

In The Superior Court of
Buncombe County }

Sam'l B. Judger Executor of
the last will of Rob't M. Henry deceased.
William L. Henry, James L. Henry,
Martha Arthur, W. B. Tidwell,
Rob't. S. Tidwell, Thomas P. Tidwell,
Mary Taylor by her trustee, W. B.
Tidwell, & Martha A. Tidwell,
Plaintiffs.
Against.

Robert M. Henry, L. & G. Gibson
wife Eugenia (William) Deaver,
an first wife Francis L. Charles
W. Candler wife Eliza.
Defendants

Petition
to
Establish
the
Last will
&
Testament
of
Robert M. Henry,
deceased.

To the Honorable the Judges of said Court:
The petition of Sam'l B. Judger as Executor
as aforesaid and the other above named
plaintiffs as heirs at law, devisees and
legatees of Robert M. Henry deceased, against
Robert M. Henry and the other above named
defendants as heirs at law & next of kin
of said Robert M. Henry deceased respectfully
represents unto yr. Honor:

I. That Robert M. Henry late of the aforesaid County
did sometime during the year 1863 having
first made and published his last will and
Testament in words and figures substantially
as follows:

I Robert M. Henry, of the County of Buncombe
& State of North Carolina, being now in
my ninety fourth year & I suppose, do
make and publish the following as my
last will & testament, hereby revoking all
other and former wills by me at any time
made.

In the first place I confirm the deed hereto-
fore executed by me to my son Wm L. Henry for
the Sulphur Springs tracts and adjoining
tracts of land, and I devise to him any adjoin-

ing lands that may have been left out
of said deed if any, and further I give
to my said son William L. Henry the fol-
lowing property (viz) land (called Buncombe land) and his wife
Lura and her four children, viz: Alton, Charles,
Wagner and Alon and also
the furniture in the Sulphur Springs
House used as hotel furniture, all to
be his absolutely subject only to the pay-
ment of the six notes which he owes
me amounting in the whole to two
thousand dollars bearing interest
from the first day of this present month.
To my daughter Martha Arthur wife
of Edward J. Arthur of Columbia S.
Caroline I confirm the deed heretofore
made to her for a piece of land near
Sulphur Springs, containing prob-
ably about twenty five acres, also I
confirm the deed of gift made hereto-
fore to the negro girl Arling, and further
I will and bequeath to my said daughter
Martha Arthur twenty five hundred
dollars to be paid to her out of the sum
due me from William L. Henry with
interest from the first day of this
month unless I shall live to collect
it and place it in her possession to
be cancelled by her receipt or that of
her said husband.

In like manner I will and bequeath to
my grand son William H. Deaver the
note of twenty five hundred dollars
which he holds on him, on his paying
the interest thereon up to the time
of my death. I only intend to collect the
interest and forgive him the principal.
Likewise I give, devise and bequeath to
my grand son William B. Tidwell the fol-
lowing property (viz) two tracts of land
in Cherokee County and two tracts in Cow-
past Creek containing about two hundred
and seventy six acres purchased from

B. V. Matlock; also negro man for his
and his wife Mary and any children she
may hereafter have all to be his absolutely.
In like manner I give and devise to my
grandson Robert S. Tidwell one tract of
land in Henderson County, in the State
of Tennessee and the descendants of his heirs
known as the Pound tract containing near
two thousand acres more or less.
In like manner I devise a tract of land
in Cherokee County, N.C. known as Branch
of thequested Creek and a tract of land con-
taining some thing more than seven hundred
acres originally in several tracts purchased
from one Peter Mottelee - also my undivided
third part of a tract of land in Ma-
son County, known by the name of the
Big Gladstone my grandsons Thomas P. Ti-
dwell and Salsgrove and bequeath to him
the following negro slaves (viz): Hamilton,
Susanna, Sam and Eliza and any
child and that she may have - also fifty
acres of land in James Creek. Also I
devise and bequeath to my grandson
William B. Tidwell the following property
in trust for the sole and separate use of my
granddaughter Mary Taylor, wife of Newton
Taylor a tract of land in Macon County
at the mouth of Marble Creek containing
about one hundred & five acres; also my
undivided half of a tract of land in
Cherokee County, in close Creek containing
about four hundred acres, purchased in
the name of Robert Henry and J. W. Gurin.
Also two negroes Sarah & child & such white
men as she may have hereafter and twenty
five hundred Dollars with interest from
the first of this month to be paid of the notes
on H. L. Henry due me to be vested as but as
said trustee may think best, and the interest &
proceeds to be dealt out for the sole and separate
use of said Mary as the trustee sees it necessary
during her life & then to go to her children, or
the descendants of such but in no event to be

subject to the control or use of her said
husband.
In like manner I give & bequeath to my
granddaughter Martha A. Tidwell a
negro girl named Jane sometimes
called Fobe, and three thousand Dollars,
with interest thereon from the first of this
month to be paid out of the money due
from H. L. Henry. All the rest and residue
of my estate real & personal, I give & be-
queath to my daughter, Martha Arthur
my granddaughter Martha A. Tidwell,
& William B. Tidwell in trust for Mary
S. Taylor as directed in relation to the
other devise & bequest for her benefit.
To my daughter Eliza Moore I give
nothing for reason satisfactory to me,
but instead I have given to her a child.
To my son Robert M. Henry I give noth-
ing as I have done much for him
and in his mother's will there is provi-
sion made for him which is satis-
factory to me.
And to my son James S. Henry I give
nothing as the liberal provision of
his mother's will is quite satisfacto-
ry to me. I approve of that but give them
nothing now. I nominate execu-
tors Col. Wingrove Edmonston, Col.
Warril. B. Guider and my grandsons
William B. Tidwell executors of this
my last will & testament.
Signed sealed & published and de-
clared as his last will & testament
by the testator this twenty fifth day of
January A.D. 1840 in presence of us
who at his request and in his presence
subscribed the same as witnesses thereto
and in presence of each other, I wrote
on two sheets and both signed by testator
Robert Henry (read)
J. B. Sawyer }
H. L. Shepard }
W. W. Woodfin. }

II. That at the Session 1865 of the court of Pleas & Quarter Sessions for the County of Buncombe the said will was duly proved by the oath of W.C. and ordered to be recorded and said B. Judges one of the executors therein named a being qualified and took upon himself the administration of the estate of said deceased, the other executor therein named Thos. T. Tidwell having renounced the said executorship respectively.

III. That after the probate of said will as aforesaid and the order for recording the same the said will was either lost or extracted from the office of the clerk of the Court aforesaid before the same was duly recorded or if recorded at all the record thereof has also been burnt, obliterated or destroyed so that no trace of the original will or the record thereof can now be found.

That the Petitioner are in possession of a copy of said will which was taken and preserved before the loss of the original. The words & tenor of which are set out in this petition and which said copy will be produced & exhibited in court at the proper time by the Petitioners, wherefore your petitioners demand judgment that the said paper writing as hereinbefore set forth may be allowed, set up, established and recorded as the last will & testament of the aforesaid Robert Henry deceased and that the same may have the like force & effect as if it had been duly recorded in pursuance of the order aforesaid, and for the costs of this proceeding & for such other & further relief as the case demands.

I doo & do W. B. Louch.
Atty for Petrs

In the Superior Court.
Buncombe County.

One of the petitioners in the foregoing petition, make the oath in due form of law that the several facts therein stated as of his own knowledge are true to the best of his knowledge & belief and as to those stated or in foundation he believes to be true.

Ourselves subscribers before me this day of — 1870. clerk.

Copy of Summons.

Daniel B. Gudgeon Ex-Robert Henry
Decd. William L. Henry, James L.
Henry, Martha Arthur, H. B. Tidwell,
Robert S. Tidwell, Thomas
P. Tidwell, Mary Taylor by her
trustee H. B. Tidwell and Martha
A. Tidwell — Plaintiffs.

Against. Summons.
Robert M. Henry, L. T. Hopson
wife Eugenia, William L. Henry,
an infant wife Francis L. and
Charles H. Caudle wife
Eliza — Defendants.

State of North Carolina:
To the Sheriff of Buncombe County
Greeting,
You are hereby commanded to
summon Robert M. Henry, L. T. Hopson
wife Eugenia, William L. Henry, an infant
wife Francis L. & Charles H. Caudle
wife Eliza the defendants above
named if to be found in the County
to appear before the Judge of the next
circuit term of the Superior Court
to be held for the County of Buncombe
at the Court house at Asheville or

The 10th Monday after the 3^d Monday
in April 1870 or as the Law Directs and
answer the complaint or petition of
the plaintiffs, and let them take notice
that if they fail to answer the said com-
plaint or petition within the time
prescribed by law the plaintiff will ap-
ply to the court for the relief demanded in
said Complaint or petition to set up
the will of the late Robert Henry deceased.
Herein fail not of this summons on pain
of return. Given under my hand & the
seal of said Court this 15th day of
February 1870.

(Signed) J. E. Reed, Clerk of
the Superior Court of
Buncombe County

A true copy of summons in
this case.
Certified,

Clerk.

In the Superior Court
Buncombe County

Saul B. Judger Exr & others } Affidavit
Against. } of
Robert M. Henry & others } Nonresidence
&c.,

C. M. McLeod one of the counsel for
plaintiffs in this cause makes oath
in due form of law as follows:
That this action is brought to set up and
establish the will of the late Robert Henry
deceased, which said will has been lost or
destroyed and no record thereof can be found,
which said will contained devises and
bequests of property in this county and in
other Counties of this State to the plaintiffs
herein, That the defendants L. F. Hopson &
wife Eugenia & Mrs Deavenport wife
Francis L. are heirs at law & next of kin
of the said Robert Henry deceased, the

said husbands in right of their wives re-
spectively - claim to have an interest in
said devised & bequeathed property in
the event the said Robert Henry should be
declared intestate as to said property,
and that a part of the relief which the
plaintiffs demand in this action will
if granted exclude said defendants
from any interest in said property,
and that the said defendants are
therefore as he is advised proper par-
ties to this action & proceeding which
exists in favor of the plaintiffs
against the defendant.

II. That said defendants L. F. Hopson &
wife Eugenia & Mrs Deavenport &
wife Francis L. cannot after due
diligence be found within this State, but
are actually non-residents, L. F. Hopson
& wife residing at the City of Columbia
& State of South Carolina and Mrs
Deavenport wife at the Village of
Oxford in the State of Georgia.

C. M. McLeod.
Sworn and subscribed
before me this 30th day of
March, 1870.
J. E. Reed, Clerk.

In the Superior Court Buncombe County
Saul B. Judger Exr & others
vs. Order of publication.
Robert M. Henry & others.

It appearing to the satisfaction of
the Court by the annexed affidavit &
complaint or petition verified
that the defendants L. F. Hopson & wife
Eugenia & Mrs Deavenport wife
Francis L. cannot after due diligence be
found within this State and that the
said L. F. Hopson wife Eugenia are

at Columbia in the State of South Carolina and the said true Deavenport wife Francis L. reside at Crawford in the State of Georgia; that they are proper parties to this action which relates to the setting up & establishing of the will of the late Robert Henry Decd. in which contained divers devises & bequests of personalty in this and other countries of this State in which said property the said defendants claim an interest in the event the said Robert Henry should be declared intestate as to the same, as heirs at law & next of kin of the said Robert Henry decd. and that the relief demanded by the plaintiffs will if granted have the effect to exclude the said defendants from any interest in the will, On motion of Messrs. Hood & Law & M. Law, Plaintiffs counsel ordered that the summons herein a copy whereof is hereto annexed be served by publication of the same in the North Carolina Citizen a newspaper published in the Town of Asheville & State of North Carolina once in each week for six successive weeks and that a copy of the summons & complaint or petition be forthwith deposited in the Post Office directed to the said Defendants at their respective places of residence and the postage paid.

J. E. Reed Clerk

In the Superior Court }
Buncombe County }

Sam'l B. Gudgeon Ex. & others } Affidavit
vs. }
R. W. Henry and others. } Mailing.

C. M. W. Lawd being duly sworn says that he is one of the counsel for the plaintiffs in this action; that on or about the 10th day of May 1870 he deposited a copy of the foregoing summons and petition in this cause in the Post Office at Asheville, N.C. directed to J. H. Hooper wife Eugenia one of the defendants at their residence in Columbia S.C. and that on said day he also deposited a copy of the said in said post office at Asheville directed to William Deavenport wife Francis L. two others of the Defendants at their residence in Crawford, State of Georgia and prepaid the postage thereon.

C. M. W. Lawd
Sworn subscribed
before me the - day
of 1870.
J. E. Reed Clerk
By Samuel Reed & Co.

Superior Court }
Buncombe County }

Sam'l B. Gudgeon Ex. & others } Affidavit
vs. }
R. W. Henry & others. } Publication.

C. F. Frank being duly sworn says that he was the foreman of the North Carolina Citizen published in Asheville at the time the summons in this case was published and that the summons therein with the notice thereto appended

no press hereof and were annexed, were published in said paper once in each week for six successive weeks, the first publication being on Thursday the 12th day of May 1870 and the last upon Thursday the 16th day of June 1870.

Witness my hand and seal
this 15th day of June 1870.
J. E. Reed, Clerk.
By Saml. H. Reed D.C.

State of North Carolina }
Buncombe County. }
In the Superior Court.

Saml. B. Judges, Ex. Robt. Henry, Dec'd,
H. L. Henry, James L. Henry, Martha
Arthur, W. B. Tidwell, Robt. S. Tidwell,
Thos. P. Tidwell, Mary Layton, by her
trustee, W. B. Tidwell, and Martha
A. Tidwell.

Against
Robt. H. Henry, L. H. Hopson and wife
Eugenia A. Hopson, William Harwood
and wife Francis L. and Charles W.
Candler and wife Eliza.

This is a petition on the part of the plain-
tiffs against the Defendants to establish
the will of the late Robt. Henry, Dec'd, which
has been lost or destroyed, the process is re-
turnable to the next term of the aforesaid
Court, at Asheville, on the 1st Monday
after the 2nd Monday of April, 1870. The pe-
tition was filed in the office of the Clerk
of said Court, at Asheville, on the 30th day of
March, 1870.

J. E. Reed vs. et.
Hood & W. M. Lound, Attorneys for Petitioners.
May 12, 1870 15th.

Superior Court. Buncombe County.

Saml. B. Judges Ex. et others. }
vs. } Decree.
R. W. Henry et others }

At a Superior Court held for the
County of Buncombe at Asheville
on the 28th day of November 1870, present
J. W. Cloud Judge Presiding.
This cause coming on to be heard be-
fore the Honorable J. W. Cloud the
Presiding Judge upon the petition,
summons and affidavits thereto
attached, and it appearing to the sat-
isfaction of the court that personal
service of the summons in the above
had been made upon the Defendants
R. W. Henry and Charles W. Candler and wife
Eliza and that service likewise had been
duly made by publication under order
of court upon the Defendants L. H. Hop-
son and wife Eugenia and William Harwood
and wife Francis L. and no answer or de-
murrer having been filed in said cause
by any of the Defendants;
It is therefore, upon motion of Hood &
W. M. Lound the counsel for the plaintiffs
adjudged that the plaintiff Saml. B.
Judges is the executor of the last will &
testament of the said Robert Henry
Dec'd. That the said Robert Henry died
prior to the 1st day of January 1864, That
prior to his death and in the month of
January 1860 he made & published his
last will & testament which was sub-
stantiated as set forth in the foregoing peti-
tion of plaintiffs in this cause, That said
will was by the said Robert Henry declared
to be his last will & testament and was
duly published & declared in the presence
of the three subscribing witnesses to wit,
J. B. Sawyer, H. L. Willard & W. M. Hood &
whose names appear to the copy set

forth in said petition, that said will
was introduced and unrevoked at
the time of the testator's death and was
duly proved there after as such set forth
in said petition. That after the proof
of the same & before it was admitted of
record it became lost or mislaid so
that the same has never been recorded or
found though careful & diligent search
has been made for it, that the copy of said
will as set forth in said foregoing peti-
tion has been duly proved as substantially
correct in all its provisions and this court
doth find that a judge and decree that
the said will is established according to the
tenor of the foregoing copy to all intents and
purposes as the original will of the said
Robert Henry decd. that the executor & parties
claiming thereunder have the same rights
as they had under the said original last
will & testament of the said Robert Henry.
It is further ordered that Saml. B. Judge
Executor pay the costs of this proceeding to-
gether with the necessary expenses out of the
assets in his hands belonging to the estate of
the said Robert Henry decd.

L. M. Cloud
Judge of the Just. Dist.

Subst. of Summons.

Saml. B. Judge Ex. Robert Henry
Decd. William L. Henry James L.
Henry Martha Arthur W. B. Tidwell,
Robert S. Tidwell Thomas P. Tidwell,
Mary Tagloe by her trustees William B.
Tidwell and Martha W. Tidwell,

Against Plaintiffs. Summons.
Robert M. Henry, L. H. Hopson wife
Guzen, William Deavenport wife
Francis L. & Charles W. Candler wife Eliza.
Deft. to.

State of North Carolina,
To the Sheriff of Buncombe County Greeting,
You are hereby commanded to summon

Robert M. Henry, L. H. Hopson wife Guzzen,
William Deavenport wife Francis L. &
Charles W. Candler wife Eliza. the
defendants above named, if to be
within your County, to appear before
the Judge of the next ensuing term of
Superior Court to be held for the
County of Buncombe, at the Court house
at Asheville, on the tenth Monday of
the Third Monday in April, 1870, so
the law directs, and answer the ac-
cused petition of the plaintiffs
let them take notice that if they fail
to answer the said complaint or peti-
tion within the time prescribed by law, the
plaintiffs will apply to the Court for
relief demanded in said complaint
or petition to set up the will of the
Robert Henry deceased.

Herein fail not, and if this summons
make due return
Given under my hand and the seal
of said Court, this 15 day of February
J. E. Reed.
Clerk of the Superior Court
of Buncombe County.

Seal;

On the back of said summons ap-
pears the following endorsement
No 73, 31, Saml. B. Judge Ex. & others
Against Robert M. Henry & others. Ry.
No 85 H. 1, 1871. Summons returnable to
Spring Term of the Superior Court to
Buncombe County 1870. Received May 7
Service accepted this 16th day of May
1870. Served as to F. H. W. May 7th 1870
R. M. Henry.

J. Sumner, Sheriff of Buncombe
County, the defendant M. B. Candler, Plaintiffs Attors.
Served as to C. W. Candler & wife June 16th 1870
J. Sumner Sheriff.
F. G. Davis, D. S.

forth in said petition, that said will was in existence and unrevoked at the time of the testator's death and was duly proved there after as such set forth in said petition. That after the proof of the same & before it was admitted of record it became lost or mislaid so that the same has never been recorded or found though due & careful & diligent search has been made for it. That the copy of said will as set forth in said foregoing petition has been duly proved as substantially correct in all its provisions and this court doth find that a Judge and doer that the said will is established according to the tenor of the foregoing copy to all intents and purposes as the original will of the said Robert Henry died that the executor & parties claiming thereunto have the same rights & then had under the said original last will & testament of the said Robert Henry. It is further ordered that said J. B. Judge & Executor pay the costs of this proceeding together with the necessary expenses out of the assets in his hands belonging to the estate of the said Robert Henry Decd.

W. Cloud
Judge of the Just. Dist.

Writ of Summons.

Samuel B. Judge Ex. Robert Henry
Decd. William L. Henry, James L.

Henry, Martha Arthur, W. B. Tidwell,

Robert S. Tidwell, Thomas P. Tidwell,

Mary Taylor by her trustees (William B.

Tidwell and Martha W. Tidwell,

Against Plffs. Summons.

Robert M. Henry, L. H. Hopper wife

Eugenia, William H. Hopper wife

Francis L. W. Charles W. Candler wife & Eliza.

Def. to.

State of North Carolina.

To the Sheriff of Buncombe County Greeting;

You are hereby commanded to summon

Robert M. Henry, L. H. Hopper wife Eugenia, William H. Hopper wife Francis L. & Charles W. Candler wife & Eliza. The defendants above named, if to be found within your County, to appear before the Judge of the next ensuing term of the Superior Court to be held for the County of Buncombe, at the Court house in Asheville, on the tenth Monday after the third Monday in April, 1870, or as the law directs, and answer the complaint or petition of the plaintiffs, and let them take notice that if they fail to answer the said complaint or petition within the time prescribed by law, the plaintiffs will apply to the Court for the relief demanded in said complaint or petition to set up the will of the late Robert Henry deceased. Herein fail not, and if this summons make due return.

Given under my hand and the seal of said Court, this 15 day of February 1870.

J. E. Reed,
Clerk of the Superior Court
of Buncombe County.

Seal;

(On the back of said summons appears the following endorsement: No 13, 31, Saml. B. Judge & others Against Robert M. Henry & others. Pg. 55. No 85 H. 1, 1871. Summons returnable to Spring Term of the Superior Court Buncombe County 1870. Received May 7, 1870. Service accepted this 16th day of May, 1870. Served as to the law May 14th 1870.

R. M. Henry.

J. Sumner, Sheriff of Buncombe County, 1 Hood & 1 M. Road, Plffs atts.

Served as to C. W. Candler wife June 16th 1870.

J. Sumner & J. F. Davis, D. F.