

Probate, NC, Rutherford, MORRIS ROBERTS 1828

North Carolina  
Lincoln County

**JOSHUA BURNET**  
vs  
**JOHN ROBERTS**

This was an action of trover brought to recover the value of seven Negroes.

The plaintiff claimed title to the Negroes, then **WALTER POLLARD** by his will dated 1768, bequeathed two negro women and a man to **MORRIS ROBERTS** and his wife during this their natural lives and after their deaths to **JOSHUA ROBERTS, MARTIN ROBERTS, JOHN ROBERTS, MARY ROBERTS, SUSANNAH ROBERTS** and **JANE ROBERTS**.

The wife of **MORRIS ROBERTS** died many years ago and **MORRIS** died in October 1828 after being possessed of said Negroes and increase many years.

**JOSHUA BURNET**, the plaintiff, married **MARY ROBERTS** before the death of **MORRIS**. After the death of said **MORRIS ROBERTS**, to wit, in March 1829 all of the said parties entitled to the remainder met, except **JOSHUA BURNET**, who then did, and still does, reside in the state of Indiana, for the purpose of dividing said Negroes, when the defendant for himself, and as agent for **JOSHUA BURNET** and wife, entered into an agreement under seal to abide by the division of said Negroes, to be made by three persons chosen for that purpose, and who did divide them and allotted the Negroes sued for to **JOSHUA BURNET** and wife, when the defendant took them into possession or their agent.

In a short time after the division of said Negroes, the defendant hired them out alleging that he did not well know whether they belonged to **BURNET** or **MAGNESS** as neither the bill of sale or registered copy could then be found.

Descendant proved that at the time of the division of said Negroes he asserted that said **BURNET** and wife had given a bill of sale for their right in said Negroes many years before to **WILLIAM MAGNESS** and that he was present when the bill of sale was executed but it was then lost and he could not find it nor could he find that it had been registered and it was proved on the trial that neither the original or copy could be found.

At the time the division took place he then proved that **WILLIAM MAGNESS** died in May 1816 that in a short time afterward, and before he administered, a particular examination was made of the papers of said **WILLIAM MAGNESS**, deceased, and that the will bill of sale could not be found among his papers.

The defendant swore that he had not the bill of sale in his possession and that he had not seen it since it was proven in court for the purpose of registration.

It was proven by the register of the county, that a bill of sale was not in his office. That frequent search had been made for the registration of it which could not be found until after the commencement of this suit because he had neglected to index it, that the copy as registered upon the register books was a true copy of the original entered by himself there on on the day of the 18<sup>th</sup>.

**Probate, NC, Rutherford, MORRIS ROBERTS 1828**

It was further proven by **MARTIN ROBERTS**, in behalf of the defendant, that he drew the original bill of sale from **JOSHUA BURNET** and wife to **WILLIAM MAGNESS** and that he saw them sign it. That he witnessed the same in presence of **JOSHUA BURNET** and his wife with **JOHN ROBERTS** the defendant and it was delivered to the said **WILLIAM MAGNESS**, and that said **MAGNESS** paid said **BURNET** a horse, a bed, and some money in silver amounting to \$150, the price they had agreed upon for his claim to said Negroes.

The copy of this bill of sale upon the register books was read to the jury, to the reading of which copy plaintiff's counsel objected. It was proven that the defendant and one **BEN MAGNESS** administered upon the estate of said **WILLIAM MAGNESS** in Lincoln County Court July sessions 1816 and produced the letters of administration and that said **BEN MAGNESS** died before said **MORRIS ROBERTS**.

**Probate, NC, Rutherford, MORRIS ROBERTS 1828**

The court was of opinion that the defendant had sufficient accounted for the loss of the original deed to **MAGNESS** by the evidence given in independent of the original oath of the defendant yet the court in ??? to the practice of the Courts of this state took the defendants oath. The sworn copy of the deed to **MAGNESS** was admitted to be read to the jury.

The court charged the jury that if **BURNET** had bona fide, and for a valuable consideration conveyed all the interest he and his wife had in the Negroes to **MAGNESS**, he had no title to the Negroes now and therefore was not entitled to recover on this action. That the jury were not estopped to find the truth and say who had the title to the Negroes, nor was the defendant in this case under the evidence given in estopped to show that he, as the administrator of **MAGNESS**, was entitled to the Negroes.

The jury found a verdict for the defendant.

Plaintiff moved for a new trial.

1<sup>st</sup> known the court permitted in proper evidence to be given to the jury.

2<sup>nd</sup> for ??? point of law. motion overturned and judgment for the defendant plaintiff appealed & c.

A copy of **WALTER POLLARD**'s will

A copy of the deed from **BURNET** and wife to **MAGNESS** and

A copy of the deed of submission to arbitrators or commission to divide the Negroes and

A copy of the division made by the Commissioners or arbitrators

A copy of the receipt given by defendant for balance of the money to make up may Barnett's share equal to the others

And all to be made a part of this case and sent to the Supreme Court.

It appeared in evidence that the defendant **JOHN ROBERTS** had intermarried with the sister of **MAGNESS**. That **MAGNESS** died without children and defendants wife is one of his distributees.

It was proved that at the time of the sale by **BURNET** to **MAGNESS** the Negroes had increased to about the number of twenty, and that **MORRIS ROBERTS**, tenant for life, was about 70 or 72 years of age but a very hearty, healthy, old man and with a good constitution and lived until he was ninety six or seven years of age.

**J. J. DANIELS.**

**Probate, NC, Rutherford, MORRIS ROBERTS 1828**

State of North Carolina  
Lincoln County

To All To whom these presents shall come, greeting.

Know ye that whereas **WALTER POLLARD** of the county of Chesterfield in the state of Virginia by his last will and testament did devise and bequeath to **MORRIS ROBERTS** and his wife **UNITY [MARTIN]**, then of the same county, the following Negroes, viz.

One negro woman named BETT  
A negro girl named MOLL  
And a negro boy named PETER

To them during the term of their natural life and after their deceased directed that the same Negroes with their increase should be equally divided between their six children viz.

**SUSANNAH [ROBERTS]** now the wife of **ABRAHAM COLLINS**  
**MARTIN ROBERTS**  
**JOSHUA ROBERTS**  
**MARY [ROBERTS]** now the wife of **JOSHUA BURNET**  
**JANE [ROBERTS]** now the wife of **HUGH QUINN** and  
**JOHN ROBERTS**

And the said **UNITY** having died in the state of Virginia and said **MORRIS ROBERTS**, having removed to the county of Rutherford in the state of North Carolina, and who then departed this life sometime in the month of October last and the said Negroes now having increased to the number of forty one, now living, and some controversy having arisen between the said **ABRAHAM COLLINS** in right of his wife **SUSANNAH MARTIN ROBERTS**, **JOSHUA ROBERTS**, **JOSHUA BURNET**, in right of his wife **MARY** by their agent, and attorney in fact **JOHN ROBERTS**, **HUGH QUINN** in right of his wife **JANE**, and **JOHN ROBERTS** respecting the division of said Negroes and with respect to the expense of raising the increase their of which said controversy the said parties had agreed to submit to the arbitrament award and final determination of us **WILLIAM J. WILSON**, **THOMAS L. SLADE**, and **LAWSON HENDERSON**. We have taken upon ourselves the burden of set award and having heard the allegations of the parties, toward that the said Negroes be equally divided among the said parties without any allowance being made to any of them for raising any of the increased thereof.

And we do hereby award and direct that the said Negroes now surviving be divided in the following manner, to wit:

To **ABRAHAM COLLINS**, in right of his wife **SUSANNAH**, the following Negroes, viz:

RHODA a woman 40 years of age valued at \$200; her child PHILIP 4 months old at \$75

MARY 4 years old at \$125

DAVE 15 years old at \$400

BETTY 24 years old at \$275, her child LUCINDA one-year-old at \$125

LUCINDA a girl 17 years old valued at \$325

**Probate, NC, Rutherford, MORRIS ROBERTS 1828**

JAKE 10 years old at \$250

To **HUGH MARTIN ROBERTS:**

A negro man named NED 50 years of age valued at \$230

One girl named MARIAH 14 years old at \$300

PETER a man 31 years old at \$375

SAM 8 years old at \$200

FRANK 5 years old at \$150

LODI a woman 33 years old at \$325

RANDALL 5 years old at \$150

To **JOSHUA ROBERTS:**

PHILIS a woman 45 years old at \$165

PETER 30 years old at \$440

DICY a woman 26 years old at \$280

RICH a boy 12 years old at \$335

LOTTY 6 years old at \$150

BETT 17 years old \$325

and NERO 22 years old at \$450

To **JOSHUA BURNET** in right of his wife **MARY**

MARY a woman 21 years old valued at \$300

JULIA six years old at \$130

YORK four years old at \$10

MOLL one-year-old at \$100

BETT at 19 years old \$325

BEN 21 years old at \$475

CAMPBELL 19 years old at \$400

**Probate, NC, Rutherford, MORRIS ROBERTS 1828**

To **HUGH QUINN** in right of his wife **JANE**

JAKE a man 38 years old valued at \$600

MARY 28 years old at \$275

PETER 13 years old \$350

MINERVA 8 years old at \$200

MARIAH 6 years old at \$150

PETER 62 years old at \$100

CREASE 8 years old at \$150

To **JOHN ROBERTS**:

a negro man named JAKE 35 years old value today \$850

RHODA 28 years old \$260

NERVA 11 years old at \$225

CHARLES 8 years old at \$200

GABE 10 years old at \$250

We do award that **JOSHUA ROBERTS**:

Do pay to **ABRAHAM COLLINS**, in right of his wife **SUSANNAH**, \$58.33 1/3 making her share with the value of the Negroes aforesaid named to her to amount to \$1,833.33 1/3 cent in full of her share in the Negroes aforesaid.

That he also pay to **MARTIN ROBERTS** \$103.33 1/3 cents which with the amount of the Negroes before named to him will make the sum of \$1,833.33 1/3 cent in full of his share.

That he also pay to **JOSHUA BURNET** in right of his wife **MARY** \$93 33 1/3 cents which with the amount of the Negroes before name to him will make the sum \$1,833.33 1/3 cent in full amount of his share.

That he pay to **HUGH QUINN** in right of his wife **JANE** the sum of \$8.33 in 1/3 which with the amount of the Negroes named in his lot will make the sum \$1,833.33 1/3 cent in full amount of his share.

to **JOHN ROBERTS** the sum of \$48.33 1/3 which with the value of the slaves named to him in his lot aforesaid will make the sum of \$1,833.33 1/3 cent in full amount of his share.

**Probate, NC, Rutherford, MORRIS ROBERTS 1828**

And we do further award that all further controversy respecting the said premises shall cease and that the said parties at any time hereafter at the request of any of the said parties and at the proper cost of the party request in the same shall execute a quit claim for the Negroes named in their said lots.

In witness whereof we have hereunto set our hands and seal this 24th day of March in the year of Our Lord 1829.

**WILLIAM WILSON  
THOMAS L. SLADE  
LAWSON HENDERSON**

**Probate, NC, Rutherford, MORRIS ROBERTS 1828**

State of North Carolina  
Lincoln County

Whereas **WALTER POLLARD** of the county of Chesterfield in the state of Virginia by his last will and testament did devise and bequeath to **MORRIS ROBERTS** and his wife **UNITY**, of in the same county and later of the county of Rutherfordton in the state of North Carolina, the following Negroes, viz:

negro woman named **BETT**  
a negro girl named **MOLL** and  
a negro boy named **PETER**

during the term of her natural life and after her death directed that the said Negroes with their increase should be equally divided between:

**SUSANNAH [ROBERTS]** (the wife of **ABRAHAM COLLINS**)  
**MARTIN ROBERTS**  
**JOSHUA ROBERTS**  
**MARY [ROBERTS]** (the wife of **JOSHUA BURNET**)  
**JANE ROBERTS** (the wife of **HUGH QUINN**)  
and **JOHN ROBERTS**

children of the said **MORRIS ROBERTS**, and she having departed this life some time in the month of October last, and said Negroes having now increased to the number of forty one, and some controversy have arisen between the said **ABRAHAM COLLINS**, in right of his wife **SUSANNAH**, **MARTIN ROBERTS**, **JOSHUA ROBERTS**, **JOSHUA BURNET** in right of his wife **MARY**, **HUGH QUINN** in right of his wife **JANE**, and **JOSHUA ROBERTS** respecting the division of the same and with regard to the expensive raising the said increase which said controversy the said parties have agreed and do hereby agree to submit to the arbitrament award and final determination of **WILLIAM WILSON**, **THOMAS L. SLATER** and **LAWSON HENRY**, arbitrators, indifferently chosen to be decided by them upon the principles of equity and justice and the said **ABRAHAM COLLINS** and his wife **SUSANNAH**, **MARTIN ROBERTS**, **JOSHUA ROBERTS**, **JOHN ROBERTS**, from **JOSHUA BURNET** and his wife **MARY**, **HUGH QUINN** and his wife **JANE**, and **JOHN ROBERTS** in his sister's behalf, do mutually covenant and agree with each other that they will stand to abide by and perform the award of the said **WILLIAM J. WILSON**, **THOMAS L. SLADE**, and **LAWSON HENDERSON** as majority of them if made in writing within two months from the date hereof, the true and faithful performance of which they have, the said, **ABRAHAM COLLINS** and his wife **SUSANNAH**, **MARTIN ROBERTS**, **JOSHUA ROBERTS**, **JOHN ROBERTS** for **JOSHUA BURNET** and his wife **MARY**, **HUGH QUINN** and his wife **JANE**, and **JOHN ROBERTS** for himself, do hereby bind themselves their heirs, executors and administrators severally and to each other in the penal sum of \$12,000.



**Probate, NC, Rutherford, MORRIS ROBERTS 1828**

In witness whereof they have hereunto set their hand and seal this 23rd day of March 1829 and in the 53rd year of the independence of the United States.

**SUSANNAH COLLINS** {her mark}  
**ABRAHAM COLLINS**  
**JOHN ROBERTS**  
**JOSHUA ROBERTS** {his mark}  
**JOHN ROBERTS** for **JOSHUA BURNET** and wife **MARY**  
**HUGH QUINN** for himself & his wife **JANE**  
**JOHN ROBERTS**

Signed sealed and acknowledged in the presence of

**B. L. JOHNSON**

And the above named parties to agree and desire that this there subscription be made a rule of Lincoln County superior court of law in the state aforesaid.

In witness whereof they have urine to set their hands and seals the day in year before written:

**SUSANNAH COLLINS** {her mark}  
**ABRAHAM COLLINS**  
**JOHN ROBERTS**  
**JOSHUA ROBERTS** {his mark}  
**JOHN ROBERTS** for **JOSHUA BURNET** and wife **MARY**  
**HUGH QUINN** for himself & his wife **JANE**  
**JOHN ROBERTS**

Acknowledged in the presence of

**B. L. JOHNSON**

Probate, NC, Rutherford, MORRIS ROBERTS 1828

```
##### # # ##### ##### # # ##### ##### # #  
# # ## ## # # # ## # # # # # ## ##  
# # # # # # # # # # # # # # # # # # # # # #  
##### # # # # ##### ##### # # # # # # # #  
# # # # # # # # # # # # # # # # # # # # # #  
# # # # # # # # # # # # # # # # # # # # # #  
##### # # ##### ##### # # # # # # # # # # # #
```

Transcribed from original documents by Brent R. Brian & Martha M. Brian.

This document and others can be found on our website:

[BMGEN](#)

We claim **COPYLEFT** on the documents that we publish that are our original work.

COPYLEFT "rules" can be reviewed on the web site:

[GNU Free Documentation License](#)

In short, use what you like. But if you use our stuff, mention us as the source.

Brent R. Brian  
Martha M. Brian  
[BrianMitchellGenealogy@gmail.com](mailto:BrianMitchellGenealogy@gmail.com)