

In Witness whereof I have hereunto set my hand and affixed my seal this the 7th day of March, 1914.

Victoria A. Mingo (Seal).

Signed, sealed, published and declared by Victoria A. Mingo to be her Last Will and Testament in the presence of us, who at her request and in her presence, and in the presence of each other do hereunto subscribe our names as witnesses, this March 7th 1914.

O. B. Hyatt
M. W. Bell.

Recorded and filed
October 21, 1926.

North Carolina
Cherokee County.

259
In Superior Court.
Before the clerk.

In the Matter of the last Will
of J. M. Hamby, Deceased.

A paper writing purporting to be the last Will and Testament of J. M. Hamby, deceased, is offered for probate before the undersigned clerk of Superior Court of Cherokee County by the legatus and devisees set out in said paper writing, and thereupon S. G. Baines and K. W. Shearer, two of the witnesses to said paper writing, and examined under oath before the undersigned clerk and the substance of their testimony reduced to writing and subscribed by each and sworn to by the said witnesses.

The court being of the opinion upon the testimony of the said witnesses that the said paper writing is not sufficiently proven to be the last Will and Testament of J. M. Hamby to be admitted to probate as his written will, denies the application to probate the same as such but leaves open the question of probating the said paper writing as the nuncupative will of the said J. M. Hamby and directs that a notice be published in the Cherokee Scout, a newspaper published in Cherokee County, once a week for six weeks calling the next of kin of said J. M. Hamby (there being no widow) to contest such will if they think proper.

It is further ordered that the said hearing to probate the said will shall be before the undersigned clerk of the Superior Court at his office in the courthouse in Murphy, North Carolina, on the 30th day of October, 1926, a copy of the said citation being hereto annexed and made a part of this order.

To the refusal of the clerk to probate the paper writing as the written will of J. M. Hamby, the propounders except and appeal to the Superior Court.

This September 18, 1926.

E. G. Davis

North Carolina,
Cherokee County.

In the Superior Court
Before the Clerk,

In the Matter of the Last Will
of J. M. Hamby, deceased. } Citation.

To William Hamby, Tom Hamby, Elisha Hamby, Marshall Hamby, Hayer Hamby, Bass Hamby, George Hamby, Marian Hamby, Kirk Hamby, Lula Hamby, Bertha Crowe, Bessie Crowe, Lellie Manby, Garfield Hamby, Elizabeth Hamby, Linn Hamby, Manuel Hamby, J. W. Hamby, Eliza Ann Barnes, Sallie Danner, J. M. Hamby, Jr., and others next of kin of J. M. Hamby:

You are hereby notified that a paper writing has been offered for probate before the undersigned clerk of the Superior Court of Cherokee County as the nuncupative will of J. M. Hamby, deceased, and that a hearing upon the probate thereof will be had before the undersigned clerk of the Superior Court of Cherokee County at the Court-house in Murphy, North Carolina, on the 30th day of October, 1926, at 10 o'clock A. M., and you are cited and called upon to appear at said time and place and contest such will if you think proper.

This the 13th day of September, 1926.

E. E. Davis,
Clerk Superior Court of Cherokee
County, North Carolina.

North Carolina--Cherokee County.

The undersigned next of kin of J. M. Hamby, Senior, deceased, late of Cherokee County, hereby renounce our right to administer upon the estate of said Hamby in favor of E. H. Barnes, and request the clerk of the Superior Court of Cherokee County to appoint him such office of administrator.

This September 13th, 1926.

J. M. Hamby Jr.
Sallie Hamby Danner
Manuel Hamby Jr. x

Eliza Hamby Barnes
J. W. Hamby, Jr.
George Hamby x
Lellie Manby.

North Carolina,
Cherokee County.

In Superior Court
Before the Clerk.

In the Matter of last will
of J. M. Hamby, deceased.

R. W. Shorer, being duly sworn, deposes and says: That affiant is a justice of the Peace living in Shoal Creek Township, and is well acquainted with J. M. Hamby, who died September 7, 1926; that affiant has known the said J. M. Hamby for forty years and that on the first day of May, 1926, the said J. M. Hamby requested the affiant to draw his last Will and Testament, and gave him instructions as to the disposition he desired made of his property; that affiant thereupon prepared an instrument in writing, dated May 1, 1926, and which has been exhibited before the clerk of the Superior Court of Cherokee County for probate; that the said paper writing was thereupon taken by affiant to the residence of the said J. M. Hamby and read over by affiant in the presence of E. H. Barnes and W. H. Payne, who, together with this affiant, signed the paper writing as witnesses in the presence of the said J. M. Hamby, who stated that that was the way that he wanted it fixed; that by an oversight the said J. M. Hamby did not sign the paper writing and that the signature appearing thereon was placed thereon by affiant after the death of said Hamby as he advised and informed he had a right to do; that at the time of the witnessing of said Will and at the time when the said J. M. Hamby gave affiant instructions as to the making thereof the said Hamby was about seventy-two years of age, but that his mental

condition was good and he had complete control of his faculties.

At the time he was in his residence and ill of heart trouble with other complications and that his death resulted from the said illness.

That the said S. H. Barnes, W. H. Payne and R. W. Shearer were specially required to bear witness, to said will by the said J. M. Hamby.

Sworn to and subscribed before me this 13th day of September, 1926.

R. W. Shearer

Clerk Superior Court

North Carolina,
Cherokee County.

In Superior Court
Before the Clerk,

In the Matter of last will
of J. M. Hamby, deceased.

S. H. Barnes, being duly sworn says:

That he was well acquainted with J. M. Hamby, who died on September 7, 1926, aged about twenty-two; that affiant had known said J. M. Hamby for nineteen years; that on the first day of May, 1926, affiant went to residence of said J. M. Hamby at request of said Hamby and that Mr. R. W. Shearer and W. H. Payne were present; that the said R. W. Shearer was a Justice of Peace and that he was writing the last will of J. M. Hamby when affiant arrived; that Mr. R. W. Shearer took the data given him by J. M. Hamby to the residence of E. H. Berrong where he had the same typewritten, brought the instrument back and it was read over in the presence of the said J. M. Hamby, who stated that that was the way he wanted it and especially required affiant and W. H. Payne and R. W. Shearer to bear witness thereto; that the paper writing referred to is the paper writing exhibited to the clerk of the Superior Court of Cherokee County and offered for probate; that by oversight the said J. M. Hamby did not sign said will; and that at the time thereof the said J. M. Hamby's mental condition was good and he was in complete control over his faculties, but that he was sick with heart trouble and other complications from which his death finally resulted; that the said paper writing was signed by affiant as a witness and that the transaction took place in the residence of the said J. M. Hamby and was during his last illness; that affiant together with R. W. Shearer and W. H. Payne signed said paper writing as witnesses in the presence of J. M.

Hamby.

S. H. Barnes
his mark

Sworn to and subscribed before me this 13th day of September, 1926.

E. C. Davis

Clerk Superior Court.

In the name of God farewell trusting for my salvation to the blood of Jesus Christ my Lord and Redeemer and relying on his promise for my hope of resurrection I consign my body to the dust and commend my spirit to the God who give it.

I J. M. Hamby been a citizen of Cherokee County, North Carolina.

Being of sound mind and memory but conscious of the uncertainty of life, and desiring to make a disposition of the worldly goods where with indulgent heavenly Father has seen fit to bless me do make publish and declare this my last will and testament hereby revoking and annulling all former wills by me made.

First: I desire that my just debts and funeral expenses shall be fully paid, and including the use of such sum my dear proper for the purchase of a monument to mark my grave.

Second: I give my farm to Manuel Hamby Jr, my old home place.

Third: I. W. Hamby five hundred and forty two dollars (\$542).

Fourth: Liza Hamby (Bairns) two hundred dollars (\$200)

Sallie Hamby (Danner) two hundred dollars (\$200)

J. M. Hamby Jr, five hundred and forty two dollars (\$542)

And Manuel Hamby & W. Hamby and Liza Hamby (Bairns) and Sallie Hamby (Danner) and J. M. Hamby Jr to look after J. M. Hamby and take care of him and see that he gets decent burial.

Witness S. H. Barnes

Witness W. H. Payne

That J. M. Hamby is sound in mind
Signed in my presence this first day of May 1926.
N. W. Shearer Justice of The Peace

J. M. Hamby (Seal)

North Carolina,
Cherokee County.

In Superior Court
Before the Clerk.

In the matter of the last will
of J. M. Hamby, Deceased.

W. H. Payne, being duly sworn says:
That he was well acquainted with J. M. Hamby, who
died on September 7, 1926, aged about seventy-two;
that affiant had known said J. M. Hamby for many years;
that on the first day of May, 1926, affiant went to residence
of J. M. Hamby at request of said J. M. Hamby and that
Mrs. N. W. Shearer and S. G. Baines were present; that the said
N. W. Shearer was a justice of the Peace and that he wrote
the last will of J. M. Hamby after affiant arrived; that
Mr. N. W. Shearer took the data given him by J. M. Hamby to
the residence of C. H. Berrong where he had some type-
writing, brought the instrument back and it was
read over in the presence of the said J. M. Hamby, who
stated that that was the way he wanted it and espe-
cially required affiant and S. G. Baines and N. W. Shear-
er to bear witness thereto; that the paper writing
exhibited to the clerk of the Superior Court of
Cherokee County and of Ford for probate; that
by oversight the said J. M. Hamby did not sign
said will and that at the time thereof the
said J. M. Hamby's mental condition was
good and he was in complete control over his
faculties, but that he was sick with heart trouble
and other complications from which his death finally
resulted; that the said paper writing was signed by
affiant as a witness and that the transaction
took place in the residence of the said

J. M. Hamby and was during his last illness. That affiant
together with N. W. Shearer and S. G. Baines signed said
papers as witnesses in the presence of J. M. Hamby.
W. H. Payne

Sworn to and subscribed before me this 30th day
of October, 1926.

E. E. Davis
Clerk Superior Court.

North Carolina
Cherokee County.

In the Superior Court.
Before the Clerk.

The application for probate of a paper writing offered as the
nuncupative will of J. M. Hamby, deceased, having been
continued to this date from the 13th day of September,
comes on to be heard and is heard and the court proceeds
to take the examination of W. H. Payne under oath and
the substance of his testimony is reduced in writing
and sworn to and subscribed by him and the court
finds as a fact that the citation to the next of kin
of J. M. Hamby, a copy of which is filed in the record
in this cause, has been published over a week for
six weeks in the Cherokee Scout, a newspaper published
in Cherokee County, North Carolina, and that the said
next of kin to J. M. Hamby have been given notice of
this proceeding by publication of the said citation
in the manner required by law.

The court finds as a fact that at the date of the
execution of the said nuncupative will the said
J. M. Hamby was of sound mind and memory but
afflicted with illness from which his death result-
ed and that the said will was executed in his
last illness. It is further found that it was
made in the habitation of the deceased and that
W. H. Payne, S. G. Baines, and N. W. Shearer are creditable
witnesses who were present at the making thereof
and were especially required to bear witness
thereto by the testator, and that the said

paper writing was reduced to writing at the time of the making thereof and contains the directions given by the said J. M. Hamby, respecting the disposition of his property in the event of his death.

And upon the proofs offered, it is considered, ordered, adjudged and decreed that the paper writing offered for probate and each and every part thereof is the nuncupative will of the said J. M. Hamby duly executed and proven and the said paper writing is admitted to probate as such nuncupative will and it is ordered that same be filed and recorded as provided by law.

The proponders withdraw their appeal to the Superior Court from the order of the clerk refusing to admit the said paper writing to probate as the written will of the said J. M. Hamby, and abide the ruling of the Court that the paper writing is the nuncupative will of the said J. M. Hamby.

This October 30, 1926.

E. E. Davis
Clerk Superior Court.

Filed and recorded
Nov. 1st, 1926.

North Carolina,
Cherokee County.

Superior Court.

In Re Last Will and
Testament
R. W. Collett,
deceased.

Commission

To Honorable J. H. Lee, Notary Public, 1012 Palmetto Building,
Columbia, South Carolina:

It appearing to the Court that the last will and testament of R. W. Collett, deceased, has been made without the State of North Carolina, and that the subscribing witnesses thereto, to-wit: Miss Irene C. Goodwin and Miss Winnie O'Ryan and Hon. James B. Murphy, are residents of the State of South Carolina, the first and second of said witnesses being residents of Waterboro, S. C., and the third a resident of Columbia, South Carolina, and

It further appearing to the Court that said will seeks to dispose of certain real estate within the County of Cherokee and State of North Carolina, and that application has been made for the examination of said witnesses pursuant to Section 4148 of the Consolidated Statutes of North Carolina, therefore

You are hereby commissioned, authorized and directed to take the examination of such witnesses, as may be produced touching the execution of said last will and testament, and upon completion of said examination you are hereby directed to return this commission, together with your proceedings thereunder, to the undersigned Court.

Given under my hand and official seal office in
Murphy, North Carolina, this March 17th, 1927.

P. C. Hyatt Clerk

Superior Court, Cherokee County, North Carolina
(Official Seal.)