

CROSS
TAM

1841 Contested Will
Submitted by Richard Stromsted.

The following will is that of John Martin Coss, my Great-Great-Great-Great-Graandfather. The will indicated he was nearly 90 when he died. It took nearly 6 months to read and transcribe the handwriting of, I assume, the clerk of the court. The will itself is about a page long. The rest of the 13 pages is testimony, as the will was contested by son William. John Martin Coss had 10 living children at the time of the will. The oldest was Hooper. He was my Great-Great-Great-Grandfather. Finding his name in the will told me who John Martin was. When I requested the will, I thought John Martin Coss was a son of Hooper Coss. Imagine my surprise when I found Hooper listed as an heir.

THE LAST WILL AND TESTAMENT OF JOHN M. COSS

Proved and recorded March 8th 1841 as a will of Real and Personal Estate.

Be it remembered that heretofore to wit on the 14th day of December 1840 William Coss personally appeared before the surrogate of the county of Schoharie and presented his petition to the said surrogate and also produced unto him a certain instrument in writing purporting to be the last will and testament of John M. Coss of the Town of Seward in said county bearing date (the 30th day of May 1840) in which the said William Coss is named as Executor and from which said petitions it appears unto the said surrogate that after the execution of the aforesaid instrument and on the twentieth day of November in the year 1840 the said John M. Coss died being an inhabitant at the time thereof of the said county of Schoharie leaving Anne Eliza Coss his widow him surviving and the following persons his only heirs at law and next of kin to wit: Hooper Coss, Patty Waldruff wife of Charles Waldruff, John Coss, Nelly Merritt wife of William Merritt and William Coss all of the Town of Seward in the county of Schoharie aforesaid Henry Coss and Peter Coss of the Town of Sanford in the county of Broome, Betsey Cady wife of Peter Cady of Cherry Valley in the county of Otsego, Nancy Waldruff wife of David Waldruff of the same place, and Michael Coss of Whitestown in the county of Oneida, and the said surrogate did thereupon give his citation unto the aforesaid heirs and next of kin requiring them to appear

before the said surrogate at the surrogate's office in the Town of Cobleskill on the eighteenth day of February 1841 and attend the probate of said instrument as a will relating to both real and personal estate on which said last mentioned day the said William Coss appeared in court and produced proof of lawful service of said citation and the same being filed with the court and the said William Coss being present in court by Thomas and Demosthonise, his attornies and the said Charles Waldruff and John Coss appearing by Jedediah Mills and Abraham Becker(?) their attornies to oppose the probate of said will as heirs at law and next of kin of said deceased the said surrogate proceeded to swear the subscribing witnesses to said will and after hearing the testimony of all the subscribing witnesses and the counsel of the several parties to these proceedings the said court did adjourn the further proceedings in said matter till the eighth day of March next at the office of the said surrogate in the Town of Cobleskill aforesaid at ten o'clock in the forenoon at which last mentioned time and place the said parties again appeared before said surrogate and the said surrogate did thereupon declare and determine that after a due examination of the matter in controversy it doth satisfactorily appear unto the said surrogate that said will was duly executed by the said John M. Coss and attested by the controversy whose names are thereunto subscribed in the presence and at the request of the said Testators and at the time of the execution aforesaid he was of sound mind and memory of full age to execute a will and competent in all respects to make a judicious disposition of his real and personal estate by his last will and testament and it is accordingly adjudged and determined by the said surrogate that the aforesaid instrument is the last will and testament of the said John M. Coss by line(?) executed and published in due form of law and it is thereupon ordered that said will together with the testimony taken on the proof thereof be recorded as a will relating to both real and personal estate which said will and testimony are in the words and figures following to wit.

In the name of God Amen I John M. Coss of the Town of Seward do make and declare this my last will and testament in manner and form following: First I resign my soul into the hands of the Almighty God hoping and believing in a purification of my sins; by the merits and mediation of Jesus Christ and my body I commit to the earth to burred at the discretion of my executors hereinafter named:

And my worldly estate I give and devise as follows: First, I give and devise to my son William all that my whole of my mortgage(?) and tenement real and personally estate situated lying and being in the town of Seward to have and to hold to my said son William, his heirs and assigns forever – except five acres of the above mentioned real estate lands property I give to my daughter Nelly the wife of William Merritt on the northwest corner of my lot where I now live to be taken in a square space where the said William Merritt now has his dwelling house to have and to hold to said daughter Nelly his heirs and assigns forever. Also I give and devise to each of my other sons and daughters the sum of five dollars to be paid one year after my death by my son William to each of the following sons and daughters Hooper, Henry, John, Michael, Peter and Betsey, Polly and Nancy to have and to hold to my said sons and daughters their heirs assigns forever.

Also my wife is to have one room in my now dwelling house as long as she remains my widow;

Also my son William is to pay all my funeral expenses and all other debts.

And I appoint my trusty friend William executor of this my last will and testament. And also that it shall and may be lawful for him my said executor and his executor or executors in the first place out of my personal estate to deduct and reimburse himself. Respectively all such late(?) cost charges and expenses as shall occur during the settlement of my estate, for or by reason of the performance of this my last will or the management or execution thereof respectively or any other thing in any wise relating thereof.

In witness whereof I have hereunto set my hand and seal the 30th day of May A.D. 1840

John M. Coss (L.S.)

(Signed with an "X")

The above instrument consisting of one sheet of paper was now here subscribed by John M. Coss, testator, in the presence of each of us, and was at the same time declared by him to be his last will and testament and we at his request sign our names hereunto as attesting witnesses.

Peter Hynds

Henry Boyce

John C. Petrio

Residence within Town of Seward

Schoharie County Surrogate Court: In the matter of proving the last will and testament of John M. Coss, deceased. County of Schoharie ss. Peter Hynds of the Town of Seward in the county of Schoharie being first duly sworn in open court doth devise and say that he is a subscribing witness to the last will and testament of John M. Coss late in the Town of Seward in the county of Schoharie deceased. Deponent further saith that the said John M. Coss the said testator did, in the presence of this deponent make his mark at the end of the instrument which is now shown and exhibited to this deponent and to this deponent and which purports to be the last will and testament of the said John M. Coss and which bears date on the thirtieth day of May in the year of our Lord one thousand eight hundred and forty. Deponent further saith that said John M. Coss the said testator, did at the said time of making his mark as aforesaid at the end of the said will, declare the said instrument so subscribed and now exhibited to be his last will and testament, and deponent did thereupon subscribe his name to the said will as an attesting witness thereto at the end of the said will at the request and in the presence of the said testator. Thinks it probable he wrote his name as a witness before the other witnesses were called in to wit. Henry Boyce Jr. and John C. Petrio Deponent ----- saith at the said time when the said testator subscribed his mark to the said last will as aforesaid and at the time of this deponent subscribing his name as an attesting witness thereto he thinks the memory of the testator was about the same that it had been for some time before. Did not discover much odds - He was an old man and was decaying as to body and forgetfulness. Thinks his mind not as strong as it had been some years before that. He was called between eighty and ninety years of age—not far from ninety. Deponent does not know that said testator was under any restraint or compulsion at the time of executing said will. This deponent further saith that he signed the will as a witness in the presence of the testator. He was at the time of executing the will an old infirm man. I did not consider him deprived of his senses at the time of signing the will. Testator did his non business as to trading with me - I have known him as long as I have any recollection. I grew up with him and I have been engaged in