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1871-19

Wesley A. Hutton & others vs James H. Hutton & others

**[Summary:** In Feb. 1850 Wesley A. Hutton, Joseph S. Hutton, Beniah S. Hutton and Eleanor Logan, 4 of the children of Moses Hutton brought suit in Washington Co., Virginia court against James H. Hutton, Augustus Wedding and Jane his wife, William D. Hutton, John Orr and Eliza Ann his wife, John R. Hutton, William Galliher and Nancy M. his wife, *Robert S.C. Hutton*, *Elizabeth M. Hutton*, *Araminta Hutton* and *Sarah F.T.C. Hutton* who were also identified as heirs of Moses. Nancy Hutton was named as the widow and James Orr as administrator. The underlined individuals were identified as not living in Washington County. Those listed in italics were underage and were appointed guardians to represent their interests.

The plaintiffs wished the court to determine if the land formerly belonging to Moses could be divided among the heirs. If not, they wished it to be sold and the proceeds divided, which is what occurred. A second bill requested that the slaves formerly belonging to Moses be sold and the proceeds divided. A formula was invoked to pay the widow Nancy her dower share. Beniah sold his share of the slave-sale-proceeds to his brother Robert S.C. Hutton prior to the division. Though these events both occurred in the early 1850s the suit was carried over until 1871. At that time payment was made to the remaining heirs, who were identified as the children of John R. Hutton, deceased. dp]

**Bill of Complaint** [not dated however accompanying bill of sale notes that the bill of complaint was filed Feb. 1850]

Wesley A. Hutton, Joseph S. Hutton, Beniah S. Hutton and Eleanor Logan, 4 of the children and heirs of Moses Hutton of said county .... their father ...owned two tracts of land lying and being in the said County each containing 120 acres or thereabouts... on one of the said tracts he lived, and on it is a grist mill and carding machine. The other tract adjoined the homestead. .... At the last January term of the county court for the said county commissioners were appointed to lay off and assign to the widow of the said Moses Hutton, her dower in the land of her deceased husband. .... Your orators desire that the said tracts be partitioned laying off each heir's share. And if a partition cannot be made, then a decree will be prayed for asking a sale and division of the proceeds. ... pray that James H. Hutton, Augustus Wedding and Jane his wife, William D. Hutton, John Orr and Eliza Ann his wife, John R. Hutton, William Galliher and Nancy M. his wife, Robert S.C. Hutton, Elizabeth M. Hutton, Araminta \_ Hutton and Sarah \_T.C. Hutton be made parties to this bill and that they answer the same on their oaths.

### **Bills of Sale**

[first entry is the bill of complaint filed Feb. 1850; order filed March 1850; then there is a series of "continued" entries - filed monthly through 1862. There was a notation in Sept. 1850 that \_\_\_\_ Cummings was appointed guardian ad litem to the 4 youngest children.

**Petition to Sell Slaves** [not dated however a second bill of sale noted a petition filed in Jan. 1851].

Wesley A. Hutton, Joseph S. Hutton and Eleanor Logan .... Moses Hutton their father, departed this life on the [left blank] day of [blank] having disposed of but a part of his estate by a will. That disposition was of his slave Emily Jane to his daughter Araminta F. Hutton. .. no executor was named.. James Orr Jr. permitted to qualify as Administrator with the will annexed. The testator left other slaves and property to be distributed amongst his children, 14 in number. The other slaves are Marion [?], Moses, Anthony and Francis. Thirteen children and Nancy Hutton the widow hold interest in slaves - Beniah S. Hutton sold his interest to Robert S.C. Hutton... there cannot be a division of the slaves and that they should be sold and the proceeds divided. No objection will be made by the widow to the sale .... estate of Moses Hutton owed but little and debts due from the estate can be paid.

**Guardian Responses**, 30 Nov. 1850 [date added in different script at bottom of item]

The answer of Robert S.C. Hutton, Elizabeth M. Hutton, Araminta F. Hutton and Sarah F.T.C. Hutton by \_ Cummings Guardian ad litem to a bill .... Invoke the court to guard and protect their rights in this particular case and render such a decree as will best promote their interest and protect their rights....

To the worshipful County Court of Washington County in Chancery sitting.

The answer of Robert S.C. Hutton, Elizabeth M. Hutton, Araminta F. Hutton, and Sarah F.T.C. Hutton, by Arthur C. Cummings, their guardian ad litem to a bill exhibited against them in this Court by Wesley \_ Hutton and others .... although a guardian ad litem was not appointed for them in time to answer the allegations of the bill exhibited against them before the Court decreed a sale of the slaves mentioned in the bill, yet your respondents are unable to perceive that their rights have been at all prejudiced by this inadvertent \_\_\_\_ and somewhat irregular decree and being of opinion that their interest would be promoted by the sale asked for in the bill and as they are now informed that the slaves sold under the above mentioned decree of the court brought a fair price they see no reason why said decree should now be disturbed. Your respondents \_\_ answered by guardian ad litem

Robert S.C. Hutton and others

By their guardian ad litem Arthur C. Cummings

Filed 26 Apr 1853 [written on back side of document]

### **Decree**

Wesley A. Hutton and others vs Jas A. Hutton and others

This cause came on the \_\_\_\_ to be heard on the bill of the complts the answer of Robt S.C. Hutton, Elizabeth M. Hutton Araminta F. Hutton and Sarah F.T.C. Hutton the infants by C.J. Cummings their guardian ad litem; and it appearing that the \_\_\_\_ in the cause has been executed on William Galliher and Nancy M. his wife more than 2 months and that they fail to appear and answer the bill, the same is as to be taken for confessed; and it appearing that James H. Hutton, Augustus Wedding and Jane his wife, John Orr and Elizabeth his wife, and William D. and John R. Hutton are non residents and and that an \_\_\_\_ of publication has been executed against them and that they fail to appear and answer, the bill is also as to them taken for confessed. And the court not being satisfied whether a division of the tracts of land in the bill maintained would more promote the interest of the parties concerned than a sale, it is decreed that \_\_\_\_ [blank], John Eakin Esq and Robt Clark, or any two of them do go upon the land and make division and partition of the same into 14 parts equal in value and that they assign to each one of the children named in the bill, of Moses Hutton \_\_\_\_ share, excluding at present from the division [blank]

acres heretofore assigned the widow of the said Moses Hutton dec'd for her dower unless the said Commrs are of opinion that a sale would more promote the interest of the parties. In which event they are required to report that fact to the next term of this court together with the probably values of said lands. And this cause is cont. to the next term

[Written below: ]Nov. term '50

#### **Decree**

Wesley Hutton and others vs James H. Hutton and others

..... the court concurring with the said Comm's that a sale of the tracts of land in the bill mentioned would more promote the interest of the parties than division, it is therefore ordered assigned and decreed that [blank] be appointed a Commr \_\_\_\_ shall be, to sell the said tracts on a \_\_ of 6 and 12 ms subject to the widow's dower, before the front door of the courthouse of the said county on a court day after giving notice of the time and place of sale for one month at the C.H. door ....

[back side] Entered Dec. 27<sup>th</sup> 1850

#### **Decree**

Similar to above.... Failing to appear and answer the petition.. taken for confessed.. And the court being satisfied that the slaves, Maria, Moses, Anthony and Francis cannot be divided in Kind amongst these interested \_\_\_\_ therefore it is ordered that [blank] be appointed a Commisioner to sell them at public sale before the front door of the CH of this court ....

[back side June 1851]

#### **Decree**

Wesley A. Hutton and others vs James H. Hutton and others

Answer of A.C. Cummings guardian ad litem for ..... the reports of M.H. Buchanan Master Comm'r Jacob Lynch to neither of which reports are there any exceptions taken and the same are therefore affirmed And the court seeing no reason for setting aside the \_\_ reports by M.H. Buchanan made before the answer of the infants was filed and being satisfied that the sale was a fair and that the slaves \_\_ their full price; it is therefore ordered adjudged and decreed that the [blank] widow of Moses Hutton dec'd be paid the sum of [blank] in lieu of her one third of the \_\_\_\_ of the slaves, which she is willing to receipt, and further attest C S. Bekem be appointed a Comr to ..... [ no continuing page]

[back side] Aug. 26<sup>th</sup> 1853

## **Decree**

Report of Baken Commr that William Byars and Wesley A. Hutton bought the land ... purchase money paid... decree that title be conveyed

[back side] Jan. 23, 1855

## **Decree**

\$2,50\_.00 was produced by sale of land to be distributed amongst 14 as set forth in the bill... first deducting costs and expenses attending the suit.... Order to distribute among parties

[back side] August 26, 1853

## **Order of Publication**

Wesley A. Hutton, Joseph S. Hutton & Eleanor Logan, heirs of Moses Hutton, deceased vs James Orr, adm with the will annexed of Moses Hutton dec'd, Nancy Hutton, widow and \*James H. Hutton, \*Augustus Wedding and Jane his wife, \*William D. Hutton, \*John Orr and Eliza Ann, his wife, \*John R. Hutton, William Galliher and Nancy M. his wife, Robert S.C. Hutton, Elizabeth M. Hutton, Araminta F. Hutton & Sarah F.T.C. Hutton, heirs of Moses Hutton, dec'd.

[asterisk added by pd]

Object of Suit: to obtain a decree for the sale of slaves of which Moses Hutton died seized and distribution of proceeds....

Then notes that the defendants noted with asterisks above were not residents of the commonwealth and instructs that they are to appear within 1 months time. And it is ordered that a copy of this order be published once a week, for four successive weeks, in some newspaper printed in the town of Abingdon, and posted at the front door of the court house of this county on the first day of the next court.

It was noted that the above notice was to run for 4 weeks and was dated Feb. 8, 1851

Also on page... This day Leonidas Baugh personally appeared before the undersigned, a justice of the Peace for Washington County and made oath that the annexed notice has been published for one month in "The Democrat" a paper published by him in the town of Abingdon. 27 June 1831 [sic] John Mitchell

## Report of Master Commissioner

Pursuant to an order of 27 May 1852:

To determine cash value of dower interest of widow Nancy

Sale of slaves:	\$1,315.00
Widow entitled to 1/3 during her life:	\$438.33
Interest per year	\$26.30
Widow's estimated life expectancy: 13 yrs	
Value of annuity of \$26.30 per year X 13 years	\$232.60

Which figure reflects the current cash value of dower interest

15 July 1853

## On Petition

30 Oct. 1871: appearing by the receipts that distributive share of each of the heirs has been paid except to children of John R. Hutton.... Now paid to George M. Hutton in his own right and by virtue of power of attorney given by Mary B. Hutton and Sarah Hutton, the 3 being heirs at law of John P [sic] Hutton, dec'd

Object of chancery suit is now fully consummated and there being no reason for retaining these causes on the docket, it is ordered that they be stricken therefrom

## Receipts

\_\_\_ rec'd \_\_\_ on account of \_\_\_ distributive share of the proceeds of said land and Negroes

With original signature of John B. Orr

Rec'd Jan. 23, 1854	\$250	John B. Orr
ditto	ditto	John B. Orr [for] acct Agustis Wedding [sic]
ditto	ditto	John B. Orr [for] William D. Hutton