

1850 – 05

Nelson Beaty by his guardian and next friend [Thomas M. Preston] vs James Beaty, C. Jones and others

My Summary of case: *Thomas Montgomery died in Washington Co. VA in 1803 leaving 3 daughters. His will left land on the Middle Fork of the Holston River to daughters Margaret Beaty (wife of John) and Abigail Preston (wife of Samuel). On the death of the 2 women the land was to be divided amongst their children. James, John, Alexander M. & Jane Beaty (the heirs of Margaret Beaty) brought suit against Thomas M. & Nancy M. Preston and Francis W. Irby & Jane his wife (the heirs of Abigail Preston) to facilitate the division. Thomas Montgomery's land was surveyed in 1829 and found to contain 708 acres. On 27 Sept. 1831 the Washington Co. court appointed commissioners to divide the tract. A division was made such that the 4 heirs of Margaret received 4/7 (408 acres) and the 3 heirs of Abigail received 3/7 or 300 acres. However no deeds were executed.*

Some years later, probably in 1842 or 1843, Nelson Beatie, described as the only heir of Jane Beatie (then Land) brought suit by his guardian against James Beaty and the other heirs of Thomas Montgomery in order to force a formal division of the land. The bill of complaint identifies what had happened to the various heirs since the 1831 suit (the names in bold were those heirs who were entitled to receive title to a share of the land via the 1840s suit):

Heirs of Abigail (Montgomery) Preston:

*- **Thomas M. Preston** (Jane Irby and her husband Francis W. Irby, and Nancy Preston and Samuel A. Preston her husband had sold their interest to Thomas)*

Heirs of Margaret (Montgomery) Beaty:

-James Beaty

-John Beaty died leaving dau Margaret who died shortly after father; also leaving wife Rebecca who intermarried with Calvin Jones and was entitled to dower in John's share of the land

*-Alexander Beaty died leaving dau **Margaret Beaty** and other unknown infant heirs (prior to this death Alexander conveyed his interest in the land to his bros James and John)*

*-Jane Beaty (then Land) died leaving son **Nelson Beaty***

James Beaty, as one of Margaret (Montgomery) Beaty's heirs, filed his answer to Nelson Beaty's suit in 1844. He stated that Margaret Beaty had been the mother of 6 children, 2 of whom predeceased her (Robert and an infant). James was not satisfied with the distribution of land as determined by the commissioners in the 1845 decree, however his objections were overturned. Regardless, deeds dividing the land were not executed until 1849, two years after James died. In Oct. 1847, following James's death, a decree added his heirs as defendants. They were stated to be: Margaret Beaty, Ann Beaty, John Beaty and Nancy Beaty. An 1849 summons included the same 4 names and added Elizabeth Beaty.

Bill of Complaint [undated]

Honorable Benjamin Estill Judge of the Circuit Superior Court of Law and Chancery for Washington Co., Virginia

Nelson Beaty an infant under 21 years of age sues by his guardian and next friend Thomas M. Preston

- orator's great grandfather Thomas Montgomery died in 1803; left will which bequeathed the tract of land on which he then lived on the Middle fork of the Holston River to his 2 daughters Margaret Beaty and Abigail Preston during their natural lives, and at their death, then to their children to be equally divided between them.

- Abigail Preston died __ 183__ [date left blank] leaving 3 children: Thomas M. Preston, Jane Irby and Nancy Preston. Jane Irby and her husband Francis W. Irby, and Nancy Preston and Samuel A. Preston her husband sold their interest to Thomas M. Preston.

- Margaret Beaty died __ __ [date left blank] leaving 4 children: James Beaty, John Beaty, Alexander Beaty & Jane Beaty (lately Jane Land).

- James, John, Alexander and Jane filed suit in Washington Co. VA Chancery Ct in __ 183__ [date left blank] vs Thomas M. Preston, F.W. Irby and Jane his wife and Nancy Preston for partition of land.

- On __ 183__ [date left blank] a decree was issued appointing commissioners to make partition; they filed report which assigned 408 acres to children of Margaret Beaty but no conveyances were ever made between the children of Margaret Beaty and the children of Abigail Preston. [report included as an exhibit]

- Alexander Beaty conveyed his interest in the land to his brothers James and John jointly on __ 18__ [date left blank]. Alexander died ____, leaving Margaret Beaty and other infant children whose names and residence is unknown.

- John Beaty died __ 183__ leaving widow Rebecca Beaty (who recently remarried with Calvin Jones) and Margaret Beaty, his only child, who died shortly after her father leaving neither brother or sister, but leaving her paternal uncle James Beaty and Jane Land her paternal aunt, and Margaret Beaty (and other unknown children of Alexander Beaty, dec'd) her paternal cousins

- Jane Land died __ 1842 leaving your orator her only child and heir, to whom descended Jane's interest in the land under the will, and Jane's interest in land which was bequeathed to John Beaty in said will, and in that which John purchased from Alexander; the one third interest which descended from John Beaty to his infant dau Margaret, dec'd.

- Orator claims one fourth of the 408 acres in right of his mother's bequest under will; also one third of interest of John, obtained by the bequest in will and his purchase from his brother Alexander and which descended from the said John to daughter Margaret and which descended from Margaret to Jane.

- Orator claims that James Beaty has been in possession of the 408 acres since the death of Jane Land

- Orator asks that James Beaty, Calvin Jones and Rebecca his wife, late Rebecca Beaty, Margaret Beaty and the other unknown children and heirs of Alexander Beaty dec'd, be named defendants
- Orator wishes defendants to state whether the relationships and order of deaths as stated above is correct. Also wishes Calvin Jones and Rebecca his wife to state if they claim dower in the land of John Beaty
- Orator asks court to appoint commissioner to make partition between James Beaty, your orator and the children of Alexander Beaty, dec'd and assign each his portion by metes and bounds; all shares between all parties to be assigned by metes and bounds and deeds executed
- Orator asks court to appoint commissioner to ascertain rents due orator from James Beaty

Summons

- 4 March 1843; summons to James Beaty, Calvin Jones and Rebecca his wife, Margaret Beaty and other unknown children and heirs of Alexander Beaty, dec'd

Thomas M. Preston Answer

filed 21 May 1844

- agrees with statements in bill of complaint regarding will of Thomas Montgomery; also to statements regarding deaths of Margaret & Abigail and to the descent to the plaintiff of the interest of his mother in her own right, and also as an heiress of 1/3 of the portion of the said John Beaty deceased in said land, subject to the dower of the widow of John Beaty dec'd.
- acknowledges he purchased shares of Francis W. Irby and wife, Samuel A. Preston and wife – and holds in fee simple 300 acres of the land assigned by the partition to the children of Abigail Preston. References decree of 23 Apr 1832 which fixed the rights of the parties.
- denies the interpretation of the will of Thomas Montgomery as put forth by defendant James Beaty

Answer of Margaret Beatie and the other unknown children of Alexander Beatie, decd

filed 11 Oct. 1844

- answer by guardian ad litem Chas J. Cummings: all infants are under 21 and will rely on court to protect their rights

James Beaty Answer

filed 13 May, 1844

- denies provisions of Thomas Montgomery's will are as stated in the bill of complaint

- believes the manner in which the commission laid off the land was incorrect. He believes that upon the death of Thomas Montgomery's daughters Margaret Beaty and Abigail Preston, the residue of the tract of land should have been divided equally amongst their children. He believes that the children of both sisters were entitled to an equal division per capita – and that an interest was vested in each child immediately upon its birth and in case of the death of any one of the children of either sister the heirs of the deceased child were entitled to its share

- states that his mother Margaret Beaty had 6 children: John Beaty, Alexander M. Beaty, Jane Beaty (later Jane Land), Robert Beaty, ____ Beaty (the last two died before their mother) – believes therefore the land should have been divided into 9 equal parts, instead of 7 as was done by the commissioners – and that the portions belonging to the 2 children of Margaret Beaty who died before her should have been assigned to the 4 children who survived her

- does not have any knowledge of the family of Alexander Beaty

- denies he is in possession of any land belonging to the complainant; is only in possession of the portion to which he is entitled

- states he purchased the dower interest of Rebecca Jones, late Rebecca Beaty, the widow of John

- James Beaty appeared before Justice of the Peace Edward Lathim on 6 May 1844 and gave testimony above

Decree

Virginia Circuit Superior Ct of Law and Chancery for Washington Co. 23 May 1845

- parties have selected Edward Lathim, William Graham and Furney Jones as commissioners to assign dower to Rebecca Jones and to make partition of the land mentioned in the bill (was laid off to the children of Margaret Beaty dec'd 27 Sept 1831; dower was assigned 21 Dec. 1844)

- court issues orders for various deeds to be recorded between all parties.

Affidavit of James Beaty

[not dated]

- James Beaty made oath that he believes injustice was done him by the division of the lands of Beatie and Preston made by Commissioners Edward Lathan, W. Graham and Finney Jones.

- States the quality of the land assigned to him is inferior. Notes that he purchased the dower land assigned to the widow of John Beatie and it is also inferior; containing only 10 or so acres fit for cultivation out of 50.

- Also states that the dower land should have been assigned out of the land belonging to the estate of John Beatie but was not

Affidavit of Jones and Hathorn

- state that from their knowledge of the lands of the late Thomas Montgomery they believe the division of the land among the Preston vs Beatie heirs has resulted in great injustice to James Beatie

12 May 1846

David Campbell, Justice of the Peace

Decree

filed May 1847

Cause came again on 22 May 1847 – oral petition of James Beatie

- ruled James Beatie's charges against previous partition not proved
- ordered James Beatie must execute deeds in said decree

Decree

filed Oct. 1847

- 21 Oct. 1847: James Beatie died intestate since last court therefore case to be revised against Margaret Beatie, Ann Beatie, John Beatie and Nancy Beatie [no Elizabeth listed], the heirs at law of James Beatie and also against Isaac A. McQuown, administer of James Beatie

Summons

- 17 Jan. 1849 summons to Margaret, Ann, John, Elizabeth and Nancy Beatie infant children and heirs of James Beatie deceased

Answer of Margaret Beatie and others

filed May 1849

Answer of Margaret Beatie, Ann Beatie, John Beatie, Elizabeth Beatie & Nancy Beatie the infant heirs of James Beatie dec'd by Ben Rush Floyd their Guardian ad Litem

- place their interests at the discretion of the court; 10 May 1849

Decree

filed May 1849

Cause came again 22 May 1849

- Charles Cummings to make conveyances for the said infant heirs of James Beatie dec'd as decreed 23 May 1845 and which were to have been made by James Beatie by a decree issued 22 May 1847.

Decree

[no file date]

Cause came again 10 May 1850

- Charles Cummings reports deeds have been executed; parties to pay cost of suit in proportion to their interest in the tract of land
- no further reason for case to remain on docket

1831 Decree (included in this case as an exhibit)

At a court continued and held for WC the 27th day of Sept. 1831

James, John, Alexander M. & Jane Beaty complt

vs

Thomas M. & Nancy M. Preston and Francis W. Irby & Jane his wife, deft

- parties agree that William Graham, Patrick Ryburn & Reuben Bradley be appointed commissioners to divide the land held by the parties under the will of Thomas Montgomery and to divide the same according to the will

1832 Commissioners Report (included in this case as an exhibit)

At a court continued and held for WCV the 24 day of Jan. 1832

- Commissioners proceeded on the 10th and 11th of Oct. 1831 to execute their duties along with Edward Fulton, surveyor and have made partition in the following manner:

- the whole tract devised by the said Thomas Montgomery to the heirs contained 708 acres; Abigail Preston left 3 children, and Margaret Beaty left four children, and by the provisions of the said will the children of said Margaret Beaty are entitled to 4/7 and the children of said Abigail Preston are entitled to 3/7 of the whole tract – your commissioners making partition upon those principles and taking into consideration the quality have given to the heirs of the said Margaret 408 acres and have given to the heirs of Abigail Preston 300 acres.

Oct. 22, 1831

W. Graham

Patrick Ryburn

Reuben Bradley