

“COLOR OF TITLE”

*Unpatented Land and the Doctrine of Possession in Colonial North Carolina:
A Case Study from the Walnut Creek Patent Study, Edgecombe County*

Marc Anderson

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I. INTRODUCTION

The phrase “color of title” describes one of the more quietly consequential mechanisms in American property law: the principle that a deed — even one conveying land whose underlying title is defective or wholly absent — may confer upon its recipient a cognizable interest in that land, provided the recipient possesses it for the statutory period without interruption by an adverse claimant.¹ In North Carolina, this doctrine was codified early, rooted in colonial Assembly enactments and subsequently formalized in what is now General Statute 1-38, which provides that seven years’ possession under color of title ripens into good title against the world.²

This paper examines a specific instance in which that mechanism appears to have operated quietly, across multiple generations and deed transactions, without any of the parties involved — seller, buyer, attorney, or court — pausing to ask the foundational question: upon what original patent did this land rest? The case emerges from the author’s research into 18th-century colonial land patents along Tyancokey Swamp and Walnut Creek in Edgecombe County, North Carolina — a study conducted under what the author calls the Art and Mystery (A&M) Method, which requires that every placed polygon on the patent map be defensible from primary sources alone.³ It was the rigorous application of that standard that exposed the problem.

¹North Carolina General Statutes § 1-38 (Seven years’ possession under color of title). The statute provides that seven years’ possession under color of title bars all claims by the record owner. Its roots lie in colonial Assembly enactments predating statehood. *See also* “Granville Grant and District,” NCPedia, <https://www.ncpedia.org/granville-grant-and-district> (accessed June 2026).

²N.C. Gen. Stat. § 1-38(a) (2023): “Every action for recovery of real property or for the recovery of the possession thereof shall be brought within seven years after the right to bring the same shall have first accrued to the plaintiff or grantor.” Color of title requires only a written instrument, not a valid one.

³Anderson, Marc. *Walnut Creek Colonial Patent Study: Art & Mystery (A&M) Method*. Edgecombe County, North Carolina. Unpublished primary-source research, 2026. The A&M Method requires that every polygon placed on the patent map be defensible from primary sources alone; the map is treated as a proof document, not an illustration.

II. THE LEGAL FRAMEWORK: COLOR OF TITLE IN NORTH CAROLINA

North Carolina’s color of title doctrine has deep roots. Under English common law, long possession could bar an owner’s right of entry, a principle ultimately codified in the English Statute of Limitations. In the Carolina colonies, the problem was acute: land records were incomplete, surveyors were unreliable, and the boundary between what was patented and what was occupied was frequently unclear.

The NC Assembly addressed this directly. As early as the proprietary period, legislative acts declared existing grants valid and treated claims based on seven years’ uncontested occupancy as legally cognizable.⁴ The principle was that the stability of land titles — and the social order that depended on them — required that long possession be treated as curing defects that more careful conveyancing would have prevented.

This gave rise to the specific doctrine of color of title: where a person receives a deed that purports to convey land, and possesses that land for seven years in reliance on the deed, the original defect in the chain is cured. The deed provides the color; possession provides the substance. Neither alone is sufficient; together they produce valid title.⁵

Critically, the doctrine does not require that the parties to the deed know of the defect. An honest mistake — a seller genuinely believing he holds title he does not actually have — suffices equally with fraud. The law concerns itself with the result: seven years of uncontested possession under an instrument that purports to convey title.

III. THE GRANVILLE DISTRICT CONTEXT

⁴“By action of the Assembly and the agreement of the governor in council, all existing grants were declared valid, and all claims based on seven years’ occupancy of the land were considered legal.” *North Carolina Land Grants Before 1800*, State Library of North Carolina LibGuide, <https://statelibrary.ncdcr.libguides.com/nclandrecords1800> (accessed June 2026).

⁵See “The Doctrine of Color of Title in North Carolina,” *North Carolina Central Law Review*, <https://archives.law.nccu.edu/cgi/viewcontent.cgi?article=1396&context=ncclr> (accessed June 2026). The article traces the doctrine from colonial Assembly acts through its modern codification, emphasizing that a defective deed — including one conveying land to which the grantor lacked good title — constitutes sufficient color if it is a written instrument purporting to pass title.

The land in question was situated in what was, at the time of the original patent in 1762, the Granville District — the upper half of colonial North Carolina reserved to John Carteret, second Earl Granville, after the other Lords Proprietors surrendered their interests to the Crown in 1729.⁶ The District was, from a land records perspective, a disaster. Granville’s land office operated on an irregular schedule. His agents were documented as keeping poor records, charging exorbitant fees, and in some instances pocketing payments without issuing grants.⁷ Squatters occupied substantial portions of the District’s territory without any legal title, farming land they had no patent to, and in many cases passing it to their children and grandchildren through informal conveyances before anyone thought to regularize the title.

The situation worsened dramatically at the outbreak of the Revolution. When Granville’s agents departed in 1776, much of the District’s grant record was dispersed or lost. The State of North Carolina thereafter exercised jurisdiction over former Granville lands, issuing new grants — but the records of prior Granville grants were far from complete, and many tracts had changed hands multiple times through deed without ever having been formally entered in a surviving record.

This was the environment into which the William Haywood family entered their 700-acre patent in 1762.

IV. THE CHAIN OF TITLE: THE VANN 187.5 ACRES

The recorded chain of title for the Vann tract proceeds as follows.

⁶“Granville District,” Wikipedia, https://en.wikipedia.org/wiki/Granville_District (accessed June 2026). The District comprised the upper half of present-day North Carolina and was reserved to John Carteret, second Earl Granville, when the other Lords Proprietors surrendered their interests to the Crown in 1729.

⁷“Granville Grant and District,” NCpedia; *see also* “Governing the Piedmont,” NCpedia, <https://www.ncpedia.org/anchor/governing-piedmont> (accessed June 2026): “Squatters occupied much of the District’s territory, living on land and farming it without clear legal title.” The Granville land office in Edenton operated on an irregular schedule; agents were documented as overcharging settlers and keeping inadequate records.

In 1762, Earl Granville issued a grant to William Haywood for 700 acres in Edgecombe County, lying on branches of Walnut Creek south of the Tar River.⁸ The patent is registered in this study as *Haywood Wm 1762 700ac* and has been placed on the 1903 USGS topographic base map with its beginning corner confirmed at Dr. John Jameson’s corner on Elverton Branch.⁹

William Haywood devised the 700-acre tract to his sons by will. The 1797 deed names two Haywood family members in connection with the eastern holdings: Adam John Haywood, whose dividing line with William Henry is formally described as separating their respective portions of the original patent, and Stephen Haywood, to whom William Henry had already conveyed land before the Gray sale. The deed treats the two as distinct references; whether they are the same person or different family members has not been established from available records. On 24 July 1797, William Henry Haywood, then residing in Orange County, North Carolina, conveyed approximately 184 acres to Charles Gray of Edgecombe County by deed recorded in Deed Book 9, page 172.¹⁰ The deed described the land as lying “on South Side Tar River and in the middle prong of Walnut Creek” and defined its southern limit as “the place where the line of the patent Granted to Moses Hare running eastwardly from the beginning corner pine crosses the same.”

The deed contained a critical intent clause: “it being intended by the parties that all the Lands belonging to the said William Henry Haywood and left him by the Will of his father which lay to the Westward of the lines by which he the said William Henry hath already sold and

⁸Earl Granville to William Haywood, 700 acres, 1762. Edgecombe County File No. 1264, Grant No. [unnumbered], Book 11, p. 209. The patent is georeferenced and placed in this study as *Haywood_Wm_1762_700ac*. Anderson, *supra* note 3.

⁹Anderson, *supra* note 3. The begin anchor was placed and confirmed by the author on the 1903 USGS Rocky Mount/Tarboro 15-minute quadrangle, EPSG:4326 coordinates (-77.670400, 35.923950). The base map was georeferenced via GDAL Python script to sub-3-pixel residuals at six neatline ground control points.

¹⁰William Henry Haywood of Orange County, NC, to Charles Gray of Edgecombe County, ~184 acres, deed dated 24 July 1797, recorded Edgecombe County Deed Book 9, p. 172. “Edgecombe, North Carolina, United States records,” FamilySearch, IG 007513467, image 142 of 576, <https://www.familysearch.org/ark:/61903/3:1:3Q57-L983-N3YL?view=explore> (accessed June 6, 2026). Transcription prepared by Marc Anderson, June 2026; included in *Vann Tract_Battle_Gray.pdf*, Walnut Creek research folder.

conveyed to Stephen Haywood shall be included.”¹¹ This language, examined closely, does not derive the conveyance from the patent. It derives it from the will. The patent is invoked as historical background; the will is the operative instrument.

On 9 March 1801, Charles Gray conveyed 187.5 acres of this holding to Elisha Vann of Edgecombe County.¹² The Vann deed’s metes begin “x SS Tar River, corner Gray & Lewis Fort on Elventon’s Branch,” proceed up the branch to an oak, then “S 228 Fort line to George Anderson,” east 105.75 poles to Anderson’s new line, north 270 poles to Gray’s line, and west to first.¹³

In 1818, Vann conveyed 100 acres of the parcel to Calip Warren, which deed recites it as “part of land purchased of Charles Gray by deed 9 Mar 1801.”¹⁴ The adjacent Lewis Fort tract of 500 acres was conveyed by Fort to James West Clark in 1802 and by Clark to James S. Battle in 1818, with each deed referencing “Judge Haywood’s corner” as the eastern boundary and George Anderson’s corner at the beginning.¹⁵ The two tracts together — the Vann 187.5 acres and the Fort 500 acres — describe a contiguous holding along the south side of the Tar River, bounded on the east by the Haywood family lands and on the west by Elverton Branch.

¹¹*Ibid.* The deed contains two distinct Haywood references. First: “the line which divides the lands of the said William Henry Haywood from those belonging to Adam John Haywood” — Adam John Haywood as eastern neighbor along the patent dividing line. Second, the intent clause: “it being intended by the parties that all the Lands belonging to the said William Henry Haywood and left him by the Will of his father which lay to the Westward of the lines by which he the said William Henry hath already sold and conveyed to Stephen Haywood shall be included in the lines by which he now sells and conveys to the said Charles Gray.” Stephen Haywood appears here as a prior grantee from William Henry. The four documented sons of William Haywood (the 1762 patentee) are John (1755–1827), Sherwood (1762–1829), William Henry (1770–1857), and Stephen (1772–1824). No son named Adam John appears in the biographical record. Whether Adam John Haywood is a separate family member, a different rendering of a known name, or the same person as Stephen remains to be established from primary sources.

¹²Charles Gray of Edgecombe County to Elisha Vann, 187.5 acres, deed dated 9 March 1801. “Edgecombe, North Carolina, United States records,” FamilySearch, IG 007513468, image 49 of 565, <https://www.familysearch.org/ark:/61903/3:1:3Q57-L983-D4ZF?view=explore> (accessed Apr. 30, 2026). Cited and transcribed in Anderson, *supra* note 3.

¹³*Ibid.* Full metes: “Begin x SS Tar River, corner Gray & Lewis Fort on Elventon’s Branch — up branch to an oak — S 228 Fort line to George Anderson — E 105.75 to a branch in Anderson’s new line — N 270 to Gray line — W to 1st.”

¹⁴Elisha Vann to Calip Warren, 100 acres, 1818. The recital in that deed reads: “part of land purchased of Charles Gray by deed 9 Mar 1801.” Cited in Anderson, *supra* note 3, *Vann Tract_Battle_Gray.pdf*.

¹⁵Lewis Fort to James West Clark, 500 acres, deed dated 30 December 1802, recorded August Court 1804. Edgecombe County Deed Book 11, p. 221. Abstracted: NCA film C.037.400010. James W. Clark to James S. Battle, 500 acres, deed dated 16 June 1818, recorded February Court 1819. Edgecombe County Deed Book 16, p. 293. FHC film 0018892. Both deeds cited and transcribed in Anderson, *supra* note 3.

V. THE CRITICAL FINDING: THE PATENT GAP

The problem emerges when the deed chain is tested against the geography of the confirmed patent placements.

The Haywood 700ac patent begins at Jameson’s corner on Elverton Branch — a placement confirmed on the 1903 USGS topographic base map — and its first call is E 330 poles along Jameson’s line. Every subsequent call extends the tract eastward and southward. The entire 700-acre patent lies east of Elverton Branch at the begin corner. Elverton Branch is the patent’s westernmost point; the patent does not extend west of it.¹⁶

The Vann 187.5 acres, however, has Elverton Branch as its *western* boundary. Its metes begin at the corner of Gray and Lewis Fort *on* Elverton’s Branch, proceed up the branch, then east only 105.75 poles. At the coordinate scale used in this study area, the tract’s maximum eastern extent falls approximately at longitude -77.670 — coincident with, or west of, the Haywood 700ac begin corner.¹⁷

In short: the Vann tract occupies land west of, or at the western edge of, the Haywood 700ac patent boundary. It cannot lie within that patent as a matter of geography. Yet the 1797 deed from William Henry Haywood to Charles Gray explicitly derives its authority from “the seven hundred acre patent by which the lands held by Wm. Henry Haywood and by Adam John Haywood was granted originally.”¹⁸

This is the patent gap. The deed references a patent. The geography establishes that the land is not within that patent.

¹⁶Anderson, *supra* note 3. The Haywood 700ac first call is E 330 poles along Jameson’s line, establishing that the entire patent lies east of the begin corner on Elverton Branch. The placement is consistent with the subsequent calls (south, east, northwest, and return to branch), all of which describe land east and south of the begin point. No call crosses or re-crosses the branch to the west.

¹⁷Anderson, *supra* note 3. In the study area, 1 pole = approximately 0.00005597 degrees of longitude (klon) and 0.00004534 degrees of latitude (klat), derived from the EPSG:4326 scale at approximately 35.9° N. The Vann tract’s E 105.75 call from Elverton Branch yields a maximum eastern extent of approximately longitude -77.670 , coincident with the Haywood 700ac begin corner.

¹⁸William Henry Haywood to Charles Gray, *supra* note 10.

VI. A SECOND ABSORPTION: JOHN HAYWOOD TO STEPHEN HAYWOOD, 230 ACRES, 1800

The pattern identified in the Vann tract is not isolated. A parallel conveyance within the same family, executed one year before the Vann deed, confirms that the absorption of land without clear original patent was not an anomaly but a practice.

In 1800, John Haywood of the City of Raleigh — the same John Haywood who served as North Carolina’s State Treasurer for forty years, the first mayor of Raleigh, and one of the most prominent legal figures in the state — conveyed 230 acres in Edgecombe County to his brother Stephen Haywood of Edgecombe by deed, the two identified explicitly as brothers.¹⁹ The deed locates the tract with precision: “SS Tar River, Eastern side of Middle prong of Walnut Creek at the place where the land purchased out of the 700 Acres Patent by William Henry Haywood begins and at the corner of the land in said Creek sold by William Henry Haywood to Charles Gray.”

That description is critically revealing. The deed does not claim this 230-acre tract is part of the 700-acre patent. It says the tract begins at the place where the 700-acre patent land begins. The 700-acre patent is a boundary marker, not a source of title. No original patent for this 230 acres is cited anywhere in the deed. The metes describe the tract by reference to the Middle prong of Walnut Creek, the back line of the 700-acre patent as a shared southern boundary, and the Haywood 460-acre patent of 1779 as an eastern boundary marker. Each boundary is defined by reference to something adjacent; the land itself is conveyed without naming its own patent source.

The significance is twofold. First, the structural pattern — conveying land whose original patent is unidentified, located by reference to patents the family holds elsewhere — is replicated identically in the John-to-Stephen conveyance of 1800, one year before the Gray-to-Vann deed of 1801 and three years after the William Henry-to-Gray deed of 1797. The three transactions form a

¹⁹John Haywood of the City of Raleigh to Stephen Haywood of Edgecombe County, 230 acres, 1800. The deed identifies the parties as brothers. Cited and transcribed in Anderson, *supra* note 3, *Vann Tract Battle Gray.pdf*, Walnut Creek research folder, June 2026. The deed recites: “SS Tar River, Eastern side of Middle prong of Walnut Creek at the place where the land purchased out of the 700 Acres Patent by William Henry Haywood begins and at the corner of the land in said Creek sold by William Henry Haywood to Charles Gray.” Boundary references include the back line of the Haywood 700-acre patent and the Haywood 460-acre patent (NC Grant #60, 1 Jul 1779, registered in this study as *Haywood_Wm_1779_460ac*). No original patent for the 230-acre tract is cited in the deed. John Haywood (1755–1827) served as NC State Treasurer from 1787 until his death — forty years. See genealogytrails.com/ncar/edgecombe/bio_haywood_william.html (accessed June 2026).

deliberate cluster in the same geography and the same family, using the same approach: anchor to a known patent boundary, convey what lies adjacent, cite no original patent of your own.

Second, John Haywood’s stature makes the case more striking, not less. A man who spent forty years administering North Carolina’s public land records, who was among the most knowledgeable legal figures in the state, conveyed 230 acres without identifying a source patent. If John Haywood did not think it necessary — or did not know — the original patent for this ground is not simply a missing document. It may be a document that never existed. The absorption of unpatented land into the chain of title by long family possession, transmitted through will and deed, operated at every level of colonial and early state society in the Granville District. John Haywood’s 1800 deed is evidence that it operated even at the top.

VII. THEORIES OF EXPLANATION

Three explanations present themselves, and they are not mutually exclusive.

Innocent Error

William Haywood Sr. possessed and improved land west of his patent line for years, perhaps decades. From his perspective — and that of his family — it was simply part of the family holding: farmed continuously, bounded by known features (Elverton Branch to the east, the Fort holding to the south), and never challenged. When he made his will, he described the land as he knew it, not as the patent strictly bounded it. William Henry, inheriting under the will, sold what he understood to be his. No party to the 1797 transaction had reason to examine the original 1762 patent plat and compare it against the deed’s metes. The error, if it was one, was wholly unintentional.

Possession Creep

This theory describes the gradual, undocumented expansion of a family’s cultivation and claim beyond the surveyed patent line, common in 18th-century North Carolina and not considered

trespass in a practical sense when adjacent land was ungranted waste.²⁰ A farmer who clears, fences, and plants land beyond his line is not typically considered a wrongdoer when no competing claimant exists; he is a settler. Over a generation, the family boundary and the patent boundary diverge, and the divergence becomes invisible in the deed record because no deed ever acknowledges it. The will inherits the possession; the deed passes the will.

Color of Title as Cure

The most legally consequential explanation is not that the Haywoods were right or wrong, but that it no longer mattered. Charles Gray received a deed in 1797. He possessed the land. He sold it to Vann in 1801. Vann possessed it and sold part of it in 1818. The seven-year statutory period ran multiple times over before any hypothetical challenger could have acted. The absence of any recorded challenge confirms that no adverse claimant with a superior patent ever appeared.

What the courts overlooked, in the author’s formulation, they may have overlooked simply because there was nothing presented to them to decide. Quiet possession under a facially valid deed is not the same as judicial acquiescence in a defective title, but the practical result is identical: the title passed, was recorded, and became part of the chain on which all subsequent owners relied. The doctrine of color of title was designed precisely for such cases — to prevent the disruption of long-settled possession, whatever the defect in its origins.

VIII. CRITICAL ANALYSIS

The significance of this case extends beyond the 187.5 acres in question.

First, it demonstrates the structural vulnerability of deed-chain title research when patent geography is not independently verified. Every deed in the Vann chain is formally regular: witnesses, acknowledgment, registration, recitation of prior ownership. A researcher following the chain from Vann backward to William Haywood and then to the 1762 patent would find, at each

²⁰“Governing the Piedmont,” NCpedia; Granville District, Wikipedia, *supra* notes 6-7. The pattern of cultivation beyond patent lines was widespread in colonial NC’s coastal plain, where dense hardwood forest made precise boundary marking difficult, land was abundant relative to population, and competing claimants were rare. Families routinely treated their effective farm perimeter as their legal boundary.

step, a properly executed instrument. The defect is invisible to deed-chain analysis alone. It becomes visible only when the metes of the Vann deed are run on a georeferenced topographic base and compared against the confirmed placement of the Haywood 700ac patent. This is the methodological contribution of the A&M approach: the map is not decoration. It is the instrument of verification.

Second, the case raises a question of broader scope for North Carolina colonial land research. If the Haywood family — a prominent Edgecombe/Wake County gentry family with legal knowledge and political standing — conveyed land outside their patent boundary without apparent awareness of the problem, the same phenomenon is presumably present in many other deed chains in the region. The Granville District’s notorious record-keeping failures, compounded by the Revolutionary disruption of its archives, created a landscape in which the gap between patent and possession could be substantial and wholly undetectable by any agent relying solely on the documentary record.

Third, and perhaps most consequentially for the historian, the intent clause in the 1797 deed is a tell. “Left him by the Will of his father” is not patent language; it is inheritance language. A grantor conveying from a patent would write “being part of a grant” or “bounded as follows according to the original plat.” A grantor conveying what he believes he inherited describes the inheritance. The 1797 deed, read carefully, says not “I own this by patent” but “I own this because my father left it to me,” and then gestures backward to the patent as the original source. The gesture may be legally sufficient to establish color of title. It is not sufficient to establish that the land was in the patent.

The original patent for the Vann 187.5 acres remains unaccounted for. That absence is not simply a gap in the research; it is a finding. In a region where the land grant system functioned — however imperfectly — for nearly a century before this conveyance, a 187.5-acre tract with Tar River frontage, Elverton Branch access, and long family possession would ordinarily carry some grant behind it. That none has been found after exhaustive search of the Edgecombe deed books, the Granville grant records, and the NC Land Grants database is itself evidence that none existed, or that it was lost beyond recovery.

IX. CONCLUSION

The Vann tract of 187.5 acres in Edgecombe County, North Carolina, stands as an instructive example of how land title in the colonial and early American period could be entirely regular in every formal respect — recorded deeds, named witnesses, acknowledged conveyances, recitation of acreage and boundaries — while resting on an original patent gap that no party in the chain ever identified.

The exposure of this gap was not possible through conventional genealogical research alone. It required the simultaneous analysis of deed metes-and-bounds against confirmed topographic placements — a methodology that treats the map not as illustration but as proof document.²¹ It was only when the Haywood 700ac polygon was placed on the 1903 USGS base map with its begin corner confirmed at Jameson’s corner on Elverton Branch, and the Vann deed metes were run from that same branch westward, that the displacement became visible as a geographical fact rather than a theoretical concern.

The case does not impugn the Haywood family. The most probable explanation is the one most consistent with what we know of colonial NC land practice: a family occupied more land than their patent covered, transmitted it through a will as if it were properly titled, and that claim passed unchallenged through deeds for generations. The doctrine of color of title was designed precisely for such cases — to prevent the disruption of long-settled possession, whatever the defect in its origins.

What it does suggest, for the researcher, is this: the absence of a challenge to a title is not the same as the presence of a valid original patent. In the chaotic land records of the Granville District, where agents were corrupt, records were lost, and squatters were the norm rather than the exception, the gap between what was patented and what was possessed may be far wider than the deed books alone can reveal. The search for the original patent for this tract continues. The absence of its discovery is, itself, a finding.

²¹Anderson, *supra* note 3. The methodology — running deed metes on a georeferenced topographic base and comparing resulting polygons against each other and against confirmed anchor placements — is described in full in the A&M Method documentation. The patent gap for the Vann tract became visible when the Haywood 700ac polygon (anchored at Jameson’s corner) was compared against the Vann deed metes run from the same branch. A polygon cannot overlap a patent it was never part of.

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