

57

57

66 Original Bill

John Montgomery

James Bevy Leland

Subd. issued May 4
1815 & two copies

1815

~~John Montgomery~~

John Montgomery

66

Wm Montgomery

23

James Berry in his own
right his guardian of ad
alium of

Wm Walker } Rhia
Polly Walker }

Wm Walker }
Jane Walker } Rhia
Polly Walker }

Perry Berry }
Walker Berry } Blount
Lena Berry }

Isaac Anderson
Jane Anderson
Betsy Anderson } Virginia
Patsy Anderson }
Wm Anderson }

Wm Walker Senr

George Walker

Wm Lytle &
Susan his wife

James Buchanan

Jane his wife

Polly Berry Blount

John

John Montgomery & Co

vs
Thomas Perry & Joseph Walker & Co

This cause, coming on to be heard on the 25th day
of December 1806 before the honourable Archibald Dean
Robert White & John Kaywood, in the presence of counsel
for complainant, the said having been taken for
- paper against the defendants, the substance of the
Plead appeared to be that Thomas Perry purchased from
John Craig a tract of land which he held in Polk
county by right of occupancy and obtained possession
thereof, that before Perry got a little ^{for it} the
land was levied on and sold to satisfy a judgment which
had been obtained against him and the same was
purchased by Joseph Walker, who again sold it to Perry
of whom Perry his horse for conveyance, & received
the purchase money 800 dollars, afterwards in
August 1800 John Craig conveyed the same to Joseph
Walker, Thomas Perry being indebted to Kennedy and
Synch, procured Walker ~~to procure~~ to mortgage
the same to them in Octr 1800 - Thomas Perry was
indebted to the firm of King and Montgomery in the
sum of fifteen hundred dollars, and for securing the
payment thereof by mortgage conveyed the same tract
of land to said firm on the 10th of June 1806 the
payment to be made on the 10th of June 1808, after
wards on discovering the mortgage to Kennedy Synch
John Montgomery procured and assignment thereof to
himself for the use of the firm on the 15th November
1805 paid them the sum of 633:11/2 the balance
due thereon, that Perry & Walker are both

dead and that defendants named in the Bill are their heirs
& representatives, that after their death, complaint at
the opening the land office procured a survey to be
made and obtained a grant for the same on the
20th of February 1808 ^{paid the state price} in the name of the firm
for 285 acres of woods & wood chains, but not with a view to deprive
the defendants of any equity they had, that is to say the sum
of 75 dollars 80 cents. That afterwards Edward Lynch
reversed a judgment against the heirs of
Thomas Perry and procured said lands to be sold
& the complainants became the purchasers for the sum of
270 dollars on the day of 1813 which sum he has paid
that the said sum respecting with the interest
thereon as said due that the land may be sold
to raise the said several sums on the equity foreclosed
is the prayer of the Bill, whereupon the court
was pleased to order that the defendants pay into
the office of the clerk & master within three months from
the date hereof, that is to say the sum of \$1500 with
interest from the 10th day of June 1808 to 31st Dec^r with
interest from the 25th of November 1805. 205. 80 cents
from 20th February 1808 also 270 dollars with
interest from 31st December 1813 to 9th Oct^r with
the cost of this suit it is further ordered and
decreed that on failure of payment, the lands are
to be sold by the Sheriff of Mount county, as in other
cases, and the proceeds of the sale applied to the payment
of the costs of this suit & in satisfaction of the respective
sums due up to the day of sale and if the ~~sums~~
the respective sum with interest ~~thereon~~ should
be paid on or before the expiration of three months

The mortgages of said to be paid & the complainant
shall convey all the right he hath to the wife
mentioned & the heirs to the heirs of Thomas
Berry, and it is further ^{ordered} that if on the day of sale
the said land should sell for more money than the
respective sums ^{respective} interest amount to the surplus to
be paid ^{by the sheriff} to the heirs of said Berry

Secret

b. a. b. a.

Montgomery vs Birney & Miller

Plm Miller deposes and swears that he has
been informed & believes that William Walker
Linn, George Walker, William Lyle Huson
his wife, James Buchanan & Anne his wife
the defendants in a true, true at the time of
filing the above bill & still are citizens
of the State of Virginia

Sworn to in court
June 2 1815

Rm Miller

Wm Walker

Affidavit

There

[Faint, illegible handwritten text, likely bleed-through from the reverse side of the page]

The State of Tennessee

I the Sheriff of Blount County Greeting

do command you to ^{summons} James Berry of said county of Blount
in his own right, and as guardian pendente lite to Betsy Berry, Walker
Berry, Teresa Berry of Blount, Wm Walker and Polly Walker of Rhea, Wm Walker
Jane Walker & Polly Walker of Knox, Isaac Anderson, Jane Anderson, Betsy Anderson,
Patsy Anderson ^{Widow} of Virginia, who are minors to appear before the
judges of our Supreme Court of Errors and Appeals to be held for the second
Circuit at the courthouse in Knoxville on the 4th Monday of May next
to answer the Bill of Complaint of John Montgomery exhibited in
our said Court as a Court of Equity against the said James Berry in
his own right and as guardian of the aforesaid minors, and against Polly
Berry William Walker and George Walker Wm Lytle Susan his wife and
James Buchanan & Jane his wife — and this he shall not omit under
the penalty prescribed by law — And have them these things done.

Witness Thomas Emerson clerk of said Court at Office the
4th Monday of November 1814

Thos: Emerson

Sub to and.

John Montgomery

to

James Berry Lither

to May 4 3 1815
to May Term

Recd May 10th 1815

B. Purcell Shff

Executed as James
Berry

B. Purcell Shff 1815

Know all men by these presents that we
John Montgomery & Pleasant Miller

are held and firmly bound unto William
Walker Polly Walker, Polly Miller, Isaac Anderson
James Anderson, Betsy Anderson, Patsy Anderson
William Anderson William Walker Jane Walker
Polly Walker, William Walker Senr, George Walker
Wendell Johnson his wife, James Buchanan & Jane
his wife, James Berry Polly Berry Betsy Berry Walker
Berry & Teresa Berry their heirs & in the sum
of five hundred Dollars to be void on condition
that said John Montgomery prosecute with
effect a suit by him this day commenced in
the Supreme Court of Errors & Appeals for
the second circuit against said William
Walker & heirs, or in case of failure pay all
costs & charges that may be awarded
against him - Witness our hands & seals
this 28th of April 1815

John Montgomery
by P. M. Miller Seal
P. M. Miller Seal

Post Bond

Montgomery

to

Walker & Howard

The State of Tennessee

To the Sheriff of Blount County Greeting:
We do command you to summon Pelly Berry to appear before
the Judges of our Supreme Court of Errors and Appeals to be
held for the Second Circuit at the courthouse in Knoxville
on the fourth Monday of May next to answer the Bill
of Complaint of John Montgomery exhibited in our said
Court as a Court of Equity against said Pelly Berry and
James Berry & others - and this we shall not omit under
the penalty prescribed by law -

Witness Thomas Emmerson Clerk of our said Court
at Office the 4th Monday of November 1874

Tho Emmerson

Sub to am.

John Montgomery

5

James Berry & others


1st May to 3rd 1815
Tosmay Term

Recd May 10th 1815

C. Russell Esq

Executed in Polly Bay

C. Russell Esq

John Allen Montgomery  In Equity for the second circuit
1875

William Walker & Polly Walker of Ohio county, Polly Anderson
Isaac Anderson Jane Anderson Betty Anderson Patsy Anderson
& William Anderson of Virginia, William Walker Jane and
Polly Walker of King County, William Walker Sam George
Walker William Lyke & Susan his wife James Buckham
= man & Jane his wife of Virginia, James Perry Polly
Perry Betty Perry Walker Perry ~~Walker Perry~~ and
Terrence Perry - of whom William ~~Walker~~ Walker
& Polly Walker of Ohio William Walker Jane & Polly Walker
of King County Betty Perry Walker Terrence Perry of
Blount county are Infants. Isaac Anderson Jane Patsy
Patsy and William Anderson of Virginia are also infants
& have no guardians known to the complainant on
Whom copies of the above Bill (which is now
filed) can be served he therefore
prays your Honour to appoint guardians
ad litem to the above defendants

John Montgomery

by

John Miller

ordered that James Perry be appointed guardian ad litem for
the infant Defendants in the above cause
April 26th 1875

John Overton

Appointment of
Guardian

Montgomery

to
Walker Tolben

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To the Honourable the Judges of the supreme court
of Errors and appeals, sitting at New York for the second
circuit

Humbly complaining sheweth unto your honour,
your orator John Montgomery (surviving partner of the
House of Williams King and John Montgomery) of the
county of Blount within the second circuit, that some
time previous to the month of May 1799 a certain Thomas
Berry now deceased purchased the tract of land here in
after mentioned of a certain John Craig lying in the
county of Blount and by virtue thereof obtained the
possession of the same and resided thereon until his death
that before he obtained a title from Craig for the same
the land was levied on as Berry's property was sold as
his and purchased by Joseph Walker who on the twenty
second day of May 1799 obtained a deed from the Sheriff
of Blount county for the same, that on the same 22^d of
May 1799 the said Joseph Walker executed his covenant
to convey the same lands to the said Berry and the said
Berry executed his Bill single to Walker as the considera-
tion for the same therefore for the sum of Eight hundred
and twenty dollars, which said Bill single the said
Berry on the 20th of June & 23^d of July 1799 paid of
as appears by indorsements on the said Bill single, that
afterwards on the 20th ^{of August} in the year 1800 John Craig conveyed
the said tract of land ~~of lands~~ to the said Joseph Walker
being the same land contained ⁱⁿ the grant herein after men-
tioned, that about this period the said Thomas Berry was
very much involved in debt and amongst others he was

indebted to the house of Kennedy & Lynch merchants of
Philadelphia & for the purpose of securing the payment
of about ~~two~~ Three Thousand Three Hundred and thirty one dollars
24 1/2 cents he the said Thomas Perry not having had the
conveyance from Walker to himself & executed procured said
Joseph Walker to convey the premises by way of mortgage
to the said Kennedy & Lynch for the security of said
debt on the twenty third day of October 1800, your
creator further shews that Thomas Perry became conside-
rable indebted to the ~~house~~ ^{firm composed} of Williams King and
your creator at Maryville in the County aforesaid
that on the day of June in the year one thousand
Eight hundred & five he was indebted to the said firm
last aforesaid the sum ^{of} one thousand five hundred
dollars and your creator who was the active part-
ner in said firm believing said Perry to be in
labouring circumstances pressed him for security where-
upon said Perry proposed and did convey the said
premises to the said firm by way of mortgage on
the said fifth of June 1805 would bond for the faith-
ful payment of said sum of money on the fifth
of June 1808 then next following and the said Thomas
then shewed and delivered into the possession of your
creator Walkers obligation for the conveyance & the
Bill single from Perry to Walker with the receipt
on the back ~~thereof~~ for the payment of the considera-
tion, that shortly after your creator discovered
that there was a balance due on the mortgage

From Walker to Kennedy & Lynch and for his better
Liability paid to the said Kennedy & Lynch the sum
of six hundred and thirty three dollars eleven cents and
mills which was the balance then due on said last men-
tioned mortgage, and at the same time (to wit) on the
Twenty fifth day of November 1805 procured the same
to be assigned to your Creator in his own name altho
in truth it was for the benefit of the firm of King
& Son & Co. may, all which deeds assignments and other writings
required by law to be proved & registered are so duly proved
registered but as they are voluminous your Creator prays
leave to produce them on the hearing & that they may be
taken & considered as part of this his Bill your Creator
For this sheweth Thomas Perry intermarried with
Betsey Walker sister to the said Joseph, that the
said Joseph Walker died ^{in the fall of the year} ~~about the year~~
one thousand eight hundred ^{and one} leaving William Walker & Polly
Walker infants who reside in Ohio county without
guardians, also Polly Anderson Isaac Anderson James
Anderson Betsey Patry and William Anderson infants
without guardians ~~who reside~~ who reside
in the State of Virginia, also William Walker Jane
& Polly Walker infants without guardians who reside
in Knox county also William Walker George Walker
Susan Lyle intermarried with William Lyle
James Buchanan intermarried with James
Buchanan who reside in the State of Virginia
all of full age, who are respectively together with the
children of Thomas Perry herein after named his heirs & Representatives

your creator for the sheweth that Thomas Perry
on or about the ~~year~~ 16th of Feb^r 1805 departed this life
~~departed this life~~ leaving James Perry & Polly Perry
now of full age Patsy, Walker & Teressa Perry who are
his heirs & representatives
now infants, for whom your creator shortly after said
Perry's death was appointed guardian, which said
James Polly Patsy, Walker & Teressa Perry
are also the heirs of Joseph Walker, your creator
for the sheweth, that ~~when~~ some short time after
the offices were opened for surveying lands on
the south side of Branch Road and Holston
Perry and Walker both being dead and no one
appearing to set up a claim to the same
& the firm of King & Montgomery being sep-
-ately concerned in the land aforesaid, he caused
the lands to be surveyed and on the twelfth
of February 1808 obtained a grant to be issued
in the name of William King & that of your
creator not however with a view of depriving
the heirs of Thomas Perry or any other of any
equity they might have to the same, which
said grant your creator has ready to produce to
this honourable court ^{& whether pay may be taken as debt of his debt} your creator for the sheweth
that after the death of Thomas Perry a certain
Edward Lynch recovered a judgment against your
creator & John Lawry his executor for
dollars on the plea of fully administered which was
found in favour of the executor, that a scire facit
against your creator as guardian of Perry's heirs

and that such proceedings were had that the lands
aforesaid was being sold and your Orator being
very desirous that the lands should be secured
by any other claims but his own was under
-ed and did on the day of
in the year 1813. bid the same off at the
sum of two hundred & seventy dollars for which
your Orator has no security or prospect of obtaining
satisfaction but out of the lands aforesaid, your
Orator further shews that when the grant passed the
stated price was paid by him out of the Court funds
of King & Montgomery to wit the sum of two hundred
& eighty five dollars & eighty cents ^{the} being sum remain
for two hundred & eighty five acres three Rods and
two chains, the quantity contained in said Grant
to said King & your Orator
your Orator further sheweth ^{about 13th Feb} ~~that some time~~
in the year 1808 — William King
died leaving your Orator the only surviving
partner of the House of King & Montgomery and
that the grant to King & Montgomery was obtained
for the better security of the Partnership debts
or for no other purpose. Your Orator further
sheweth that the aforesaid sums of money and
the interest thereon are now & for a long time have
been respectively due & unpaid to your Orator
and that the aforesaid tract of land is but
a slender security for the aforesaid respective
sums & the interest thereon, In Tender
consideration whereof and for as much

as your orator cannot by the rules of the com-
-mon law foreclose the equity of redemption in
a piece of land, or procure a sale thereof
but in a court of equity
" when matters of this sort are properly cognizable
in lawable

To the end therefore that the said
defendants may upon their oaths & respective
oaths true full & perfect answer make to all
& singular the premises as fully and particularly
as if the same were herein repeated and
interrogated according to the best of their
knowledge & belief as particularly & more parti-
-cularly whether Thomas Perry did not purchase
the said tract of land of Craig & continue in possession
the same until his death whether Craig did not
convey to Walker, whether Walker did ~~not~~ sell
to Perry, whether Perry did pay the consideration
whether Walker did not give a Bond to convey
whether Walker did not convey to Perry &
Lynch, whether the complainant ^{did} not purchase
in that manner for the sum stated, whether
~~the~~ said Perry did not convey to complain-
-ant by way of mortgage as stated, whether
complainant did not pay the state taxes
for said land, whether complainant ~~the~~
~~complainant~~ did not purchase at Sheriff's sale
as stated & whether sums are not together
with the interest respectively due com-
-plainant

your orator prays that the equity of redemtion may
be foreclosed, & that if he has mistaken his relief
that your honours may grant him such other &
further relief as may be just & reasonable

May it please your honours to grant him the
States most gracious writs Subpoena ^{of Rhea county} commanding
The saids William Walker, Polly Walker, Polly Anderson
= son Isaac Anderson, Jane Anderson, Betty Ander
= son, Polly Anderson, William Anderson, of Virginia
William Walker Jane & Polly Walker of Rhea county
also William Walker son & George Walker of Virginia
also William Lyle & son his wife, James Duck Lawson
& Jane his wife, also James Perry Polly Perry, Betty
Perry Walker Perry Horace Perry, to be before you
your honours at a time and place therein named
as by Law they should, them & them to abide &
perform what ever this honourable will award
& your Orator will pray &c

Per Muller Attorney

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1787
1788

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Montgomery
 vs
 Barry & Walker
 Heirs

2" 50
 9" 25
 75
 20
 25
 1" 00
 14" 95

2 Sub. to answer 2" 50
 2 Copies of Bill 18 1/2 9" 25
 2 Cont. Insurance } 50
 Filing Bill } 25
 Bond _____ 20
 1 affidavit _____ 25
 Rules _____ 1 75
 Order for publication 1" 00
~~Payment for copy~~
 Printed charge _____ 14" 45
 J. J. J. _____
 Bill 4" 6 2/2 _____ 1" 25
 6 in Decree 1" 6 2/2
 Enrolling Decree 3 25
 Setting for hearing 25
 9" 75
 Bond _____ 15" _____ 9" 90
 tax for _____ 2" 50
 Sheriff Russell _____ 1" 20
 Atto Miller _____ 12" 50

1691
1692
1693
1694

1695
1696
1697
1698

1699
1700
1701
1702

66

John Montgomery

vs

James Berry & John
Walkers Heirs