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James C. WESTERFIELD vs. P. M. HALE, et.al. petition in Equity

Mercer County Circuit Court Records
File Box W- 76, Mercer Co, KY, Circuit Court Records

contributed by [Barbara Westerfield Hilyerd](#)

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Plaintiffs: James C. WESTERFIELD and Jesse H. WESTERFIELD

Defendants: P. M. HALE, James HALE, Mary Ann BOTTOMS, Amanda JOHNSON and Thomas JOHNSON, her husband, Lorinda HALE and Malory HALE her husband, Arthusa PETERS & Silas PETERS her husband, Martha SUTHERLAND & J. Simeon SUTHERLAND, her Husband, Elizabeth HALE, Ablalon HALE, Margaret HALE, surviving widow of Charles HALE, dec'd., Mary GRAY & Elijah GRAY her husband, Eliza BONTA, widow of Henry BONTA Dec'd., John (alias Jack)HUNGATE, Davis HUNGATE and all other children and heirs of Sally HUNGATE and Joseph HUNGATE, whose names and residences are unknown to plaintiffs, Jesse HALE, the children and heirs of Isabella LOCKHART dec'd. whose names and residences are unknown to plaintiffs, the children and heirs of William Hale dec'd. whose names and residences are unknown to plaintiffs, children and heirs of Cynthia HUNGATE dec'd. whose names and residences are unknow, the children and heirs of Sarah Anne EPPS dec'd.(and Thomas A. EPPS, her surviving husband) whose names and residences are wholly unknow to plaintiffs, William J. WESTERFIELD, John WESTERFIELD, James WESTERFIELD, Mary Jane CLARK & her husband, John CLARK, Margaret JONES, John J. PLAXICO, Washington PLAXICO, John R. PLAXICO, Emelin HUFFMAN, James F. HUFFMAN, Eliza Ann HUFFMAN.

The plaintiffs, . . . state that their paternal grandfather, Jesse HALE, departed this life on the 15th day of Dec 1812 after having made his noncupative will which was probated and recorded in Mercer Co. Court in April 1813. On Apr 5, 1813, Nancy HALE, widow of Jesse, came into court and renounced the provisions of said will and claimed her dower in said decedant's estate instead.

Said Jesse HALE left surviving him, his widow, Nancy HALE, his daughters, viz; Sally HUNGATE" ... (m.)" Joseph HUNGATE, Hannah WESTERFIELD, the mother of these plaintiffs who had intermarried with John WESTERFIELD, Isabella HALE, "who soon afterwards intermarried with Richard LOCKHART. He left sons Jesse HALE, Charles HALE, Elias HALE, and William HALE, making in all seven children and heirs at law at the time of his death."

"Jesse was the owner of 563 acres of land lying on the waters of Chaplin River in Mercer Co., KY, at the time of his death. The upper tract contained 350 acres and the mansion house and the lower tract contained about 200 acres and lay adjacent to the upper tract." Nancy got 120 acres including the mansion house from upper and 66 acres lower. The 66 later resurveyed and proved to be 93 acres. "The seven sons and daughters allotted 50 acres each."

"Plaintiffs state that their maternal grandmother, Nancy HALE, departed this life in 1856. That Hannah (HALE) WESTERFIELD, their mother, departed this life in the year 1823 or thereabouts, leaving her husband, John WESTERFIELD, surviving her, and also the following children and heirs: James C. WESTERFIELD - Jesse H. WESTERFIELD - David WESTERFIELD - John A. WESTERFIELD - Phobe WESTERFIELD who afterwards intermarried with Henry HUFFMAN. Henry HUFFMAN departed this life

and she intermarried with John A. PLAXICO. By said Henry HUFFMAN said Phoebe had the following children: James F. HUFFMAN and Eliza Anne HUFFMAN, and by said John A. PLAXICO, she had the following children: Washington PLAXICO - John R. PLAXICO and other children and heirs whose names are not known to plaintiffs, all of whom are over 21 years of age, none of whom have been heard from for more than 7 years, and all of whom when last heard from were non-residents of the state of Kentucky and lived in the state of Mississippi.

"Sarah Ann EPPS, formerly WESTERFIELD, was also a child an heir of John and Hannah WESTERFIELD, married Thomas A. EPPS, and has since departed this life leaving her said husband and several children and heirs surviving her, all of whom when last heard from lived in Texas . . . The names and residences of said Thomas A EPPS and the children and heirs are wholly unknown to the plaintiffs. Neither said EPPS or his children have been heard from for more than 15 years.

"William J. WESTERFIELD was also a child a heir of John and Hanah (HALE) WESTERFIELD. . ." (m) Margaret WELBORN and afterwards departed this life leaving his widow, the said Margaret WESTERFIELD and thier children and heirs, viz: William J. WESTERFIELD - John WESTERFIELD - James WESTERFIELD - Mary Jane WESTERFIELD, who afterward married John CLARK. All of these are over 21 years of age and yet alive. The said widow, Margaret WESTERFIELD, afterwards intermarried with William Jones, who has since departed this life leaving his widow, the said Margaret JONES. Neither Margaret JONES nor any of her children and heirs have been heard from for more than seven years, but when last heard from were all non-residents of Ky. living in the state of Kansas.

"The seven above named children and heirs of Hanah and John WESTERFIELD, the heirs of such of them who are dead, and the assigns of those wh have sold and conveyed their interests are entitled, since the death of John WESTERFIELD, who was tenant by Curtesy, to the above described 50 acres of land laid off to John and Hannah WESTERFIELD. They are also entitled to the remainder interst, since the death of their grandmother, Nancy HALE, and their father, John WESTERFIELD, into undivided or seventh part of her said dower interest of 213 acres. The other six sevenths of the dower belongs to the other six heirs . . ." (It gives the other known HALE desc.)

"Plaintiffs state that David WESTERFIELD, son of said John and Hannah (HALE) WESTERFIELD, sold his interest in the land in controversy to James C. WESTERFIELD, Mar 3, 1854, . . . recorded . . . Mercer County in Deed Book No. 29 page 86.

"John A. WESTERFIELD, another son . . . sold and conveyed his interest to James C. WESTERFIELD, on Mar 13, 1854. . . Mercer Co Court, Deed Book 29 - Page 87.

"Plaintiffs state that their father, John WESTERFIELD, departed this life on the 22nd day of November 1872."

"Plaintiff J. C. WESTERFIELD is entitled to three sevenths of the 50 acres and three sevenths of one seventh of the dower land. Plaintiff Jesse H. WESTERFIELD is entitled to one seventh part of the 50 acres of land and one seventh part of one seventh of the dower land."

"DEPOSITION OF JESSE H. WESTERFIELD: taken at the law office of John G. KEVE in the town of Barbourville, Knox Co., KY on the 15 of November 1878. He says that John WESTERFIELD was married twice. His first wife was Hannah HALE. He married her in Mercer Co., KY about 8 miles west of Harrodsburg. Her father was Jesse HALE and her mother was Nancy HUFF. John WESTERFIELD and Hannah HALE were married about the year of 1808. Hannah's father, Jesse HALE died about the year 1810 and her mother died about 20 years ago, and both died in Mercer Co. They lived about 8 miles West of Harrodsburg on Chaplain River.

"John WESTERFIELD died Nov 22, 1872 and his wife, Hannah, died about the year 1823. John died at Fort Gibson in the Indian Nation and Hannah died in Daviess Co, KY. I was not present when my father died and I never saw my father, John WESTERFIELD, after his death. After John Westerfield and Hannah were married, they lived about three miles south of Harrodsburg, Ky. He says tht he cannot state where they were raised but was his understanding that John WESTERFIELD was born in Shelby Co. Ky. Hannah Westerfield was never married but the one time. She had seven children by her husband, John Westerfield and their names are as follows: William J. WESTERFIELD - Jesse H. WESTERFIELD - David WESTERFIELD - James C. WESTERFIELD- John A. WESTERFIELD and Sarah Ann WESTERFIELD.

"WILLIAM J. WESTERFIELD married Margaret WILBURN, Jesse H. WESTERFIELD married Malinda ELLIOT, David WESTERFIELD's first wife a was by the name of WHITTINHILL and his last wife name not known, James C. WESTERFIELD married Nancy HOPPER, Phebe WESTERFIELD married a man by the name of Henry HUFFMAN and after his death she married John J. PLAXICO, John A. WESTERFIELD married a RAGSDILL, Sarah Ann WESTERFIELD married a man by the name of John EPPS. William J., David, Phoebe and Sarah Ann are dead, the rest are living.

"William WESTERFIELD died in Ohio Co., Ky. Phebe died in the state of Mississippi and Sarah Ann died but can't state where. He says that William WESTERFIELD died in Aug 1837 but can't give the death dates of the others.

"William WESTERFIELD left a Widow, Margaret, who afterwards married a man by the name of William JONES who is now dead. After JONES' death she went to Nevada City to her son's William WESTERFIELD. William WESTERFIELD and wife, Margaret, had

the following children : William - John - James - Mary Jane, their residence not known to this witness.

"David WESTERFIELD left a widow and children but their names or residence not known to this witness.

"John J. Placksco, the last husband of Phoebe, was living at the time of her death. She also left children but this witness does not know their names nor their residence or that of John J. Placksco.

" Thomas EPPS was living at the time of the death of Sarah Ann and she left some children, but this witness cannot state whether they are living.

"John WESTERFIELD and Hannah HALE were legally married before the division of the land of Jesse HALE in 1815. They had four living children at this time (Sept 15, 1815) viz: William J., the oldest, born November 30, 1809, Jesse H., David, and Jame C. They cotinued to live together as man and wife until the death of Hannah in 1823."

"He states that his mother and father (John & Hannah WESTERFIELD) removed from Mercer County to Daviess Co, Ky sometime between the years 1814 and 1816 and his mother died in that county about the year 1823. His father then left Kentucky in the year 1836 and went to the state of Tennessee and went from there to the Indian Nation and died there in Nov 1872. He (Jesse H. WESTERFIELD) further states that after the death of his mother, he went from Daviess Co. to Harrodsburg, Mercer Co, Ky and stayed there some four or five years. Then he went with his grandmother, Nancy HALE to the state of Indiana and stayed there about twelve months. He then came back to the state of Kentucky and passed through Mercer Co. and have not been to Mercer Co. since.

"He further states that he does not know what property his father (John WESTERFIELD) had at his death, either personal or real, or the value of the same. Whe he first married in the year 1833, his father gave him a tract of land containing about 300 acres and also some personal property, all to to the value of about \$400. He has never received anything since from his father."

"DEPOSTION OF JAMES C. WESTERFIELD: (only that which adds to information given by Jesse H. WESTERFIELD was copied) taken at the law office of John G. EVE in the town of Barbourville, Knox Co., Ky Nov 22, 1878. He state that he is 64 years old and resides in Knox Co, Ky. He says that he received a letter from his sister Jennie THOMAS, that his father died Nov. 22, 1872, at Fort Gibson, I. T. that his father was married twice.

" He says that Mary Jane WESTERFIELD, daughter of his brother William J. WESTERFIELD, intermarried with John CLARK and they ar now living in the state of Kansas.

"Phebe WESTERFIELD married Henry HUFFMAN and second to John R. Plaxico ad she died in the state of Mississippi. She left surviving her by her first husband the following children; Eveline, James F., and Eliza Ann Huffman. By her last husband she had two children, John ans Washington Plaxico and they live in Mississippi.

"Sarah Ann WESTERFIELD and her husband, Thomas EPPS, had some children and moved to Texas shortly after their marriage and he cannot recollect the names of the children.

"David WESTERFIELD was married twice. His frist wife was the name of Whitinghill but he does not know the name of the last wife. He died in Daviess Co, Ky and left the following children, viz: William, Rebecca, James, and Galien WESTERFIELD who lived in Daviess Co the last he heard of them. He has not heard from any of them for some years except Galain WESTERFIELD, son of David WESTERFIELD, he received a letter from him some four months ago.

"He says that his father and mother moved from Mercer Co. to Daviess Co. somewhere between 1814 and 1817 and lived there until his mother's death in 1822 or 1823. After her death, John WESTERFIELD went to Shelby Co. Ky and remained there until 1836 when he moved to the state of Tennessee and in May 1872, he moved to Fort Gibson, I.T. and lived there until his death the 22 day of November 1872.

"James C. WESTERFIELD further states that he lived with his grandfather WESTERFIELD in Mercer Co for about 5 years after the death of his mother. Says that he has been in Mercer Co. some six or seven times since 1815. Sometimes he stayed a week or ten days and sometimes not so long."

"CEMETERY RECORD; The following is a true copy of the original taken for the Registry of the National Cemetery at Fort Gibson, I. T. To Wit-Dr. John WESTERFIELD died November 22, 1872. Grave No. 2283. This the 16th day of July 1878. R. M. WALKER, Clerk, Court Illinois District, Cherokee Nation.

"INTERROGATION OF LYDIA WESTERFIELD, WILLIAM THOMAS, & JENNIE THOMAS of Ft. Gibson, I. T. Jennie Thomas states that she is 35 years of age, a resident of Fort Gibson, I. T., and no party to the suit. She says that the plaintiffs (James C. and Jesse H. WESTERFIELD) are her half brothers. She states that John WESTERFIELD, now dead, was the father of Dr. James C. WESTERFIELD and Jessie H. WESTERFIELD. She was present at the time of death of John WESTERFIELD and so was Lydia

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WESTERFIELD, William THOMAS, and S. ALTON. That he died at the residence of William THOMAS and is buried in the Fort Gibson National Cemetery. Date of death wa Nov 22, 1872. She did not know Hannah WESTERFIELD. John WESTERFIELD did not own any real estate or personal property at the time of his death. Sworn to Julu 16, 1878 by Jennie THOMAS and William THOMAS, Illinois District, Cherokee Nation. SUIT DISMISSED -APRIL 1881 at cost of plaintiffs. (Note: Fort Gibson is located in Muskogee Co. Okla. This county was formed in 1898. Oklahoma became a state of the union in 1907."

Further notes by Barbara: One says his brother David died in Ohio Co. and one says Daviess Co. Daviess was made from Ohio in 1815 and joins Ohio on the north. The boundary in that area was moved back and forth some. David's son Dr. William P. WESTERFIELD had his biography in the Ohio Co. or Butler Co. section of the Battle, Perrin, and Kniffen Ky Histories. It has quite a few mistakes in it but is helpful. His first wife was Catherine WHITTINGHILL. Confusion often results from the fact that my 2nd great-grandfather, also a David, son of Cornelius WESTERFIELD Sr., married as his second wife, Catherine RALPH SUTTON, a widow, and they lived in the same areas of Ohio and Daviess Co, although my David was born in 1819 and lived until 1905, part of the time in each of the two counties. My David is buried at Mt. Hermon Methodist Church cem. in Ohio Co., KY. I do not know whether David, son of John is bur. in Ohio or Daviess. I grew up in Daviess Co. A David WESTERFIELD m. a Susan ROBY, possibly nee Roberts, in Ohio Co. bond or marriage Dec. 13, 1853. I think this is David, son of John's, second marriage, but I am not sure. A ROBEY, Wm., I believe, sued David in Ohio Co over land Robey had sold to him and claimed he had not paid for and planned to sell. He said David was not a resident. However, later vital statistics (microfilm) list children born to David and Susan ROBERTS WESTERFIELD,so it is not clear.

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