

1885-015 Chancery Causes: Lucy A. Thomas vs Mary L. Boykin & Samuel H. Baykin

Isle of Wight County

other SURNAMES: Stephenson

Thomas Lucy St.

15. { Bill in Chancery  
Boyskin L.S. & ex

March Res. 1884.

Bill <sup>to</sup> filed - ~~seems~~ <sup>exd.</sup>  
& de. nisi.

Apr. Cts. Bill taken  
for confed. set for  
hearing.

April Term 1885:  
Dismissed on ~~motion~~  
of Plaintiff.

may be made parties, defend-  
ant to this bill, and re-  
quired on their oath to an-  
swer the same; that proper  
process issue that the said  
real estate be divided between  
the parties entitled thereto, and  
your complainants portion al-  
lotted to her; and in case  
the said real estate cannot be  
divided, and partitioned in  
kind that the same be ex-  
posed to sale and the proceeds  
of such sale be divided among  
the parties entitled thereto;  
that all proper orders and decrees  
be made, and proper inquiries  
directed, and that all such  
other farther and general re-  
lief may be granted your com-  
plainant, as the nature of her  
case may require or to equity  
shall seem meet. And your com-  
plainant will ever pray &c.

Wm. J. Nelson  
Sr. / Jr.

states that the said lot or tract of land is as she verily believes susceptible of partition in kind among the parties thereto; but if it be not, then your complainant desires the same to be sold, and the proceeds thereof divided among the parties entitled thereto.

Should the property not be divisible in kind your complainant believes, and here states that the interest of those <sup>the same</sup> entitled to the said estate or its proceeds will be promoted by the sale thereof.

In tender consideration whereof and for as much as your complainant is without remedy in the premises at law and can only be relieved by this Honorable court of equity where matters of this kind are alone and properly cognizable, your complainant prays that the said Mary L. Boykin and Samuel G. Boykin her husband

either of them the said Mary L. Boykin or the said Lucy A. Thomas shall die without leaving a child or children living at the time of her death the share of such one so dying shall go and accrue to the survivor.

That on or about the 23<sup>rd</sup> day of April 1873 the said Sarah F. Thomas departed this life.

That on or about the 18<sup>th</sup> day of Decr. 1883 the said James Thomas as who was the trustee as aforesaid departed this life.

That the said Mary L. Boykin is above the age of 50 years and is the wife of one Samuel G. Boykin and has no child now living.

That under and by the deed above mentioned your said complainant Lucy A. Thomas and her said sister Mary L. Boykin are the only owners of the said lot or tract of land and are now occupying the same jointly.

And your complainant further

Ex "A"

was granted and conveyed  
to the said James Thomas upon  
certain trusts which are more  
fully set forth in said deed  
a copy of which is herewith filed  
marked exhibit "A" and prayed  
to be taken as a part of this  
bill.

That as will appear from  
said deed the said trustee  
was directed to permit his wife  
Susan F. to occupy possess  
and enjoy the said lot or  
parcel of land and the issues  
rents and profits thereof to take  
for and during her life and  
at the death of the said Susan  
F. wife of the said James Thomas  
as trustee as aforesaid the  
said trustee and his heirs  
should permit your said com-  
plainant and her sister Mary  
D. Boykin, wife of one Saml.  
G. Boykin to have and to  
hold the said lot or tract of  
land in fee simple to be divided  
between them in equal shares,  
on condition however that if

To the Hon. Geo. Blow, Judge  
of the Circuit Court of Law  
and Chancery for the county  
of Isle of Wight in the State  
of Virginia, in Chancery  
sitting.

Your complainant Lucy A.  
Thomas, humbly complaining  
respectfully shows to the court  
that Wm. N. Stephenson  
and Elizabeth, his wife  
by their deed bearing date  
on the 14<sup>th</sup> day of May  
1863 did convey with gen-  
eral warranty unto James  
Thomas trustee, all of that  
certain lot or tract of land  
situate in the town of Smith-  
field and county and state  
aforesaid, bounded as follows,  
on the north by Pagan Creek,  
on the east by the lot then  
belonging to Geo. K. Atkinson, on  
the south by the main street  
of said town and on the  
west by the lot of Robt. F. Barrett  
which said lot or tract of land

in herit it. Untill the one or the other  
 dies I can not be said she will not-  
 have a child & that this child will not be  
 living at her death, and untill the one  
 the other dies it can not be said who  
 will be the survivor. As the survivor  
 will inherit the whole property I can  
 not send be sold and the proceeds given  
 one half to each to do with as she pleases  
 for of this sum so it might be spent, wa-  
 tered or destroyed and at the death  
 of the party <sup>receiving it.</sup> nothing might remain for  
 the survivor to receive.

And having answered their dependants  
 pray that they may be disimpeged hence  
 with their reasonable costs in this behalf  
 expended and they will ever pray &c

J. G. Boykin  
 in L. Boykin

Thomas Carey &

|              |          |        |             |                |       |
|--------------|----------|--------|-------------|----------------|-------|
| Boykin et al | Demonstr | Answer | aff. as per | April 2nd 1884 | Filed |
|              |          |        |             |                |       |

I sh of West-County Co. Va. J. R. S. Thomas, a  
 notary public in the county aforesaid in the State of Virginia  
 do hereby certify that S. G. Boykin & M. L. Boykin whose names are signed  
 to the answer above this day appeared before me & made oath  
 that the facts stated above are so far as they are known to them  
 true & correct, & so far as they are known to them  
 knowledge & information of them they believe them to be  
 correct. Given under my hand this 28th Day of March A. D. 1884  
 R. S. Thomas  
 Not. Public

But not withstanding these facts the property  
can not now, in the judgment of these de-  
fendants be sold divided in kind, or sold  
without the consent and assent of both  
the said complainant & these defendants  
because, while the property is according  
to the deed ~~forwards~~ in the death of the  
aforesaid Susan F. Thomas given to  
Mary L. Boykin and Lucy A. Thomas  
"in fee-simple to be divided between them  
in equal shares" Yet it is upon this con-  
dition however that if either of them...  
shall die <sup>leaving a child or children</sup> without issue living at the time  
of her death the share of such one dy-  
ing shall go and accrue to the survivor.

It is true that the said Mary L.  
Boykin is fifty three years of age, and it  
is true that the said Lucy A. Thomas  
will be 46 years of age on the 21<sup>st</sup> day of  
April 1884 & while it may be against  
the usual laws of nature for either to  
have a child it is not impossible. The  
said Mary L. Boykin may yet have a  
child & may inherit the whole property.  
Or she may survive her unmarried  
sister Lucy and may thus by survi-  
vorship inherit the whole. In the  
same way Lucy may marry &  
may have a child & that child may be  
living at the death of M. L. Boykin &  
thus she may inherit the whole prop-  
erty: or, she may survive her sister & thus

The new part has a parlour chamber  
up stairs, parlor & large <sup>small lighted</sup> basement.  
The old part has two old rooms on first-  
floor, old, leaky & ~~needing~~ ~~plastering~~  
~~very much~~, two basement-rooms  
rooms but very small, dark, gloomy out-  
of order & one absolutely fit for nothing, ex-  
cept to store lumber & such heavy & room  
cumbersome material. The <sup>up-stairs</sup> ~~parlour~~ of this  
old part is reached by the one front-door  
of the <sup>main</sup> building & one by and through  
the stairway ~~out~~ which is entirely crotch-  
-in the building. There is but one ac-  
cess to the lot & to the rear of the lot, one  
gate, one pathway. There is only one  
well, and one set of out-houses. There  
is only one garden & no part of this is good  
& the other part - valueless. The water  
front is of ~~no~~ unequal value - the side  
next to Mrs. Ely's capable of use because  
junks can anchor & land there - and this  
they can not do at the Addison side  
Thirty feet of the front of muddy feet is  
cut off for a carriage way and at  
the end of this is the carriage house and  
stables. This is on the side of the river  
and ~~not~~ most valuable part.

For these and other reasons the lot  
can not be divided in kind & neither  
<sup>the complainant or these defendants</sup>  
can take the whole & pay to the other  
party such a sum of money as she, or they  
may be entitled to.

or dying shall go and accue to the  
Survivor &c.

Thus it will be seen from the rec-  
-itals and averments of the Deed, what  
is true as a matter of fact, the said  
Susan F. Thomas was not the wife  
of the said James Thomas, as the com-  
-plainant hath twice alleged in her  
bill of complaint; but she was the  
wife of his brother John P. Thomas  
as every body in the town of Smithfield  
knew, or ought to have known.

2 The said Susan F. Thomas, called Sarah  
F. Thomas, <sup>in the</sup> ~~was~~ ~~in the~~ ~~com-~~  
-plainant in the 2<sup>d</sup> paragraph of the  
complainant's bill, did not die on the  
25<sup>th</sup> day of April 1873 as the said com-  
-plainant hath alleged, but on the  
14<sup>th</sup> day of August 1873.

3 The lot of land in the town of Smith-  
field mentioned and described in the  
said complainant's bill of complaint  
is not susceptible of partition in kind  
as the said complainant hath alleged.  
It fronts 90 feet on Church Street of the  
town of Smithfield and has a rear of  
feet on Pagan Court. The dwell-  
-ing on it consists of two parts - one quite  
new & the other ~~some~~ very old - differ-  
ent in length, width, dimension &  
conveniences, & would rent if they could  
be separately rented for greatly different  
sums.

said James Thomas Trustee of the 2<sup>d</sup>  
part, and Susan F. Thomas Mary  
L. Boykin and Lucy A. Thomas of the  
third part- and the said deed recited  
that for and in consideration of the love  
and affection which the said James  
Thomas bore to "the said Susan F.  
Thomas who is the wife, and the said  
Mary L. Boykin and Lucy A. Thomas  
who are the daughters, of John P. Thomas  
his brother, and for other <sup>money</sup> considerations  
which were supplied he devised the prop-  
erty to be conveyed to him, & it was  
conveyed to him "upon Trust- that he  
the said Trustee & his heirs should permit  
the said Susan F. Thomas to occupy, pos-  
sess and enjoy the said lot & parcel of land  
& the rents, issues, & profits thereof for  
and during the term of her natural life"  
free from the debts, & control of her hus-  
band, and upon "the further trusts that  
in the expiration of the term aforesaid  
he the said Trustee and his heirs should  
permit the said Mary L. Boykin and  
Lucy A. Thomas to have & to hold the  
said tract of land in fee-simple to be  
divided between them in equal share  
or children known that if either of them  
the said Mary L. Boykin, or the said Lucy  
A. Thomas, shall die without leaving  
a child or children living at the time  
of her death the share of such one

the joint answer of S. G. Boykin and Mary Lou his wife to the Bill of Complaint of Lucy A. Thomas exhibited in the circuit court of the County of Ind. & W. Va. against them the said S. G. Boykin and Mary Lou his wife.

These defendants now and at all times hereafter saving and reserving to themselves all benefit and advantage of exception which can, or may be had or taken to the many errors, uncertainties and imperfections of the said complainant's bill of complaint contained in answer thereto, or so much thereof as they are advised it is material and necessary for them to answer, answering saith.

That it is true as the said complainant hath in his bill alleged that the Wm. H. Stephenson and Elizabeth his wife did by their Deed of May 14<sup>th</sup>, 1863 convey to James Thomas, his - the lot of land in the town of Smithfield mentioned in the said complainant's bill, but it is not true that the said lot of land was conveyed for the uses, purposes, benefits and trusts as set forth in the said complainant's bill of complaint. The conveyance aforesaid was between the said Wm. H. Stephenson & wife of the first part; the

Lucy A. Thomas  
v

Bozkin & Wife.

The Demurrer of S. G.

Bozkin & Mary Lou his wife to the  
Bill of Complaint of Lucy A. Thomas  
in the circuit-court of Iowa of Wright against  
them

These Defendants by protestation not con-  
fessing or acknowledging all, or any  
of the matters & things in said bill of com-  
plaint contained to be true in manner  
& form as the same are therein set forth  
doth demur thereto & for causes of de-  
murrer shew:

- 1 That no such deed was made from  
Wm. H. Stephenson and Elizabeth his  
wife as the said complainant hath  
alleged
- 2 That if there had been the age, and  
condition of the complainant, whether  
married or unmarried, or whether  
or with or without children is not given
- 3 She does not allege, except indirectly  
the birth of Josephine Bozkin, the mother  
by Coverture of S. G. Bozkin, & if she did  
Mary Lou Bozkin still living, the com-  
plainant is not entitled to the issue  
why she sues

Not finding the within named J. Baykin as he  
reduced place of a late J. Baykin, a true copy to Wm.  
J. Baykin wife of the within named J. Baykin the possessor  
of the same. Feb. 16th 1842

R. C. Edwards  
Sgt.

Thomas Lucy &

v. J. Success  
v. J. Nick

By Kin Mary &  
H. L.

//

To Mark Rules 1842  
J. H. J. Kelmsley

✓  
Entered by advertising to  
the within named Mary  
J. Baykin a true copy  
of the within summons  
Feb. 16th 1842

R. C. Edwards

Sgt.

# The Commonwealth of Virginia,

TO THE SHERIFF OF ISLE OF WIGHT COUNTY, GREETING

WE COMMAND YOU TO SUMMON

*Maud L. Boykin*  
*and Samuel G. Boykin*

to appear at the Clerk's Office of the Circuit Court of Isle of Wight County, at Rules to be holden for the

said Court, on the first Monday in

*March* next to answer *the Bill*  
*in Chancery of Lucy A. Thomas*

~~of a plea of~~ ~~for \$~~ ~~Damages \$~~ And have then there this writ.

Witness, N. P. YOUNG, Clerk of our said Court at the Court House, the

day of *February* 188*4*, in the *108<sup>th</sup>* year of the Commonwealth.

*N. P. Young*

Thomas L. A.  
vs

Baykin M. L. dtd

Amel Jan. 1885

To be entered

Gen. 1885

Gen. 1885

—

Exterior #6

Thomas L. v. W. Barker & M. A.  
et al.

This cause came on  
this day to be ~~again~~ heard  
and on motion of ~~plff~~  
it is ordered to be dismissed  
from the docket at the  
~~plffs~~ cost.

Stephenson wife

5. 3 Cope  
Deed

Thomas Fenton &

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Ex- "A"

Sam a Thomas

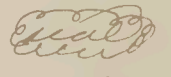
11.

Proy R. Fenton

This Deed, made this 14<sup>th</sup> day of May in the year one thousand eight hundred and sixty three, between William H. Stephenson and Elizabeth Stephenson his wife of the first part, James Thomas of the second part, and Susan F. Thomas Mary L. Boykin and Lucy A. Thomas of the third part, Whereas, the said James Thomas has purchased of the said William H. Stephenson a certain lot of land hereinafter described, which said lot the said James Thomas in consideration of the love and affection, which he hath & beareth for the said Susan F. Thomas, who is the wife, and the said Mary L. Boykin and Lucy A. Thomas, who are the daughters of John P. Thomas his brother, and in the further consideration of five dollars, (the receipt of which he the said James Thomas hereby acknowledges) desires the said lot or tract of land to be conveyed to & for the use and benefit of the said Susan F. Thomas, Mary L. Boykin and Lucy A. Thomas, Now this Deed witnesseth, that in consideration of the premises, and in the further consideration of the sum of sixteen hundred dollars, the said William H. Stephenson & Elizabeth Stephenson do grant unto the said James Thomas, with general warranty, all that certain lot or tract of land, situate in the town of Smithfield in the County of Isle of Wight & State of Virginia, known & described on the plat of the said Town as lot number — and bounded as follows; On the North by Pagaw Creek, On the East by the lot of George R. Atkinson, On the South by the main Street of said town,

and on the West by the lot of Robert T. Barrett, being the same lot which was conveyed to the said Stephen son by Octavius C. Goodrich and Adelaide his wife, by deed bearing date on the 13<sup>th</sup> day of May 1863, I have and to hold the said lot or tract of land unto the said James Thomas & his heirs, upon trust, that he the said trustee & his heirs shall permit the said Susan T. Thomas to occupy, possess & enjoy the said lot or parcel of land, and the issues, rents & profits thereof to take for and during the term of her life, for her support, free & clear of & from all manner of debt charge & incumbrance of her said husband, or any husband she may hereafter take, so that the said Susan T. Thomas shall not sell, mortgage, charge or otherwise dispose of the said issues, rents & profits in the way of anticipation, And on this further trust that, on the expiration of the term aforesaid, he the said trustee & his heirs, shall permit the said Mary L. Boykin and Lucy A. Thomas to have & to hold the said tract of land, in fee simple, to be divided between them in equal shares, on condition however that if either of them, the said Mary L. Boykin or the said Lucy A. Thomas shall die without leaving a child or children living at the time of her death, the share of such one so dying, shall go and accrue to the survivor. And upon this further trust that, if during the continuance of the said trust it shall be deemed to be to the interest of the said Susan T. Thomas, Mary L. Boykin

and Lucy A. Thomas, to sell the said lot or exchange the same for other property, the said James Thomas & his heirs, by and with the consent of the said Susan T. Thomas, Mary L. Boykin, & Lucy A. Thomas, testified to by their becoming parties to the deed conveying the same and signing & delivering the said deed, and those who are married undergoing such joint examination & making such acknowledgment as is required by the laws of the State of Virginia in the case of married women conveying property, may exchange the said lot for other property, or may sell the said lot & with the proceeds of such sale buy other property, but in either case the property so purchased or received in exchange for the said lot shall be subject to the same trusts, limitations & conditions as is herein before provided as to the lot herein conveyed. The said William H. Stephenson covenants that he has the right to convey the said land to the said grantee, that he has done no act to encumber the said land, that the grantees shall have quiet possession of the said land free from all incumbrances, and that they the said grantees of the first part will execute such further assurances of the said land as may be required. Witness the following signatures and seals.

Wm. H. Stephenson   
Jas. Thomas   
Elizabeth Stephenson 

State of Virginia, County, County of Isle of Wight, to wit:  
We S. James Wilson, and Wm H. Casey, justices of the  
peace for the County aforesaid in the State of Virginia,  
do certify that Wm H. Stephenson and James Thomas,  
whose names are signed to the writing annexed, bear-  
ing date on the 14<sup>th</sup> day of May 1863, have acknowledged  
the same before us in our County aforesaid And we do  
further certify that Elizabeth Stephenson the wife of the  
said William H. Stephenson whose names are signed to  
the writing hereto annexed bearing date on the 14<sup>th</sup>  
day of May 1863, personally appeared before us in  
the County aforesaid and being examined by us priv-  
ily & apart from her husband and having the deed  
aforesaid fully explained to her she the said Elizabeth  
Stephenson acknowledged the said writing to be  
her act and declared that she has willingly ex-  
posed the same and does not wish to retract it.

Given under our hands this 19<sup>th</sup> day of May 1863.

S. James Wilson J.P.

Wm H. Casey J.P.

In the Clerk's Office of the County Court of Isle of Wight,  
County, June 1<sup>st</sup> 1863, This deed from Stephenson & wife  
to Thomas for Thomas &c. was admitted to record upon  
the annexed certificate of acknowledgment & being exam-  
ination of the parties thereto before Justices of the  
peace.

Test, J. P. Young cc.  
a copy. Test, J. P. Young clk.