec'd. vs Ledbetter and Runnels.]

Jesse Cunningham's 1812 Enlistment in Wilson County

State of Alabama, Shelby County

On this 3d day of December AD eighteen hundred and fifty personally appeared before H.V. Nabors, J.P., Jesse Cunningham, aged sixty nine years, a resident of Shelby County, Alabama, and declares that he was a private in the company commanded by Captain George Hallum in the 39 Regiment of United States Infantry commanded by Colonel Williams (whose given name affiant does not recollect) in the War of 1812; that he enlisted at Lebanon, Wilson County, Tennessee, on or about the 22 day of September 1813 for the term of twelve months and continued in actual service for twelve months; was honorably discharged at Fort Montgomery between the 25th and 30th days of September 1814, as will appear by the muster rolls of said company. He received a written discharge but has long since lost the same. He makes this declaration for the purpose of obtaining the bounty land to which he may be entitled under act of Sept. 28, 1850. [signed] Jesse Cunningham.

Photostat copy as reported by Pauline Jones Gandrud in *Alabama Records*, volume 244 1980, p. 51.a.



A MENSAGE SALDING 101

"Dear Mother in Law"

A Confederate Prisoner of War Tells a Mother of the Death of her Two Sons

By Jesse L. Lynn, Jr. (JesselLynn@cs.com)

Since at least the time of Xenophon and Julius Caesar, military leaders have written commentaries describing and justifying their military exploits, a pastime of retired commanders that has continued to the present day. These writings have been studied and criticized extensively by historians. In comparison, little attention has been paid to the life, thoughts, and actions of the common soldier. No doubt, this is in part due to the greater effect that a single leader has had in comparison to a single private, and the greater appeal that a distinctive individual leader has in comparison to the nondescript masses. However, during most of the centuries of warfare, the common soldier was illiterate. Of what little that may have been written by ordinary soldiers, less has survived. Even from the American Revolution, very little survives that was written by ordinary combatants. In comparison, by the Civil War, many more soldiers were literate, and many more common soldiers wrote of their experiences. The following letter is one such example. The author submits it in the belief that it may be informative to other readers who are interested the life of an ordinary Confederate private in the American Civil War. He also believes that it says more about the experiences of a common soldier in combat than many pages written by many officers.

The letter was written by Moses Woodfin to his mother-in-law, Emily Clark. A photocopy has been in the possession of the author's mother, Olive Jean Paty Lynn, for many years. She is a first cousin 4-times removed of Moses Woodfin, the author of the letter (being a 4th great-granddaughter of Nicholas Woodfin). This author does not know the source of the original letter, or its current whereabouts. The letter was accompanied by a notation indicating that the partially obscured heading was, "Rock Island, Ill Aug. the 23 / 64." The following transcription was made by the author from the photocopy and provides a number of alterations and additions to the original transcription:

[Rock Island, Ill

Aug the 23/64]

Dear Mother in Law

I Read your Kind favor which Came

duly to hand I am sory to hear of the Ilnis of little Emer This lea[ves] me well hoping this may find you all well & doing well you wuant me to give you the particulars of the deaths of W^m + Newton I will try to do so with pleasure W^m was kiled instantly he never moved nor spoke after he was struck. Newtons Right arm was taken off at the sholder I was hurt very bad in my left arm Newton and myself ware caried back to our Hospital in[e] the

woods his wond was drest + news came that our men ware falling Back The grape begin to fall around us our trifling Doctors ran off + left us there some 30 wounded there without Eny asistan[ce] But one chaplin who was brave enough to stay with us ******* all he cold tho all the Doctors in the world cold done Newton env good he did not talk But very little nor did not complain much he only Complaind of his Bed being hard, he lived from Wednesday until Sunday Morn about day light when he past away like going to Sleep without a struggle or a grone + I have no dout But he is now at Rest I had him Buried on a nice little mound as dasant as I cold you can only amaii[ne] my trial + suffering while we lay thare in the woods with nothing to Eat part of the time but a little Corn that we piaked up ware the horses had fed we ware caried in to Chattanooga on Sunday Evening whare we ware treated vary well I staid thair about a week I Sympathize with you in your Bereavements but yours is only that of Thousands of others [I] James + Espy is well Sams Box Came Safe you may send me + [J]im a suit of cloths all in one Box marked to both of us Barracks No A ples write often yours with Respect Moses Woodfin I wishd I cold write more Excuse this²

The rough directness of the letter, coupled with a rural Southern courtesy of 150 years ago, speaks more eloquently to the situation of the ordinary soldier and his family in the Civil War than many more lengthy essays. Moses Woodfin appears to neither exaggerate the gravity of his situation, nor to minimize it. In fact he is unusually candid,

1 I. e. grapeshot

² Letter from Moses Woodfin, Rock Island, Ill. to "Mother in Law" (Emily Clark), (Rutherford Co, Tenn), 23 Aug 1864. Photostatic copy currently in possession of Jesse L. Lynn, Jr., Congers, N.Y.; previously in possession of Olive Jean Paty Lynn, Bell Buckle, Tenn., first cousin 4 times removed of the writer, Moses Woodfin.

including his wound and his implied fear while being abandoned alone with other wounded in the woods for several

The following brief comments will put the personalities in the letter in historical context, along with the actions described in the letter.

Moses Woodfin, the author of the letter, was born in Bedford County, Tennessee, 7 March 1829, the son of Samuel Woodfin (b. 1791 Buncombe Co., NC; d. 29 April 1863, Bedford Co.) and Maria Barnhill (b. 9 Dec. 1798 S.C.; d. 8 March 1863, Bedford Co.), married 12 Feb 1816, Rutherford County, Tennessee. He was the grandson of Nicholas Woodfin (1759 - 1832) and Hannah Ashbrook (ca 1765 - 1845), married ca 1785, North Carolina.⁵ Samuel Woodfin was a soldier in the War of 1812⁶ and Nicholas Woodfin in the Revolutionary War.⁷ Moses Woodfin married Rachel A. Clark, 11 Sept 1856. Both Moses and Rachel appear in their parents' household in the 1850 census, and in their own household in 1860, 1870 and 1880. Moses was primarily a farmer, although also a wheelwright. They were members of the Cumberland Presbyterian Church. Moses died 30 January 1908¹¹ and Rachel died 4 December 1920.¹² Both are buried in Hazel Cemetery, Bell Buckle, Bedford County, Tennessee.

The letter is addressed to "Mother in Law." Rachel, wife of Moses Woodfin, was born 9 Aug 1835 in Rutherford County, Tennessee, the daughter of William Clark (b. 1807, NC, d. 20 Oct. 1881, Tenn.) and Emily (b. 1817, Tenn., d.1870-1880).¹³ Hence, Emily Clark, maiden name unknown, was the mother in law. The 1850 Rutherford County census includes the following family members: William Clark, Sr. age 45, Emily age 38, Rachael age 15, James age 12, Newton age 10, Sarah age 8, W^m age 6, John age 4, Margaret age 1, and Fanny Clark age 50, all born in Tennessee except William Sr. and Fanny, who were born in North Carolina.¹⁴ William and Emily were apparently married about 1833, probably in Tennessee, although their marriage does not appear in Sistler's compilation.¹⁵ The 1860 census shows: William Clark age 56, E.L. age 46, R.N. (male) age 21, Sarah age 18, William age 17, Margret age 11, Mary age 9, Eliza age 5, S.C. (female) age 2 and Rachal [Keltun] age 78, all born Tennessee except William Sr. and Rachal [Keltun], who were born in North Carolina. Rachal [Keltun] may have

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History of Tennessee Illustrated, with Sketches of Maury, Williamson, Rutherford, Wilson, Bedford and Marshall Counties (Nashville:Goodspeed Publishing Co. ca 1886; reprint: Easley, SC: Southern Historical Press, 1988), 1188. Moses Woodfin was undoubtedly the author of this "vanity biography." It is difficult to imagine why Moses Woodfin would have falsified any information provided in this modest (auto)biography; nonetheless, wherever possible, the information contained in it was compared against other direct, primary sources and found to be uniformly accurate.

Byron & Barbara Sistler, Early Middle Tennessee Marriages, Vol. 1, Grooms (Nashville; Byron Sistler & Assoc, 1988), 603.

Jesse L. Lynn, Jr., "Woodfin-Ashbrook," Bedford County, Tennessee, Family History Book, Dick Poplin, ed. (Paducah, Ky.; Turner Publishing Co., 2002), 492. Although omitted in publication, due to editorial policies, the submitted version of this biography was supported by extensive references that are available from the author.

Byron & Samuel Sistler, Tennesseans in the War of 1812 (Nashville: Byron Sistler & Assoc., 1992), 540. Samuel Woodfen (sic) was listed as a corporal in the Tennessee Volunteer Mounted Gunmen.

William Hutchison Pension Application File, Va. R5457, Revolutionary War Pension and Bounty Land Warrant Application Files (Records of the Veterans Administration RG15, National Archives Microfilm Publication, M804 R 1387, Fr 0331, et. al.). There are numerous other references to Nicholas Woodfin's military service. However, this is the original, primary reference upon which the others depend.

[&]quot;Moses Woodfin." The marriage record is not listed in Early Middle Tennessee Marriages, probably because it took place in Bedford County, many of whose records were lost in a Courthouse fire during the war.

Samuel Woodfin household, 1850 U.S. census, population schedule, Bedford Co., Tennessee, Civil District no 5, page 123B, line 27, dwelling

^{45,} family 45 National Archives micropublication M432, roll 869.

W^m Clark S' household, 1850 U.S. census, population schedule, Rutherford Co., Tennessee, Millersburgh post office, page 325A, line 23, dwelling 1074, family 1074 National Archives imcropublication M432, roll 906).

Moses Woodfin gravestone, Hazel Cemetery, Bell Buckle, Bedford Co., Tenn. Birthdate agrees with date in "Moses Woodfin."

Rachel Anna Clark Gravestone, Hazel Cemetery, Bell Buckle, Bedford Co, Tenn. Rachel and Moses share a common gravestone headed "Woodfin." Birthdate agrees with date in "Moses Woodfin."

"Moses Woodfin." The range of death years of Emily Clark was estimated from her apparent absence in the 1880 Census. However, it is

curious that the "Moses Woodfin" biography should list the death of the father in 1881 but not that of the mother in 1870-1880. This suggests that Emily Clark may have been residing elsewhere in 1880 and has not yet been identified by this author.

W^m Clark S' household, 1850 U.S. census, Rutherford County, Tennessee, population schedule, Millersburgh post office, page 325A, dwelling 1074, family 1074.

Sistler, Early Middle Tennessee Marriages. Again, they may have been married in Bedford County (although the Keltons lived in southern Rutherford County).

Wm Clark household, 1860 U.S. census, population schedule, Rutherford County, Tennessee, Millersburg, Jordans Valley post office, page 150B, line 13, dwelling 477, family 477(National Archives Micropublication M653, roll 1271.

A Hear your Him? Jum Blich Gunce duty to hand I am Sury to hear of the Shoris of title Erner this day one will hoping this many fint you all well I doing well you work on to give you the Particulars of the Malle of 11mm & Meesting will try to do so write flow time men plant hiled instantly he num voust non Statuofter de mas obtructe ? Fintlang Right anne grotifinaff lit The shalder of over hunt very lad inmy geft com Meeter and ing delf more buil back to our Hospital ine the wants his want woo doest to ment to methoto on munione fallin. Bask The grape beginto fall around no our trifling Bosters on off + left wathers dome so morouted them with out from distince But one Chapling homes brown enough to day with us the all helpled the all the sectors in traveled Cold thom youther by good hed donat tolk But very little nor didnot Complain much he only Complained of his Bed being have he lived from mesonesday until! Sunday Morn about day light orban he past away like gains to Sleep without of Strugle or a grane & house no don't But he is norrost Not I had him Brief on a new Little . wome so descont de Hold you Canant any in my brief & affermy while we lay Hum in the words with matering to lat hand of the ting bat a little. Can there me field we more the horges had fed me some Carisaline to Challonoryum funday Erning whom we now treated wary good survey on the grow is and; that of Thensunds of allier ! Somet gapy so well Some Box Come John gon may Dad med & agreet of Clathodliname Bo smart to foth of as Barrell Sife G plannileatin good with flaguet asial state of

been the mother of Emily Clark. supplying a possible family name. By this time Rachael, the eldest daughter. had married Moses Woodfin.

James A. Clark, the oldest son, had married Mary A. Clark, 14 December 1858, Rutherford County, 17 and they resided in the dwelling next to that of James' parents in 1860.18 James owned no property at this time and, in all likelihood, the young couple lived on his parents' farm. The 1860 census shows no children, but, according to the 1880 Rutherford County census, this couple had two children during the Civil War period, Nancy E., born 1860-1861, and William N., born 1861-1862.19

In addition to James A., the 1850 and 1860 censuses of the William Clark Sr. household show two other male children. R. Newton, born ca 1838 and William. born ca 1843.

Having identified the main characters in the letter, it now seems appropriate to attempt to outline the actions that led to its composition. Compiled Military for Service Records Confederate Volunteers...Tennessee.20 and Goodspeed biography cited above show

Moses Woodfin's Letter

that Moses Woodfin, J. A. (or James A.) Clark, R. N. Clark, and W. G. Clark all served as privates in Company D of the 45th Tennessee Infantry. The 45th Tennessee was organized in December 1861 at Camp Trousdale, Sumner County, and paroled 1 May 1865 at Greensboro, North Carolina. Among other actions, it was engaged at Shiloh in April 1862, the Corinth Campaign in April-June 1862, Vicksburg from May to July 1862, Baton Rouge in August 1862, Murfreesboro from December 1862 to January 1863, Tullahoma in June 1863, Chickamauga in September 1863, the siege of Chattanooga from September to November 1863 and Chattanooga in November 1863, to mention only those engagements relevant to the parties in this letter.²² The severity of its casualties suffered during the course of the war may be gleaned from the following: after Murfreesboro, it reported 323 effectives out of 449 present; at Chickamauga it suffered 98 casualties out of 226 effectives engaged; at Dalton, Georgia shortly

¹⁷ Sistler, Early Middle Tennessee Marriages, Grooms, 102.

¹⁶ J. A. Clark household, 1860 U.S. census, population schedule, Rutherford County, Tennessee, Millersburg, Jordans Valley post office, page 150B, line 11, dwelling 476, family 476 National Archives Micropublication M653, roll 1271.

James A. Clark household, 1880 U.S. census, Rutherford County, Tennessee, 20th Civil District, sheet 242D, line 37, dwelling 66, fa 66. (National Archives Microfilm Publication T9 R 1276). ²⁰ National Archives Micropublication M268.

Civil War Centennial Commission, Tennesseans in the Civil War, Part I (Nashville: Civil War Centennial Commission, 1964), 273.

²² Stewart Sifakis, Compendium of the Confederate Armies: Tennessee (New York: Facts on File, 1992), 157.

after its engagement at Missionary Ridge as part of the Battle of Chattanooga, it reported 232 effectives out of 316 present. In January 1865, after the withdrawal from Tennessee, it reported 37 effectives out of 49 present. Although its loses were indeed severe, the author suspects that the extremely low figures reported in 1865 were due in significant degree to desertions as the Tennessee volunteers realized that the regiment was leaving their home state, and that the war was essentially lost.

The compiled service record of Moses Woodfin shows that he enlisted 3 November 1862 at Murfreesboro.²⁴ He appears on subsequent company muster rolls until he was reported wounded and supposed to be captured at Missionary Ridge, 25 November 1863. A separate list reports that he was "Wounded slightly on arm." He then appears on various prisoner of war rolls showing that he was captured at Chattanooga, 4 December 1863, subsequently transferred to Louisville, Kentucky, and then to Rock Island, Illinois, where he remained from 13 December 1863 until 22 May 1865, when he was released.

James A. Clark enlisted 13 October 1862 at Murfreesboro, appearing on various company muster rolls until he is reported as having "Deserted on Lookout Mountain November 24, 1863." He then appears on various rolls and registers of prisoners of war indicating he was captured at Chattanooga, 25 November 1863, transferred to Louisville, and then Rock Island, where he remained from 5 December 1863 until 18 May 1865.

The other two brothers, R. N. (Newton)²⁶ and W. G. (William)²⁷ Clark enlisted 28 November 1861 at Camp Trousdale. William appears on the company's muster rolls (as W. G.) until he is reported, "Killed in action at Missionary Ridge."²⁸ Similarly, Newton (R. N.)²⁹ appears on the muster rolls and then is reported to have been "Wounded slightly in the arm" at Murfreesboro, and later "Killed by shell" at Missionary Ridge.

From these facts we can then paint a backdrop for Moses Woodfin's letter. Newton and William Clark, the two youngest and unmarried boys/men in the family of William and Emily Clark, enlisted in November 1861 when the 45th Tennessee was organized and served with it until they were both killed as a result of action at Missionary Ridge on 25 November 1863, both probably by artillery fire. James A. Clark, the oldest son in the family, and married with two children actual or expected, enlisted October 1862, and joined his two brothers in Company D, 45th Tennessee. He deserted at the beginning of the Battle at Missionary Ridge, was captured within a day, and interned at Rock Island, Illinois, until the end of the war. Moses Woodfin, husband of the oldest child in the Clark family, enlisted in November 1862, joined his three brothers-in-law in Company D, and fought with them at Murfreesboro, Chickamauga, and Missionary Ridge. In the last action, he was wounded, abandoned as the Confederate forces withdrew from Missionary Ridge, subsequently captured by Union forces and interned at Rock Island until the end of the War, joining his brother-in-law and a neighbor (see below.)

While at Rock Island, Moses Woodfin corresponded with his mother-in-law, and she asked him for the particulars of her sons' deaths. It is interesting that she addressed this question to her son-in-law rather than her oldest son who was also at Rock Island. This suggests that James had indeed deserted, hence was not present in the final day's action, and that his mother knew he was not present. In her previous letter she had apparently reported that "little Emer" was sick. This was probably Rachel and Moses' daughter Emma L. (perhaps named for her grandmother)

²³ Tennesseans in the Civil War, Part I, 274-275.

Moses Woodfin, Company D, 45th Tennessee Infantry, Compiled Military Service Records for Confederate Volunteers, Tennessee; War Department Collection of Confederate Records, Record Group 109; National Archives Micropublication M268, roll 306.

J. A. Clark, Company D, 45th Tennessee Infantry, Compiled Military Service Records for Confederate Volunteers, Tennessee; War Department Collection of Confederate Records, Record Group 109; National Archives Micropublication M268, roll 302.

R. N. Clark, Company D, 45th Tennessee Infantry, Compiled Military Service Records for Confederate Volunteers, Tennessee; War Department Collection of Confederate Records, Record Group 109; National Archives Micropublication M268, roll 302.
 W. G. Clark, Company D, 45th Tennessee Infantry, Compiled Military Service Records for Confederate Volunteers, Tennessee; War Compiled Military Service Records for Confederate Volunteers, Tennessee; War March Compiled Military Service Records for Confederate Volunteers, Tennessee; War March Compiled Military Service Records for Confederate Volunteers, Tennessee; War March Compiled Military Service Records for Confederate Volunteers, Tennessee; War March Compiled Military Service Records for Confederate Volunteers, Tennessee; War March Compiled Military Service Records for Confederate Volunteers, Tennessee; War March Compiled Military Service Records for Confederate Volunteers, Tennessee; War March Compiled Military Service Records for Confederate Volunteers, Tennessee; War March Compiled Military Service Records for Confederate Volunteers, Tennessee; War March Compiled Military Service Records for Confederate Volunteers, Tennessee; War March Compiled Military Service Records for Confederate Volunteers, Tennessee; War March Compiled Military Service Records for Confederate Volunteers, Tennessee; War March Compiled Military Service Records for Confederate Volunteers, Tennessee; War March Compiled Military Service Records for Confederate Volunteers, Tennessee; War March Compiled Military Service Records for Confederate Volunteers, Tennessee; War March Compiled Military Service Records for Confederate Volunteers, Tennessee; War March Compiled Military Service Records for Confederate Volunteers, Tennessee; War March Compiled Military Service Records for Confederate Volunteers, Tennessee; War March Compiled Military Service Records for Confederate Volunteers, Tennessee; War March Compiled Military Service Records for Confederate Volunteers, Tennessee;

Department Collection of Confederate Records, Record Group 109; National Archives Micropublication M268, roll 302.

²⁹ R. N. Clark, Company D, 45th Tennessee Infantry, Compiled Military Service Records for Confederate Volunteers, Tennessee.

who was born 1861-1862.³⁰ Moses dutifully reports the circumstances of Newton's and William's deaths, at first "with pleasure," but upon reflection concludes that this is in no wise a pleasure. He mentions several other names. "Sam" was probably Samuel Woodfin, his brother, who had sent him a package.³¹ "Espy" was probably Samuel E. Espy. He appears as Moses Woodfin's neighbor, age 41, in the 1880 Rutherford Census.³² An S. E. Espy served in Company F, 18th Tennessee Infantry.³³ While Samuel Espy's compiled service record has not been consulted, the 18th and 45th Tennessee were both in Brown's Brigade, Army of Tennessee, at Missionary Ridge and he certainly could have been captured there.³⁴

Moses Woodfin was released from Rock Island on 22 May 1865,³⁵ returning to find a Tennessee vastly different from that which he had left. Although he was no doubt proud of his service in the 45th Tennessee, as evidenced by his inclusion of his Civil War service in his biography in Goodspeed, and undoubtedly felt animosity to the restored Union,³⁶ he apparently did not harbor the adamant hatred of the Union that was displayed by some "Good Ole' Rebels," if one can judge by the fact that he appears on the 18 March 1864 Prisoner of War Roll at Rock Island as one who desired to take the oath of allegiance.³⁷ Like many other Tennesseans, he may have had equivocal feelings about secession, as evidenced by the fact that it was the last state to secede from the Union and the first to be readmitted. He no doubt suffered the hardships of defeat after the war, including the fact that Tennessee's farm production and property values would not reach 1860 levels again until 1900.³⁸ Nonetheless, he appears to have become a moderately prosperous yeoman farmer.

Before concluding, a brief observation on dates and times seems appropriate. The Battle of Missionary Ridge was fought on 24-25 November 1863, which, consulting an 1863 calendar, were a Tuesday and Wednesday. Based upon his letter, Moses and Newton were wounded on Wednesday, 25 November, the second day of the battle, at about the time William was killed. Newton lived until Sunday morning, 29 November. Over those four days they lay in the woods abandoned, with other wounded. He then states that he was carried into Chattanooga on Sunday evening where he stayed about a week. His compiled service record cites Confederate records stating that he was wounded in the arm at Missionary Ridge on 24th or 25th November, and that he was "Supposed to have been captured at Missionary Ridge November 25, 1863." It then shows, via Union prisoner of war data, that he was captured on 4 December at Chattanooga, received at Military Prison, Louisville, Kentucky, 11 December, and finally at Rock Island, Illinois on 16th December. He was released from Rock Island a year and a half later, on 22 May, 1865. On the basis of his letter and compiled service record, it is unclear whether he was carried back into Chattanooga by Confederate forces or sympathizers, or that he was in fact captured by Union forces on the evening of Sunday the 29th, but was not entered on prisoner rolls until the following Friday, 4 December.

As Moses Woodfin brings his letter to a close he observes, "you can only imajin my trial and suffering," and consoles his mother-in-law with the observation "your bereavement...is that of only thousands of others." However, this author must conclude with the observation that he cannot imagine the trial and suffering that Emily Clark must have endured when she discovered that she had lost her three sons and the husband of her oldest daughter, "in one fell swoop," at Missionary Ridge, two killed, never to return, and two prisoners of war to return, if ever, at some uncertain time in the future.

33 J. B. Hewett, ed., Roster of Confederate Soldiers 1861-1865, Vol V (Wilmington, N.C.: Broadfoot Publishing, 1996), 355.

³⁴ Compendium of the Confederate Armies: Tennessee, 119, 157.

³⁰ Moses Woodfin household, 1880 U.S. census, Rutherford County, Tennessee, 20th Civil District, sheet 243A, line 41, dwelling 75, family 75 National Archives micropublication T9, roll 1276). The entry for Emma occurs at the top of the subsequent sheet.

Samuel Woodfin household, 1850 U.S. census, population schedule, Bedford County, Tennessee, Civil District no 5, page 123B, line 27, dwelling 45, family 45 National Archives micropublication M432, roll 869). This enumeration includes, among others, Samuel Woodfin 58, Moses Woodfin 29, and Samuel C. Woodfin 10.

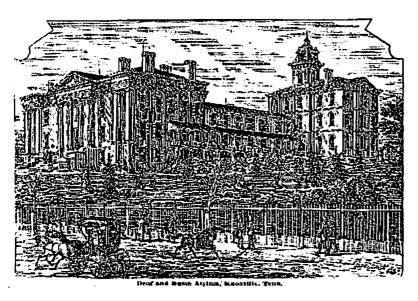
2 Samuel E. Espy household, 1880 U.S. census, Buthodget County, Tongesco, 20th Civil District about 200 decirils.

Samuel E. Espy household, 1880 U.S. census, Rutherford County, Tennessee, 20th Civil District, sheet 243A, line 32, dwelling 72, family 72 National Archives micropublication T9, roll 1276.

Moses Woodfin, Company D, 45th Tennessee Infantry, Compiled Military Service Records for Confederate Volunteers, Tennessee.
 Goodspeed, History of Tennessee, 1188.

Moses Woodfin, Company D, 45th Tennessee Infantry., Compiled Military Service Records for Confederate Volunteers, Tennessee.
 W. C. Mocre, A Path Divided, Tennessee's Civil War Heritage Trail (Nashville: Tennessee Civil War Commission, 2000), 44.

The Defective, Dependent, and Delinquent Schedules of the 1880 Tennessee Census



Cheatham County

Abstracted by
Gale Williams Bamman, CG SM
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The DDD Schedules, as they are often called, were part of the non-population schedules supplementing the 1880 federal census, and were created to help the government decide on funding appropriations for institutions and health programs. On each of the following schedules of the DDDs, the census-takers were instructed to give an account of the location and condition of persons who met certain descriptions.

The following questions were asked on all seven of the DDD schedules:

name of the afflicted person; county and district where enumerated; county of residence; and location in the population schedule.

The remainder of the questions pertained to each particular class of persons:

Insane Inhabitants: form of disease; duration of current attack; age at first attack; if requires restraint; if ever institutionalized and for how long; if additional features, such as epileptic suicidal, or homicidal. Distinction was to be made between persons with deterioration of mental powers, such as dementia and those born defective; the latter were to be classified as Idiots.

Idiots: supposed cause; age of occurrence; size of person's head [at that time considered significant]; if self-supporting or partly so; if ever in training school and for how long; and if additional illnesses present (insane, blind, deaf, paralyzed.)

Deaf-Mutes: supposed cause; age of occurrence; if semi- or totally deaf and/or mute; if ever institutionalized; if also insane, idiotic, or blind. Enumerators were instructed to inquire about deaf-mutes and their residences from physicians in the area and also from schoolteachers.

Blind: if self-supporting; age at occurrence; form; supposed cause; if totally or semi-blind; if ever in an institution for the blind; length of time there; date of discharge; if also insane, idiotic, deaf-mute. Those who could see well enough to read were not to be placed on this schedule.

Homeless Children: whether father and/or mother were deceased; whether abandoned or surrendered; whether born in an institution, or year admitted; whether illegitimate; if separated from his/her mother; if ever arrested,

and why; if origins were "respectable;" whether removed from criminal surroundings; if blind, deaf-mute or idiotic.

Inhabitants in Prisons: place of imprisonment; whether awaiting trial, serving a term, or serving out a fine; if awaiting execution, or transfer to higher prison, or if held as a witness; if imprisoned for debt, or for insanity; date incarcerated; alleged offense; fine; number of days in jail or workhouse, or years in penitentiary; whether at hard labor, and if so, whether contracted out. Enumerators were also to ask these questions of wardens or keepers of any prison, "station-house, or lock-up in their respective districts."

Paupers and Indigent: if supported wholly or partly at cost of city, county, or state; or at cost of institution; whether able-bodied; whether habitually intemperate; if epileptic; if ever convicted of a crime; if disabled; if born in the institution, or date of admission; whether others of the family were also in that establishment; if also blind, deaf and dumb, insane, idiotic. Paupers living in individual homes who were supported partly or fully at county cost were referred to by the Census Office, as "outdoor paupers," to distinguish them from paupers in institutions.

For a more-detailed discussion of the DDD schedules and this abstracting project, please see Part I, in the Summer 2005 issue of this journal (Volume XIX, no.1), pp. 32-40.

Note: For some entries, data from the population census schedule has been added. That additional data does not appear on the DDD Schedules themselves.

The interpretation of these records may contain deciphering errors. If, upon viewing the microfilm, any mistakes are noted, please contact the compiler with that information.

Change to abstracts: From this point on, the "residence when at home" will not be not abstracted unless it differs from the place enumerated.

Cheatham County

Turner, Eunice: Idiots Schedule; enumerated Cheatham Co.; not self-supporting; afflicted at birth; large head; never an inmate of an institution. [s.d.3,e.d.33;see Pop.Sch.p.12,ln.24]

Dunn, Margaret: Deaf-Mutes Schedule; enumerated Cheatham Co.; not self-supporting; afflicted at birth, never an inmate of an institution. [s.d.3,e.d.33;see Pop.Sch.p.9,ln.31]

Stokes, Lucy: Blind Schedule; enumerated Cheatham Co.; partly self-supporting; afflicted at birth; semiblind; never an inmate of an institution. [s.d.3,e.d.33;see Pop.Sch.p.3,ln.6]

Stokes, Mary: [sic] Blind Schedule; enumerated Cheatham Co. [s.d.3,e.d.33;see Pop.Sch.p.4,ln.49]

Note by enumerator: "I am sorry to have overlooked this matter, but I will now correct it.

There is a mistake in the case of Mary Stokes. She is not blind at all. Respectfully, J. H. Judd, Emr."

Pop.Sch.: age 51, widow, head of household, with 2 daughters and 3 grandchildren in home. A tick mark in the "Blind" column is on the line where Mary's name appears.

Lewis, Edward: Idiots Schedule; enumerated Cheatham Co.; not self-supporting; afflicted at birth; small head. [s.d.3,e.d.33;see Pop.Sch.p.3,ln.19]

Lewis, Henry: Idiots Schedule; enumerated Cheatham Co.; partly self-supporting; afflicted at birth; small head. [s.d.3,e.d.33;see Pop.Sch.p.3,ln.20]

Lewis, Lucinda: Idiots Schedule; enumerated Cheatham Co.; not self-supporting; afflicted at birth; small head. [s.d.3,e.d.33;see Pop.Sch.p.3,ln.21] Lewis, Joseph: Idiots Schedule; enumerated Cheatham Co.; not self-supporting; afflicted at birth; small head. [s.d.3,e.d.33;see Pop.Sch.p.3,ln.22]

Lewis, John: Idiots Schedule; enumerated Cheatham Co.; not self-supporting; afflicted at birth; small head. [s.d.3,e.d.33;see Pop.Sch.p.3,ln.23]

Pop.Sch.: John, 40, son, single; Joseph, 42, son, single; Lucinda, 44, daughter, single; Henry 46, son, single; Edward 48, son, single—all are marked on population schedule as Idiotic, and all born in Tennessee; in household of William Lewis, age 89, farmer, b "Ocean," father b Germany, mother b Germany; wife is Ilsabela[?] J. Lewis, 37, wife, b North Carolina, parents b Tennessee.

Cox, Mary: Idiots Schedule; enumerated Cheatham Co.; not self-supporting; afflicted at birth; small head. [s.d.3,e.d.33;see Pop.Sch.p.4,ln.50]

Shelton, Samuel: Idiots Schedule; enumerated Cheatham Co.; not self-supporting; afflicted at birth; small head. [s.d.3,e.d.33;see Pop.Sch.p.10,ln.30]

Garland, Orville: Deaf-Mutes Schedule; enumerated Cheatham Co.; self-supporting; afflicted at birth. [s.e.3,e.d.33;see Pop.Sch.p.11,ln.30]

Garland, Delila: Blind Schedule; enumerated Cheatham Co.; partly self-supporting; afflicted at age 18. [s.d.3,e.d.33;see Pop.Sch.p.6,ln.39]

Dunn, Mary: Blind Schedule; enumerated Cheatham Co.; not self-supporting; afflicted at age 4; Scrofula; semi-blind. [s.d.3,e.d.33;see Pop.Sch.p.7,ln.43]

Stokes, Lucy: Blind Schedule; enumerated Cheatham Co.; partly self-supporting; afflicted at birth; semiblind; never an inmate of an institution. [s.d.3,e.d.33;see Pop.Sch.p.3,ln.6]

Ferby, George: Prisoners Schedule; enumerated Cheatham Co.; county jail; state prisoner awaiting trial; Larceny; 3 years in penitentiary. [s.d.3,e.d.33;see Pop.Sch.p.12,ln.5]

Pop.Sch.: age 25, single, son, Laborer, in household of Harriett Ferby, age 45, widow and her children.

Note by gwb: This entry in the Prisoners Schedule refers to "prisoners during the year ending May 31, 1880." The date the enumerator visited the Ferby household was listed by him as 8 June 1880.

Oliver, William: Deaf-Mutes Schedule; enumerated Cheatham Co.; self-supporting; afflicted at birth; semimute. [s.d.3,e.d.32;see Pop.Sch.p.12,ln.47]

Pop. Sch.: age 47, head of household.

Oliver, Bettie: Deaf-Mutes Schedule; enumerated Cheatham Co.; self-supporting; afflicted at birth; semimute. [s.d.3,e.d.32;see Pop.Sch.p.12,ln.48]

Note by enumerator: [under question relating to ever being an inmate of an institution:] "I have no information on this subject."

Note by gwb: The enumerator's remark took up the space of the line for William as well as the line for Bettie.

Pop.Sch.: age 35, wife, in household of William Oliver.

Pardue, Nellie: Insane Schedule; enumerated Cheatham Co.; epilepsy; age at first attack, 18; not confined, not restrained, never an inmate of an institution. [s.d.3,e.d.31;see Pop.Sch.p.6,ln.49]

Pop.Sch.: age 30, wife; epilepsy; in household of D. C. Pardue, age 43, Farmer, and children.

Sanders, Claiborn: Insane Schedule; enumerated Cheatham Co.; epilepsy; age at first attack, 43; not confined, not restrained, never an inmate of an institution. [s.d.3, e.d.31;see Pop.Sch.p.9,ln.25]

Pop.Sch.: age 56, married, head of household, paralysis, insane.

Jones, Elizabeth: Idiots Schedule; enumerated Cheatham Co.; not self-supporting; afflicted at age 7; fever; never an inmate of an institution; epileptic. [s.d.3,e.d.31;see Pop.Sch.p.5,ln.24]

Major, Wm. H.: Idiots Schedule; enumerated Cheatham Co.; not self-supporting; afflicted at birth; natural head; never an inmate of an institution; epileptic; paralyzed right side. [s.d.3,e.d.31;see Pop.Sch.p.7,ln.10]

Nicholson, Wm.: Idiots Schedule; enumerated Cheatham Co.; not self-supporting; afflicted at birth; "His brother says he got a fright from a snake"; small head; never an inmate of an institution; paralyzed right side.

Also: Deaf-Mutes Schedule. [s.d.3,e.d.31;see Pop.Sch.p.9,ln.1]

Pace, Wm.: Idiots Schedule; enumerated Cheatham Co.; afflicted at age 3; "His father says when he was 3 years old he had a very sore head, and he took him to his physician who made him a salve to rub on his head which healed it up and, forthwith he began to show symptoms of idiocy"; never an inmate of an institution. [s.d.3,e.d.31;see Pop.Sch.p.10,ln.17]

Jones, Sarah: Idiots Schedule; enumerated Cheatham Co.; afflicted at age 7; Scarlet Fever; never an inmate of an institution. [s.d.3,e.d.31;see Pop.Sch.p.9,ln.30]

Major, Tennessee: Blind Schedule; enumerated Cheatham Co.; not self-supporting; afflicted at age 14; Scrofula; never an inmate of an institution. [s.d.3,e.d.31;see Pop.Sch.p.7,ln.8]

Walker, J. M.: Idiots Schedule; enumerated Cheatham Co.; partly self-supporting; afflicted at birth; natural head. [s.d.3,e.d.30;see Pop.Sch.p.4,ln.21]

Darden, Charles: Idiots Schedule; enumerated Cheatham Co.; self-supporting; afflicted at age 3; "fall on his head"; large and long head. [s.d.3,e.d.30;see Pop.Sch.p.14,ln.24]

Stack, E: Blind Schedule; enumerated Cheatham Co.; not self-supporting; afflicted at age 68; Scrofula; never an inmate of an institution. [s.d.3,e.d.30;see Pop.Sch.p.12,ln.49]

Pop.Sch.: p.8, line 49. Stack, E.; female, age 82, mother, old age, blind; in the household of D. W. Stack 45 and wife and sister, C. Stack, 48, single, insane.

Note by gwb: Although the enumerator placed a tick mark in the "Insane" column on the census for the daughter, C. Stack, he did not fill out the Insane Schedule for her.

Hewitt, W.: Blind Schedule; enumerated Cheatham Co.; self-supporting; afflicted at age 46; never an inmate of an institution. [s.d.3,e.d.30;see Pop.Sch.p.18,ln.34]

Ramer, Milberry: Insane Schedule; enumerated Cheatham Co., 2nd C.D.; never an inmate of an institution.

Also: Idiots Schedule.[s.d.3,e.d.29;see Pop.Sch.p.8,ln.36]

Pop. Sch.: age 21, daughter, single, lunatic, in household of Geo. W. Ramer, age 51.

Note by gwb: The tick mark by Milberry Ramer's name on the population schedule is in the Insane column.

Walker, Jane: Insane Schedule; enumerated Cheatham Co., 2nd C.D. [s.d.3,e.d.29;see Pop.Sch.p.2,ln.3]

Pop. Sch.: age 60, widowed, sister-in-law, in household of M. C. Walker 51.

Chambless, Delia: Deaf-Mutes Schedule; enumerated Cheatham Co.; self-supporting; afflicted at birth; never an inmate of an institution. [s.d.3,e.d.29;see Pop.Sch.p.7,ln.48]

Nye, Fannie W.: Deaf-Mutes Schedule; enumerated Cheatham Co., 2nd C.D.; self-supporting; afflicted at 2 8/12; Scarlet Fever; semi-mute, semi-deaf; inmate of Knoxville Deaf and Dumb School, 4 5/12 years.

Note by enumerator: "Not enumerated by me as she was at Knoxville Deaf and Dumb School 1st June and probably enumerated there. She at the age of 2 8/12 years lost her hearing entirely. Cannot hear loud sounds." [s.d.3,e.d.29;see Pop.Sch.p._,ln._{no page or line number given}] Note by gwb: Only one household of Nyes lived in E.D. 29. They were at p.36, lns.39—41. Nye, D. W. 65, son—in-law, widow, Enumerator; Nye, Shadrach 28, grandson, single, law student; Nye, John H., 22, grandson, single, farm manager—all in household of Kirkpatrick, Mildred, 77, female, widow, farmer. [No other Nyes lived in all of Cheathams County, according to Ancestry.com index]

Ramer, Jeremiah: Deaf-Mutes Schedule; enumerated Cheatham Co., 2nd C.D.; afflicted at birth; semi-mute, semi-deaf; never an inmate of an institution. [s.d.3,e.d.29;see Pop.Sch.p.9,ln.30]

Ramer, Edward: Deaf-Mutes Schedule; enumerated Cheatham Co., 2nd C.D.; afflicted at birth; semi-mute, semi-deaf. [s.d.3,e.d.29;see Pop.Sch.p.9,ln.32]

Mayo, George: Blind Schedule; enumerated Cheatham Co., 2nd C.D.; self-supporting; afflicted at age 40; hurt by fall of a tree; never an inmate of an institution. [s.d.3,e.d.29;see Pop.Sch.p.7,ln.30]

Morris, Geo. W.: Blind Schedule; enumerated Cheatham Co., 2nd C.D.; semi-blind. [s.d.3,e.d.29;see Pop.Sch.p.13,ln.32]

Pop.Sch.: Geo. W. Morris 23, brother, partially blind, in household of brother Thomas Morris, age 20.

Henderson, James W.: Blind Schedule; enumerated Cheatham Co., 2nd C.D..

Also: Idiots Schedule. [s.d.3,e.d.29;see Pop.Sch.p.16,ln.48]

McQuary, J. C.: Idiots Schedule; enumerated Cheatham Co.; afflicted at 1/12; Spinal Fever; small head. [s.d.3,e.d.28;see Pop.Sch.p.2, ln.14]

Jones, Emily: Deaf-Mutes Schedule; enumerated Cheatham Co.; self-supporting; afflicted at birth. [s.d.3,e.d.28;see Pop.Sch.p.2,ln.20]

Farmer, Martha: Deaf-Mutes Schedule; enumerated Cheatham Co.; self-supporting; afflicted at birth. [s.d.3,e.d.28;see Pop.Sch.p.2,ln.22]

Farmer, J. W.: Deaf-Mutes Schedule; enumerated Cheatham Co.; self-supporting; afflicted at birth. [s.d.e,e.d.28;see Pop.Sch.p.6,ln.36]

Demombra[?], Wilson: Blind Schedule; enumerated Cheatham Co.; self-supporting; afflicted at age 81. [s.d.3,e.d.28;see Pop.Sch.p.9,ln.6]

Goodrich, Hannah: Blind Schedule; enumerated Cheatham Co. [s.d.3,e.d.28;see Pop.Sch.p.8,ln.7]

Jones, Armes[?]: Prisoners Schedule; enumerated Cheatham Co.; county jail; residence Davidson Co.; awaiting trial; incarcerated 22 May 187_[digit illegible]; Stabbing. [s.d.3,e.d.28;see Pop.Sch.p.15,In.21]

Pop.Sch.: age 21, married.

Harper, H: Pauper and Indigent Schedule; enumerated Cheatham Co.; Old Age; admitted May 27, [year blank]. [s.d.3,e.d.28;see Pop.Sch.p.8,ln.33]

Pop.Sch.: A.[?] Harper, age 81, widowed, boarder, in household of W. Y. Bright, age 42.

Cheatham County Concluded. Next Issue: Clay County

Low Bidder Gets Orphans

Mary and Juleta Campbell, Grundy County 1856

Know all men by these presents that we, Hamilton Thompson and John Thompson, all of the County of Grundy and State of Tennessee, are held and firmly bound ... in the penal sum of \$50 the payment of which well and truly to be made unto the said State of Tennessee we bind ourselves ... this 7th of July 1856.

The condition of the above obligation is such that whereas the above bounden Hamilton Thompson on the 7th day of July 1856 bid off Mary Adline and Juleta Virginia Campbell he being the lowest bidder for to keep said children till the first Monday in Sept. 1856 for seven dollars each. Now if the said Hamilton Thompson aforesaid shall keep Mary Adline and Juleta Virginia Campbell untill the aforesaid time and give them sufficient diet and clothing to keep them comfortable and administer to their necessities in sickness and in health during the aforesaid time, then this obligation to be void....

Examined and received this 7th day of July 1856

[signed] S. H. Thompson ((seal))

John Thompson ((seal))

[signed] Philip Roberts, Judge

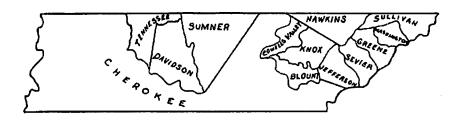
From: Grundy County Tennessee Loose Court Papers, Box 7.
Tennessee State Library & Archives, Grundy County Records, microfilm reel #136.

Law and Order in the Territory of the United States South of the River Ohio

Part II of a Series (Part I appeared in Winter 2006)

By Patricia Gilliam Daley (ducstop@aol.com)

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Tennessee in 1795
Known as Territory South of the River Ohio.
(Courtesy of Sharon McCormack, McMinn County Rootsweb site.)

Early Courts Established

The following is an abstract of ordinances passed by the Territorial Governor, William Blount, either alone or with the judges of the Territory, concerning the early courts in the Territory of the United States South of the River Ohio:

[v] 11 Jun 1792. Courts of Pleas and Quarter Sessions for Knox County meet the third Mondays of January, April, July and October at Knoxville. Courts for Jefferson County meet the fourth Mondays of same months at house of Jeremiah Matthews. Court terms may be continued for up to six days.

The Courts of Pleas and Quarter Sessions were the middle tier of courts; above the single J.P., but beneath the Superior Courts. The Courts of Pleas and Quarter Sessions were manned by the individual J.P.s, sitting together.

- [vi] 20 Nov 1792. First court in each county each year to levy tax on land and polls for repairing or building courthouses, prisons, stocks, paying jurors. Tax collected and accounted for by officers as required by laws of North Carolina.
- 18 Dec 1792. Apportionment of jurors by county to the Superior Court in Washington District: Washington, 10; Sullivan, 6; Greene, Hawkins, Jefferson, Knox, 8 each. To be appointed by county courts.

It is likely that these jurors were grand jurors, whose purpose was to investigate crime, to determine whether criminal charges should be brought, and to return indictments for those cases which were deemed worthy of trial, as opposed to petit jurors, who tried cases and returned verdicts in civil and criminal cases. The grand jury played a much more important role than today.

13 Mar 1793. Jefferson and Knox Counties to constitute the judicial district of Hamilton. Two

Superior Courts of law and equity at Knoxville meet on second Mondays in April and October. Court terms may be continued for up to ten days. Knox and Jefferson Counties to appoint eighteen jurors each to the Superior Court of Hamilton District. Cases on the Washington District dockets to be transferred to Hamilton District when both plaintiffs and defendants lived in Hamilton.

[vii] 16 Feb 1793. After 1 April 1793, Washington District Superior Court terms to begin on third Mondays in March and September. Courts of Pleas and Quarter Sessions in Knox County to meet first Mondays in February, May, August and November; in Jefferson County on the second Mondays of said months; and in Washington County, on the fourth Mondays of said months. In Sullivan County the Courts of Pleas and Quarter Sessions to meet on the first Mondays of March, June, September, and December, and in Hawkins County on the second Mondays of said months.

13 Mar 1793. Persons holding monies from fines and forfeitures by public offenders, taxes on lawsuits, and fees for registration of land and for marriage and ordinary licenses to account and pay to Daniel Smith, Secretary of Treasury, on or before 1 June, each year. [viii] Clerks of courts and county registers [of deeds] to give \$500.00 bond with security to the Governor for their proper collection and payment of monies and taxes collected.

21 Mar 1793. Courts of Pleas and Quarter Sessions for Jefferson County to be held on lands of Francis Dean as Commissioners shall select.

The following is an exact transcription of the first statute establishing the courts in the Territory of the United States South of the River Ohio. Comments are indicated by {brackets}.

[n.p.] ACTS

PASSED AT THE FIRST SESSION OF THE TERRITORIAL ASSEMBLY,
BEGAN AND HELD AT KNOXVILLE ON MONDAY THE TWENTY FIFTH DAY OF AUGUST, ONE
THOUSAND SEVEN HUNDRED AND NINETY FOUR.

CHAPTER I.

An ACT to amend "an act establishing Courts of Law, and for regulating proceedings therein" -- [Passed September 29, 1794]

{It is beyond the scope of this article to trace the evolution of law regulating the North Carolina courts, which was in effect in the Southwest Territory prior to the passing of the Territorial statute transcribed below. The statute below is quite comprehensive. Readers who wish to trace the North Carolina law may consult Walter Clark's compilation of the North Carolina law which was cited in the Winter 2006 installment of this article or Edward Scott's compilation of Tennessee and North Carolina law (published 1821), also cited in the Winter 2006 installment.}

Section 1. BE it enacted by the Governor Legislative Council and House of Representatives of the Territory the United States of America south of the river Ohio. That from and after the passing of this act this Territory shall remain divided into three districts as heretofore, viz the district of Washington, Hamilton, and Mero in each of which a court for the trial of causes civil and criminal shall continue to be held at the times and places already by law appointed, and shall be distinguished and known as heretofore by the name of the Superior Court of Law, in the district where the same shall be held; and the said court shall consist, as heretofore, of three judges, who shall have been appointed, commissioned and qualified as directed by the acts of Congress, passed under the federal constitution, and the ordinance of the old Congress, of the thirteenth of July, one thousand seven hundred and eighty-seven, who shall have cognizance and legal jurisdiction of all pleas, real, personal, and mixt, and also of all suits and demands relative to legacies, filial portions,

and estates of intestates, all pleas of the government, and criminal matters of what nature, degree, nor denomination soever, whether brought before them by original or mesne process, or by certiorari, writ of error, appeal from any inferior court, or by any other ways or means whatsoever; and they are hereby declared to continue to have as heretofore, full power and authority to give judgment and to award execution and all other necessary process thereupon; and to have, use, exercise, and enjoy the same powers and authorities, rights, privileges, and pre eminences as were had, used, exercised and enjoyed by the said judges heretofore, except where it is otherwise directed by this or some other act, or where such authorities, rights, privileges or pre eminences, or any of them, may be inconsistent with, or repugnant to, the present form of government. And in case of the death or absence of any of the said judges, it shall and may be lawful for one or more of the same judges, by himself or themselves, to hold any of the said courts, and to take cognizance, and give judgment, and award execution in the same manner as all the said judges might have done, had they been present.

{The Legislative Council was the upper body of the Territorial General Assembly.}

{"Jurisdiction" is the power of a court to decide a case; courts have jurisdiction over certain geographical areas, over a certain amount in controversy, and over certain subject matter. Courts are said to have jurisdiction over people (in personam) and property (in rem). In personam jurisdiction is necessary for a court to have the power to give and enforce judgments against a person. In personam jurisdiction requires either that the defendant "be found" and served with process in the geographical area in which the court has jurisdiction or that he be notified by publication of the lawsuit against him. If a court does not have in personam jurisdiction over a party, it may still have in rem jurisdiction to act against his property if the property is located within the court's geographical area. It is clear that this section of the law gives the Superior Court of each District extremely broad jurisdiction over virtually all kinds of cases and over both original and appellate matters.}

{A "legacy" is a bequest of personal property devised in a will. "Filial portions" are children's shares in a decedent's estate. "Original or mesne process," "certiorari," "writ of error," and "appeal" are procedures by which matters were brought before a court. Original process begins a judicial proceeding and commands the defendant to appear and answer. By contrast, mesne process was issued during a judicial proceeding. Certiorari, writ of error, and appeal are procedures by which an appellate court reviews judgments of inferior courts. When a court "gives judgment," it pronounces its final decision in the case before it. "Execution" is the process by which the judgment is enforced, such as by levying on the loser's assets.}

[4] Sec. 2. And for the benefit of suitors, and to prevent irregularities in making up records, *Be it enacted*. That there shall be a clerk to each of the said courts, of skill and probity, who, if they have not already, shall each of them give bond, with security payable to the governor and his successors in office, of ten thousand dollars, for the safe keeping of the records, and the faithful discharge of the duties of his office, which said bond shall be lodged in the Secretary's office, and may be put in suit on the assignment of the Governor by the party or parties injured, in his or their own name; and shall not become void upon the first recovery, or if judgment be given against the plaintiff; but may from time to time be put in suit by action of debt, until the whole penalty be recovered.

{The security bond was a predecessor of today's malpractice insurance policy. Its purpose was to compensate parties who were injured by the clerk's willful or negligent acts. Even after it had been used in part to reimburse one injured party, the bond did not become void. Rather, the remainder was available for anyone injured later. A clerk could injure a person, for example, by failing to enter a judgment on the court's records. An unsatisfied judgment would operate as a lien against property owned by a losing party, but if the clerk had not entered the judgment, a prospective purchaser of the property might not know of the lien. If the purchaser were truly a bona fide purchaser ("BFP") –without actual notice and for full value—he would acquire title free of the lien, to the detriment of the judgment holder.}

Sec. 3. And be it further enacted, That in case of the death, resignation or removal from office of either of the clerks of the said courts, that his successor in office shall take the following oath, viz. — "I A.B. do swear that by myself or any other person, I neither have given, nor will give to any person or persons whatsoever, any gratuity, gift, fee, or reward, in consideration of my appointment to the office of clerk of the _____ nor have I sold, nor offered to sell, nor will I sell, or offer to sell my interest in the said office. I also, solemnly swear, that I do not directly or indirectly hold any other lucrative office in this Territory. And I do further swear, that I will execute the office of clerk of the _____ for the ____ without prejudice, favor, affection or partiality, to the best of my skill and ability. SO HELP ME GOD" — And if it shall be discovered that any of the said clerks shall have violated his oath, or willingly, wittingly or corruptly have done any thing contrary to the true intent and meaning of the said oath, such clerk shall be deemed, upon conviction, guilty of misbehavior in office, and shall forever be incapable of holding any office, civil or military.

{Judges already in office had taken an oath under North Carolina law.}

Sec. 4. And be it enacted, That no person coming into this Territory from any state, or from any foreign country, with an intention to practice the law as an attorney, shall be admitted as such, unless he shall have previously resided one year in this Territory; and all attornies shall in open court, before a judge or judges thereof, take the following oath: — "I A.B. do swear, that I will truly and honestly demean myself in the practice of an attorney according to the best of my knowledge and ability. SO HELP ME GOD."

Sec. 5. And be it enacted. That all real actions, actions of ejectment, trespass, Quare clausum fregit, suits on penal statutes, and pleas of the government shall be commenced in the court of the district wherein the cause of action shall arise, or the offence committed, and not in any other district; and all actions of debt, other than on penal statutes, all actions of detinue and repleven, actions of account render, assault and battery, and for the unlawful taking of goods, all actions upon the case, and suits for legacies, and for distributive shares of intestates estates, shall be brought to the court of the district where both parties reside; and where the parties live in different districts, shall be brought to the court of either district, at the option of the plaintiff; and where the plaintiff shall reside beyond seas, or in a different state or government, shall be brought to the court of the district where the defendant resides; and where any action or suit shall be brought otherwise than is herein directed, such action or suit may be abated on the plea of the defendant.

{The purpose of Section 5 is to establish venue, the proper location, for a lawsuit. Venue is the geographical area in which a court had sufficient *in personam* and *in rem* jurisdiction to allow it to fairly hear and determine a case. Here, the proper location in certain enumerated kinds of cases is the county where the cause of action arose or where the offense was committed. In other particular causes of action, the court in the county where both parties resided or in which either of them resided, at the plaintiff's election, was the proper location. Cases in which the plaintiff was a resident of another state or a foreign country were to be brought in the district where the defendant resided. A case which was not in compliance with this section would be dismissed if the defendant so moved.}

{Section 5 contains a number of legal terms which may be unfamiliar to the genealogist. Many of these terms represent actions at common law that no longer exist today, at least not in their common law form or terminology. At common law, fitting the plaintiff's case into the proper action was extremely important; a plaintiff's case could be dismissed if it were improperly pleaded. "Real actions" related to real property. "Ejectment" was a special form of trespass, also termed "trespass quare clausem fregit," and was used to regain possession of real property that was being wrongfully held by the defendant. "Trespass" was a voluntary injury to a person or property that was committed intentionally and directly, causing immediate injury, including violent acts against the plaintiff or his

property. "Debt" was the proper form of action to recover under a simple agreement when a liquidated amount of money was involved or for judgments or obligations of record. By contrast with covenant, another common law form of action, debt required a demand for liquidated damages (amount fixed by agreement or statute), whereas covenant lay for unliquidated damages (amount decided by a judge or jury). "Detinue" was the action used to recover property wrongfully taken from the plaintiff; detinue lay for the return of the property itself rather than its monetary value. "Replevin" was similar to detinue in that the plaintiff's property had been taken wrongfully. However, it was distinguished from detinue in that the plaintiff did not have to wait until the culmination of the lawsuit to have possession of the property-the court could award it immediately, subject to certain conditions. Also in contrast to detinue, replevin allowed the plaintiff to recover the value of the property if the original property were no longer available. "Account" was an action in which a fiduciary had received goods on behalf of his beneficiary but had not accounted for them or applied them for the beneficiary's use. The action was used to compel an accounting. Fiduciaries against whom account would lie included guardians, executors, administrators, and trustees. "Action upon the case" can be somewhat confusing because it is often referred to by more than one name; in addition to "action on the case," it might be called "trespass on the case" or simply "case." It was used to address a wrongful act of the defendant, without immediate force or violence and of indirect consequence, causing harm to person or property. By contrast, trespass was a voluntary act and of immediate consequence to the plaintiff or his property. Trespass on the case was the predecessor of modern negligence actions. In a few short decades after the drafting of this statute, case came to be used to address workplace injuries after the rise of factories as well as accidents to workers and passengers following the rise of the locomotive.}

[5] Sec. 6. And be it enacted, That no suit shall be originally commenced in any of the said courts, for any debt or demand of less value than one hundred pounds, where the plaintiff and defendant live in the same district, or for less than fifty pounds where the parties live in different districts: And if any suit shall be commenced contrary to the true intent and meaning hereof, or if any person shall demand a greater sum than is due on purpose to evade this act, in either case the plaintiff shall be non suited and pay costs – Provided always, that if the plaintiff or any other person for him, will make an affidavit (to be filed in the court) that the sum for which his suit shall be brought is really due; but that for want of proof, or that the time limited for the recovery of any article bar a recovery, then, and in that case, such plaintiff shall have a verdict and judgment for what appears to be legally proved, any thing before mentioned to the contrary notwithstanding: And provided also that nothing herein contained shall extend or be construed to extend to suits on bonds, penal bills, or any other action of debt grounded on a penalty, where the balance due on such bond or penal bill, or other action of debt, is of less value than the sums herein before mentioned, to be limited for bringing suits in the said courts.

{The purpose of Section 6 is to establish the minimum amount in controversy required to give the Superior Court jurisdiction.}

- Sec. 7. And be it further enacted, That if any plaintiff, or other person, shall hereafter swear falsely, in order to obtain a recovery in any of the said courts, he shall upon conviction thereof, be adjudged guilty of perjury, and suffer as in cases of willful and corrupt perjury.
- Sec. 8. And be it enacted, That none of the said courts, nor any of the proceedings therein depending, shall be discontinued by reason of the death of any of the said judges; or by their not attending at any term; but in such cases, all pleas, causes, matters, and things therein depending, shall stand, continue, and remain in the same condition in which they shall then be, to the next succeeding term.

{In a time where travel was unpredictable and death was often sudden, the legislature felt obligated to clearly and specifically protect the rights of litigants.}

To Be Continued



Full Name and Place Index MTGS Journal Volume XIX, 2005-2006

Indexed by Juanita Patton

Introduction to the Index

We believe that every genealogical work requires a complete index, and to that end provide an every-name index in the fourth and final issue of each volume of the Journal. This index includes names, places and subjects. Pagination of Volume XIX began with page 1 in the Summer 2005 issue and continued through this issue. The following notes prepared during the indexing process will be helpful to the reader.

- Individuals identified in the text as "slaves" are indexed under that heading.
- Names beginning with M', Mc, and Mac appear as if all started with Mac.
- If the maiden name of a female is known, she is listed under both her married and maiden names.
- Rivers and streams are indexed under Waterways and cemeteries are grouped under Cemetery.
- Military units are indexed under that heading.
- (n) indicates that the entry appears in the notes on the page cited.
- (auth) indicates that the person is the author of a Journal article
- ? indicates the entry appears in the boxed section of the page listed
- Church denominations have been abbreviated: Prim Bap for Primitive Baptist; Cum Pres for Cumberland Presbyterian; Epis for Episcopal; UMC & Meth for United Methodist or Methodist; ME South for Methodist Episcopal Church South.

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