

APPENDIX B

THE LAST WILL AND TESTAMENT OF JAMES M. SMITH

I, James M. Smith, of Asheville, in the State of North Carolina, being of sound and disposing mind and memory, but knowing that all men are born to die, and being desirous of disposing of my property in a manner most suitable to my family and to my own notions of propriety, do make and publish this my last will and testament.

FIRST, I give and devise to my beloved wife Polly the house and lots in which I now live in the town of Asheville, including the tavern and adjoining buildings, Garden orchard, and adjoining lots, Beginning at Mr. Summey's line on the Main street near my house, then with the Main street a north course crossing the hollow to the line of the southern half-acre lot, hereinafter devised to my daughters Ann Catherine Crook and Ruth W. Ripley, then with that line and the line of the lot east of it an east course to the new street running by Ephraim Clayton's, and with that street a south course to the cross street, and with that and Mr. Summey's line to the beginning, together with the lot west of the Main street and east of the new street made by James W. Patton on which my new stable stands and north of my old stable lot conveyed to me by James W. Patton, also all that farm and tract of land on both sides of French Broad River including my bridge and known as the bridge tract and conveyed to me by John Jarrett, likewise all the land lying on the west side of said river purchased at the sale of the lands of Z. Baird, decd., by myself, B. J. Smith, and others, which they have all since conveyed to me, together with a small tract adjoining thereto of about sixty acres conveyed to me by Z. Candler all of which she is to have and enjoy for and during her natural life and no longer.

Also I give and bequeath to my said wife Polly during her natural life the following negro slaves, viz. Bob, (the tanner) and his wife, Lidia and her children Alexander Sy (the blacksmith), Bob Hardin, Catherine and Betsey, also Moses, together with all the household and kitchen furniture at the home place, except six beds hereinafter disposed of.

And I also give and bequeath to my said wife as her absolute property forever, the negro man George (the Shoemaker), his wife Louisa, her child William and future increase, and the girl Caroline, (Lidia's daughter), and her increase together with a good wagon and four horses and mules and harness, her choice of my stock, six cows, to be chosen by her, eight beds and furniture of her choice of all on hand, and provisions suitable for her of the value of eight hundred dollars.

SECOND, I give and bequeath to my daughter, Harriet Eliza Brown, all the negroes and other property that I have heretofore put into her possession, which I estimate at the sum of four thousand and three hundred dollars.

THIRD, I have heretofore given to my daughter, Emeline Shuford, decd., and to her children and conveyed by deed and otherwise (reserving to Jacob R. Shuford a lifetime estate therein) property real and personal which I estimate at ten thousand dollars, and now I give and bequeath to them, viz. Marcus L. H., Mary Elizabeth, James Martin and Harriet Louisa Shuford each a negro girl to be worth four hundred dollars and

young and if suitable ones are not amongst my negroes at my decease my executors are directed to purchase them, also a horse, bridle and saddle each to be worth one hundred dollars, also a bed and furniture each to be worth twenty-five dollars and a cow and calf each, and no more of my estate except the interest in the land and gold mine in Georgia hereinafter mentioned.

FOURTH. I give and bequeath to my daughter, Ann Catherine Crook, the negroes and other property heretofore put into her possession and any and all growth and increase thereof. And in addition thereto I give and devise to her and her heirs forever one undivided half interest in my farm and contiguous lands below the mouth of New Found Creek on the west side of French Broad River, known as the Kinkade and Hunter farm and supposed to contain between six and seven hundred acres, also on undivided half interest in the four half-acre lots in Asheville south of N. W. Woodfin's fronting the Main street and bounded north by the cross street leading to the parsonage and extending up the Main street opposite John Reynold's hotel, and half of the acre lot lying east of the two southern ones, with the line of the lots herein given for life to my wife to the back street and adjoining John Reynold's house lot together with one hundred and twenty-one dollars in cash, which I estimate at four thousand three hundred dollars.

FIFTH. I give and bequeath to my daughter, Ruth W. Ripley, the negroes and other property heretofore put in her possession and its increase and growth, also I give and devise to her and her heirs forever and undivided half interest in the farm and lands below the mouth of New Found Creek and half the four half-acre lots and one acre lot in the Town of Asheville, the other half of all which is in the fourth item herein given and devised to Ann Catherine Crook, the said farm and town lots being intended for them as tenants in common and this including that first given to her, I estimate at four thousand three hundred dollars.

SIXTH. I will and devise to Valentine Ripley, William W. McDowell, John P. Smith and the survivor or survivors of them and the heirs of the survivors forever the lots of land in Asheville on the west side of the Main street and between it and the Haywood road on both sides of the new street made by J. W. Patton, including my storehouses, being the lot on which my old stables are build conveyed to me by James Patton Senr. and that lying west thereof conveyed to me in part by James W. Patton and in part by Hugh Johnston and bounded north by James W. Patton's lot near the Haywood road and by the lot on which my new stable stands near the Main street and south of Hugh Johnston's [sic] lot, also the tract of land granted to me by the State containing about one hundred acres lying adjoining Asheville on which my bar stands west of said lots and adjoining the boarding house lot, a small portion of which I have conveyed to E. Rowley and another small portion being under contract to J. H. Coleman, together with eight hundred dollars in cash to be expended in building a dwelling house on the western portion of said lot near Haywood road, (unless I should put a building there for that purpose in my lifetime) also an undivided interest in my bridge and Bridge tract on both sides of the French Broad River conveyed to me by John Jarrett to take effect at the decease of my wife.

Also I give and bequeath to them the said Valentine, William W. and John P. the following negroes, viz., Miles and Charles (sons of George), Alfred, Swan Lucy Ann and Tom (the miller), also a horse, bridle and saddle worth one hundred dollars, two beds

worth fifty dollars (to be taken from those on hand in my house), a bureau worth eighteen, and five thousand dollars in cash, in trust nevertheless that they or the survivor or heirs of the survivor shall hold and use the whole of the foregoing property real and personal in such manner as to preserve its value from time to time (as they may judge best) for the use and benefit of such lawful child or children as my son, Jessee S. Smith, may have and apply it for their support and education if need be, and in case the said Jessee S. Smith die without lawful child or children, then to be equally divided amongst all my children now living or if one or more be dead leaving children, such child or children to represent the parent, But if by any means my said son, Jessee S. Smith, should pay off or be relieved from the claims set up against him as partner or surety of John O Roberts and from any and all indebtedness whatever, then and in that even they the said Valentine Ripley, William W. McDowell and John P. Smith or the survivor or heirs of the survivor shall convey the said property real and personal to the said Jessee S. Smith and pay over to him the profits received therefrom, but in no other event whatever.

SEVENTH, I give and devise unto my son, John P. Smith, his heirs and assigns forever, all my farm and lands at the mouth of Swannanoa on both sides of French Broad River, which I purchased in part of Moses Smith and part from Daniel Smith, embracing the Col. Daniel Smith farm and the new brick house near the road, also one undivided half of my bridge and Bridge tract of land on both sides of French Broad River purchased of Jarrett to take effect at the death of my wife. I also give and bequeath to the said John P. Smith the following negroes, Joe (the wagoner) and his wife Tilda and her children, Alfred, Joe, Mary, Jane, and Vina, also Peter, Charles (Clara's son), and Robb and their increase forever, also one-half of the live stock put into his possession under the article of copartnership together with half of the increase &c. that belongs to him under the contract, also one-half of the grain provender provisions and growing crop that may be on hand at my decease, and all of the farming tools, waggon and harness and household and kitchen furniture that may be at the farm at my decease, Also I give and devise to him and his heirs forever all my lands on Reems Creek.

EIGHTH, I give and bequeath to my daughter, Sarah L. McDowell, all the property heretofore placed in her possession and a negro girl, Carolina (child of Arsela), also I will and devise to her and her heirs forever the tract of land on the south of Asheville on both sides of the Buncombe T. P. road (and at the fork leading by Foster's) which tract I purchased of L. D. Patton and is supposed to contain about three hundred and twenty acres, all of which I estimate at four thousand three hundred dollars.

NINTH, to my daughter , Elizabeth Lucinda Adeline, I give and bequeath to her and her heirs forever the tract of land at the south end of Asheville, including the meadow below J. W. Patton's and adjoining Joshua Robert's land, containing twenty nine acres, and the tanyard lot, including Tannery, containing thirty acres, both (I believe) conveyed to me by Col. John Patton, also one undivided half of the tract of land in the bend of French Broad River joining lands of Col. Alexander and others and between the B. T. P. road and river near Davis', also I give and bequeath to her the following negroes, viz. Jeff and his wife, Mary, and her child Samuel, also Martha, and their increase forever, also five hundred dollars worth of furniture, of which two beds worth fifty dollars must be furnished out of those on hand in my house, and the balance furnished by my executors of my estate, unless I furnish her in my life time, also a horse, bridle and a saddle worth one

hundred dollars, and two cows and calves worth twenty dollars, all of which I estimate at four thousand and three hundred dollars.

TENTH, I give and devise to my daughter, Jane Cordelia, the lot in the town of Asheville, containing nine and one-half acres, lying adjoining to the lot on which N. W. Woodfin and between his lot and John Hildebrand, now used as pasture land and which I purchased at the sale of lands belonging to Z. Baird, decd. (also the tract purchased at said sale on Glenn's Creek containing one hundred and twenty-eight acres, adjoining Chunn and others), also one undivided half of the tract of land in the bend of the River on the east side of French Broad River (the other half of which is devised in the ninth item hereof to my daughter Elizabeth Lucinda), also I give and bequeath to her the following negroes viz. Henry and Julia Ann, and McCama and George, her children, and their future increase, also furniture worth five hundred dollars, of which two beds worth fifty dollars is to be furnished out of those on hand in my house, and the balance to be purchased by my executors, unless I should furnish them in my lifetime, also a horse, bridle and saddle worth one hundred dollars, two cows and calves worth twenty dollars, and one hundred dollars in cash, which I estimate at four thousand three hundred dollars.

If I should sell any of the property herein specially willed to any one of my children, or if any of the negroes remaining in my possession should die while remaining with me, its value must be made up to those whose portions are reduced out of the residue of my estate, and if there should be any increase amongst the negroes herein disposed of in my lifetime, I wish the increase to go with the mother as if it were after my decease. All the balance of my negroes (except Phillip) I direct to be equally divided amongst my daughters now living, viz. Harriett Eliza Brown and Catherine Crook, Ruth W. Ripley, Sarah L. McDowell, Elizabeth Lucinda Smith and Jane Cordelia Smith, the division to be made by my executors, into six lots as nearly equal as convenient, charging the lots of greater value in favor of those of less, if need be to equalize them, and to be drawn for under the direction of John P. Smith. My old man, Phillip, has long been a faithful servant and useful to myself and family, I direct no labor be required of him, but that he be allowed to live with my wife or my son, John P. Smith, as he prefers, and as the law requires that he must have an owner, I give him as the property of my son, John P. , in confidence that he will take care of him and protect him, and I give and bequeath to Phillip twenty-five dollars per annum as long as he lives for his comfort, to be paid out of my estate. If the legacy cannot legally take effect directly to him, I leave it to be paid to John P. Smith having a confidence that he will faithfully apply it as here intended.

My lands and gold min[e] in Rabun County in the State of Georgia I devise to my executors in trust for the use and benefit of all my children equally, the four children of my deceased daughter, Mary Emeline Shuford, taking one share, or ninth part, the property to be held for twenty-five years without sale or division.

All the rest and residue of my estate, real, personal and mixed, I direct to be sold by my executors at public or private sale as they may deem best and if my stock of goods should require it, they are at liberty in their discretion to have them retailed by themselves or clerks.

All my debts I direct to be collected and the money as well that arising from the sales herein directed, and all the money on hand I direct to be equally divided amongst my six living daughters (first paying any debt that I may owe) and if one or more of my

said daughters should die leaving issue, such child or children always to represent the mother, and if either of them should die before I do, the portion herein directed to go to her must not be regarded [*sic*] as lapsed but be given and paid to her child or children if she leaves any to survive her.

The property real and personal herein left my wife for life is intended to embrace the direction on this page, to sell the residue of my estate and divide the proceeds amongst my daughters, the sale of that part of course to take place after her death, unless she should prefer being rid of the charge of any part of it in her lifetime.

I nominate, constitute and appoint my long and well tried friend the Honorable David L. Swain of Chapel Hill and my sons-in-law, Valentine Ripley and Wm. W. McDowell, and my son, John P. Smith, executors of my last will and testament.

In witness whereof I have hereunto set my hand and seal the 9th day of February, A. D. 1850.

James M. Smith (Seal)

Signed, sealed, published and declared by the testator James M. Smith as his last will and testament in the presence of us who have at his request and in his presence subscribed the same in the presence of each other.

February 9th, 1850

John E. Patton
John Burgin
M. Patton

Codicil I to The Last Will and Testament of James M. Smith

I, James M. Smith, on the 29th day of October in the year one thousand eight hundred and fifty one do make and publish this the following codicil to my last will and testament heretofore executed and to which the said codicil is not meant (namely) in the first place, whereas W. W. McDowell and myself are partners at this time in merchandizing according to the terms of the partnership heretofore executed, and to which reference may be made he being the owner of one third and I of two thirds of the profits of the store in which we are now engaged, I will and bequeath unto the above named V. Ripley and W. W. McDowell and John P. Smith the trustees above named or the survivor or the survivors or heirs of the survivors one half of my interest in the profits of said store, it being one third of the whole amount of said profits, to have and to hold the same in trust for the use of the lawful children of my son, Jesse S. Smith, or for Jesse S. Smith himself upon the same term, conditions and limitations as those upon which the other property has been conveyed for the use of his lawful children or of himself (secondly) whereas I have in the above will given and devised one half of the tract of land in the bend of French Broad River to my daughter Elizabeth and made the other half to my daughter Jane Cordelia, it is now my will and desire to change that provision so as to give the whole of said tract of land to Jane Cordelia and heirs forever which I hereby do, (thirdly) whereas it is provided in the above will that whenever any portion of said lands devised in the same shall be sold in my lifetime that the value of said land should be paid up to the person to whom the same is devised, I hereby declare this provision is suspended, and is to have no effect as to the land sold up to this time, but is to have full operation and validity as to any sale that may be made hereafter as though this codicil had never been executed.

In testimony whereof I have hereunto set my hand and seal this day of October A. D. 1851.

James M. Smith (Seal)

Codicil I to the Last Will and Testament of James M. Smith. Signed, sealed, published, declared by the testator James M. Smith as codicil to his last will and testament in the presence of us who at his request and in his presence subscribed the same as Witness in presence of each other. Oct. 29 day 1851. Attest.

M. Patton
John E. Patton
John Burgin

Codicil II to The Last Will and Testament of James M. Smith

I, James M. Smith of Asheville, North Carolina, do make and publish this codicil to the last will and testament of the heretofore made bearing date 9th day of February 1850 and to which there is a codicil added in October 1851 and to publish this is attached viz., whereas my beloved wife for whom I had made provision in my said will has departed this life, I direct that the property in said will real and personal given to her for life be divided at my decease as it was contemplated to be at her death, and that property given to her absolutely be disposed of as the other (i.e.) the negroes be divided amongst them equally, if any of my said daughters should die leaving children, such children or child to represent the mother, and if any should die without leaving children or a child alive, then such have to be equally divided amongst the survivors or the children of the survivors and whereas my son, Jesse S. Smith, has since the making of my said will and codicil thereto, intermarried with his present wife Margaret Isabella and has by her one female child not yet named, I order and direct that the property real and personal in said will and codicil given to my executors for the use of Jesse S. Smith's wife and children if he should leave any be and assure to the sole and separate use, benefit and support of the said Margaret Isabella Smith and such other children as she may have while the wife of the said Jesse S. Smith or within a competent time thereafter the same to be to her use for life with remainder to her children equally, and in the meantime the children to be raised and educated thereon, I further direct that the girl Caroline in said will be given to my daughter Sarah L. McDowell, be given to my daughter Jane Cordelia, and in her stead I give to the said Sarah L. a negro woman Rebecca and her child Charlotte which I purchased of William W. McDowell and placed in her possession, and further will and direct that the said girl Caroline together with the Piano Forte in my house and side board and bureau to be chosen by her of all in my house to be given to my daughter Jane Cordelia in addition to the portion given to her in my said will, and whereas the by Bobb and the girl Tilda in my said will given to my son John P. Smith have since died, I will to him in their stead the boy Mose purchased at the widow Alexander's sale, Lucy and Harry, the furniture and other property in my said will give to my daughter Elizabeth Adeline to be of the value of four hundred dollars worth which is yet to be given her, the horse, saddle and bridle have been also furnished her by me since her marriage with Joseph Gudger. The negroes in my said will directed to be given to each of the children of my deceased daughter Mary Emeline Shuford to be worth four hundred dollars, each must be good and likely negro girls between ten and twelve years old, I make this alteration because of the great fluctuations in the prices of negroes, it being my intention to give them such as will be immediately useful and growing property.

In testimony whereof I have hereunto set my name and seal this 7th day of January 1854.

James M. Smith (Seal)

Signed, sealed, published and declared as a codicil to his last will and testament by the testator in our presence the date above.

John Burgin
John E. Patton

Codicil III to The Last Will and Testament of James M. Smith

I, James M. Smith of Asheville, N.C., do make, publish and declare the following as a codicil to my last will and testament heretofore made bearing date the 9th day of February 1850 and to which there has been a codicil heretofore added bearing the date of 29th day of Oct. 1851 and one 7th January 1854 all of which I confirm and allow except as herein and hereby altered to wit, certain changes in my property and in my arrangement thereof, (viz.) having purchased in and paid the debts due by John O Roberts & Co. and against Jessee S. Smith from said debts and all liability on account thereof and having greater cost than I contemplated the half interest in the bridge tract of land intended for him in said will jointly with my other son, he is not to have but the said one-half interest together with some for which I sold the bridge (as well that would go to one as the other) I direct to go into the residue of my estate, and be distributed as a part thereof and no further sum is to be spent building for my son Jessee S. Smith, (but it is my will that all other property and interests named in my said will to go into the hands of the Executors and trustees for the use of the said Jessee S. Smith and for the use of his wife and children shall vest in him directly and in his heirs *[sic]* and assigns discharged from any claim or control of trustees or others). Secondly, in lieu of the piece of land in said will devised to my daughter Elizabeth A. Gudger south of Asheville on the east of the plank road which the said Elizabeth A. Gudger the house and lots in which I live including the tavern and outbuildings contiguous on the east side of the Main street beginning on the street and J. B. Whiteside's corner south of the tavern house, and running with the Main street including five front half-acre lots passing below the fence north of the well and running with the lower or north line of the lower or fifth lot eastward by the east corner thereof and the same course to the street near Ephraim Clayton's and south with that street and the south line of my lot to the beginning, including the orchard, but as this is of greater value than the land sold, I charge it with two thousand dollars to be deducted from the portion that she is to get out of the residue of my estate but this and all other property real and personal given, devised or bequeathed to my said daughter Elizabeth A. Gudger to her sole and separate use and benefit for and during her natural life with remainder to such children as she may leave her surviving and those representing the interests any that my die leaving children.

It is further my will that all property real and personal that I have in said will given or bequeathed to my daughter Jane Cordelia Smith shall be to her sole and separate use and benefit for life only with remainder to any children that she may have and if none then to her next of kin by consanguinity in equal portions.

And whereas I heretofore by codicil made January 7th 1854 gave to my son John P. Smith shall have out of my negroes undisposed by name a girl from 14 to 18 years old of average value or the value of such a girl in cash to be paid out of my estate by my executors.

In testimony whereof I have hereunto set my hand and seal the 8th day of February 1856.

James M. Smith (Seal)

Signed, sealed, published and declared as a codicil to his last will and testament by the testator in our presence and at his request we became subscribing witnesses in his presence.

John E. Patton
M. Patton

State of North Carolina)

Court of Pleas & Qr Sessions)

Buncombe County)

July Term 1856

The execution of the last will and testament (including codicils) of James M. Smith, decd., by John E. Patton, John Burgin, and Montraville Patton, witnesses - See full probate in minutes Tuesday, July 8th 1856

R. B. Vance, Clk.

(See County Court minute Docket B - page 130)¹

¹ The Last Will and Testament of James M. Smith, in Buncombe County Will Docket, A, 1831-1868, pp. 171-180, North Carolina Division of Archives and History, Raleigh, NC