

Summary of the Chancery Record of Alexander Huston Petition filed by John Huston vs. Henry McGrath (variously called McGraw sic. in document) 7 March 1830:

Term: 12 March 1830

Part A. Pg. 61: claim to section number thirty of township ten in range six between the great Miami River and the Virginia Reservation

- First part indicating that John Huston, son of Alexander deceased, “died intestate that at the time of his death he was seized and possessed of the following described land, to with, the west half of section thirty in township two of range six lying between the great Miami River and the ... Reservation, which tract was patented to him by the President of the United States on the twenty third day of October in the year eighteen hundred and six containing one hundred and forty seven acres and thirty hundredths of an acre to be laid off on the east end of the south half of lots or section number thirty of township ten in range six between the great Miami River and the Virginia Reservation, both of wick tracts are situated in said County of Montgomery and together make the whole of said fractional section number thirty. That said alexander Huston died leaving a widow named Mary Ann who was entitled to dower in said premises who has since married to on Henry McGrath, both of whom your petitioner prays may be made defendants”

Part B. Page 62 Names children, grandchildren, great grandchildren as

defendants: “That said Alexander died sometime about the year eighteen hundred and fourteen, leaving ten children to wit,”

- Ten children: **Edward** of *Montgomery Cty, OH*, **Samuel** of *Indiana*, **Rebecca** (married name Johnson; no living husband) of *Clarke Cty, OH*, **Mary** (married name Roberts, children’s surname Croy; no living husband) of *Union Cty, OH*, **David**, **Rachel** (married name McClish; no living husband), **Sarah** wife of Jacob Oswald (variously spelled Oswald), *all of Stark County, OH*, **Andrew** (deceased after death of father), **Catharine** wife of Dominick McGrath (deceased after death of her father), **Susannah** (married name Croy; who died in the lifetime of Alexander her father-before 1814 approx.), **Alexander Jr.** (who died in the lifetime of Alexander his father-before 1814 approx.)
 - Children of **Susannah Huston Croy**-eleven children: Jacob, Elizabeth wife of Henry Musgrove, *both of Miami Cty, OH*, Alexander of *Indiana*, Matthew, John of *Indiana*, Benjamin, Sarah wife of John Sills, Samuel, Joseph, David M., James
 - Children of **Catherine Huston McGrath**-11 children: William, Sarah, Margaret, Mary, Andrew, James M, Mark *all of Montgomery Cty, OH with father Dominick*
 - Children of **Andrew Huston** who died after the death of his father and dead at filing-nine children: John of *Richland Cty, OH*, David of *Columbiana Cty, OH*, Andrew Jr., Eleanor wife of William Cleary, Drusilla wife of Hugh Cowan, *all of Bedford Cty, PA*, Mary (married name Miskelly no husband; later in document named variously Collins), Rebecca wife of Jacob Blocher (variously spelled Blocker, Blucher), Hannah (dead before filing March 1830) wife of Peter McCleary, *all of Allegany Cty, MD*, Sally (dead before filing March 1830) wife of John Tomlinson of *Bedford Cty, PA*
 - Pg 62 Children of **Hannah Huston McCleary** (daughter of Andrew, son of Alexander)-2 children: Rebecca, John

- Pg 62 Children of **Sally Huston Tomlinson** (daughter of Andrew, son of Alexander)-5 children: Emily, Jesse, Andrew, John Jr., William
- Total defendants besides Mary Ann Huston McGrath (widow of Alexander) and Henry: **39**

Part C. **Pg 63-65: Outlines all claims, where to find defendants, and rational for the petition.**

- Notice that original will being verbal and nonbinding, indicated 50 acres to Samuel and Edward Huston to which at the time the rest of the heirs surrendered to them for \$511 on 19 November 1816 a deed of release. John Huston said no part had been paid and also indicated that on 12 October 1827 Samuel conveyed his portion to one Gabriel Parris which John Huston in turn purchase.
- Henry Stoddard: purchased Andrew Jr (son of Andrew, son of Alexander) portion. (see bottom for info on Henry Stoddard)
- Pg 64 Places of residence: **some live in Pennsylvania, some in Maryland, some in Ohio, and some in Indiana.** This information is noted in italics of listed defendants above.
- Names of minor children-those under 21: “And your petitioner would further represent that a number of said defendants are minors under the age of twenty one years, viz, Joseph Croy, David M Croy and James Croy children of the said Susannah Croy, Rebecca McCleary and John McCleary, children of Sally late wife of Peter McCleary, Emily Tomlinson, Jesse Tomlinson, Andrew Tomlinson, John Tomlinson, Also Elizabeth McGrath, Susan McGrath, Rebecca McGrath, Nancy McGrath, James McGrath, and Mark McGrath children of Catharine late wife of Dominick McGrath”
- Pg 65 Rational for petition: “That great waste has been committed upon the premises by said McGraw by cutting and felling valuable timber; That said McGraw has been in the habit of falling valuable oak timber in large quantities for the purpose of providing the bark to sell to Tanners; that he has also been in the habit of cutting and selling in large quantities timber for various purposes, such as Cooper stuff from ...and for sawing into boards and soforth to the very great injury of the premises. Your petitioner prays that said Alexander (sic Henry)McGraw and Mary ann his wife who was entitled to dower in said premises maybe made to account for the waste and damage done to said premises, and for the rents.”

Part D. Pg 65-67Notices go out to all defendants in Ohio, a notice in newspaper goes out to those outside Ohio, and guardian appointed for minor children. i.e:

- “And thereupon written of subpoena issued out of the office of the Clerk of said Court closed in the words and figures following to wit the State of Ohio, Montgomery County: To the Sheriff of the **Champaign County**, Greetings: You are hereby commanded to summon **Mary Roberts**, if she may be found in your bailwick to appear before the Judges of the Court of Common Pleas, at the Courthouse in Dayton, on the fourteenth day of June next to answer a bill in ... exhibited against you and others by John Huston. In this, she shall in no wise omit under the penalty of one thousand dollars. And have you then there this writ, Witness she have this writ. George B Holt President of said Court at Dayton, the twelvth of April Anno Domini one thousand eight hundred and thirty.
C.R. Greene Clerk”
- Pg 67 “...at the March seven Anno Domini one thousand eight hundred and thirty, the complainant having filed an affidavit setting forth that he believes there are several persons interested in the premises described in said bill, whose names are not mentioned in said bill and not known to complainant. And it appearing to the Courts that several of the defendants named in said bill reside out of the state, it is ordered that notice of the pendency of this suit

be given to the now resident defendants and to all interested in said premises by publication in some newspaper in general circulation in said County for nine weeks.... According to law.”

- “And it appearing also to the Court that the following named defendants and minors under the age of twenty one years, to wit, Joseph Croy, David M Croy, James Croy, Rebecca McCleary, John McCleary, Emily Tomlinson, Jesse Tomlinson, Andrew Tomlinson, John Tomlinson, Elizabeth McGraw, Susan McGraw, Rebecca McGraw, Nancy McGraw, James McGraw and Mark McGraw The Court Therefore appoint Peter P Lorms Esquire Guardian of said minor, to defend this suit in their behalfs.”

June term 15 June 1830

Part E. Pg 67-69: results of writs to appear and notice of publication in paper, discovery that one more of Alexander’s children is dead before filing March 1830.

- Not found: Rebecca Johnson (she later is considered a defendant and receives compensation so they must have found her.), Jacob Croy not found.
- Article was published in paper 6 April through 14 June 1830 in Dayton Journal
- Pg 69 Discovery that **Mary Roberts** was dead at time of filing and **left 10 children**: Elizabeth widow of James Russel; Eleanor wife of John Marquis, Margaret wife of John Jolly *all of Union Cty, OH*; David Croy *of Franklin Cty, OH*; Andrew, Jacob, Richard, Matthias, Sarah wife of John DeLong, and Rebecca wife of John Stone (variously spelled Stoner)
- Pg 70 Because of the new information on Mary’s death the court ordered an article in a newspaper outlining the petition for her children. Continued until next term

7 September 1830

- Gave notice that the newspaper article appeared for nine weeks commencing 20 July 1830 in the Dayton Journal

14 September 1830 and 1 November 1830

Part F. pg 71-73 Edward petitions the court regarding his claim to the 50 acres

- “his Father sometime before his decease made a verbal agreement with this defendant that if said defendant would stay with him until he neared to... he would give him fifty acres of land in pursuant to this said agreement this defendant did stay and labour for his Father six years after he was twenty one years of age.” That the heirs agreed to convey the land but since not all heirs were available to sign he could not file a quitclaim deed and thus did not pay for it. However considered the work of six years fair payment and asked “that said bond may be cancelled and defendant have the fifty acres decreed to him, or have an equal portion in the dividend of the premises should said deed be set aside.”
- In November Edward returned to further petition: “that he this defendant was twenty one years old in seventeen hundred and ninety four. His Father Alexander Huston proposed to him that in as much as the farm was new and required much labor, to improve it, and his other sons had left him being the same premises mentioned in complainants bill, that if he this defendant would stay and work for him, he would give him fifty acres off the said ...of land. This defendant did then again said work for his Father six years faithfully; and his Father secondly did measure and mark out fifty acres off of said tract, and this defendant secured in the possession of the same. His said Father promised to ...to deed to him foresaid premises; but in the late war this defendant was out on a ...duty on the frontier and his Father died in his absence, but made his will and willed said fifty acres to this defendant, but the will being informal was set aside by the Court...This defendant states that his six years labour at the time he performed it as of on said ...at the bequest of his Father was well worth

one hundred seventy dollars a year and his clothing was of the shabbiest kind flax and ...in the summer and dear skin in winter which some prepared by this defendant, and this defendant states that such clothing was not worth seventy dollars per year..."

- Also in September 1830 John answered Edwards claim indicating that he "denied it true."

23 February 1831

Part G. pg 74-75 Henry Stoddard begins major acquisition of shares in the land from heirs

- Joseph Croy sells shares to Stoddard
- Andrew Huston Jr. of Bedford County sold to H Stoddard on 23 October 1829
- Elizabeth Russel (of Mary Roberts) to H Stoddard on 27 May 1830
- William Cannon and Elizabeth (of Catharine McGrath) 24 March 1830
- David Huston (child of Alexander) Stark Cty, OH on 15 June 1830
- Henry Musgrove and Elizabeth (of Susannah Croy) 28 October 1830

Part G. pg 76-78 The court makes determination of right of heirs and Henry Stoddard to portions of land and designates team to survey and divide the land accordingly.

March term 1831

- "So that the interest of the parties in this case is as follows: Said John Huston the petitioner is entitled to one sixth part of the land in said petition described; that is one share in his own right and one share in right of Samuel Huston. Said Edward Huston, Rebecca Johnson, Rachel McClish and Sarah Oswald are each entitled to one twelvth part; The eleven children of said Susannah Croy deceased are each entitled to one eleventh of one twelvth part , excepting Elizabeth the wife of Henry Musgrove and Joseph Croy whose shares are conveyed to Henry Stoddard as aforesaid; The seven children of said Andrew Huston deceased are each entitled to one ninth part of one twelvth part except Andrew who has transferred his interest to said Stoddard as aforesaid. The two children of said Hannah McCleary are entitled to one ninth of one twelvth part and the five children of Sally Tomlinson are entitled to one ninth of one twelvth parts. The children of said Alexander Huston Junior the number and names no known are entitled to one twelvth part. The eleven children of said Catherin McGraw deceased are each entitled to one eleventh of one twelvth part except Elizabeth the wife of William Cannon whose right and interest has been transferred to H Stoddard as aforesaid. The ten children of Mary Roberts deceased, are each entitled to one tenth of one twelvth part, except Elizabeth russel, who has transferred her interest therein to said Stoddard as aforesaid. And said Stoddard is entitled to one twelvth part in right of said David Huston one of the children of said Alexander deceased; also to one ninth of one twelvth part of right of Andrew Huston Junior; one of the children of said Andrew Huston deceased; also to one tenth of one twelvth part of right of said Elizabeth Russel, one of the ten children of said Mary Roberts; also one eleventh of one twelvth part in right of Elizabeth wife of William Cannon, said Elizabeth being one of the eleven children of said McGrath Catherine deceased; also to one eleventh of one twelvth part in right of Elizabeth wife of Henry Musgrove, said Elizabeth Musgrove being one of the eleven children of said Susannah Croy deceased; also one eleventh of one twelvth part in right of Joseph Croy also one of the children of said Susannah Croy deceased."
- "The court therefore adjudge and decree that partition be made according to the prayer of said petition to each of the parties aforesaid, the shares and interests to which it appears to the Court they are to as aforesaid entitled. And the Court appoints Fielding Laury, Samuel Bradford, and Edward Newcom to make partition accordingly. And it is ordered that a writ of partition ...returnable to this Court at the next term."

6 April 1831

Part H. pg 78-82 The survey team makes their determination

- Lot 1 78+ acres to Edward Huston

- Lot 2 72+ acres to be sold and dollars distributed to remaining heirs because “In our opinion and judgment further partition cannot be made and had as demanded in said writ without prejudice to and materially damaging the whole of the residue in its value to the other heirs whose interests are small.” The portion is valued at \$12.
- Lot 3 78+ acres to be sold after dower rights end. The portion valued at \$10.
- Ordered sheriffs to send out writ explaining terms and continued case until next term.

September term 1831

- No one contests terms so court orders land sold

Part I. Pg 83 Complication of completion of petition order because of one more death before sale.

March term 1832

- Discovery that Sarah Oswald (variously Oswald) has died

Continuance for 7 terms through March 1834

Part J. Pg 84-97 Henry Stoddard appears in court as explanation of his efforts to discover remaining heirs and acquire their interest.

March term 1834

- First a review of proceedings from March 1830 to present was made pg 84-86
- Pg 87-88 Heirs of Sarah Oswald (variously Oswald) “Your orator further states that after the proceedings had in said writ as aforesaid, said Sarah Oswald died intestate leaving thirteen children, her heirs at law, to whom her undivided part of the premises descended in fee simple, whose names are as follows, viz John Oswald and Samuel Oswald of Carroll County, Margaret wife of Thomas Graton of Jefferson County, Martha wife of Daniel Wymer of Seneca County all in the state of Ohio and Sarah wife of Peter Waggoner of the State of Virginia and Joseph Oswald, Jacob Oswald Junior, Michael Oswald, Susanna wife of said Andrew Croy /page 88/ one of the heirs of said Mary Roberts deceased, Catharine Oswald, Elizabeth Oswald wife of Thomas Simonton, Mary wife of Jacob Shoe and Rebecca wife of said defendant David Huston (one of the said heirs of Alexander Huston senior deceased)”
- Pg 88 Heirs of Alexander Huston Jr. previously unknown. “And your Orator states that since the last term of this Court, he has discovered that said Alexander Huston Jr deceased left nine children his heirs at law who in right of their said Father were entitled to one twelfth part of the premises as aforesaid; whose names are Samuel Huston of said Jefferson County Ohio, Margaret wife of John Cline, Abraham Huston, Alexander Huston, John Huston, George Huston, ? Huston, James Huston and Edward Huston.”
- Pg 88-89 Stoddard outlines purchases by heir and the date of acquisition of their share as follows (excluding those already stated in Part C and G of this overview.) *Samuel Croy August 25, 1832; John Croy September 27 1831; Benjamin Croy August 13, 1832; Mary McGrath March 17 1832; David Croy son of Mary Roberts January 11 1832; William McGrath August 9 1832; Rebecca Johnson April 14 1832; John Marquis and Eleanor his wife April 5 1832; John Jolly and Margaret his wife April 6 1832; Andrew McGrath sold to John Huston March 9 1830; Josiah Clawson and Sarah his wife child of Sarah McGrath May 28 1831; John Huston April 24 1832; David Croy son of Susannah May 1 1832; Milton Garrison and Rebecca his wife late Rebecca McGrath (said Milton and Rebecca intermarried during case) Feb 2 1833; Jefferson Hurtt and Susannah his wife, late Susannah McGrath...intermarried during case) Feb 9 1833; Jacob Croy son of Susannah Croy June 6 1833; John Jolly and Margaret June 22 1833; James Croy /page 89/November 4 1833; Rachel McClish November 28, 1833; John Stoner and Rebecca his wife November 12 1833; Matthias Croy son of Mary Roberts November 21, 1833; Andrew Croy, son of Mary Roberts, and Susannah his wife, daughter of Sarah Oswald November 1833; Jacob Oswald Junior, Michael Oswald and Catharine*

Oswalt November 19, 1833; Joseph Oswalt November 20, 1833; David Huston and Rebecca his wife late Rebecca Oswalt November 21, 1833; Jacob Shoe and Mary his wife late Mary Oswalt November 22, 1833; Tomas Simonton and Elizabeth his wife (d of Sarah Oswalt) November 30, 1833; John Huston son of said Andrew Huston November 11, 1833; John Huston son of Alexander Huston Jr. deceased, Jesse Huston, James Huston and Edward Huston (son of Alex. Junior), John Cline and Mary his wife all November 13 1833; Abraham Huston, George Huston, and Alexander Huston (sons of Alexander Jr) November 27 1833; Jacob Blocher and Rebecca his wife, William Carey and Eleanor his wife, and Mary Miskelly (also called Mary Collins) March 11 1834; . David Huston son of Andrew deceased March 18 1834; Sarah Delong wife of John Delong died since this suit leaving heirs who are minor but unknown and believes living in Tuscarawas County ; thinks Margaret McGrath sold her interest to a Samuel Conklin of Montgomery County

- Pg 90 Henry Stoddard then names those persons still holding interest in the land *Jacob Croy son of Mary Roberts of Indiana; Richard Croy of Portage County; John Oswalt and Samuel Oswalt of Carroll County, OH; Thomas Gradon and Margaret his wife and Samuel Huston son of Alexander Junior of Jefferson County; Peter Waggoner and Sarah his wife of Virginia; Hugh Cown and wife Drusilla, Rebecca Cleary and John McCleary, Emily, Jesse, Andrew, John and William Tomlinson, in Maryland; Margaret McGrath, Nancy McGrath, James McGrath and Mark McGrath of Montgomery County, Ohio; Alexander Croy of Indiana; the children of Sarah Delong deceased of Tuscarawas Cty OH.*
- Pg 91- Court orders subpoenas for all above named in Ohio and newspaper article indicating petition for those outside state.

9 June 1834

- Pg 91-93 Subpoenas issued

July term 1834

- Pg 94 Results of subpoenas: all received but Nancy, Matthia and John Delong who did not reside in Harrison Cty OH;
- Now knows names of children of Sarah Delong: *Soloman, Jesse, Sally Ann, Abraham, Andrew, and Rebecca all whom reside at Harrison Cty in OH and Nancy who intermarried with Elias Chamber and John Delong who resides at Jefferson Cty, and Matthias who resides at Union Cty (John, Jesse, Sally Ann, Abraham, Andrew and Rebecca are minors under 21 and the females under 18. He wishes the court to consider them as per last term when he did not know their names, rather than file a continuance.*
- Pg 95 The court refused this request and ordered subpoenas for the adults and established a guardian to represent the minors. Continued to next term.

28 August 1834

- Pg 95-Subpoenas sent out

September term 1834

- Pg 96 Answer of subpoenas

9 October 1834

- Pg 96 Guardian of all minors in suit requests the minors be given due consideration and leaves decision to court.
- Continuance to allow all parties to be reached, 30 day notice in Dayton Journal for those out of state, and cost to court determined.

Part K. Henry Stoddard gains control of Lots 2 and 3

July term 1835

- Pg 97 -98 Overview of efforts of Stoddard and that Stoddard since purchased and obtained *Daniel Wymer and Martha his wife April 11 18334; Matthew Croy and*

- Susannah Croy May 26, 1824; Richard Croy son of Mary Roberts June 27, 1834; Matthias Delong of Sarah Delong September 16, 1834;*
- Pg 99 “Order of Court to allow Stoddard to take control of Lots 2 and 3 The Court therefore adjudge the same to said Stoddard in fee simple, according to law; said lot number three being subject to the life estate of said Mary Ann McGraw where tofore assigned to her for dower, and soforth”
 - Pg 99-100 The cost to the court is outlined including costs to Edward Huston and John Huston, as well as taxes on Stoddard. The appraised value of lots 2 and 3 are set at \$1556.28 and are divided *“Paid as follows to wit, to Jacob Croy, son of Mary Roberts, the sum of twenty dollars and sixty one cents, to Soloman Delong, Nancy wife of Elias Chambers, John Delong, Jesse Delong, Sally Ann Delong, Abraham Delong, Andrew Delong, and Asbasom? Delong each the sum of two dollars twenty nine cents; to John Oswald, Samuel Oswald, Margaret wife of Thomas Graydon, and Sarah wife of Peter...each the sum of fifteen dollars and sixty six cents; to Drucilla wife of Hugh Cowan the sum of twenty two dollars and ninety cents; to Rebecca McCleary and John McCleary each the sum of eleven dollars and forty five cents; to Emily Tomlinson, Jesse Tomlinson, Andrew Tomlinson, John Tomlinson Junior and William Tomlinson each the sum of four dollars and fifty-eight cents; to Margaret McGrath Nancy McGrath, James McGrath and Mark McGrath each the sum of eighteen dollars and seventy four cents and to Samuel Huston, son of Alexander Huston Jr the sum of twenty two dollars ninety cents; and to Alexander Croy son of Susannah Croy the sum of eighteen dollars and seventy four cents, being the respective portion of said appraisement. And the balance there of being twelve hundred and sixty one dollars and eighty-nine cents of said appraisement said Stoddard is permitted to retain.”*