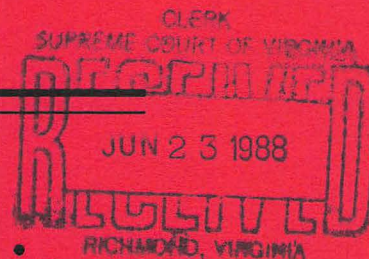


238VA54



IN THE
Supreme Court of Virginia
AT RICHMOND

RECORD NO. 870646

THE LESTER GROUP, INC.,
f/n/a LESTER LUMBER COMPANY,

Appellant,

v.

LARRY K. LITTLE, et. al.,

Appellees.

JOINT APPENDIX

Philip G. Gardner
GARDNER, GARDNER
& BARROW, P.C.
Fourth Floor, Dominion Bank Building
231 East Church Street
Martinsville, Virginia 24112
(703) 638-2455

Counsel for Appellant

Ralph Rhodes
HUTCHERSON, RHODES
& FURROW, LTD.
118 Main Street
Rocky Mount, Virginia 24151
(703) 483-5234

Counsel for Appellees

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VIRGINIA:

IN THE CIRCUIT COURT OF FRANKLIN COUNTY

LARRY K. LITTLE

and

DOUGLAS M. HUNT,
PLAINTIFFS,

VS.

MOTION FOR JUDGMENT
TO ESTABLISH BOUNDARY
LAW NO. _____

THE LESTER GROUP, INC.
F/N/A LESTER LUMBER COMPANY
c/o John A. Thompson
14 E. Liberty St.
P. O. Box 4991
Martinsville, Virginia 24112

DEFENDANT.

COMES NOW plaintiffs, Larry K. Little and Douglas M. Hunt, by counsel, and move this Court for judgment against the defendant, The Lester Group, Inc., f/n/a Lester Lumber Company, pursuant to Va. Code 8.01-179, and in support thereof states as follows:

(1). The plaintiffs are possessed in fee simple and absolute of a tract of land lying in Franklin County, Virginia, containing 193 acres, more or less, bounded by the lands of the defendant, et als, and more fully described as follows:

BEGINNING at an existing iron pipe located in the northern bank of a branch, Amos' corner in George Wallser's western line; thence, with said branch the following courses and distances: N. 52 degs. 15' W. 78.58 feet to a stake; N. 1 deg. 00' W. 66.96 feet to a stake; N. 60 degs. 13' W. 178.77 feet to a stake; N. 3 degs. 12' E. 168.76 feet to a stake; N. 36 degs. 22' W. 81.13 feet to a nail in a stone pile; thence, crossing said branch with Amos' line, S. 55 degs. 38' 10" W. 465.47 feet to a stake; thence, continuing with Amos' line, S. 88 degs. 29' 45" W. 1452.00 feet to a stake; thence, leaving Amos' line, N. 26 degs. 35' W. 1181.41 feet to a stake; thence, N. 31 degs. 50' E. 1633.22 feet to a stake; thence, N. 56 degs. 42' 30" E. 1320.00 feet to a stake; thence, N. 34 degs. 40' E. 693.00 feet to a stake; thence, S. 58 degs. 34' E. 1485.00 feet to a stake and stone at a marked maple in George Wallser's western line; thence, with said Wallser's line, S. 17 degs. 57' 20" W. 3259.74 feet to the point and place of BEGINNING, containing 193.07 acres, more or less, all according to a survey by Clotus

Craven, R.L.S., dated October 26, 1981, and of record in the Clerk's Office Circuit Court of Franklin County, Virginia, in Deed Book 370, Page 1964.

BEING the same land conveyed to Larry K. Little and Douglas M. Hunt, by deed dated March, 1983, from Walter V. Roberts and Virginia S. Roberts, his wife, and of record in the aforesaid Clerk's Office in Deed Book 370, Page 1960.

(2). The defendant is a coterminous land owner with the plaintiffs.


(3). A dispute has arisen between plaintiffs and defendant as to the true location of the boundary line between the tracts of land owned by the plaintiffs and that of the defendant.

(4). Plaintiffs respectively allege that the true boundary lines of the tract of land owned by the plaintiffs are represented in the aforementioned plat of survey prepared by Clotus Craven, surveyor, dated October 26th, 1981, and accordingly, the true boundaries between said tract of land owned by plaintiffs and the defendant are set out on the said plat and definitely designated thereon. The said boundary lines are alleged herein to be the true boundary lines between the land of plaintiffs and that of the defendant.

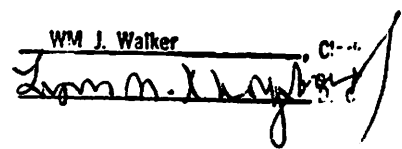
WHEREFORE, plaintiffs, Larry K. Little and Douglas M. Hunt, by counsel, demand judgment against the defendant establishing the boundary lines between the land of plaintiffs and the land of the defendant in accordance with the plat hereinabove referenced.

LARRY K. LITTLE AND
DOUGLAS M. HUNT

By Counsel



of
Hutcherson, Rhodes & Furrow, Ltd.
118 S. Main St.
Rocky Mount, Va. 24151

Filed in the Clerk's Office the 7 day of NOV 1984 AT 4:30 PM
Writ Tax \$ 5.00 Test: _____
LL. 2.00
Fees 15.00 WM J. Walker
Total Paid \$ 22.00 

Law Office of
Hutcherson, Rhodes &
Furrow, Ltd.
118 Main Street
Rocky Mount, Virginia 24151

1-4-143
VIRGINIA: IN THE CIRCUIT COURT OF FRANKLIN COUNTY

LARRY K. LITTLE)

and)

DOUGLAS M. HUNT,)

Plaintiffs,)

vs.)

THE LESTER GROUP, INC.)

F/N/A LESTER LUMBER COMPANY,)

Defendant.)

A N S W E R

COMES NOW your Defendant, The Lester Group, Inc., by counsel, and files its Answer to the Motion for Judgment filed by Plaintiffs herein as follows:

1. The allegation in paragraph 1 is denied.
2. The allegation in paragraph 2 is not denied.
3. The allegation in paragraph 3 is not denied.
4. The allegation in paragraph 4 is denied.

WHEREFORE your Defendant respectfully prays that the Motion for Judgment be dismissed.

THE LESTER GROUP, INC.
F/N/A LESTER LUMBER COMPANY

By

Counsel

Benjamin R. Gardner, Esq.
GARDNER, GARDNER & BARROW, P.C.
10 N. Bridge St.
P. O. Box 552
Martinsville, VA 24114

CERTIFICATE

This is to certify that a true copy of the foregoing pleading was this day mailed to all counsel of record.

Filed in the Clerk's Office of Circuit Court of Franklin County the 31 day of May, 1984, at 11:22 P. M.
By: [Signature] Deputy Clerk

[Signature]
Sated

VIRGINIA:

IN THE CIRCUIT COURT OF FRANKLIN COUNTY

LARRY K. LITTLE

and

DOUGLAS M. HUNT,

Plaintiffs,

AMENDED MOTION FOR
JUDGMENT

LAW NO. 84-4-1143

vs.

THE LESTER LUMBER GROUP, INC.

f/n/a Lester Lumber Company

C/O Benjamin R. Gardner

Gardner, Gardner, & Barrow, P.C.

10 N. Bridge Street

P.O. Box 552

Martinsville, VA 24112,

Defendant.

COMES NOW the plaintiffs, Larry K. Little and Douglas M. Hunt, by counsel, and move this Court for judgment against the defendant, The Lester Lumber Group, Inc., f/n/a Lester Lumber Company, pursuant to Va. Code 8.01-55-153 et seq. and Va. Code 8.01-131 et seq. and in support thereof state as follows:

**COUNT 1
QUIET TITLE
VA CODE 55-153**

1. The plaintiffs are possessed in fee simple and absolute of a tract of land lying in Franklin County, Virginia, containing 193 acres, more or less, and more fully described as follows:

BEGINNING at an existing iron pipe located in the northern bank of a branch, Amos' corner in George Wallser's western line; thence, with said branch the following courses and distances: N. 52 degs. 15' W. 78.58 feet to a stake; N. 1 deg. 00' W. 66.96 feet to a stake; N. 60 degs. 13' W. 178.77 feet to a stake; N. 3 degs. 12' E. 168.76 feet to a stake; N. 36 degs. 22' W. 81.13 feet to a nail in a stone pile; thence, crossing said branch with Amos' line, S. 55 degs. 38' 10" W. 465.47 feet to a stake; thence, continuing with Amos' line, S. 88 degs. 29' 45" W. 1452.00 feet to a stake; thence, leaving Amos' line, N. 26 degs. 35' W. 1181.41 feet to a stake; thence, N. 31 degs. 50' E. 1633.22 feet to a stake; thence, N. 56 degs. 42' 30" E. 1320.00 feet to a stake; thence, N. 34 degs. 40' E. 693.00 feet to a stake;

thence, S. 58 degs. 34' E. 1485.00 feet to a stake and stone at a marked maple in George Wallser's western line; thence, with said Wallser's line, S. 17 degs. 57' 20" W. 3259.74 feet to the point and place of BEGINNING, containing 193.07 acres, more or less, all according to a survey by Clotus Craven, R.L.S., dated October 26, 1981, and of record in the Clerk's Office Circuit Court of Franklin County, Virginia, in Deed Book 370, Page 1964.

2. The above described property is the same land conveyed to Larry K. Little and Douglas M. Hunt by Deed dated March, 1983, from Walter V. Roberts and Virginia S. Roberts, his wife, and of record in the Clerk's Office of the Circuit Court of Franklin County in Deed Book 370, Page 1960.

3. Your plaintiffs have been advised that The Lester Lumber Group, Inc. also claims fee simple ownership in said property as a result of a Deed from Clyde H. Perdue (Special Commissioner) to Lester Lumber Company, Inc. dated February 28, 1945, and recorded in the aforesaid Clerk's Office in Deed Book 104, Page 319.

4. Your plaintiffs allege that the Deed to Lester Lumber Company, Inc. is a cloud on their title and ask the Court to annul the force and effect of the Deed to Lester Lumber Company, Inc.

**COUNT 2
EJECTMENT
VA CODE 8.01-131**

The plaintiffs hereby adopt and reallege as if set forth verbatim herein the allegations contained in paragraphs 1-4 of Count 1 of this Amended Motion for Judgment.

5. Your plaintiffs have been advised that The Lester Lumber Group, Inc. claims title to the property described in Deed Book 370, Page 1960.


6. Your plaintiffs allege that they were previously possessed of the property described in Deed Book 370, Page 1960 and that subsequent to their possession, The Lester Lumber Group, Inc. has claimed title to said property.

7. Your plaintiffs claim ownership of the 193 acres previously described in fee simple and absolute.

WHEREFORE, your plaintiffs, Larry K. Little and Douglas M. Hunt, by counsel, request this Court to quiet title in your plaintiffs and to determine that Larry K. Little and Douglas M. Hunt are the fee simple owners of the property described in Deed Book 370, Page 1960.


LARRY K. LITTLE and
DOUGLAS M. HUNT

By counsel


Hutcherson, Rhodes, & Furrow, Ltd.
118 S. Main Street
Rocky Mount, VA 24151

CERTIFICATE OF MAILING

I, David A. Furrow, counsel of record for the plaintiffs, do hereby certify that I have mailed a true and correct copy of the foregoing Amended Motion for Judgment to Benjamin R. Gardner, Gardner, Gardner, & Barrow, 10 N. Bridge Street, Martinsville, VA 24112, counsel of record for the defendant, this the 21 day of March, 1985.


David A. Furrow

VIRGINIA: IN THE CIRCUIT COURT OF FRANKLIN COUNTY

LARRY K. LITTLE,

and

DOUGLAS M. HUNT,

Plaintiffs,

vs.

THE LESTER GROUP, INC.

F/N/A LESTER LUMBER COMPANY,

Defendant.

ANSWER TO AMENDED
MOTION FOR JUDGMENT
LAW NO. 84-4-1143

COMES NOW your Defendant, The Lester Group, Inc., by counsel, and files its Answer to the Amended Motion for Judgment filed by Plaintiffs herein as follows:

1. The allegation in paragraph 1 is denied.
2. The allegation in paragraph 2 is denied.
3. The allegation in paragraph 3 is not denied.
4. The allegation in paragraph 4 is denied.
5. The allegation in paragraph 5 is not denied.
6. The allegation in paragraph 6 is denied.
7. The allegation in paragraph 7 is denied.

WHEREFORE your Defendant respectfully prays that the Motion for Judgment be dismissed.

THE LESTER GROUP, INC.
F/N/A LESTER LUMBER COMPANY

By

Counsel

Benjamin R. Gardner, Esq.
GARDNER, GARDNER & BARROW, P.C.
10 N. Bridge St.
P. O. Box 552
Martinsville, VA 24114

CERTIFICATE

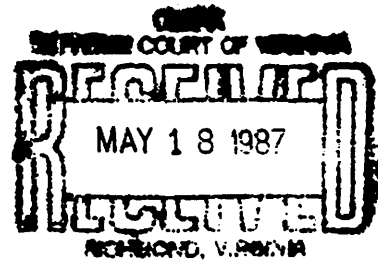
This is to certify that a true
copy of the foregoing pleading
was this day mailed to all
counsel of record.

Filed in the Clerk's Office of Circuit
Court of Franklin County the 22 day of
April, 1985, at 12 M.
Deputy Clerk

Counsel

870640 3/17
due 6/17
pull 7/1

VIRGINIA:



IN THE CIRCUIT COURT
FOR THE COUNTY OF FRANKLIN

LARRY K. LITTLE
and DOUGLAS M. HUNT,
Plaintiffs

-vs-

THE LESTER GROUP, INCORPORATED,
F/N/A LESTER LUMBER COMPANY,
Defendant

CASE NO.: 84-4-1143

SEPTEMBER 16, 1986
9:30 A.M.

HEARD BEFORE:

THE HONORABLE B. A. DAVIS, III

JANICE F. HAMBRICK
459 NELLIE CIRCLE
SALEM, VIRGINIA 24153
(703) 380-3565

Filed in the Clerk's Office of Circuit
Court of Franklin County the 30 day of
April, 1987, at 12:34 P. M.
By: [Signature] Deputy Clerk

APPEARANCES:

RALPH B. RHODES, ESQ.
Rocky Mount, Virginia

Counsel on behalf of the Plaintiffs

PHILIP G. GARDNER, ESQ.
Martinsville, Virginia

Counsel on behalf of the Defendant

I N D E X

WITNESS	DIRECT	CROSS	REDIRECT	RECROSS
---------	--------	-------	----------	---------

FOR THE PLAINTIFF:

Larry K. Little	8	13	19	- -
-----------------	---	----	----	-----

FOR THE DEFENDANT:

Kenneth O'Brien Scruggs	22	30	35	40
-------------------------	----	----	----	----

RECALLED:

Larry K. Little	42
-----------------	----

E X H I B I T S

EXHIBIT NUMBER	DESCRIPTION	PAGE
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For the Plaintiff:

One	Deed	11
Two	Map	11
Three	Insurance Policy	12
Four	Chancery Suit	21
Five	Pages from Grantor and Grantee Books	21

For the Defendant:

One	Letter from Mr. Williams to Mr. Rhodes	23
Two	Deed dated November 28, 1945	25
Three	Map	36
Four	Map	38
Five	Overlay	38

1 The following cause came on to be heard on this
2 the 16th day of September, 1986 before the Honorable B. A.
3 Davis, III, sitting in Rocky Mount, Virginia when the
4 following Proceedings were had:

5
6 THE HONORABLE B. A. DAVIS, III: Are you gentle-
7 men ready?

8 MR. RHODES: Yes, we are, Your Honor.

9 MR. GARDNER: Yes, sir.

10 THE COURT: Are there any witnesses you want to call
11 and separate?

12 MR. RHODES: There are none other than the parties.

13 THE COURT: Mr. Rhodes, I believe you instigated
14 this proceeding?

15 MR. RHODES: Yes, sir. Your Honor, Mr. Gardner
16 and I have agreed on a few things here and I would like
17 to give them to the Court first so that the Court will
18 have an understanding of what is going on.

19 THE COURT: What little I know about it is what
20 you gentlemen told me; that is that you can go either
21 way and come up with a good title.

22 MR. RHODES: Judge, here is the chain of title
23 for the Plaintiffs, Larry K. Little and Douglas M. Hunt,
24 and also for the Defendant Lester.

25 Your Honor, here is a diagram that I think we are

1 both going to be referring to and if the Court will
2 mark Lester on this side and Little and Hunt on this
3 side (indicating). This shows the two chains of title
4 and where they joined.

5 THE COURT: Okay.

6 MR. RHODES: That diagram follows the two chains
7 of title and we will be talking about it. We put the
8 dates and the information on there as best we could, but
9 I think that will help the Court understand what we are
10 doing.

11 If it please the Court, I would like to make a
12 short opening statement. Judge, I represent Larry K.
13 Little and Douglas M. Hunt who purchased 191 acres of
14 land on Turkeycock Mountain on March 17, 1983 from
15 Mr. and Mrs. Roberts.

16 As you can see from the chain there, their chain
17 goes back to a land grant to the Commonwealth of Virginia
18 to James Grant dated June 13, 1955 which was not recorded
19 until March 12, 1957. The 191-acre tract in their chain
20 hasn't changed; it has been 191 acres. It has been
21 surveyed and I am going to introduce the map. I don't
22 think we have any problem with that.

23 Mr. Gardner is representing Lester Lumber and he has
24 the other side of the chain which shows the various
25 transactions there. Lester Lumber obtained a deed to

1 the property in February of 1945 which was the 191-acre
2 tract amongst other land. He has a map of it.

3 If the Court sees the diagram I don't think there is
4 going to be any other evidence, other than what is
5 basically on that diagram. There are various maps that
6 may help the Court see the land that we are talking
7 about.

8 I think what the question is going to boil down to
9 is a matter of law, and I think the Court will have to
10 determine it based on the law. I don't think there will
11 be any dispute in the facts.

12 THE COURT: Mr. Gardner?

13 MR. GARDNER: If Your Honor please, I wanted to
14 mention what I think some of the issues will be and it
15 may be helpful as the evidence unfolds.

16 One of the issues in this case will be, as between
17 the two chains of title, whether there were any mistakes
18 in the recording of the documents. It will appear that
19 at one point in one of the chains there was a failure to
20 completely index a transaction; this was back in about
21 1878.

22 Mr. Rhodes and I may disagree on the law as to
23 whether there is a difference between a transaction being
24 improperly indexed and a transaction not being completely
25 indexed. When we get to that point in the evidence I

1 would ask the Court to be on the lookout for what both of
2 us will be introducing to show that back in about 1878
3 there was a creditor's suit against this Grant. You will
4 hear the name James Grant throughout this case.

5 James Grant was the person who owed the money and
6 whose land was taken and sold. Grant's name did not
7 appear in the Grantor or the Grantee index, but the names
8 of the creditors did, and some question will be in the
9 case as to whether that is important or whether it makes
10 any difference or not.

11 Another question in the case will be where the
12 Treasurer's Office records show that taxes have been paid
13 on the tract and they have not been paid on the same
14 tract. Does that affect the title that is conveyed
15 through a tax sale?

16 Mr. Rhodes' clients claim their title through a tax
17 sale. The evidence will be that the Commissioner's
18 finding in about 1960 that the taxes hadn't been paid is
19 correct and is also incorrect because the evidence will
20 also be at the same time that Lester, my clients, had
21 paid the taxes on the property. The evidence will be
22 clear that that happened. One of the questions in the
23 case will be: Does that make any difference; is that
24 important and is that a significant fact in the case?

25 Another issue that we will putting evidence on

1 concerns notice to the parties of each other's claims. A
2 legal question will exist as to whether that makes any
3 difference, whether it is important or not, and does it
4 adversely affect either of the parties.

5 There will be evidence that at one point the com-
6 peting interests did indeed finally become aware of each
7 other's claim. I say they "became aware"; in fact, Your
8 Honor, I don't mean legally. A question that the Court
9 will have to decide is when legally did one claim have
10 notice of the other, but at one point Mr. Rhodes and I
11 agree - and it will be almost on a date certain that we
12 will agree - that the parties became aware of each
13 other's claim to the same property. One of the questions
14 in the case will be: Does that make any difference?

15 I have not attempted to say in this statement, Your
16 Honor, what my position is on any of these issues or what
17 I think the law is on it. I simply wanted to alert the
18 Court from the beginning about these three issues and I
19 think they will be issues the Court will have to make
20 rulings of law on. At the appropriate time, of course,
21 we will present what our position is on the law. Thank
22 you.

23 THE COURT: Thank you, Mr. Gardner.
24
25

LARRY K. LITTLE

was called as a witness and, after having first been duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

BY MR. RHODES:

Q Your name is Larry K. Little?

A Correct.

Q Where are you from?

A Randolph County, North Carolina.

Q Mr. Little, I believe you and Mr. Hunt purchased a tract of land consisting of 191 acres here in Franklin County on Turkeycock Mountain; is that correct?

A That is correct.

Q I am going to show you a deed and ask you if this is a copy of the deed of the land that you purchased?

A It is.

THE COURT: There is no question about that, is there, Mr. Gardner?

MR. GARDNER: No question, Your Honor; that is the deed.

BY MR. RHODES:

Q It was purchased in March of 1983; is that correct?

1 A That is correct.

2 Q Tell the Court how you and Mr. Hunt came to purchase
3 this land.

4 A I was confronted by Ken McDowell who was acting as
5 agent for Mr. Walter Roberts. With myself being in the land
6 and timber business, naturally I was interested in tracts of
7 land and he suggested that he had a good buy in Virginia.

8 Q Did you and Mr. Hunt come up and look at the land?

9 A We did.

10 Q Did you go on the land?

11 A We came up with Mr. McDowell and we walked over the
12 land and we made an offer.

13 Q What did you find on the land?

14 A It had pretty good timber on it, mountainous,
15 state access road going across the top, a recent survey and
16 everything looked to be in order.

17 Q Did you find any occupation or possession of the
18 land? Was there any evidence that the land was possessed or
19 occupied?

20 A Oh, no.

21 Q Any signs?

22 A No.

23 Q You mentioned a minute ago that there was a survey
24 of it. Did you have it surveyed when you purchased it?

25 A Mr. Roberts had surveyed it some months before that;

1 it may have been close to a year before we purchased it.

2 Q Is this the same survey that you all had made;
3 the same surveyor (indicating)?

4 A By Mr. Clovis Craven of Ashboro; yes.

5 Q Is that the map?

6 A That is it.

7 THE COURT: You had the survey available when you
8 bought it?

9 THE WITNESS: It was surveyed when we bought it.
10 He had it surveyed.

11 THE COURT: Was there a survey prior to the time
12 that you bought it that you are aware of?

13 THE WITNESS: Yes, sir, just recently. The lines
14 were marked and painted.

15 THE COURT: Did Roberts have a survey when you came
16 to see it to buy it?

17 THE WITNESS: Yes, sir.

18 THE COURT: And then you had it surveyed again?

19 THE WITNESS: No, no; we had it updated.

20

21 BY MR. RHODES:

22 Q Mr. Little, the surveyor updated that and put your
23 names on it, but I think what the Court is asking is: When you
24 came to see the land did you have a copy of the survey and all
25 when you looked over the land?

1 A Oh, yes; we had this (indicating).

2 Q You had that (indicating)?

3 A Yes, in Mr. Walter Roberts' name.

4 Q Then when you bought it you had the survey updated
5 and put your names on it?

6 A That's right.

7 Q This was recorded in the Clerk's Office also?

8 A That is correct.

9 MR. RHODES: We will mark the Deed Plaintiff's
10 Exhibit One and the map as Plaintiff's Exhibit Two.

11 (Thereupon, the Deed was marked
12 and entered into evidence as Plaintiff's Exhibit
13 Number One; the map was marked and entered into
14 evidence as Plaintiff's Exhibit Number Two.)

15 MR. RHODES: Judge, the map was recorded on
16 March 21, 1983, the same time as the deed.

17

18 BY MR. RHODES:

19 Q Mr. Little, I believe at the time you purchased
20 the land you had the title examined and purchased title
21 insurance?

22 A That is correct.

23 Q I believe you sent me a copy of the facing sheet
24 of the title policy; is that correct?

25 A That is it (indicating).

1 Q Is a copy of the policy, the facing sheet of it,
2 from Lawyer's Title Insurance Company?

3 A Yes, sir.

4 MR. RHODES: We would mark that as Plaintiff's
5 Exhibit Three.

6 (Thereupon, the copy of the
7 title policy was marked and entered into evidence as
8 Plaintiff's Exhibit Number Three.)
9

10 BY MR. RHODES:

11 Q Now, Mr. Little, at the time you went on the land
12 did you have notice or knowledge concerning anyone else,
13 any ownership or anything?

14 A No, sir.

15 Q When was the first time that you knew that there
16 was any claim on this land other than what you all had?

17 A It was some months later as we would approach
18 various ones to sell it. There seemed to be a lack of
19 interest from certain individuals. Really, what clinched it,
20 I contracted to sell it to Mr. Randy Bridges of Statesville.
21 As a matter of fact, he paid me a deposit.

22 I am not sure about this, but I think he came to
23 Lester Group to sell the timber or whatever. I am not sure,
24 but, anyhow, he called me back and said he found out that
25 somebody else was claiming the land. I said, "Well, you know,

1 that is an interesting situation." From that we notified the
2 title insurance company.

3 Q I believe you notified me?

4 A That is correct.

5 Q You had this action instituted to determine the
6 title to it?

7 A That is correct.

8 MR. RHODES: Answer Mr. Gardner's questions.
9

10 CROSS EXAMINATION
11

12 BY MR. GARDNER:

13 Q Mr. Little, had you had any discussions with
14 Mr. Walter Roberts personally about the property?

15 A Not really, no; nothing other than buy and sell,
16 seller atmosphere.

17 Q Did Mr. Roberts tell you anything about what
18 happened at the auction when he bought the property?

19 A No, sir.

20 Q He never said a word to you about it?

21 A No.

22 Q The deed that you got from Mr. Roberts, was that
23 a General Warranty Deed?

24 A Yes, sir.

25 Q Who did you engage to examine the title for you?

1 A Mr. Dusty Rhodes.

2 Q In the course of that representation - and before
3 you answer this question give Mr. Rhodes a chance to object if
4 he has an objection - in the course of your having Mr. Rhodes
5 examine the title for you did he say anything to you about
6 what had happened at the auction when the property was pur-
7 chased by Mr. Walter Roberts?

8 A No.

9 Q Did anybody, including Mr. Rhodes, ever tell you
10 that a claim had been made on this property by Lester back
11 when this property was in an auction sale before Mr. Roberts
12 bought it?

13 A Oh, no; I wouldn't have considered buying it had I
14 known I would have had this hassle, so to speak.

15 Q I had assumed as much but I wanted to ask you to
16 make sure. You never knew anything and were never told any-
17 thing by anybody that you might be getting something less than
18 full free and clear title?

19 A Correct.

20 Q Who did you buy the property with; who was your
21 partner?

22 A Douglas M. Hunt.

23 Q Did Mr. Hunt have any role or did he play any part
24 in the negotiations or the purchase?

25 A Oh, yes, we were together.

1 Q Were you together when you talked to Mr. Roberts?

2 A Actually, the deal was confirmed before we spoke
3 to Mr. Roberts through his agent, Mr. McDowell.

4 Q I take it that McDowell likewise did not tell you
5 anything about a potential problem with the title to the
6 tract?

7 A No; as a matter of fact, I don't think he knew.

8 Q Did Mr. Roberts tell you where he got the property?

9 A No; later on after we had the property he mentioned
10 it.

11 Q Did Mr. McDowell or Mr. Roberts tell you that they
12 had bought it at auction?

13 A No, sir. Let me correct that - not until after the
14 litigation and I went back and in discussion this surfaced.

15 Q Did Mr. McDowell or Mr. Roberts tell you whether
16 they had had the title examined or not?

17 MR. RHODES: Was this before or after they purchased
18 it?

19

20 BY MR. GARDNER:

21 Q Before the purchase.

22 A Yes, he did in this sense: As I would naturally
23 have a title exam made, I said, "Who would be a good Lawyer,"
24 and he suggested Hutcherson and Rhodes since they had searched
25 his title.

1 Q Was Mr. Hunt with you at all of the times and places
2 you have testified about so far? Were you together when you
3 looked at the property and talked to Mr. McDowell?

4 A Yes, sir.

5 Q To your knowledge, were there any times before you
6 bought the property that Mr. Hunt talked with Mr. Roberts or
7 Mr. McDowell and you weren't present?

8 A Not to my knowledge.

9 Q When you went out to look at the property did you
10 see any signs anywhere on the property?

11 A No, sir.

12 Q Did you see any evidence on trees that there had
13 been signs on the property?

14 A No, sir, I don't recall any.

15 Q Did you see any marks or blazes on trees?

16 A The survey was evident.

17 Q When you say "the survey was evident," tell the
18 Judge what you mean by that.

19 A I mean there was no problem; we went back later and
20 painted the lines, repainted the lines.

21 Q After you bought the property?

22 A After we bought the property and there was no
23 problem; it was a very good survey.

24 THE COURT: Were the trees blazed; is that what
25 you mean?

1 THE WITNESS: Yes, and painted, lightly painted.

2

3 BY MR. GARDNER:

4 Q Before you bought the property?

5 A Yes, sir.

6 Q Tell the Judge what color those blazes were, if you
7 remember.

8 A I know we painted blue; I just cannot honestly say.
9 It wasn't blue; I can testify to that.

10 Q Did Mr. McDowell, when you looked at the property or
11 at anytime, or did Mr. Roberts when you discussed the property
12 before the sale - - I am asking you whether Mr. McDowell or
13 Mr. Roberts at anytime before the sale made any representation
14 to you or statement to you about who owned the land around
15 you; that is, around him, the property you were going to buy?

16 A There was a question as to how we would get the
17 timber out. In the process of the negotiations he paid
18 Mr. Danny Walker, the adjoining land owner to the road, \$500
19 for the easement to come out with the timber and drew up a
20 contract on a legal pad like that (indicating).

21 Q In the course of your dealings with the property
22 after you got the property did you contact the Lester Group or
23 Lester Lumber Company about them buying the timber?

24 A Yes.

25 Q What happened as a result of that contact?

1 A We went in to the business and talked to
2 Mr. Scruggs and immediately when we tried to sell it he - - -
3 You know, sell a man his own chickens doesn't work too well;
4 that is the way he took it, so that closed the deal right
5 there, so to speak.

6 Q After you had bought the property before you talked
7 to Mr. Scruggs had you gotten any direct communication that
8 somebody else claimed your land? Was that the first time you
9 knew?

10 A I think maybe we had - I don't know whether I should
11 say this or not, but there were certain innuendos, statements
12 made by the neighbors down there that, "Lester Group claims
13 everything that adjoins them."

14 THE COURT: That adjoins you?

15 THE WITNESS: Sir?

16 THE COURT: What did you say?

17 THE WITNESS: You know, somebody would say, "This
18 tract is in litigation," you know; "The Lester Group is
19 claiming it," maybe a prospective buyer, and then they
20 would say, "but then they claim everything that adjoins
21 them." That was a common reference that was made to us
22 by local saw millers, et cetera.

23
24 BY MR. GARDNER:

25 Q How much land did you think you were getting?

1 A 191 acres; I am sorry, 193 point something. I
2 believe the recent survey by Clovis Craven reveals 193.

3 MR. GARDNER: Thank you, sir; that is all.
4

5 REDIRECT EXAMINATION
6

7 BY MR. RHODES:

8 Q Mr. Little, Mr. Gardner asked you a few minutes
9 ago about the blazes being on the trees down there and you
10 said that you painted yours blue at the time you purchased it.

11 When you first went down there with the map and all
12 did the blazes on the trees follow your lines there the way
13 the map called for?

14 A The blazes that Clovis Craven - - - the recent
15 blazes, yes.

16 Q Were there any old blazes on there that you saw?

17 A Not to my knowledge.

18 Q What you found when you went there were recent
19 blazes and it followed your map?

20 A Oh, it was the paint that Clovis had put on it, yes;
21 I believe it was red. I am not positive about that.

22 Q There weren't any old blazes there? That is what
23 I was getting at.

24 A Not to my knowledge.

25 MR. RHODES: Those are all the questions I have.

1 THE COURT: Thank you, Mr. Little.

2 (Thereupon, the witness was excused.)

3
4 MR. RHODES: Your Honor, I have two Exhibits to
5 introduce; one is a Chancery Suit, Franklin County versus
6 James Grant, which was filed back in the 1960's with the
7 orders and all. The case has been copied and we would
8 introduce that as Plaintiff's Exhibit Four.

9 The other, Your Honor, is just a copy of the
10 Grantee and Grantor book going back to the map that we
11 talked about in 1878. Mr. Gardner told you about a
12 mix-up or an incorrect indexing by the Clerk. I have
13 a copy of what the Grantor page shows and the Grantee
14 page which we will introduce as Plaintiff's Exhibit
15 Five.

16 THE COURT: There is no question about that, is
17 there?

18 MR. GARDNER: No, sir.

19 MR. RHODES: But I would like to show it to the
20 Court. Your Honor, the first page is the Grantor page
21 and the Court can see that is listed from Powell to
22 Mitchell and Cable.

23 THE COURT: Powell was the Commissioner; right?

24 MR. RHODES: Powell was the Commissioner.

25 THE COURT: Mr. Grant's name does not appear?

1 MR. RHODES: No, sir; that is what we are talking
2 about. The other is in the Grantee book, Your Honor. At
3 the same time it was listing for Mr. Mitchell there it
4 shows that it was from Powell, Commissioner; that is
5 what is indexed in the Grantee book.

6 The other one is in the Grantor book and shows the
7 two prior deeds back before Powell where the chain is
8 joined.

9 (Thereupon, the Chancery Suit
10 was marked and entered into evidence as Plaintiff's
11 Exhibit Number Four; the copy of pages from Grantor
12 and Grantee Books were marked and entered into
13 evidence as Plaintiff's Exhibit Number Five.)
14

15 MR. RHODES: That is the Plaintiff's case, Your
16 Honor.

17 THE COURT: That is the Plaintiff's case,
18 Mr. Gardner.
19

20 KENNETH O'BRIEN SCRUGGS
21 was called as a witness and, after having first been duly
22 sworn, was examined and testified as follows:
23
24
25

DIRECT EXAMINATION

BY MR. GARDNER:

Q Tell the Judge your name, please.

A Kenneth O'Brien Scruggs.

Q Where do you live?

A Route 6, Danville.

Q Who is your employer?

A The Lester Group.

Q How long have you been with the company?

A Eight and a-half years.

Q What is your position and title?

A Forest Lands Manager.

Q What does the Forest Lands Manager do at Lester Group?

A I am in charge of all of the activities on our forest lands; also our contract logging operations I am in charge of.

Q Who is in charge of keeping track of the property the company owns?

A I am.

Q Mr. Scruggs, is the Lester Group a successor to Lester Lumber Company?

A Yes, sir.

Q Mr. Scruggs, who is the official records custodian

1 or has custody of and access to the records of Lester Lumber
2 Company, now the Lester Group, relating to property matters?

3 A I take care of all of the forest lands.

4 Q Is there a file on this tract?

5 A Yes.

6 Q Was that file kept in the ordinary course of the
7 business of Lester Lumber Company, now the Lester Group?

8 A Yes.

9 Q Have you checked that file for relevant entries or
10 communications or correspondence concerning this tract?

11 A That is correct.

12 Q I hand you a letter from Ebb H. Williams, III to
13 Mr. Ralph B. Rhodes and ask you if you can identify that
14 letter. Where did you find the letter?

15 A I found this letter in our permanent files for this
16 particular tract.

17 MR. GARDNER: Your Honor, I have an agreement with
18 Mr. Rhodes as to the admissibility of this letter.

19 THE COURT: I assume you have seen it?

20 MR. RHODES: Yes, sir.

21 MR. GARDNER: We would offer this as the Defendant's
22 first Exhibit.

23 (Thereupon, the aforementioned
24 letter from Mr. Williams to Mr. Rhodes was marked
25 and entered into evidence as Defendant's Exhibit

1 Number One.)

2

3 MR. GARDNER: Your Honor, rather than have the
4 witness to read it I would ask the Court to read it
5 before I proceed.

6 THE COURT: All right.

7

8 BY MR. GARDNER:

9 Q Mr. Scruggs, do you know Mr. George Ray?

10 A That is correct.

11 Q Tell the Judge what Mr. Ray's title was back in
12 1970.

13 A Forest Lands Manager.

14 Q For who?

15 A Lester Lumber Company.

16 Q You know, of course, that Mr. Little and Mr. Hunt
17 claim their title from Mr. Roberts who got the title in 1970
18 at an auction; are you aware of that?

19 A Yes.

20 Q Do you know whether Mr. Ray attended the auction at
21 which Mr. Roberts bought the property up here in Franklin
22 County?

23 A Yes, he did attend the auction.

24 MR. GARDNER: Your Honor, I have an agreement with
25 Mr. Rhodes as to the admissibility of the answer to the

1 next question.

2 THE COURT: All right.

3

4 BY MR. GARDNER:

5 Q Would you please tell the Judge what Mr. Ray did at
6 the auction?

7 A During the course of the auction before they sold
8 this parcel in question Mr. Ray stood up, raised his hand, and
9 said that "Lester Lumber Company does claim title to this
10 piece of land."

11 Q It was thereafter that Counsel for Lester Lumber
12 Company wrote Mr. Rhodes about the property; is that correct?

13 A Yes, sir.

14 MR. GARDNER: Your Honor, I would like to intro-
15 duce the deed from Clyde Perdue, Special Commissioner,
16 dated 28 November 1945 to Lester Lumber Company.

17 Mr. Rhodes, of course, has seen this.

18 THE COURT: Do you have any objection, Mr. Rhodes?

19 MR. RHODES: No, sir.

20 (Thereupon, the aforementioned
21 Deed dated November 28, 1945 was marked and entered
22 into evidence as Defendant's Exhibit Number Two.)
23

24 BY MR. GARDNER:

25 Q Mr. Scruggs, have you checked the records of Lester

1 Lumber Company and the records of the treasurer of Franklin
2 County to determine who paid taxes, if anybody did, on the
3 property acquired by Lester Lumber Company in the deed I just
4 gave the Judge?

5 A Yes, sir.

6 Q Do you need your notes?

7 A Yes.

8 Q Tell the Judge where you checked these records.

9 A I came in and went to the Commissioner of Revenue's
10 Office and asked them about looking up this information to
11 check to see who had paid the taxes all of these years.

12 Q Did you get the assistance of the clerk?

13 A Yes; the clerk assisted me to the land books in the
14 Clerk's Office.

15 Q Mr. Scruggs, I ask you to look at Defendant's
16 Exhibit Number Two. It is the deed from Mr. Perdue, the
17 Commissioner, to Lester Lumber Company. How many tracts of
18 land were covered in this deed?

19 A Three tracts.

20 Q Is one of the tracts the tract in question in this
21 case?

22 A That is correct; Tract Number Two.

23 Q It is described as how many acres?

24 A 191 acres.

25 Q You say there are three tracts?

1 A That is correct.

2 Q What is the total acreage of the three tracts?

3 A 464 acres.

4 Q How do the records in the Office of the Treasurer
5 carry this land?

6 A From 1946 until 1973, up through 1973 it was carried
7 as 464 acres.

8 Q Is that the total of the acreage on the three tracts
9 of the deed the Court has seen?

10 A That is correct.

11 Q Were the taxes paid?

12 A Yes, sir.

13 Q Who paid the taxes?

14 A Lester Lumber Company.

15 Q How much were they?

16 A The total taxes?

17 Q Per year.

18 A It varied anywhere from \$10.67 in 1946 to - - - Do
19 you want me to go to 1973?

20 Q From 1946 until 1973; I want you to tell the Judge
21 how the tract was identified and carried in the Clerk's
22 Office.

23 A It was identified as 464 acres and we paid the
24 taxes on it every year and the taxes ranged from \$10.67 in
25 1946 all the way up to 1973 when we paid \$478.35.

1 Q Did there come a time, Mr. Scruggs, when the Clerk
2 started showing it as a separate tract of 191 acres?

3 A No.

4 Q What happened in 1973?

5 A In 1973 it was still recorded as 464 acres, but in
6 1974 then they showed that tract plus another tract adjoining
7 it; they combined it as 937.75 acres.

8 Q Who paid the taxes on the 191-acre tract starting
9 that year?

10 A Lester Lumber Company.

11 Q Did Lester Lumber Company pay the taxes on the
12 property every year thereafter?

13 A Yes, sir.

14 Q Have the taxes been paid every year by Lester Lumber
15 Company since 1946?

16 A Yes, sir.

17 MR. GARDNER: Your Honor, these documents in the
18 chain of title should all be introduced. Rather than
19 wait until the Defendant puts on its case if I could
20 go ahead and proceed with that now.

21 THE COURT: Sure.

22 MR. RHODES: Are those the same deeds that I have
23 already given the Court?

24 MR. GARDNER: Did you give him the deeds in both
25 chains?

1 MR. RHODES: Yes.

2 MR. GARDNER: I am sorry, Your Honor; I won't need
3 to introduce those.

4 THE COURT: I have one chain of Lester and then a
5 chain of Mr. Little and Mr. Hunt.

6 MR. GARDNER: You have them both?

7 THE COURT: Yes, sir.

8
9 BY MR. GARDNER:

10 Q Mr. Scruggs, are you familiar with the property
11 in question?

12 A Yes, sir.

13 Q Have you been out to the property?

14 A Yes, sir.

15 Q Tell the Judge what, if anything, Lester Lumber
16 Company has done with the property since 1946?

17 A To my knowledge, since 1946 I don't know whether
18 we have cut any timber; I don't have any record of that.

19 Q There is no record showing timber has been cut?

20 A No, I don't have any record of that. The only
21 other thing that we have done we would try to ride on it
22 once a year to inspect it and we did paint the boundary
23 lines.

24 Q Do you know when that was done?

25 A About two years ago if I am not mistaken.

1 Q Do you know whether or not they had ever been
2 painted before that time?

3 A Not this particular tract, to my knowledge. It had
4 been surveyed and the monuments put in. It had been posted.

5 MR. GARDNER: Answer for Mr. Rhodes.
6

7 CROSS EXAMINATION
8

9 BY MR. RHODES:

10 Q Kenneth, when did you first go to work at Lester?

11 A April of 1978.

12 Q April of 1978?

13 A Yes, sir.

14 THE COURT: Let me ask him a question. You said
15 you marked the boundaries two years ago?

16 THE WITNESS: Yes, sir.

17 THE COURT: Did you see the blazings or the markings
18 that Mr. Little testified to?

19 THE WITNESS: Yes, sir.

20 THE COURT: The same trees? What did you do; paint
21 over it or mark it separate on the same trees or what?

22 THE WITNESS: My painter went and I think they
23 painted over those particular trees.

24 THE COURT: But it was the same boundary line?

25 THE WITNESS: On some we had common boundary lines

1 on certain sections and, where we did, paint was applied
2 over it.

3 THE COURT: Go ahead, Mr. Rhodes.
4

5 BY MR. RHODES:

6 Q What you are telling the Court, Mr. Scruggs, is
7 that you had a lot of other lines and actually those lines
8 weren't all contiguous with the Little property?

9 A That is correct.

10 Q Where you did have common boundary lines then you
11 saw their painting and blazes?

12 A Right.

13 Q Mr. Scruggs, you went to work in April of 1978 with
14 Lester and you don't know what took place as far as Lester and
15 anybody else concerning the land, other than what you found in
16 the records there at Lester?

17 A What I found in the records and when I talked to
18 Mr. Ray; that is what I know.

19 Q You don't know and the records don't reflect whether
20 a title examination was made when Lester purchased the
21 property?

22 A No, sir, I do not know that.

23 Q You testified a few minutes ago that Mr. Ray made
24 a statement in 1974 at the auction of the property?

25 A 1970.

1 Q In 1970 at the auction of the property, and also
2 there was a letter that was written which is Exhibit Number
3 One. What was the date of that letter?

4 THE COURT: October 28, 1970.
5

6 BY MR. RHODES:

7 Q You don't know whether a title examination was
8 made by Lester Lumber at that time or not, do you?

9 A No, sir, I do not.

10 Q Nothing in the records reflect that a title examina-
11 tion was made?

12 A No, sir.

13 Q You all have never cut the timber on the land or
14 never used the land, have you?

15 A To my knowledge the company has never cut it; that
16 is to my knowledge. As far as use, basically just walking
17 over it and hunting it.

18 Q Basically, it was growing timber?

19 A Yes, sir.

20 Q From the records of Lester Lumber going back to
21 1970 when the letter was written to me from Ebb Williams,
22 there is nothing in the record showing that Lester took any
23 legal action, filed any liens or filed anything in the Court-
24 house or anything?

25 A There is no record in my files.

1 Q There is no indication of anything being done at
2 that time?

3 A The only thing that was done is property lines were
4 posted with metal signs.

5 Q At that time?

6 A Yes, sir.

7 Q Now, let me ask you this, Mr. Scruggs: How about
8 prior to that time? Is there anything in the Lester files
9 prior to 1970 that reflects that there was a claim to this
10 land?

11 A Yes, sir.

12 Q Tell me about it.

13 A A survey.

14 Q When was the survey made?

15 A 1962, I believe.

16 Q When was it that Lester had knowledge that somebody
17 else had a claim to it is what I am asking.

18 A I think it was in 1970.

19 Q Is that the first time?

20 A To my knowledge, that is what the files show.

21 Q From 1970 on up until this suit was filed do the
22 records of Lester Corporation reflect that anything was done
23 to resolve this dispute?

24 A From 1970 up, no.

25 Q Mr. Scruggs, you introduced the deed from Clyde H.

1 Perdue that Lester obtained this tract in 1945. That deed
2 shows three separate tracts of land, does it not?

3 A Yes, sir.

4 Q That tract of land that we are concerned about shows
5 191 acres?

6 A Yes, sir.

7 Q It refers to being on Turkeycock Mountain?

8 A Yes, sir.

9 Q Did it refer to James Grant? There was no survey
10 at that time, was there?

11 A When we bought the land?

12 Q Right.

13 A To my knowledge, it was not.

14 Q The deed referred to 191 acres on Turkeycock
15 Mountain?

16 A Yes, sir.

17 Q Your testimony is that prior to you going out two
18 years ago and marking the line along the boundary lines, that
19 that was the first time that Lester had done that?

20 A Yes, sir; in fact, I had no knowledge that we had
21 a problem until Mr. Hunt and Little approached me about the
22 timber.

23 Q That is when you went back in the records and you
24 saw that your company had knowledge and knew about it?

25 A That is correct; right.

1 THE COURT: Mr. Scruggs, when Mr. Little came to
2 see you and said, "We want to sell you 191 acres," how
3 did you know it was the same 191 acres that Lester was
4 claiming?

5 THE WITNESS: One of my foresters went out and
6 looked at it and he came back and told me about the
7 property and all.

8 THE COURT: You mean after Mr. Little came to see
9 you one of your men went to look at the property?

10 THE WITNESS: No, sir; one of my men went and looked
11 at the timber first before Mr. Little ever approached me.
12 I am not sure if Mr. Little contacted one of my men or
13 one of his agents but, anyway, he came back and he told
14 me about the timber and I asked him to show me on a
15 topographic map where it was and when he did I said,
16 "That can't be right; we own that property there."

17 We got to investigating a little further and we
18 found out that we had a problem there.

19 THE COURT: Go ahead, Mr. Gardner.
20

21 REDIRECT EXAMINATION
22

23 BY MR. GARDNER:

24 Q Mr. Scruggs, did Lester Lumber Company ever have a
25 map to this property recorded?

1 A Yes, sir.

2 Q Would you identify this document that I have put in
3 front of you?

4 A Yes, sir.

5 Q What is it?

6 A This is the map of the 464 acres originally deeded
7 to us, surveyed in 1962.

8 Q When was it put on record?

9 A It was recorded in March of 1971.

10 Q In the Franklin County Circuit Court Clerk's Office?

11 A Yes, sir.

12 Q Is that in Map Four, Page 122?

13 A Yes, sir.

14 MR. GARDNER: Your Honor, we would respectfully
15 offer this as the Defendant's next Exhibit.

16 THE COURT: All right, sir.

17 (Thereupon, the aforementioned
18 map was marked and entered into evidence as
19 Defendant's Exhibit Number Four.)
20

21 BY MR. GARDNER:

22 Q Mr. Scruggs, did I ask you to make us up a map of
23 where you think the 191 acres is?

24 A Yes, sir.

25 Q Did you do that?

1 A Yes, sir.

2 THE COURT: Mr. Rhodes, I assume you have seen it,
3 but would you like to see it again?

4 MR. RHODES: That is the one you sent me, isn't
5 it?

6 MR. GARDNER: Yes, sir.

7
8 BY MR. GARDNER:

9 Q Who made this map that I have in my hands?

10 A I did.

11 Q What does it show?

12 A Basically, it shows our property lines in the
13 heavily indexed lines here and then it shows where Mr. Hunt
14 and Little are claiming.

15 Q Would you go get the overlay that shows the 191
16 acres?

17 A Yes, sir.

18 Q That is a green plastic overlay and it shows the
19 191 acres in question?

20 A Yes, sir.

21 THE COURT: That is based on Mr. Little's survey;
22 is that correct?

23 THE WITNESS: That is correct.
24
25

1 BY MR. GARDNER:

2 Q Is there any significant difference between where
3 you think the 191 acres is and where they think the 191 acres
4 is?

5 A (Witness shakes head to indicate negative response.)

6 Q The answer is no?

7 A No, sir.

8 Q You made the overlay and you made this map; is that
9 correct?

10 A Yes, sir.

11 Q Is that based upon the maps that have previously
12 been introduced?

13 A Yes, sir.

14 Q Did you make this overlay from the maps that have
15 been previously introduced?

16 A Yes, sir.

17 MR. GARDNER: Your Honor, we would mark these as
18 the next Exhibits.

19 (Thereupon, the aforementioned
20 map and overlay were marked and entered into
21 evidence as Defendant's Exhibits Number Four and
22 Five.)

23

24 MR. RHODES: The overlay corresponds with what you
25 have on the map?

1 THE WITNESS: Yes, sir.

2 MR. RHODES: I was just wondering why you were
3 introducing the overlay when you have it drawn out on
4 the map.

5 MR. GARDNER: Because I asked him to go to the
6 trouble to make it and I thought it made it clear where
7 the disputed property was, something colorgraphic to
8 put in the Record.

9 Your Honor, there are three documents I would
10 like to introduce. I would ask the Court first to take
11 judicial notice of these three documents. I didn't know
12 I was going to need them; I will get them immediately if
13 the Court will indulge me.

14 THE COURT: What are they?

15 MR. GARDNER: Number One, Your Honor, is the will
16 of James Grant which is part of the chain of title and
17 that is recorded in Will Book 16 at Page One.

18 The other two documents, Your Honor, are the
19 Chancery Suit papers in the case where the property was
20 sold and Lester Lumber Company bought it at auction.

21 THE COURT: From Mr. Perdue; is that correct?

22 MR. GARDNER: Yes, sir; those suit papers will
23 indicate that Lester had a title examination done when
24 they bought the property.

25 The other suit papers which I would ask the Court to

1 take judicial notice of and let me introduce, please, are
2 the chancery suit papers where Mr. Roberts got the
3 property.

4 MR. RHODES: I put that in.

5 MR. GARDNER: That is already in; so I have two
6 additional documents.

7 THE COURT: You have no objection, do you,
8 Mr. Rhodes?

9 MR. RHODES: No, sir.

10

11 RECROSS EXAMINATION

12

13 BY MR. RHODES:

14 Q Mr. Scruggs, do you know approximately when the
15 timber was last cut on part of this 191-acre tract, what
16 lies within that area?

17 A No, sir, I really don't. I know it is a good stand
18 of hardwood saw timber.

19 Q Have you ever heard that Mr. Saunders cut the
20 timber back in 1960?

21 A The only thing I find with reference to that is
22 I think it was in a letter that was sent, one of the letters
23 I believe that was sent by Mr. Williams; that is the only
24 recollection that I have.

25 Q What letter was that?

1 A. It was a letter - - - I don't even know; I would
2 have to look at my file.

3 Q Go ahead and look at it.

4 THE COURT: Let's take a recess; you let me know
5 when you are ready.

6 (Thereupon, a short recess was taken; following
7 the recess the Proceedings continued as follows:)

8
9 BY MR. RHODES:

10 Q Mr. Scruggs, I believe the last question I asked
11 you was whether the records of Lester reflected that the
12 timber had ever been cut by someone else on the property?

13 A I recall reading something about a Saunders person
14 and I can't put my finger on it. Apparently, I did not bring
15 that document. .

16 Q That Saunders cut timber on it at some point in
17 time?

18 A Yes.

19 Q Would that have been W. L. or P. G. Saunders that
20 purchased the land in 1961?

21 A It could have been.

22 Q But your recollection is that the Lester file
23 reflects that somebody named Saunders had cut timber on the
24 land sometime before 1970?

25 A I am not sure if it is in our files; it might be

1 that document there (indicating) that I was reading the other
2 day. I just can't remember.

3 MR. RHODES: Those are all the questions I have.

4 THE COURT: Thank you, Mr. Scruggs.

5 (Thereupon, the witness was excused.)
6

7 THE COURT: Do you have any other evidence,
8 Mr. Gardner?

9 MR. GARDNER: Your Honor, I would like to put those
10 two Chancery Suit papers and the Will in the Record.

11 THE COURT: They are in.

12 MR. GARDNER: We rest.
13

14 LARRY K. LITTLE

15 was recalled as a witness and testified further under his
16 oath as follows:
17

18 DIRECT EXAMINATION
19

20 BY MR. RHODES:

21 Q Mr. Little, do you have any knowledge as to when the
22 timber was cut on this land?

23 A Yes, sir.

24 Q Tell the Court when the timber was cut.

25 A Between the years of 1960 and 1961, between that

1 period. Let me clarify that - - -

2 Q Let me ask you this first: Point out to the Court
3 on this map where the timber was cut.

4 MR. GARDNER: If Your Honor please, I am not sure
5 this could be anything other than hearsay.

6 THE COURT: Maybe it is reflected on the ground
7 by stumps and so forth.

8

9 BY MR. RHODES:

10 Q Show the Court in what area there is evidence that
11 the timber had been cut.

12 A This is the tract; I am guessing, but a good two-
13 thirds of this property is mountainous, steep. The lower
14 section down to Mr. Walker and Mr. Amos was cut, the flat
15 land, the accessible and easy to get on.

16 THE COURT: Is there evidence on the ground,
17 Mr. Little?

18 THE WITNESS: The sawdust piles are there and I have
19 talked to Mr. Saunders himself and he told me that he cut
20 it in 1960 and Mr. Walter Roberts also told me that he
21 cut a location on the tract when he had it.

22

23 BY MR. RHODES:

24 Q What evidence is there that the timber has been
25 cut in one place and not in another?

1 A The timber on the mountain is good, big, chestnut
2 oak and Virginia pine up through here (indicating) and in this
3 lower section it is not hardly harvestable at this time. It
4 is a good stand; you can tell it is about a 20 or 25 year
5 growth.

6 THE COURT: Was it cut to a line or cut just by
7 virtue of the fact that it was convenient to get out?

8 THE WITNESS: On the upper part it looks more like
9 convenience; naturally, it was to the line down here
10 with Mr. Amos and Mr. Walker (indicating).

11 THE COURT: No, I am talking about going up.

12 THE WITNESS: They didn't get up on the mountain.

13
14 BY MR. RHODES:

15 Q How about on the lower part on the flat land; was
16 that cut to the line?

17 THE COURT: At the bottom of the mountain.

18 THE WITNESS: Yes; it was cut to Mr. Amos' line
19 which is on the lower part. This is Mr. Amos down here
20 and this is Mr. Walker (indicating).

21 THE COURT: But on the upper part of the map that
22 Mr. Rhodes has, it was not cut to a line?

23 THE WITNESS: No, no; they didn't get up on the
24 mountain at all. I am guessing 50 acres maybe was cut
25 over or 75.

1 BY MR. RHODES:

2 Q Tell the Court how this land lies as far as being
3 mountainous or steep or what have you? Show it on the map.

4 A I would say the bottom of the mountain is something
5 like this (indicating) and probably two-thirds of it is
6 mountainous and the rest of it is fairly accessible. The
7 old homeplace is right down in here with the spring.

8 Q When you say you found sawdust piles there, show
9 the Court where you found that or any other evidence that it
10 had been cut.

11 A The road that they brought the timber out was
12 through Mr. Walker's land and the old sawmill road is still
13 accessible. Of course, it is grown up in pines now but the
14 old sawdust pile is there and the young pines have grown up
15 around where they have cleared out for the sawmill yard.

16 Q How long have you been buying timber and selling
17 timber and so forth?

18 A Twenty years.

19 MR. RHODES: Answer Mr. Gardner's questions.

20 MR. GARDNER: I don't have any questions.

21 (Thereupon, the witness was excused.)
22

23 MR. RHODES: That is the case, Your Honor. I would
24 be glad to put Mr. Hunt on if you want. Do you want to
25 question him, Mr. Gardner? He doesn't know anything any

1 different than Mr. Little; I just picked one of them.

2 MR. GARDNER: I am afraid this is a case where we
3 don't have any bad guys in the Courtroom.

4 THE COURT: Gentlemen, is there anything that you
5 want to tell me?

6 MR. GARDNER: Your Honor, how much time would the
7 Court deem reasonable for us to submit a brief on the
8 issue?

9 THE COURT: Whatever you want.

10 MR. GARDNER: Thirty days, Your Honor?

11 THE COURT: Yes, sir.

12 MR. GARDNER: With that, I don't have any further
13 comment.

14 THE COURT: I was telling Mr. Rhodes awhile ago,
15 the indexing is not unusual. I don't know about Henry
16 County, but let's go back 13 or 14 years ago and it
17 wasn't unusual to find where Philip Gardner, Trustee,
18 conveyed property to Ralph Rhodes and it wasn't
19 designated in the Grantor index who you were trustee
20 for and the only way you could be sure or raise a red
21 flag or something is to go back and check every deed that
22 you were grantor in as trustee to determine under what
23 deed of trust or whatever you sold that property.

24 I hope it is corrected now, but it was not unusual
25 at one time. It would be indexed only in the trustee's

1 name and not in the property owner's name. It is a
2 matter of just what we have here.

3 MR. RHODES: Yes, sir, Mr. Gardner and I agree on
4 that.

5 MR. GARDNER: I think there are other issues.

6 THE COURT: I know, but that is one of the issues,
7 though.

8 MR. GARDNER: Yes, sir, and I think the legal effect
9 of that is something the Lawyers are going to have to
10 submit case law on.

11 THE COURT: There has to be some law on that.

12 MR. GARDNER: There is.

13 THE COURT: Mr. Rhodes, is there anything you want
14 to say?

15 MR. RHODES: Like Mr. Gardner said, there are
16 certain issues here that we are going to have to give the
17 Court a memorandum on and at that time I think we should
18 be able to respond to the other's memorandum to be sure
19 we haven't overlooked anything.

20 THE COURT: Which one wants to go first?

21 MR. RHODES: I think just let us both submit them
22 and let us both respond to them to save time.

23 MR. GARDNER: That is fine.

24 THE COURT: Does the 15th of October suit you?

25 MR. GARDNER: Yes, sir.

1 MR. RHODES: Yes, sir.

2 THE COURT: I will give you until November 1st to
3 reply. If you desire to reply to each other's briefs do
4 it on or before November 1st.

5 Thank you, gentlemen.

6
7 (Thereupon, the Proceedings were concluded.)
8
9

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CERTIFICATE

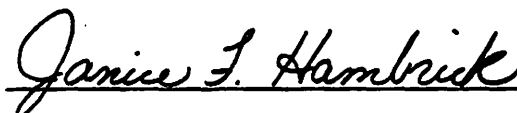
COMMONWEALTH OF VIRGINIA

COUNTY OF ROANOKE

I, Janice F. Hambrick, Notary Public in and for the Commonwealth of Virginia, at Large, do hereby certify that the foregoing Proceedings were taken by me at the time and place in the foregoing caption specified, and that the foregoing is a true and correct transcript of those Proceedings.

I further certify that I am not a relative, counsel, or Attorney for either party, or otherwise interested in the outcome of this action.

Given under my hand on this the 24th day of April, 1987.



JANICE F. HAMBRICK

Notary Public

My commission expires June 6, 1988.

VIRGINIA:

IN THE CIRCUIT COURT OF FRANKLIN COUNTY

LARRY K. LITTLE

and

DOUGLAS M. HUNT,

Plaintiffs,

MEMORANDUM OF LAW
LAW NO. 84-4-1143

vs.

THE LESTER GROUP, INC.,
f/n/a Lester Lumber Company,

Defendants.

COMES NOW the plaintiffs, Larry K. Little and Douglas M. Hunt, by counsel, and file the following Memorandum of Law in support of their position that they are the fee simple owners of a certain 193 acre tract of land located in Franklin County, Virginia.

STATEMENT OF FACTS

The action now before the Court involves the establishment of the ownership of a tract of land containing approximately 191 acres. The real property is located on Turkey Cock Mountain in Franklin County close to the border of Pittsylvania County and Franklin County.

Attached hereto as Exhibit 1 is a diagram setting out the chain of title of both the plaintiffs and the defendant. The plaintiffs have previously filed with the Court deeds in the chain of title of both the plaintiffs and the defendant. This statement of facts will give an outline of the events preceding the current controversy.

ELEMENTS COMMON TO BOTH PARTIES

In 1845, James Grant conveyed to Willis J. Cousins, as Trustee, two tracts of land. The first tract, with which the suit is not concerned, contained 105 acres.

The second tract of approximately 191 acres, is the land whose ownership this Court is now asked to determine.

In 1848, Willis J. Cousins foreclosed on a deed of trust. At this point, the Trustee, conveyed away the 105 acres to a third party. The 191 acre tract, with which this case is concerned, was not conveyed; instead, Willis J. Cousins reconveyed the 191 acres to James Grant in 1850. The 1850 deed specifically refers to the 191 acre tract as "which property was conveyed to the said James Grant by James McDowell, Esquire, Governor of the Commonwealth of Virginia on the 30th day of June, 1845, by virtue of Land Office Treasury Warrant No. 15268 containing 191 acres."

Although the 1850 deed referred to the specific land grant by which James Grant conveyed the 191 acre parcel of property, it did not reference the recordation of the land grant in the land records of the Clerk of the Circuit Court of Franklin County. The reason for the absence of said reference is because, at this point, the land grant had not been recorded.

CHAIN OF TITLE OF LESTER LUMBER COMPANY

By his will, dated September 4, 1865, and probated March 6, 1871, James Grant devised the 191 acre tract of land to his daughter, Mary F. Grant ("2nd I will and bequeath to my Daughter, Mary F. Grant, my entire Tract of Land in which I now reside and known as my home house tract, containing (191) one-hundred and ninety-one acres more or less.") The Clerk's probate certificate states as follows:

"and on the Motion of William T. Mitchell and William V. Reynolds, the Estate of the James Grant, deceased, is committed to the hands of John W. Hartwell, Sheriff of this County to be by him administered according to law, Teste, James J. Carfien, C.F.C."

William T. Mitchell and William V. Reynolds subsequently filed a creditors action against the Estate of James Grant. Pursuant to the creditors suit, in 1878, Charles L. Powell, a Commissioner acting under a decree of the Circuit Court of Franklin

County, conveyed to William T. Mitchell and John R. Cabel, with special warranty of title, the tract of land containing 191 acres which James Grant owned at his death.

The root of the controversy now before the Court occurred at this point. The conveyance by Charles L. Powell, Commissioner, was incorrectly indexed in the Grantor and Grantee Index of the Circuit Court of Franklin County. The conveyance was indexed in the name of Charles L. Powell as Grantor. The conveyance is not indexed in the name of James R. Grant.

Subsequent to 1878 through various mesne conveyances Lester Lumber Company acquired the property in 1945. The outstanding feature of the mesne conveyances from 1878 through 1945 is that all of the conveyances were by special warranty deed. The chain of title of Lester Lumber Company does not contain the recordation of the land grant of the 191 acre tract from the Commonwealth to James R. Grant. Further, the chain of title of Lester Lumber Company does not contain a single general warranty deed. From the "creation" of the 191 acre tract in 1845 through the present, all mesne conveyances of Lester Lumber Company were either pursuant to the foreclosure of a Deed of Trust or as a result of a chancery suit in which a Special Commissioner conveyed the title of the litigants.

CHAIN OF TITLE OF LARRY K. LITTLE AND DOUGLAS M. HUNT

The Land Grant dated June 30, 1844, conveying to James Grant the 191 acre tract of land now at issue was not recorded until March 12, 1957, and is recorded in the Clerk's Office of the Circuit Court of Franklin County in Deed Book 148, Page 369.

The real property taxes on the 191 acre tract were not paid in 1955 thru 1959. In 1959, there was filed a Bill of Complaint in the Circuit Court of Franklin County styled Franklin County, A Body Politic v. James Grant, his heirs, devisees, assigns, and any unknown heirs, to sell the property at issue for payment of these delinquent taxes.

Pursuant to the Decree for a court sale, the following advertisement was published for two consecutive weeks in the Franklin County newspaper commencing on March 3, 1960;

Court Sale of Valuable Tract of Land

Pursuant to a Decree entered in the Circuit Court of Franklin County, Virginia, the 25th day of February, 1960, in the chancery cause of Franklin County, a body politic, versus James Grant, his heirs, devisees, assigns, and any unknown heirs, I will, on

**SATURDAY, MARCH 19, 1960
AT 12:00 NOON**

At the front door of the Courthouse of Rocky Mount, Virginia, offer for sale at public auction to the highest bidder, all that certain tract or parcel of land containing One hundred ninety-one (191) acres, more or less, situate, lying and being on Turkey Cock Mountain, in Franklin County, Virginia, near the Pittsylvania County and the Henry County line, and it being the same land that was granted to James Grant by James McDowell, the Governor of the Commonwealth of Virginia, by a grant dated June 30, 1845, and which grant was recorded March 12, 1957, in the Clerk's Office of the Circuit Court of Franklin County, Virginia, in Deed Book No. 148, at Page No. 369. Terms of Sale: Cash, Russell L. Davis, Commissioner.

The sale was confirmed and by deed dated April 7, 1960, recorded in the Clerk's Office of the Circuit Court of Franklin County, in Deed Book 175, Page 193, Russell L. Davis conveyed by a special warranty deed, the property at issue to W. L. Saunders and P. G. Saunders.

Sometime after 1960, W. L. Saunders and P. G. Saunders with the knowledge of Lester Lumber Company cut part of the timber off the land. The Saunders at that time informed Lester Lumber Company that they (W. L. Saunders and P. G. Saunders) owned the land.

By deed dated August 15, 1961, and recorded in the Clerk's Office of the Circuit Court of Franklin County in Deed Book 192, Page 373, W. L. Saunders et ux, and P. G. Saunders et ux, by general warranty deed, conveyed the property at issue to Burton C. Jessup and Kathryn K. Jessup.

By deed dated December 3, 1970, and recorded in the Clerk's Office of the Circuit Court of Franklin County in Deed Book 268, Page 16, Ralph B. Rhodes,

substitute trustee, by special warranty deed, conveyed the property here at issue to Walter V. Roberts. This deed was the result of a foreclosure of a deed of trust dated March 12, 1962, between Burton C. Jessup and Kathryn K. Jessup and T. R. Wall, Trustee, said deed of trust being recorded in the Clerk's Office of the Circuit Court of Franklin County in Deed Book 193, Page 329.

At the time of the foreclosure sale, Lester Lumber Company's attorney wrote a letter to Ralph B. Rhodes, attorney for Walter V. Roberts, informing him of Lester Lumber Company's claim on the land. Lester Lumber Company took no action to stop the foreclosure sale or to exercise a legal remedy to determine ownership of this tract of land.

By deed dated March, 1983, and recorded in the Clerk's Office of the Circuit Court of Franklin County in Deed Book 370, Page 1960, Walter V. Roberts et ux, by general warranty deed, conveyed to Larry K. Little and Douglas M. Hunt the property here at issue.

At no time did Lester Lumber Company bring any type of legal action to determine the parties claiming title to the land. Even though Lester Lumber Company had notice of the claims of others to the land, they refused to act. Nor did they commence any legal proceedings to determine ownership of the land.

The chain of title of Larry K. Little and Douglas M. Hunt, unlike the chain of title of Lester Lumber Company, does contain the land grant from the Commonwealth of Virginia.

DISCUSSION OF AUTHORITY

ISSUE 1

HAS LESTER LUMBER COMPANY'S CLAIM TO THE LAND BEEN AFFECTED BY NOTICE OF OTHER CLAIMS ON THE LAND?

Lester Lumber Company has been on notice of claims of other parties as to the land since 1960. In the chancery suit in 1960, the Special Commissioner was unable to determine who owned the land at issue. Consequently, notice of the judicial sale was placed in The Franklin News-Post for two consecutive weeks. This was sufficient notice, as required by statute, to inform any persons with a claim to the land of the sale.

The Notice, set forth in the Statement of Facts, describes the tract of land as being 191 acres and is the same description contained in Lester Lumber Company's deed of November 20, 1945, from Clyde H. Perdue, Special Commissioner.

The Virginia law as to notice by publication is dispositive in this instance. The 1950 Code of Virginia as amended, 8-71 and 8-72 (now 8.01-316(2) and 8.01-317) stated as applied in this instance:

"And in any suit in equity, when the bill states that there are or may be persons interested in the subject to be divided or disposed of, whose names are unknown, and makes such persons defendants by the general description of parties unknown, on affidavit of the fact that such parties are unknown, an order of publication may be entered against such unknown parties. Va. Code 8-71."

"Every order of publication shall give the abbreviated style of the suit, state briefly its object, and require the defendants against whom it is entered, or the unknown parties, to appear within ten days after due publication thereof and do what is necessary to protect their interests. Va. Code 8-72."

In Forrer v. Brown, 221 Va. 1098, 277 S.E.2d 483 (1981), the Virginia Supreme Court recognized the object of a notice by publication:

"The order of publication is in lieu of process, and its purpose is to bring the party into court, to apprise him of the nature of the proceedings against him, and to notify him that his rights will be affected by the litigation."

Thus the Order of Publication must give some identifying data concerning the parties and it must designate the newspaper in which it is to be published. As a result of the Court Order in the 1960 Chancery suit, the advertisement of sale was published. The ad included the style of the case, the land involved, and was published in the local newspaper. The act was sufficient to require any owner (including Lester Lumber Company) to be attentive to the suit and sale.

The notice by publication was constructive notice to Lester Lumber Company concerning land they claimed. In University of Richmond v. Stone, 148 Va. 686, 139 S.E. 257 (1927), the Court held:

"It is a general rule that whatever puts a party on inquiry amounts in judgment of law to notice, provided the inquiry becomes a duty, and would lead to a knowledge of the facts by the exercise of ordinary intelligence and understanding."

Lester Lumber Company, placed on notice by the publication, had a duty to investigate as to the nature of the suit.

"Whenever inquiry is a duty, the party bound to make it is affected with knowledge of all which he would have discovered had he performed the duty." Id.

If Lester Lumber Company had investigated they would have discovered the nature of the suit, as well as the flaw in their chain of title. This notice of the chancery suit imposed a duty.

By virtue of Va. Code Ann. Section 8.01-322 and 8.01-113 (Repl. Vol. 1984), (formerly Section 8-78 and 8-673) respectively, Lester Lumber Company was entitled to a rehearing of the chancery suit in 1960 by filing a petition within two years of the date of judgment. If Lester Lumber Company had done this, they would have had a remedy. Judicial sales confirmed by the Court may not be contested nor will the title of the innocent purchaser be disturbed unless such action is taken within twelve months from the confirmation of the sale. See Section 8.01-113. Since

Lester Lumber Company did not challenge the sale within twelve months of the confirmation of the sale, title which had vested in the purchasers, W. L. and P. G. Saunders, could not be disturbed.

See Robertson v. Stone, 199 Va. 41, 97 S.E.2d 739 (1957) wherein it was held:

"It thus appears from the history and the language of the statute (8-673, now 8.01-113) that the title of a purchaser at a judicial sale shall not be disturbed after twelve months from the date of the decree of confirmation, even though the decree is erroneous or voidable."

Therefore Lester Lumber Company lost any claim to the land within twelve months of the confirmation of the 1960 sale.

Alternatively, the equitable doctrine of laches would estop Lester Lumber Company of asserting any ownership to the land in question. Not only did Lester Lumber Company have notice of the judicial sale in 1960, but it had actual notice of the purchaser's claim after the sale. The Saunders', while cutting timber in the 1960s, were confronted by Lester Lumber Company and asserted their ownership. Lester Lumber Company also had notice and knoweldge of the foreclosure sale of the land in 1970 as evidenced by the letter written from their attorney to the attorney for Walter V. Roberts.

Strangely enough, Lester Lumber Company has never instituted any action of ejectment, boundary line proceeding, nor attempted to obtain an injunction to block the sale of the land for which they had notice. The failure since 1960 to assert any legal right they may have had prevents them from doing so now under the doctrine of laches. In Shirley v. Van Every, 159 Va. 762, 167 S.E. 345 (1933), the Virginia Supreme Court defined laches as:

Laches is such neglect or omission to do what one should do as warrants the presumption that he has abandoned his claim, and declines to assert his right.... Length of time alone is not a test of staleness of a demand, and mere lapse of time, unaccompanied by some circumstances affording evidence of a presumption that the right has been abandoned, is not laches.

Not only has Lester Lumber Company "slept" on their alleged rights for 26 years, but they have failed to act according to the other claims. They had actual notice of Saunders' claim in the 1960s and actual notice of the foreclosure sale in 1970. However, Lester Lumber Company instituted no legal proceeding to assert their claim of title to the land.

While delay is the first element of laches asserted here (26 years), prejudice or disadvantage to another is the second element. The Virginia Supreme Court further stated in Shirley v. Van Every, Supra., that:

"Laches is not necessarily implied from mere lapse of time. To constitute laches there must be a delay that works a disadvantage to another."

In the case at bar, the failure of Lester Lumber Company to bring an action to remove the other claimants or disprove their claim has allowed the other claimants to continue conveying the land. Because Lester Lumber Company's deed was improperly recorded, none of the subsequent purchasers had knowledge of their claim. However, Lester Lumber Company did have knowledge of the other claims. Consequently, any assertion of their rights now would certainly be a disadvantage to the subsequent innocent purchasers, who would not have bought the land had they known of Lester Lumber Company's claim.

Any claim by Lester Lumber Company, now, would violate the doctrine of laches. The alleged rights of Lester Lumber Company as to this property have been waived due to this prejudicial delay.

ISSUE II

WAS WALTER ROBERTS A BONA FIDE PURCHASER AT THE FORECLOSURE SALE IN 1970?

Walter Roberts purchased the 191 acres at the foreclosure sale in 1970. At the time of the sale, he was not aware of any claim to the land by Lester Lumber Company. In fact, Lester Lumber Company made no claim to the land, at any time, until after the foreclosure sale in 1970.

In Guss v. Realty Corp., 204 Va. 65, 129 S.E.2d 43 (1963), the Virginia Supreme Court found that a latent ambiguity, one not evident on the face of a deed, would not affect title taken by bona fide purchasers. Since the purchaser was not aware of the ambiguity or mistake, he was a bona fide purchaser for value. Id. at 72, 129 S.E.2d at _____. See Also Snyder v. Grandstaff, 96 Va. 473, 31 S.E. 647 (1898).

The Guss holding is important to the case at bar. Roberts bought the 191 acres at the foreclosure sale in 1970. After he had purchased the land, Lester Lumber Company informed Roberts' attorney of their claim. Consequently, Roberts was a bona fide purchaser for value because he had no notice of any claim by Lester Lumber Company before the sale. Not only did he have no notice before the sale, but he could not have been expected to discover any claim because his chain of title did not reveal Lester Lumber Company's claim. Furthermore, Lester Lumber Company with knowledge of the claim of ownership by Lester Lumber Company and the foreclosure sale had the option to enjoin the sale and/or notify Roberts of their claim prior to the sale.

Because Roberts is a bona fide purchaser without notice, he should receive favorable consideration by this Court. In National Valley Bank of Staunton v. Harman, 75 Va. 604 (1881), the Court recognized the long standing principle that:

...the plea of a purchaser for valuable consideration without notice, is good against one asserting a legal title to the property....the defense of a purchaser for value without notice is a shield as well against a legal as on equitable title. Id. at 609 (citations omitted).

This doctrine was reaffirmed in University of Richmond v. Stone, 148 Va. 686, 139 S.E. 257 (1927). The Court stated:

Certainly a bona fide purchaser for value and without notice, is a great favorite of a Court of equity, and that Court will not disarm such a purchaser of a legal advantage. Id. at 695, 139 S.E. at ____.

The Harman holding is applicable in this case. Roberts bought the property at the 1970 foreclosure sale in 1970. Since he bought the land without notice of any claim of Lester Lumber Company, his title subsequently conveyed to Little and Hunt, should be favored by this Court against the claims of Lester Lumber Company.

In order for Lester Lumber Company's claim to be effective as against Roberts, they must show he had notice prior to the foreclosure sale. In Carter v. Thorp, 114 Va. 348, 76 S.E. 950 (1913), the Court stated:

It is a well settled rule of law...that the burden to prove notice is on him who alleges it....Id. at 352, 76 S.E. at ____.

Lester Lumber Company cannot do this since it made no claim to the land whatsoever until after the 1970 foreclosure sale.

Because Roberts bought the 191 acres in 1970 without knowledge of any prior claims, he is a bona fide purchaser for value. The subsequent claim by Lester Lumber Company did not affect this status. Furthermore, Lester Lumber Company, prior to the foreclosure sale had the option of notifying Roberts of their claim and/or enjoining the foreclosure sale by asserting their claim to the land. Lester Lumber Company did neither.

ISSUE III

DID THE LETTER FROM LESTER LUMBER COMPANY'S LAWYER IN 1970 PREVENT ROBERTS FROM GIVING A GENERAL WARRANTY DEED WITH MODERN ENGLISH COVENANTS TO LITTLE AND HUNT?

Va. Code Ann. Section 55-68 (Repl. Vol. 1986) provides:

A covenant by the grantor in a deed, "that he will warrant generally the property hereby conveyed," shall have the same effect as if the grantor had covenanted that he, his heirs and personal representatives will forever warrant and defend such property unto the grantee, his heirs, personal representatives and assigns, against the claims and demands of all persons whomsoever.

Furthermore, a general warranty deed is a covenant that he will warrant generally the property conveyed. Va. Code Ann. Section 55-70 (Repl. Vol. 1986).

By conveying the property to Little and Hunt by general warranty deed, Roberts was promising to defend Little and Hunt's title to the property against anyone in the future. Roberts has guaranteed Little and Hunt quiet enjoyment of the land and would be bound to defend their quiet enjoyment against anyone challenging their title. The letter from Lester Lumber Company's lawyer in 1970 would not prevent Roberts from conveying a general warranty deed to Little and Hunt. His doing so only requires him to defend Little's and Hunt's ownership as to any future claim by anyone claiming title.

The same reasoning would extend to Roberts transfer with Modern English covenants. The Modern English covenants are: the grantor's right to convey, grantee's quiet possession free of encumbrance, that the grantor has done no act to encumber and that he will furnish such further assurances of title as will be requisite. See Va. Code Ann Section 55-71 thru 55-74. Under Section 55-70, the words "with English covenants of title" are deemed to be an expression that the grantor is seized in fee simple of the property conveyed.

To reiterate, there is no reason why Roberts could not transfer by the general warranty with modern English covenants deed; consequently, he is bound to defend

the grantee's title as against all future claims, not the title of a third party, which in this instance would be Lester Lumber Company.

Accordingly, notice to Robert's attorney affects Robert's privity with his grantees, only there is no such privity as between Roberts and Lester Lumber Company which would prevent Roberts from giving a general warranty deed to Little and Hunt.

ISSUE IV

LESTER LUMBER GROUP WAS NOT A BONA FIDE PURCHASER.

Lester Lumber Company was not a bona fide purchaser of the land when it purchased the property from Clyde H. Perdue (Special Commissioner) on February 28, 1945. A bona fide purchaser is one who purchases for a valuable consideration, paid or parted with, without notice of any suspicious circumstances to put him upon inquiry. 19 M.J., Vendor and Purchaser, Sec. 126, p. 456.

A person who purchases real estate has knowledge of all that the records pertaining to the real estate would reveal.

"Where a party purchases an Estate which is subject to the right of another, and that right is shown by chain of title papers, the purchaser is charged with notice of all that the title papers, or papers to which they refer, may disclose upon complete examination. Fox v. Templeton, 229 Va. 380, 329 S.E.2d 6 (1985), Chavis vs. Gibbs, 198 Va. 379, 94 S.E.2d 195", (emphasis added).

Every prudent man about to purchase land searches the records to see whether the property has been previously conveyed or encumbered. Pillow vs. Southeast, etc. Imp. Co., 92 Va. 144, 152, 23 S.E. 32, 34 (1895). A special warranty deed should be taken by the title examiner as a warning of a possible title defect back of that immediate grantor. Parham, A Virginia Title Examiner's Manual, Sec. 16-10, Page 126. Consequently, only very rarely, will a purchaser from a Trustee qualify as a bona fide purchaser entitled to the protection of the recording acts. Id. at Sec. 43-1, Page 318.

The chain of title through which Lester Lumber Company claims, does not contain a single general warranty deed. All of the mesne conveyances are either by special warranty as a result of a Special Commissioners Sale or the foreclosure of a deed of trust. In addition, the chain of title of Lester Lumber Company does not contain the original grant by a warrant from the Commonwealth to James R. Grant. There is no recorded document in the chain of title of Lester Lumber Company which shows the acquisition by any of the mesne grantors of a clear interest in the property now at issue.

The accepted practice in Virginia in performing a title examination is to trace the chain of title back 60 years to a general warranty deed. See Lucian B. Cox, A Manual for Title Examiners in Virginia, Berryhill, Title Examination in Virginia, 17 Rich.L.Rev. 229, Parham, Jr., a Virginia Title Examiners Manual, The Virginia Lawyer, A Basic Practice Handbook, Real Estate Transactions in Virginia. There is no general warranty deed in the chain of title of Lester Lumber Company. Because of the requirement that the 60 year period begin with a general warranty deed, and the lack of a general warranty deed in the chain of title of Lester Lumber Company, it would be necessary for Lester Lumber Company to trace its chain of title, at least, to the deed of trust from James Grant to Willis J. Cousins recorded in 1845.

The deed of trust from James Grant to Willis J. Cousins put Lester Lumber Company on notice that its title originated in a land grant dated 1844 which was not recorded. This put Lester Lumber Company on notice that there was no document of title which originated ownership in the property at issue in James Grant. (It is well settled that what is sufficient to put a person upon inquiry would charge him with knowledge of the facts of which a diligent pursuit of that inquiry would have informed him. University of Richmond vs. Stone, 148 Va. 686, 139 S.E. 257 (1927).) At that point it was encumbrant on Lester Lumber Company to try to determine whether the land grant had been placed on record.

Once a chain of title has been established, it is then necessary to check each owner of the property from the date of the deed into the party until the date of the recordation of a deed out of the party for adverse conveyances. This is done in order to insure that a previous owner had not done any acts or been subjected to any process which would cloud the title. (See authority previously cited on the correct procedure for the examination of land records in Virginia.)

By deed dated December 29, 1849, recorded in the Clerk's Office of the Circuit Court of Franklin County in Deed Book 21, Page 327, Willis J. Cousins, as Trustee, and James Grant, conveyed to James Grant the 191 acre tract which is the subject of this litigation. By having traced its chain of title, Lester Lumber Company was or should have been aware that it was necessary to adverse James Grant from December 29, 1849, until the recordation in Deed Book 32, Page 587 of the deed from Charles L. Powell (Commissioner) to William T. Mitchell and John R. Cabel. If James Grant had been adversed in the grantor index of the records contained in the Clerk's Office of the Circuit Court of Franklin County, the indexes would have shown that there had been no conveyance by James Grant to William T. Mitchell and John R. Cabel. This would have placed Lester Lumber Company on notice to inquire further into the state of the title acquired through James Grant.

The land grant to James Grant was recorded on March 12, 1957. No taxes were paid on the property. By a chancery suit styled Franklin County, A Body Politic v. James Grant, his heirs, devisees, assigns, and any unknown heirs, the property at issue was sold for back taxes. In connection with that chancery suit, an advertisement containing a description of the 191 acre tract and the time and the date of sale (a copy of which was introduced into evidence as Exhibit 4) was published for two consecutive weeks on March 3, 1960, and March 10, 1960, in the Franklin County News Post, a newspaper having general circulation in Franklin County. The advertisement stated as follows:

Court Sale of Valuable Tract of Land pursuant to a Decree entered in the Circuit Court of Franklin County, Virginia, on the 25th day of February, 1960, in the Chancery Cause of Franklin County, A Bodily Politic vs. James Grant, his heirs, devisees, assigns, and any unknown heirs, I will, on SATURDAY, MARCH 19, 1960, AT 12:00 NOON AT THE FRONT DOOR OF THE COURTHOUSE AT ROCKY MOUNT, VIRGINIA, offer for sale at a public auction to the highest bidder, all that certain tract or parcel of land containing One hundred ninety-one (191) acres, more or less, situate lying and being on the Turkey Cock Mountain, in Franklin County, Virginia, near the Pittsylvania County and Henry County line, and it being the same land that was granted to James Grant by James McDowell, Governor of the Commonwealth of Virginia, by a Grant dated June 30, 1845, in which Grant was recorded March 12, 1957, in the Clerk's Office of the Circuit Court of Franklin County, Virginia, in Deed Book 148, at Page 369. Terms of Sale: Cash. (Emphasis Added).

The advertisement clearly refers to assigns. An assign is "a person to whom a transfer of property, right, or interest is made," The American Heritage Dictionary, (1973 Edition) "Assigns," generally comprehends all those who take either immediately or remotely from or under the assignor whether by conveyance, devise, descent, or act of law. Ferrell vs. Deverick, 85 W.Va. 1, 100 S.E. 850 (1919). In 1960, at the time of the tax sale, Lester Lumber Company was an assign of James Grant. The advertisement published in the Franklin County newspaper was notice to Lester Lumber Company that its interest in the property at issue would be affected by the tax sale.

Lester Lumber Company was charged with notice that James R. Grant had not recorded his grant from the Commonwealth in 1878 when Charles L. Powell, Special Commissioner, conveyed the 191 acre tract in issue to William T. Mitchell and John R. Cabell, Lester Lumber Company's predecessors in title. In addition, in adversing Lester Lumber Company's chain of title in the Circuit Court of Franklin County, Lester Lumber Company should have discovered that there was not a deed recorded in the grantor index from James Grant. This would have put Lester Lumber Company on notice to find the land grant which is the origination of their title.

The grant by the Commonwealth to James R. Grant is in the chain of Title of your plaintiffs. Further, the mistake in the indexing, (i.e. the 1878 conveyance in

the name of Charles L. Powell as Grantor and not in the name of James R. Grant) could not have been determined by your plaintiffs. The land records give no notice to your plaintiffs of any conflicting interest held by another.

Even, assuming arguendo, that Larry K. Little and Douglas M. Hunt could have learned of the existence of the claim of Lester Lumber Company, your plaintiffs should still prevail. It is a well established rule of law that where equities are equal, the party having an advantage at law or superior equity shall prevail. Williamson vs. Gordon, 19 Va. (5 Munf.) 257 (1816). In this case, your plaintiffs have the superior equity.

Your plaintiffs have the superior equity because the defendant, Lester Lumber Company, had notice as to what all the records pertaining to its chain of title in the Clerk's Office of the Circuit Court of Franklin County would have revealed. An ordinary title examination would have resulted in Lester Lumber Company being required to trace its chain of title until at least August 16, 1985. Such a tracing of the chain of title would have revealed that the land grant to which at least one of their mesne conveyance referred to was not of record. This would have put Lester Lumber Company on notice to inquire further into the state of its title.

In addition, adversing the chain of title back from 1845 to the present, your defendant would have been forced to adverse James R. Grant in the grantor index in the Clerk's Office of the Circuit Court of Franklin County, from December 1849, when James R. Grant was reconveyed the property by Willis J. Cousins, Trustee, until an out conveyance from James R. Grant. The grantor indexes in the Clerk's Office of the Circuit Court of Franklin County do not contain such an out conveyance. At this point, Lester Lumber Company would have been placed on notice of a defect in its title.

If the two defects in the title of Lester Lumber Company already cited were not sufficient, Lester Lumber Company received yet a third notice. The third notice

was the advertisement in connection with the sale of the property for taxes in April of 1960. The advertisement accompanying the sale leaves no doubt that the 191 acre tract sold for taxes is the same tract claimed by Lester Lumber Company.

The position of Lester Lumber Company must be viewed in contradiction to that of Larry K. Little and Douglas M. Hunt. The plaintiffs in this lawsuit, can trace a clear chain of title to August 16, 1845, through several general warranty deeds. Adversing the mesne conveyances to the present would not reveal the existence of the out-conveyance in 1878 by Charles L. Powell to William T. Mitchell and John R. Cabel. There is no evidence contained in the grantor indexes in the Clerk's Office of the Circuit Court of Franklin County that the interest of James R. Grant was in any way affected by the mesne conveyances in the chain of title of Lester Lumber Company.

The inescapable conclusion is that because of the lack of notice to Larry K. Little and Douglas M. Hunt as opposed to the frequent and forceful notice received by Lester Lumber Company, the plaintiffs, Larry K. Little and Douglas M. Hunt, have a superior equity and should have the title to the property at issue quieted in them.

CONCLUSION

Lester Lumber Company and your plaintiffs claim title to the identical 191 acre tract of land located in Franklin County, Virginia. They both trace their title to a deed of trust dated August 16, 1845. There is no out-conveyance or other defect in the chain of title of your plaintiffs which would put them on notice to the claim of Lester Lumber Company.

There are at least three instances by which Lester Lumber Company received clear notice of the outstanding and superior claim of your plaintiffs. The first notice received by Lester Lumber Company was the fact that there is no muniment of title originating title to the property at issue in the chain of title of Lester

Lumber Company. The absence of a document originating title in the chain of title of Lester Lumber Company placed Lester Lumber Company on notice to search the land records in the Clerk's Office of the Circuit Court of Franklin County to find the "missing" land grant.

Second, adverting James Grant from December 29, 1849 does not reveal an out-conveyance from James Grant. The grantor index in the Clerk's Office of the Circuit Court of Franklin County is silent as to any conveyance by James R. Grant of his interest in the property at issue subsequent to December 29, 1849. This lack of an out conveyance vesting title in the chain of Lester Lumber Company put Lester Lumber Company on notice to make further inquiry.

The third and perhaps most forceful notice received by Lester Lumber Company is the advertisement of sale contained in the Franklin County News Post in March of 1960. On two occasions, the date and object of the sale was published in the Franklin County News Post. Even a cursory perusal of the advertisement would lead to the patent observation that the property being sold was the identical tract of land acquired by Lester Lumber Company in February of 1945. Lester Lumber Company had the opportunity at that point to make the existence of their claim known and to avoid the controversy now at issue.

Fourth, W. L. and P. G. Saunders cut timber on part of this 191 acre tract sometime after 1960 and when Lester Lumber Company inquired as to the Saunders' right to cut the timber, the Saunders informed Lester Lumber Company that they (W. L. and P. G. Saunders) owned the land. Lester Lumber Company again had notice of another claim to this land. Lester Lumber Company did nothing.


Fifth, by ignoring all of these notices for the past 26 years without taking action to assert their claim to this tract of land, Lester Lumber Company is barred by the doctrine of laches from gaining title to the 191 acre tract of land.

The result of the foregoing is that Lester Lumber Company is not a bona fide purchaser. Larry K. Little and Douglas M. Hunt, on the other hand, are bona fide purchasers. However, even if Larry K. Little and Douglas M. Hunt are not bona fide purchasers, they still must prevail because of their superior equity. The plaintiffs have superior equity because of the total lack of notice to them of the claim of Lester Lumber Company in contradiction to the notice possessed by Lester Lumber Company of the claim of your plaintiffs.

WHEREFORE, the plaintiffs, Larry K. Little and Douglas M. Hunt, by counsel, request this Court to enter an Order quieting title in the 191 acre tract which is the subject of this litigation in your plaintiffs.

LARRY K. LITTLE and
DOUGLAS M. HUNT

By counsel


Hutcherson & Rhodes, Ltd.
118 S. Main Street
Rocky Mount, VA 24151

CERTIFICATE OF MAILING

I, Ralph B. Rhodes, counsel of record for the plaintiffs, do hereby certify that I have mailed a true and correct copy of the foregoing Memorandum of Law to Philip G. Gardner, Gardner, Gardner, & Barrow, P.C., 10 N. Bridge Street, P.O. Box 552, Martinsville, Virginia 24112, this the 25TH day of NOVEMBER, 1986.

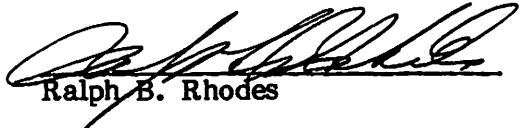

Ralph B. Rhodes

EXHIBIT 1
CHRON OF TITLE FOR LESTER LUMBER AND LARRY LITTLE

H. Percue(Special Commissioner)
Lester Lumber Company, Inc. dated
Feb. 1945 recorded 104/319. Conveys
acre tract acquired 70/547

Clement(Special Commissioner) to
Cobbs and S.P. Brown dated 24 Feb.
recorded 70/547. Suit styled
vs v. Yeatts filed in Pittsylvania
county to partition property. Conveys
acres.

s L. Treadway(Trustee) to D.B. Yeatts
d 26 December 1856 recorded 46/549
veying 191 acres "conveyed to James
Grant in warrant no. 15268 from the
nor of Virginia". Deed forecloses
rest of W.T. Mitchell granted in D/T
rded in Pittsylvania county.

Charles L. Powell(Commissioner) to
William T. Mitchell and John R. Cabell
d 4 March 1878 recorded 32/587
uded 191 acre tract. Deed recites
Charles L. Powell was appointed
issioner in a creitors' suit to
the lands of James Grant. Style
suit was Mitchell and Reynolds v.
s Grant's Administrator.

Walter V. and Virginia S. Roberts t
Larry K. Little and Douglas M. Hunt
dated 17 March 1983 recorded
370/1960 conveying 191 acres

Ralph B. Rhodes(Trustee) foreclosin
D/T Of Jessups' to Walter V. Robert
dated 3 December 1970 recorded
268/16 conveying 191 acres

W.L. and P.G. Saunders and wives to
Burton and Gladys Jessup dated 15
August 1961 recorded 192/374
conveying 191 acres

Russell L. Davis(Special Commissio
to W.L. and P.G. Saunders dated
7 April 1960 recorded 175/193
conveying 191 acres

Commonwealth of Virginia to James
Grant dated 13 June 1845 RECORDED
12 March 1957 conveying 191 acres
148/369

Deed from Willis J. Cousins and James Grant to
James Grant dated 29 December 1849 recorded
21/327 conveying to James Grant the 191 acre
tract previously encumbered

Deed of Trust from James Grant to Willis J.
Cousins Dated 16 August 1845 encumbering
105 acre tract and a 191 acre tract

VIRGINIA: IN THE CIRCUIT COURT OF FRANKLIN COUNTY

LARRY K. LITTLE,

and

DOUGLAS M. HUNT,

Plaintiffs,

vs.

MEMORANDUM ON BEHALF OF
DEFENDANT

THE LESTER GROUP, INC.,
f/n/a Lester Lumber Company,

Law No. 84-4-1143

Defendant.

COMES NOW Defendant, by counsel, and respectfully files this its Memorandum, the particulars of which are as follows, to-wit:

I. STATEMENT OF THE CASE AND STATEMENT OF FACTS

This cause was instituted by a motion for judgment to establish a boundary, which said motion was filed by Larry K. Little and Douglas M. Hunt against The Lester Group, Inc., f/n/a Lester Lumber Company. Throughout this Memorandum, The Lester Group, Inc., will be referred to as "Lester" and the Plaintiffs will be referred to as "Little and Hunt." The original motion for judgment was amended in a two-count motion for judgment wherein Plaintiffs pleaded under Count I pursuant to Virginia Code Section 55-153 a suit to quiet title and under Count II a claim for ejectment pursuant to Virginia Code Section 8.01-131. The parties do not raise any issues concerning the form of the action before the Court nor do the parties raise any procedural issues concerning

whether the case is one at law or at chancery or whether it is a suit to quiet title or a boundary line dispute or any other technical deficiencies. The parties agree that the question before the Court is, quite simply, "who has superior title to the tract in question." The case involves a tract of land on Turkeycock Mountain, which tract lies on or near the Pittsylvania County line. Fortunately, it will not be necessary to establish the location of the Pittsylvania County line for the purposes of this suit. The tract in question is a rough, mountainous tract with no improvements lying on it.

The Plaintiffs and Defendant both claim title to the tract in question. Both Plaintiffs and Defendant have deeds to the tract in question, which deeds are of record in the Franklin County Circuit Court Clerk's Office. The chain of title of the parties is set forth as Exhibit A attached hereto. This diagram is also placed on the back of each proceeding page for the next three pages for ease of reference. The tract in question was originally the subject of a land grant from the Commonwealth of Virginia to James Grant dated June 13, 1845. This land grant was recorded on March 12, 1957, in the Franklin County Circuit Court Clerk's Office in Deed Book 148 at page 369. The earliest recorded document concerning the tract is a deed of trust from James Grant to Willis J. Cousins dated August 16, 1845, encumbering a 105-acre tract and a 191-acre tract. This deed of trust from James Grant to Willis J. Cousins, trustee, is recorded in the Franklin County Circuit Court Clerk's Office in Deed Book 19 at page 175.

The next document of any relevance is a deed from Willis J. Cousins and James Grant to James Grant dated December 29, 1849, which said conveyance is recorded in the Franklin County Circuit Court Clerk's Office in Deed Book 21 at page 327 conveying to James Grant the 191-acre tract previously encumbered in the deed of trust previously mentioned.

One would assume from the next document of record that Grant became indebted on the tract inasmuch as on March 4, 1878, a deed is recorded in the Franklin County Circuit Court Clerk's Office in Deed Book 32 at page 587 wherein a Commissioner was appointed in a creditor's suit to sell the lands of James Grant. The style of the suit was "Mitchell and Reynolds v. James Grant's Administrator." Although it is not specifically stated in the documents, one would surmise that perhaps Grant died and his property was sold for the debts. In any event, a W.T. Mitchell ended up owning the property as a result of the conveyance. It is at this point that a recording error was committed by the Clerk of the Circuit Court of Franklin County. The recording error was that in the indexing of the deed, no mention is made of the name "Grant." The transfer was recorded as being from C.L. Powell, Special Commissioner, to Mitchell and Cabell. Apparently, because the land records do not show a transfer of the land out of James Grant, the land continued to be assessed to Grant on the tax rolls although it was also assessed to Lester's predecessors in title.

The next document of consequence is a December 26, 1896, deed recorded in Deed Book 46, page 549, of the Clerk's Office of the Franklin County Circuit Court. This was from James L. Treadway, Trustee, to D.B. Yeatts; and it conveyed 191 acres and it was a foreclosure deed. The description specifically references James R. Grant's Warrant No. 15268 from the Commonwealth of Virginia. W.T. Mitchell had apparently given a deed of trust to Treadway; and on default, it was sold to Yeatts. Yeatts was involved in a partition suit about twenty years later styled "Yeatts v. Yeatts." As a result of this partition suit, a deed dated February 24, 1921, was recorded in the Franklin County Circuit Court Clerk's Office in Deed Book 70 at page 547. As a result of this deed, W.C. Cobbs and S.P. Brown became the owners of the 191 acres in question. Finally, Lester bought the tract on February 28, 1945, by deed recorded in the Franklin County

Circuit Court Clerk's Office in Deed Book 104 at page 319. Lester bought the tract as a result of a chancery suit styled "S.P. Brown, et al. v. Ella J. Cobbs, et als." and Lester bought the tract at auction together with other tracts not at issue here. It is relevant to note and important to note that when Lester bought the property, it was bought in three tracts totaling 464 acres and was, for a time, carried on the land book as 464 acres. It is important and significant to note that since 1947 to the present time Lester has been assessed the taxes on the property and has paid the taxes on the property. The records in the office of the Treasurer and Commissioner of Revenue verify this. The testimony of Ken Scruggs was uncontradicted on this point. Of course, at the same time, the property is also on the land books in the name of Grant and the taxes are showing as "not paid". After years of delinquent taxes, finally, Russell L. Davis, a Special Commissioner, sold the tract for Franklin County at a tax sale to W.L. and P.G. Saunders. The tax sale is dated April 7, 1960, and is recorded in Deed Book 175 at page 193 in the Franklin County Circuit Court Clerk's Office. Saunders, the purchaser at the tax sale, sold the property to Burton and Gladys Jessup by deed dated August 15, 1961, recorded in Deed Book 192 at page 374.

Ralph B. Rhodes was named as the trustee in a deed of trust executed by Jessup on the subject property. Jessup defaulted on the deed of trust and Rhodes, as trustee, sold the property at foreclosure sale. By deed dated December 3, 1970, the property was conveyed to Walter V. Roberts, which said deed is recorded in Deed Book 268 at page 16 in the Franklin County Circuit Court Clerk's Office. It is important to note at this point that it is stipulated that a representative of Lester attended the auction and before the property was sold announced at the auction that Lester claimed title to the property being auctioned. Ralph B. Rhodes was the trustee conducting the sale. In addition, it is stipulated that Ebb H. Williams, III, an attorney acting for Lester at the time, wrote a letter

to Ralph B. Rhodes as trustee and warned him not to convey the property because Lester claimed title to it. Nevertheless, the property was conveyed to Walter V. Roberts who was at the auction and bought the property with full knowledge and notice of Lester's claim to the property.

Roberts later sold the tract in question to Plaintiffs in this case, Hunt and Little, on March 17, 1983, which deed is recorded in Deed Book 370 at page 1960 in the Office of the Clerk of the Franklin County Circuit Court. It is undenied that Ralph B. Rhodes conducted the examination of title for Little and Hunt but that no mention was made to Little and Hunt of Lester's claim to the property.

II. ARGUMENT

1. THE 1960 TAX SALE WHEREIN RUSSELL L. DAVIS, SPECIAL COMMISSIONER, CONVEYED THE TRACT IN QUESTION TO W.L. AND P.G. SAUNDERS BY DEED DATED APRIL 7, 1960, IS VOID AND NO ONE CLAIMING TITLE FROM THAT TAX SALE HAS ANY TITLE AT ALL.

Statutes providing for the sale of lands for nonpayment of taxes must be strictly construed, such sales being forfeitures; and the preliminary steps necessary to afford an owner due process of law cannot be dispensed with even by express legislative enactment. Dennis v. Robertson, 123 Va 456, 96 S.E. 802 (1918); Bond v. Pettit, 89 Va 474, 16 S.E. 666 (1892); Boone v. Simmons, 88 Va 259, 18 S.E. 439 (1891). It is critical that all necessary parties be given notice of a tax sale; and to procure publication of notice of tax delinquency, the applicant must use such diligence in investigating the owner's whereabouts as a diligent person of ordinary intelligence would ordinarily exercise. In the tax sale suit wherein Hunt and Little's predecessors get title, the suit papers show no

notice to Lester. Jennings v. City of Norfolk, 198 Va 277, 93 S.E.2d 302 (1956); Harris v. Deal, 189 Va 675, 54 S.E.2d 161 (1949); Crabtree v. Dickinson County, 183 Va 698, 33 S.E.2d 187 (1945); Attkisson v. Moore, 159 Va 643, 167 S.E. 367 (1933). The title of a tax sale purchase is defeated by a showing that the taxes for which the land was sold had been properly paid or that the notice required by statute was not given. Attkisson v. Moore, supra; Roller v. Cooley, 119 Va 209, 89 S.E. 136 (1916), error dismissed, 249 U.S. 619 (1919). It is elementary, of course, if the taxes have, in fact, been paid, jurisdiction never vests under the statute for the property to be sold. It is uncontested in this case that in 1960 the taxes were not delinquent as found by the Special Commissioner but, in fact, had been paid since 1947 by Lester.

A tax deed conveys only such title as was vested in the person assessed. See Virginia and West Virginia Coal Co. v. Charles, 251 F. 83 (Western District of Virginia 1917), affirmed 254 F. 379 (4th Cir.) error allowed 255 F. 992 (4th Cir.) (1918) error dismissed 252 U.S. 569 (1920); Craig Giles Iron Co. v. Eppling, 135 Va 74, 115 S.E. 534 (1922); Ashbrook v. Bailey, 116 Va 10, 81 S.E. 64 (1914); Hotchkiss v. Middlekauf, 96 Va 649, 32 S.E. 36 (1899). A tax sale purchaser can transfer no better title than he received. Johnson v. Gartlan, 334 F.Supp. 438 (E.D. Va 1917), reversed on other grounds 470 F.2d 1104 (4th Cir.) (1973), cert. denied 414 U.S. 865 (1973); Fugate v. Fox, 217 Va 452, 230 S.E.2d 245 (1976). Accordingly, Hunt and Little have no title since their predecessors have no title. Hunt and Little have, of course, their remedy against Roberts for breach of warranty.

2. THE RULE OF PRUITT V. FERGUSON DOES NOT APPLY.

In Pruitt v. Ferguson, 224 Va 507, 297 S.E.2d 714 (1982), the Supreme Court of Virginia addressed the question of a recording error in the

chain of title and the question of taxes. In Pruitt, the plaintiffs were suing to quiet title to certain land, specifically to remove the cloud of defendant's claim which was based on a separate chain of title immanating from a tax sale. Plaintiff's claim in Pruitt also presented the question of an error in the chain of title to the land, which error had been caused by a scrivener's error in recording a handwritten deed in the late 1800s. That error resulted in a transfer of the subject land to "Rush" being recorded as a transfer to "Bush". Real estate taxes subsequently were assessed to Bush, a non-existent person, and were never paid. Thereafter, the land was sold for taxes beginning the new chain of title under which the defendants in Pruitt claimed. The Court in Pruitt decided in favor of the defendant's claim for two reasons: (a) Whenever land is claimed by two innocent purchasers, due to a recording error, the purchaser claiming under the chain of title in which the error occurs must sustain the loss because the clerk making the mistake is deemed to be the agent of the grantee and that grantee and his successors are estopped to complain of the erroneous record; and (b) the tax sale was not void for failure to give notice to the true owners because the assessing officials had the right to rely on the face of the land records and need only give notice of the tax sale to the "person in whose name the land so sold stood" as shown by the land records.

The rule in Pruitt should not apply to this case because the error made by the clerk in Pruitt was induced by the sloppy handwriting of the plaintiff's predecessor while the error in the instant case resulted from a breach of the clerk's legal duty to record the transfer from Grant to his creditors and to use the name "Grant". See §55-138 of the 1950 Code of Virginia, as amended. The ruling in Pruitt clearly does not apply to the tax sale argument inasmuch as in Pruitt the subject land was shown to be on the land records and the tax assessment records only in the name of "Bush" while in the instant case the

subject land is and has been on the land records and the tax assessment records in the names of both Grant and Lester. The tax officials should have easily discovered Lester's interest in the lands on the basis of the fact that the land record showing a land grant to James Grant in 1844 that was not recorded until 1957, which fact appearing on the record would have put a reasonable person on inquiry to discovery what had caused such a bizarre occurrence. See Allen v. Green, 229 Va 588, 331 S.E.2d 472 (1985); Orphanovdakis v. Orphanovdakis, 199 Va 142, 98 S.E.2d 676 (1957); Rorrer Iron Co. v. Trout, 83 Va 397, 2 S.E. 713 (1887). In addition, the tax assessment records showing that the taxes on the same land had been assessed and paid by Lester since 1945 was obviously information which the treasurer had inasmuch as the treasurer assessed the land to Lester and actually collected the money. A prudent title attorney, preparing the order of publication in the tax suit in 1959 to 1960, should have discovered Lester's claim. See Forrer v. Brown, 221 Va 1098, 277 S.E.2d 483 (1981). It is important to note that the rule requiring that a suit to set aside a tax sale be filed within twelve months does not validate a deficient order of publication and cannot "breathe life" into a void decree of sale or authorize a court by judicial sale to divest one not a party to the suit of his ownership in the property. Forrer v. Brown, supra. The Court in Forrer recognized that "elementary is the proposition that no person may be deprived of his property without due process of law and one of the essentials of due process is notice." Forrer, supra, page 486. Also, Finkle Outdoor Products, Inc. v. Bell, 205 Va 927, 931, 140 S.E.2d 695, 698 (1965). The Court specifically rejected the contention that the county joined plaintiff by order of publication as a "party unknown." Thus, the Pruitt case does not help the plaintiff.

3. LESTER GAVE ACTUAL NOTICE OF ITS CLAIM TO WALTER V. ROBERTS, RALPH B. RHODES, AND INDIRECTLY TO LITTLE AND HUNT.

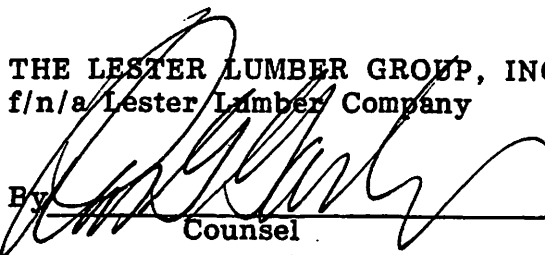
It is uncontested that Walter V. Roberts purchased the tract in question from Ralph B. Rhodes acting as trustee with actual knowledge both to Rhodes and to Roberts of Lester's claim. Lester had a representative stand up at the auction sale and announce Lester's claim to the property and further Lester's attorney wrote to the trustee, Ralph B. Rhodes, and advised him in writing not to sell the property because Lester laid claim to it by prior conveyance. According to Hunt and Little's testimony, Roberts apparently felt it appropriate to stand mute about this obvious and critical matter when Roberts sold the property to Hunt and Little. It is clear that Hunt and Little have a cause of action against Roberts inasmuch as Roberts breached the covenants of general warranty of title in conveying the property by general warranty of title when he, in fact, had actual notice of a prior claim to the property. In addition, the attorney for Hunt and Little himself had received oral and written notice of the prior claim of Lester to the property.

III. CONCLUSION

For the reasons cited and based upon the arguments foregoing, your Defendant respectfully prays that the Court dismiss the counts of the amended motion for judgment and that the Court adjudicate that Lester has good and sufficient title as against Hunt and Little to the property in question.

Respectfully submitted this 20th day of November, 1986.

THE LESTER LUMBER GROUP, INC.
f/n/a Lester Lumber Company

By 
Counsel

Philip G. Gardner, Esq.
GARDNER, GARDNER & BARROW, P.C.
10 N. Bridge Street
P.O. Box 552
Martinsville, VA 24114-0552
703-638-2455

CERTIFICATE

This is to certify that a true copy of the foregoing pleading was this day mailed to all counsel of record.


Counsel

11-24-86
Dated

VIRGINIA: .

IN THE CIRCUIT COURT OF FRANKLIN COUNTY

LARRY K. LITTLE

and

DOUGLAS M. HUNT,

Plaintiffs,

v.

REPLY MEMORANDUM OF LAW
LAW NO. 84-4-1143

THE LESTER GROUP, INC.,
f/n/a Lester Lumber Company,

Defendants.

COMES NOW the plaintiffs, Larry K. Little and Douglas M. Hunt, by counsel, and files the following Reply to the Memorandum of Law filed by the defendant, Lester Lumber Company, on November 24, 1986.

STATEMENT OF FACTS

The plaintiffs reassert the factual statement submitted in their Memorandum of Law filed on November 25, 1986.

ARGUMENT

I. THE 1960 TAX SALE WHICH RESULTED IN THE CONVEYANCE OF THE TRACT IN QUESTION TO W. L. AND P. G. SAUNDERS BY DEED DATED APRIL 7, 1960, IS NOT VOID AND TITLE EMANATING THEREFROM IS VALID.

The tax sale of the tract in question in 1960 was a valid sale based on delinquent taxes assessed to James Grant, his heirs, devisees, assigns and any unknown heirs. These delinquent taxes were unpaid real property taxes for the years 1955 thru 1959. This sale was not a forfeiture but was for these delinquent taxes.

James Grant, his heirs, devisees, assigns and any unknown heirs were considered to be the parties necessary for the chancery suit involving the sale of 191 acres of land. In order to sell the property it was necessary to give all parties proper notice. In 1960, the Commissioner in Chancery was unable to determine who owned

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CLERK OF CIRCUIT COURT
WM. J. WALNER JR.

Offices of
& Rhodes, Ltd.
Main Street
County, Va. 24151

the property in issue. There is simply no evidence that the Commissioner in Chancery acted in any manner other than with due diligence. The undisputed evidence is that a recordation error in 1878 (using the name of the commissioner in a creditor's action, Charles L. Powell, as Grantor and not the name of the true Grantor, James R. Grant) could not and would not have been discovered by the Commissioner in 1960. Thus, there can be no contention that the Commissioner in Chancery acted without due diligence.

On the other hand, Lester Lumber Company was presumed to have knowledge of all the records surrounding their alleged purchase of the property in 1945. Lester Lumber Company presumably did a title examination on the 191 acres of land they were purchasing. In Virginia:

A full search requires that the seller's chain of title be established for a minimum of sixty years. The adversing process should begin with the grantor of a general warranty deed to the captioned property at least sixty years old. Berryhill, Virginia Real Estate Closings, Sec. 3-3 (1983).

However, the chain of title of Lester Lumber Company includes nothing but special warranty deeds. Thus the special warranty deeds should have placed Lester Lumber Company's title examiner on notice of a possible defect in their chain of title. Parham, A Virginia Title Examiner's Manual, Sec. 16-10 (1977). Consequently, these two concepts immediately shed doubt upon the accuracy of Lester Lumber Company's claim of title.

More importantly, and contrary to Lester Lumber Company's claim of no notice, the law presumes Lester Lumber Company was on notice of the tax sale. (Plaintiff's original Memorandum of Law, pp.6-7). As Lester Lumber Company's chain of title reflects, they had knowledge of any interest James Grant had in the land they had bought.

The Deed of Trust from James Grant to Willis J. Cousins put Lester Lumber Company on notice that its title originated in a land grant dated 1844 which was not recorded. Thus, Lester Lumber Company was on notice that there was no

document of title which originated ownership in the property at issue in James Grant. (It is well settled that what is sufficient to put a person upon inquiry would charge him with knowledge of the facts of which a diligent pursuit of that inquiry would have informed him. University of Richmond v. Stone, 148 Va. 686, 139 S.E. 257 (1927).) As a result, the doctrine of laches prohibits Lester Lumber Company from any attempt to divest Little and Hunt of their legal title some twenty-six years later.

Similarly, Lester Lumber Company is presumed to have knowledge of the interest of James Grant in the "erroneous" recordation of the conveyance from Charles L. Powell to William T. Mitchell and John R. Cabell dated March 4, 1878 recorded at Deed Book 32 Page 587 in the Franklin County Circuit Court Clerk's Office. The Deed recited that Charles L. Powell was appointed Commissioner in a creditor's suit to sell the lands of James Grant.

Any erroneous recordation is charged to the person whose title includes the error.

...(T)he Clerk recording a deed acts as the agent of the person offering it for recordation. The purpose of recordation is to protect the grantee's interest, and the recorder acts for him in copying the deed into the record. If this task is improperly done, the consequence must be borne by the party at whose instance it was done, rather than by an innocent purchaser. Pruitt v. Ferguson, 224 Va. 507, 297 S.E. 2d 714, 717 (1982).

Since the error, of which Lester Lumber Company had knowledge, was in Lester Lumber Company's chain of title, they are not

"in a position to complain of or to take advantage of the resulting confusion." Pruitt v. Ferguson, supra.

Thus, the error does not affect the title in James Grant and his assigns.

As a result of this knowledge of Lester Lumber Company, the notice by publication in 1960 imputes notice of the tax sale to Lester Lumber Company. The notice was specifically directed to "James Grant, his heirs, devisees, assigns, and any unknown heirs." An "assign" is "a person to whom a transfer of property, right, or interest is made." The American Heritage Dictionary (1973 Edition). Lester

Lumber Company was an assign of James Grant and the notice by publication was notice to Lester Lumber Company that its interest in the property at issue would be affected by the tax sale.

Cases cited by Lester Lumber Company do not support their position that they failed to receive notice of the tax sale. In Jennings v. City of Norfolk, 198 Va. 277, 93 S.E.2d 302 (1956), the Virginia Supreme Court reversed a tax sale because of lack of notice to a necessary party. The notice of publication was addressed to "Parties Unknown." In that case, a subsequent purchaser was deemed not to have received notice of the tax sale because "Parties Unknown" was insufficient to put the party on notice. The Jennings court did suggest that the Order of Publication would have been proper notice had

"Parties Unknown" been modified to include "personal representative, heirs, assigns, or successors in title or estate. Jennings v. City of Norfolk, supra.

The Jennings rationale is applicable to the case at bar as it supports the position of Little and Hunt. In 1959, Russell Davis, acting as the attorney for Franklin County, a body politic, filed a Bill of Complaint in the Circuit Court of Franklin County to sell the property at issue for back taxes. By a decree of reference, Willard R. Finney, Commissioner in Chancery, was appointed to determine who the owners of the property were. The Commissioner's Report stated:

Your undersigned Commissioner reports that as far as the records in the Clerk's Office of the Circuit Court of Franklin County, Virginia, are properly kept and indexed, that James Grant was the owner of the 191 acres of land lying and being on Turkey Cock Mountain in Franklin County, Virginia. This land was granted to James Grant by a grant dated June 13, 1845, from James McDowell, Governor of the State of Virginia. This grant was made by virtue of treasury warrant no. 15268, said tract of land being described in said grant as follows:....

From the depositions, from the records of the Clerk's Office, your undersigned Commissioner was unable to determine whether James Grant is deceased, and if he is deceased, who were his heirs. Considering the date of the grant, it would appear that James Grant died, seized and possessed of the following described tract of land.

This prudent title examination would have resulted in notice going to heirs, assigns, and devisees of James Grant. The Order of Publication was published and indicated that the suit concerning 191 acres on Turkey Cock Mountain was against James Grant, his heirs, devisees, assigns, and any unknown heirs. Consequently, this notice would have been sufficient to place Lester Lumber Company, who obtained 191 acres on Turkey Cock Mountain and who was an assign of James Grant, on notice that their interest in 191 acres was subject to the jurisdiction of the Court.

Similarly, in Harris v. Deal, 189 Va. 675, 54 S.E.2d 161 (1949), the Court found a notice by publication for a tax sale to be defective. The notice stated that "some of the respondents are non-residents of the State of Virginia." Harris v. Deal, supra. Further, the Court found:

There is nothing in the order of publication to indicate that the unknown parties referred to are the successors or assigns of the Kerrey Land Corporation, or the heirs of George E. Wood, or what their interests are. It does not give a description of the land or proper notice of its ownership. As to such non-residents and unknown parties, the order of publication was fatally defective....Id.

While notice in Harris was defective as to the description of property being sold and failure to adequately include all parties, the notice in the case at bar is without such deficiency. As demonstrated, Lester Lumber Company was an "assign" of James Grant and the notice was directed to "assigns." Lester Lumber Company obtained 191 acres on Turkey Cock Mountain, Franklin County, Virginia. In addition, the description in the notice was sufficient to put Lester Lumber Company on notice. The notice, published in The Franklin News Post stated (in addition to time and date):

At the front door of the Courthouse of Rocky Mount, Virginia, (the Commissioner would) offer for sale at public auction to the highest bidder, all that certain tract or parcel of land containing one hundred ninety-one (191) acres, more or less, situate, lying and being on Turkey Cock Mountain, in Franklin County, Virginia, near the Pittsylvania County and the Henry County line,...(emphasis added).

This description is strikingly similar to the language in the deed by which Lester Lumber Company claims title. That deed recited:

That certain tract or parcel of land containing 191 acres, more or less, situate, lying and being on the east side of Turkey Cock Mountain and taxes in the Union Hall Magisterial District....(emphasis added)

Thus, Lester Lumber Company was on notice that their interest in the land could be affected in 1960. The notice of publication was in accordance with Va. Code Ann. Sec. 8-71 and 8-72 (now Va. Code Ann. Sec. 8.01-316(2) and 8.01-317) and the Court in 1960 properly had jurisdiction to enter its decree affecting the interest of Lester Lumber Company.

The defendant, Lester Lumber Company asserts that "it is uncontested in this case that in 1960 the taxes were not delinquent...but, in fact, had been paid since 1947 by Lester." This is simply not the case. Lester Lumber Company had paid taxes on an erroneous assessment of real property taxes. Lester Lumber Company's payment of those taxes rested upon their erroneous claim of legal title.

Similarly, Lester Lumber Company asserts that a tax sale to Little and Hunt by their predecessors in title is defeated by a showing that the notice required by statute was not given or that the taxes for which the land was sold had been properly paid. The plaintiffs, Little and Hunt, have already shown that Lester Lumber Company had proper notice. More importantly, the taxes for which the land was sold had not been properly paid. The delinquent taxes for which the property in issue had been sold were those assessed to James Grant as a result of lack of legal title in Lester Lumber Company. Lester Lumber Company's payment of erroneously assessed taxes does not vest title in Lester Lumber Company. James

Grant and his successors in title were vested with legal title when the taxes became delinquent.

As the Virginia Supreme Court stated in Craig Giles Iron Co. v. Epling, 135 Va. 74, 115 S.E. 534, 536 (1922):

(T)he tax deed vested... only such title as was vested in the party assessed with the taxes on account whereof the land was sold.

The delinquent taxes were assessed in the name of James Grant. The delinquent taxes resulted in the selling of the property. Since James Grant and his successors in title have been shown to have held legal title to the land at the time of the sale, the tax deed would transfer proper legal title to the innocent purchaser at the sale. If Lester Lumber Company had any interest, they could have challenged the tax sale. Their failure to do so for 26 years prevents them from doing so now due to the equitable doctrine of laches.

ARGUMENT

II. THE RULE OF PRUITT v. FERGUSON SHOULD AND DOES APPLY.

Lester Lumber Company is mistaken in its assertion that Pruitt v. Ferguson, 224 Va. 507, 297 S.E.2d 714 (1982) does not apply to the case at bar. The suit was to quiet title but the Court recognized that it had to "determine the effect of a misnomer" in a recorded Deed. In 1877, a mistake had been made by a scrivener in recording by longhand. The clerk wrote the surname of the grantee as "Bush" rather than "Rush" as it was supposed to be throughout the deed. The scrivener's formation of the letter "B" was found to be a result of misunderstanding the handwriting on the original Deed. As a result of this error, the taxes on the property were assessed to George and Reanna Bush from 1895 through 1955 and were unpaid for many years. In 1964, the land was sold to satisfy 1958 delinquent

taxes. There was no evidence or contention of error, irregularity or fraud in any proceeding. In 1966, the Fergusons purchased the property and brought suit in 1974.

The original claim of the Pruitts was based on the will of William Harding who conveyed the property before his death. The trial court rejected this argument. The Pruitts then claimed the tax sale in 1964 was void because the assessment was made against a non-existent person named Bush and that no notice was given to the true owners. The trial court found "that the tax sale was valid and that the uncontroverted evidence was that the assessing officials, the clerk, and the purchaser, Sterne,

"all acted in good faith, upon reasonable and honest interpretations of the facts as they appeared, and with full intent to satisfy all requirements of law." Pruitt v. Ferguson, supra

The Virginia Supreme Court found that Forrer v. Brown, 221 Va. 1098, 277 S.E.2d 483 (1981), cited by Lester Lumber Company, was inapplicable to the Pruitt situation. In Forrer the Court found that an order of publication was defective when addressed to "heirs and all other perons interested in the estate." It was defective because it would not be adequate notice to Mr. Brown who purchased the property at a tax sale. In Forrer, unlike Pruitt, a prudent title attorney, in preparing the order of publication, would have found the claim of Mr. Brown. Brown's claim was valid but had not been recorded. Pruitt, supra.

The Court likewise found that George and Reanna Rush were responsible for the misnomer recorded in 1877, and that:

"neither they nor any parties claiming under them, in the absence of fraud or oppressive conduct by others, were in a position to complain of or to take advantage of the resulting confusion". Id.

The Court concluded by holding:

"that the clerk recording a Deed acts as the agent of the person offering it for recordation. The purpose of recordation is to protect the grantee's interest, and the recorder acts for him in copying the deed into the record. If this task is improperly done, the consequence must be borne by the party at whose instance it was done, rather than by an innocent purchaser. The

original deed does not constitute notice to subsequent purchasers after it had been copied into the record. After it is copied, the record alone imports such notice. The Court further held that the persons claiming under (the mistake) were estopped to dispute correctness of the record:

'wherever one of two innocent persons might suffer by the acts of a third, he who has enabled such third person to occasion the loss must sustain it.'" Pruitt v. Ferguson, supra. (citing White v. Himmelberger-Harrison Lumber Co., 240 Mo. 13, 25, 139 S.W. 553, 556 (1911)).

The Pruitt case is directly applicable to the situation in this case between Lester Lumber Company and Little and Hunt. The counsel for Lester Lumber Company incorrectly suggests that a clerk breached his/her legal duty in the mistake recorded in Lester Lumber Company's chain of title in 1878. The mistake involved the recordation of the sale of land in a creditor's suit in the name of the Commissioner rather than in the name of the debtor, James Grant. This mistake is no different than the misunderstanding in the recordation of Rush as Bush in Pruitt. Under the Pruitt rule, there is quite clearly no way in which a prudent title attorney, in preparing an order of publication in 1960, would have discovered Lester Lumber Company's claim. But a prudent title attorney, in examining the title for Lester Lumber Company would have found the error in examining the title back to a general warranty deed.

Furthermore, due to the factual similarities between Pruitt and the case at bar, Lester Lumber Company should be held liable for the mistake which is in their chain of title. According to Pruitt, the mistaken recordation in 1878 would be borne by William T. Mitchell and John R. Cabell, the grantees in the Deed and their successors in title. As in White, cited by Pruitt, any persons claiming title under the persons responsible for the mistake:

are estopped to dispute correctness of the record: 'wherever one of two innocent persons might suffer by the acts of a third, he who has enabled such third person to occasion the loss must sustain it.' Id.

Thus, since Mitchell, Cabell, and Charles L. Powell (parties in the mistaken recordation of 1878) are in Lester Lumber Company's chain of title, Lester Lumber Company must sustain the loss occasioned by the mistake. Little and Hunt claim good title under the innocent purchasers of the 191 acre tract at the 1960 tax sale.

ARGUMENT

III. WHILE LESTER LUMBER COMPANY DID MAKE A CLAIM AGAINST THE PROPERTY, THERE WAS NEVER ANY ACTION TAKEN TO ENFORCE THE CLAIM IN PARTICULAR LEGAL ACTIONS.

While it is uncontested that Lester Lumber Company made a claim at the foreclosure sale in 1970, the sale also placed Lester Lumber Company on further notice that any interest they possessed in the property was before the Court. The counsel for Lester Lumber Company apparently is suggesting that Little and Hunt should bring suit against Roberts in this situation. However, that is not the issue.

The issue in this case is whether Little and Hunt's title is superior to Lester Lumber Company's claim. Since Lester Lumber Company sent a representative to the sale in 1970 they were obviously aware of the adverse claim to the property by virtue of the foreclosure proceeding. It was Lester's prerogative to obtain an injunction against the foreclosure sale in 1970 and assert their claim to the property. However, Lester Lumber Company refused to seek an injunction or exercise their legal remedies to challenge the sale. Consequently, the equitable doctrine of laches prevents their assertion of ownership at this point.

In Shirley v. Van Every, 159 Va. 762, 167 S. E. 345 (1933), the Virginia Supreme Court defined laches as:

... neglect or omission to do what one should do as warrants the presumption that he has abandoned his claim, and declines to assert his right.


For 26 years, Lester Lumber Company has failed to assert any rights they claimed in the property at issue and 16 years since the foreclosure sale.

CONCLUSION

Because Lester Lumber Company was on notice of legal action which would affect their interest in the 191 acre tract, their failure to do so promptly estopped them from asserting any rights at this time (26 years later). Any mistake in recordation which is in Lester Lumber Company's chain of title, must be borne by Lester Lumber Company. Lester Lumber Company's failure to correct any errors or assert rights over an extended period of time should not divest Little and Hunt of legal title received as innocent purchasers.

LARRY K. LITTLE and
DOUGLAS M. HUNT

By counsel


Hutcherson & Rhodes, Ltd.
118 S. Main Street
Rocky Mount, VA 24151

CERTIFICATE OF MAILING

I, Ralph B. Rhodes, counsel of record for the plaintiffs, do hereby certify that I have mailed a true and correct copy of the foregoing Reply Memorandum of Law to Philip G. Gardner, Gardner, Gardner, & Barrow, P.C., 10 N. Bridge Street, P.O. Box 552, Martinsville, Virginia 24112, this the ____ day of _____, 198__.

Ralph B. Rhodes

VIRGINIA: IN THE CIRCUIT COURT OF FRANKLIN COUNTY

LARRY K. LITTLE,

and

DOUGLAS M. HUNT,

Plaintiffs,

vs.

REPLY MEMORANDUM ON BEHALF
OF DEFENDANT

Law No. 84-4-1143

THE LESTER GROUP, INC.,
f/n/a Lester Lumber Company,

Defendant.

COMES NOW Defendant, by counsel, and respectfully files this his Reply
Memorandum, the particulars of which are as follows, to-wit:

REPLY TO ISSUE NO. I

The first issue raised by Plaintiffs is really two issues. Plaintiffs first claim that Defendant has sat on their rights for twenty-seven years and somehow lost its rights because it did not institute a legal proceeding to assert its claim to the land. The mere mention of the equitable doctrine of laches is absolutely ludicrous in this case because it has nothing to do with this case whatsoever. The question in the case is who has good title. The argument of the Plaintiffs that Defendant is barred by laches seems to admit that the Defendant has good title but is a last-ditch "grasping at straws" argument to try to save the day. Defendant has a superior legal title to that claimed by Plaintiffs and no amount of delay can affect Plaintiff Hunt's claim.

Laches is a delay in the enforcement of one's rights as works a disadvantage to another; or, such delay without regard to the effect it may have upon another as will warrant the presumption that the party has waived his right. It is such neglect or omission to do what one should do as warrants the presumption that he has abandoned his claim, and declines to assert his right. Mere lapse of time, in the absence of circumstances affording evidence of a presumption that a right has been abandoned, is not considered laches. See generally Michie's Jurisprudence, Equity, Vol. 7A, §26. One who has a valid and recorded deed does not have to worry about sitting on his rights. His rights are recorded in the Clerk's Office. The doctrine of laches has nothing to do with one who has a bona fide legal title recorded in the Clerk's Office. Mr. Rhodes overlooks in his memorandum the fact that delay alone and time alone is not the important element in laches. The important element is delay which places another at a disadvantage. If Defendant had any duty to take any action, and it is submitted that it did not, such delay did not prejudice Mr. Rhodes' client. Indeed, the party from whom Mr. Rhodes' clients bought the property (Mr. Roberts) was put on actual notice of Defendant's claim and Mr. Rhodes himself was put on actual notice of Defendant's claim. Mr. Rhodes and Mr. Roberts notwithstanding being put on actual notice at the auction sale and notwithstanding the fact that Defendant's lawyer wrote Mr. Rhodes, blasted full-steam ahead and Mr. Rhodes sold the property and Mr. Roberts bought it with full knowledge that Defendant had a prior recorded deed to the property. There has been no showing at all that Defendant ever intended to abandon their rightful claim of ownership to the property. Mr. Rhodes has completely misconstrued the doctrine of laches. The passage of time is only one circumstance from which one might infer that another has abandoned his rights. All the circumstances must be considered. Defendant has legal title to the property as evidenced by its deed in the Clerk's

Office and was under no duty to take any claim. Accordingly, Defendant cannot be charged with having abandoned its claim by not taking action which it did not have to take in the first place. The second element of laches, prejudiced to the other party, is certainly not present since the "other party's" predecessor in title, Walter V. Roberts, had actual notice of Defendant's claim. See generally Michie's Jurisprudence, Equity, Vol. 7A, §30.

The second part of the argument made by Mr. Rhodes in his first issue is as ill-founded as the argument on laches. The tax sale wherein Russell L. Davis, Special Commissioner, conveyed the tract in question to Mr. Rhodes' clients' predecessors in title is completely void and no one claiming title from that tax sale has any title at all. Notice of publication was not sufficient to put Defendant on notice of anything. Defendant Lester was a necessary party to that suit and was not made a necessary party to that suit. The case of Jennings v. City of Norfolk, 198 Va 277, 93 S.E.2d, 302 (1956) at page 307 in the Southeastern Reporter, contains an interesting discussion of tax sales and notices. In Jennings v. City of Norfolk, the Supreme Court noted that under §58-797 of the 1950 Code of Virginia, as amended, the Clerks of Courts in which deeds are recorded are required at the end of each year to furnish the Commissioner of Revenue with a list of all deeds and deeds of trust with the names of the grantors and the grantees and the description of the property conveyed during the year. The Court noted that the Commissioner under the same statute is then required to promptly and carefully check such list against the records in the office of the Clerk who furnished the same and if he finds any errors on the list he shall make the proper corrections. By §58-803 of the 1950 Code of Virginia, as amended, the lands appearing on the lists in the Commissioner's Office shall be transferred accordingly on the land book and charged to the person to whom the transfer is made. Section 58-809 requires the Commissioner, in making out his land book and

703-638-2455

correct any mistake made in any entry. Section 58-1104 which provides the procedure for enforcement of liens for taxes through bill in equity filed for that purpose requires that "all necessary parties shall be made defendant." One must bear in mind that Russell L. Davis was acting as Special Commissioner for Franklin County. Franklin County knew that Defendant claimed the property. Franklin County knew that Defendant Lester claimed the property because Defendant Lester was paying taxes on the property. Defendant was by no stretch of the imagination a party unknown. Only actual notice would serve to bring Lester into the suit and it is undenied that Lester got no actual notice by service of process. Case law is clear that Franklin County was required to use due diligence in investigating the owner's whereabouts and it is obvious that Franklin County used no diligence because no one bothered to tell Mr. Davis that Lester not only owned the property but was paying taxes on the property and that there were, in fact, no delinquent taxes on the property. See Jennings v. City of Norfolk, 198 Va 277, 93 S.E.2d, 302 (1956); Harris v. Deal, 189 Va 675, 54 S.E.2d, 161 (1949).

REPLY TO ISSUE NO. II

The second issue raised by Mr. Rhodes in his memorandum is whether Walter Roberts is a bona fide purchaser for value at the foreclosure sale in 1970. As has been previously noted, it doesn't make any difference whether he is a bona fide purchaser at the foreclosure sale because no one claiming title through the Franklin County tax sale has any title at all. The argument that Walter Roberts is a bona fide purchaser for value ignores the facts. The facts are stipulated that at the auction sale which Walter Roberts attended a representative from Defendant Lester stood up, waved his hand, and announced that Lester claimed the property. In addition, Mr. Rhodes himself who was the trustee when Walter Roberts bought

the property admits that he received written notice of the claim before he deeded the property to Mr. Roberts.

REPLY TO ISSUE NO. III

The third issue raised by Mr. Rhodes concerns the argument surrounding the fact that his clients have a general warranty deed. The only important thing to remember about the fact that his clients have a general warranty deed is that his clients have somebody to sue. The solution to this complicated case is very simple. Walter V. Roberts gave a general warranty deed to Plaintiffs Little and Hunt. Walter V. Roberts breached his general warranty deed to Plaintiffs Little and Hunt. Plaintiffs Little and Hunt ought to sue Walter V. Roberts on the general warranty. It is quite clear that Walter V. Roberts knowingly breached his general warranty to Plaintiffs Little and Hunt. He and his attorney were both on actual notice of Defendant Lester's claim and blindly proceeded forward in total disregard of this claim.

REPLY TO ISSUE NO. IV

In the fourth issue, Mr. Rhodes argues that Defendant Lester is not a bona fide purchaser. Unfortunately for Mr. Rhodes, whether Defendant Lester is or is not a bona fide purchaser is not at issue. Even if Mr. Rhodes is correct that Defendant Lester is not a bona fide purchaser, that is not significant in this case. Mr. Rhodes' clients don't have any title at all and thus they are in no position to claim that Defendant Lester is or is not a bona fide purchaser. The argument that Defendant Lester is not a bona fide purchaser is specious anyway because all of the authority Mr. Rhodes cites relates to what a lawyer is supposed

to do in an examination of title in the exercise of reasonable care. Mr. Rhodes cannot cite one single fact to show that Defendant Lester was on notice of any adverse claim to the property. Mr. Rhodes tries to bridge this gap in the evidence by making the ridiculous argument that because the tax sale decree referred to James Grant and his "assigns" that this somehow put Defendant Lester on such notice as would make them not a bona fide purchaser. This Alice in Wonderland logic is so weak that it is aggravating that Mr. Rhodes would expect anybody not to see through it. Defendant Lester already owned the property and had its deed recorded when the notice Mr. Rhodes relies upon was run. Defendant Lester Lumber Company got the property in 1945. Mr. Rhodes argues that by some magic a tax sale notice run in 1960 makes Defendant Lester Lumber Company other than a bona fide purchaser.

CONCLUSION

Mr. Rhodes overlooks the basic fact that the tax sale decree from and through which his clients claim title is not only voidable but flat out void. It is void because when Franklin County brought the suit there were no delinquent taxes on the property and Franklin County had the records to show that there were no delinquent taxes on the property. Franklin County knew by its own records Defendant Lester Lumber Company had paid the taxes up to date yet Franklin County had not paid any attention to its own records, which is a breach of statutory duty, which records showed that Defendant Lester Lumber Company not only claimed the property but had paid the taxes on it. If Mr. Rhodes' arguments about special warranty deeds and general warranty deeds and laches have any merit, they might have some merit for some other case but certainly not for this case. Mr. Rhodes is just not the right person to be making the

arguments because his clients don't have any title. His clients ought to sue Walter V. Roberts who gave, and breached, a general warranty deed.

Respectfully submitted this 9th day of February, 1987.

THE LESTER GROUP, INC.,
f/n/a Lester Lumber Company

By 

Counsel

Philip G. Gardner, Esq.
GARDNER, GARDNER & BARROW, P.C.
Fourth Floor, Dominion Bank Building
231 East Church Street
Martinsville, VA 24112
703-638-2455

CERTIFICATE

This is to certify that a true copy of the foregoing pleading was this day mailed to all counsel of record.


Counsel

2-9-87
Dated

221 Va. at 1104, 277 S.E.2d at 486. The distinction between that case and this lies in the fact that a prudent title attorney, preparing the order of publication in the tax suit, would have discovered Ned Brown's claim. The same property had been subjected to a judicial sale in another chancery suit four years earlier. Brown had been the successful bidder then, and the final decree had confirmed the sale and recited that a deed had been delivered to him but that it was still unrecorded. It would have been the duty of a prudent title examiner to examine the papers in the earlier suit, which named the record owners as defendants and came within their chain of title. Brown was thus not outside the record chain, as the Rush heirs were in the case at bar.

[3] Undoubtedly William Harding intended to convey the land to Reanna Rush and her husband. The original deed may well have contained their names correctly spelled.* Were they, or their heirs, upon due process principles, entitled to notice, in their true names, of the tax sale? To so hold would seriously impair the integrity of our system of recording land titles. It would require a title examiner to search for unrecorded matters as a guard against scrivener's mistakes. He would rely on the record only at his peril.

The facts of this case are unlike those frequently seen where tax authorities erroneously assess land in a name different from that of the owner shown by the land records. We need not, therefore, consider whether the misnomer was sufficiently slight to put the true owners on notice of the assessment, or whether they by their conduct waived any objection thereto, or whether the purchaser at the tax sale is protected by the two-year statute of limitations provided by Code § 58-1064. We think that George and Reanna Rush, in causing their deed to be recorded in 1877, were responsible for the misnomers thus perpetuated in the land records, and that neither they nor any parties claiming under them, in the absence of fraud or oppressive conduct by others, were in a position to complain of or to take advantages of the resulting confusion.

The case of *White v. Himmelberger-Harrison Lumber Co.*, 240 Mo. 13, 139 S.W. 553 (1911), is in point. There, a grantee named

* The original deed is not in evidence. If it contained the erroneous name, then by the reasoning we adopt in this opinion, the grantee who offered it for recordation is estopped to complain of the erroneous record which resulted. But whether it was erroneous or not, it was not void. A deed to a non-existent person is a valid conveyance to the intended but mis-named grantee, if such a person exists and if the intention of the parties can be ascertained. *City Bank of Portage v. Plank*, 141 Wis. 653, 124 N.W. 1000 (1910).

Opinion.

O.H.P. Williams took his handwritten deed to the clerk for recordation. The clerk copied it into the land records, misnaming the grantee as O.N.P. Williams. Taxes assessed in the name of record became delinquent. Notice was given to "O.N.P. Williams" and a tax sale was completed in that name. Williams' successor attacked the sale on the ground that the statutory notice had not been given to Williams, but to a non-existent person. The court held, overruling prior authority to the contrary, that the clerk recording a deed acts as the agent of the person offering it for recordation. The purpose of recordation is to protect the grantee's interest, and the recorder acts for him in copying the deed into the record. If this task is improperly done, the consequences must be borne by the party at whose instance it was done, rather than by an innocent purchaser. The original deed does not constitute notice to subsequent purchasers after it has been copied into the record. After it is copied, the record alone imparts such notice. The court further held that the persons claiming under Williams were estopped to dispute the correctness of the record: "Wherever one of two innocent persons must suffer by the acts of a third, he who has enabled such third person to occasion the loss must sustain it." *Id.* at 25, 139 S.W. at 556.

We agree with the foregoing reasoning and will accordingly affirm the decree.

Affirmed.

Commonwealth of Virginia

TWENTY-SECOND JUDICIAL CIRCUIT
CIRCUIT COURT OF DANVILLE
CIRCUIT COURT OF FRANKLIN COUNTY
CIRCUIT COURT OF PITTSYLVANIA COUNTY



B. A. DAVIS, III, JUDGE
ROCKY MOUNT, VIRGINIA 24151

JAMES F. INGRAM, JUDGE
DANVILLE, VIRGINIA 24541

SAMUEL M. HAIRSTON, JUDGE
CHATHAM, VIRGINIA 24531

February 13, 1987

Ralph B. Rhodes, Esq.
Hutcherson & Rhodes
Main Street
Rocky Mount, Virginia 24151

Philip G. Gardner, Esq.
Gardner, Gardner & Barrow
P. O. Drawer 552
Martinsville, Virginia 24112

Re: Hunt and Little v. Lester

Gentlemen:

In reference to the above, I see no need in setting forth the factual matters as to the chain of title; most, if not all matters, have been stipulated or are not in dispute.

It is evident from the facts that both the plaintiffs and defendant feel, and justifiably so, that they each have title to the property in question.

As counsel has stated time and again, the difficulty began on March 4, 1878, when a deed was recorded in the Clerk's Office of this court by and between Charles L. Powell, Commissioner "in the case of Mitchell & Reynolds against James Grant's administrator and others of the one part, and William T. Mitchell and John R. Cabell of the other part..."

When the conveyance was recorded, it was indexed by the then Clerk as a deed from Charles L. Powell, Commissioner, to William T. Mitchell and John R. Cabell. In the indexing, no reference was made that the conveyance was on behalf of James Grant or his estate. The result of which is that there is nothing in the grantor index to indicate that the Grant property was the subject of this conveyance, and the Commissioner of Revenue continued to carry this property as Grant's

Ralph B. Rhodes, Esq.
Philip G. Gardner, Esq.
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February 13, 1987

taxable real estate since there was nothing in the indexing to show or indicate that the Grant property had been conveyed to Mitchell and Cabell and as a result of which the property was sold for delinquent taxes assessed in the name of Grant to W. L. and P.G. Saunders by virtue of the Chancery suit styled Franklin County v. James Grant, his heirs, devisees, assigns and unknown heirs.

First - I find that in the Chancery suit styled "Franklin County v. James Grant, his heirs, devisees, assigns, and any unknown heirs" by virtue of which the property was sold for non-payment of taxes, that the order of publication and the publication were both proper and legally correct.

Second - Contrary to counsels insistence, there was no way, due to the defect in indexing, that either party in the two chains of title could know or be put on notice of the claim of the other. The same 191 acres being carried on the tax records in different names as two different tracts or parcels of land.

Third - Counsel for The Lester Group contends that at the time the property was sold at public auction by Ralph B. Rhodes, Trustee, to Walter V. Roberts that a statement by a Lester representative that The Lester Group owned the property to be sold was sufficient notice to a prospective purchaser and voided the sale. Further, that a letter from Lester's attorney to Rhodes was sufficient notice to void title in Roberts. I do not agree. The Lester Group should have proceeded by a petition for injunction to enjoin the Trustee's sale rather than having someone make a statement at the time of sale as to Lester's alleged claim and likewise a letter from Lester's attorney was and is of no effect. A Trustee cannot and should not in such instances void or terminate a sale.

Fourth - The Court finds that *Pruitt v. Ferguson*, 224 Va. 507 (1982) is controlling. That the conveyance made as the result of the suit, *Mitchell and Reynolds v. James Grant's administrator* which deed was recorded on March 4, 1878, was not properly indexed; that the Clerk of the Circuit Court was acting as the agent for Mitchell and Cabell, the grantees, and unfortunately this omission in indexing must be borne by The Lester Group, it being in the Mitchell and Cabell chain of title.

Ralph B. Rhodes, Esq.
Philip G. Gardner, Esq.
Page 3
February 13, 1987

The Court finds that Larry K. Little and Douglas
M. Hunt are the title owners of the property in dispute.

Mr. Rhodes will prepare the requisite order setting
forth Mr. Gardner's objections and exceptions and forward
to me for entry.

Very truly yours,

B. A. Davis, III

BADIII:ja

CHAIN OF TITLES FOR LESTER LUMBER AND LARRY LITTLE

LESTER

HUNT & LITTLE

H. Percue (Special Commissioner)

Lester Lumber Company, Inc. dated
Feb. 1945 recorded 104/319. Conveys
191 acre tract acquired 70/547

Clement (Special Commissioner) to
Cobbs and S.P. Brown dated 24 Feb.
recorded 70/547. Suit styled
Yeatts v. Yeatts filed in Pittsylvania
County to partition property. Conveys
191 acres.

James L. Treadway (Trustee) to D.B. Yeatts
dated 26 December 1896 recorded 46/549
conveying 191 acres "conveyed to James
Grant in warrant no. 15268 from the
Governor of Virginia". Deed forecloses
mortgage of W.T. Mitchell granted in D/T
recorded in Pittsylvania County.

Charles L. Powell (Commissioner) to
William T. Mitchell and John R. Cabell
dated 4 March 1878 recorded 32/587
included 191 acre tract. Deed recites
that Charles L. Powell was appointed
Commissioner in a creditors' suit to
sell the lands of James Grant. Style
of suit was Mitchell and Reynolds v.
James Grant's Administrator.

Walter V. and Virginia S. Roberts to
Larry K. Little and Douglas M. Hunt
dated 17 March 1983 recorded
670/1960 conveying 191 acres

Ralph B. Rhodes (Trustee) forecloses
D/T of Jessups' to Walter V. Roberts
dated 3 December 1970 recorded
268/16 conveying 191 acres

W.L. and P.G. Saunders and wives to
Burton and Gladys Jessup dated 15
August 1961 recorded 192/374
conveying 191 acres

Russell L. Davis (Special Commissioner)
to W.L. and P.G. Saunders dated
7 April 1960 recorded 175/193
conveying 191 acres

Commonwealth of Virginia to James
Grant dated 13 June 1845 RECORDED
12 March 1957 conveying 191 acres
148/369

Deed from Willis J. Cousins and James Grant to
James Grant dated 29 December 1849 recorded
21/327 conveying to James Grant the 191 acre
tract previously encumbered

Deed of Trust from James Grant to Willis J.
Cousins Dated 16 August 1845 encumbering
105 acre tract and a 191 acre tract

87 FEB 17 AM 1:03

FILED/FRANKLIN CO.
CLERK OF CIRCUIT COURT
WM. J. WALKER JR.

VIRGINIA:

IN THE CIRCUIT COURT OF FRANKLIN COUNTY

LARRY K. LITTLE

and

DOUGLAS M. HUNT,

Plaintiffs,

v.

THE LESTER GROUP, INC.,
f/n/a Lester Lumber Company,

Defendant.

FINAL ORDER
#84-4-1143

THIS DAY CAME the plaintiffs and the defendant, by their counsel, pursuant to the proceedings heretofore held in this cause; and,

UPON CONSIDERATION WHEREOF and after considering the evidence heard by the Court Ore Tenus, stipulations of facts and other evidence, and after reviewing the various Memorandums of Law filed by each of the parties herein, the Court finds that the plaintiffs, Larry K. Little and Douglas M. Hunt are the title owners of certain property containing approximately 191 acres located on Turkey Cock Mountain, Franklin County, Virginia, as more fully described in plaintiffs' Motion for Judgment for the reasons set forth in this Court's opinion letter to counsel for plaintiffs and defendant dated February 13, 1987, a copy of which letter is attached to this Order and by reference made a part of this Order; and, it is,

THEREFORE, ORDERED and ADJUDGED for the reasons set forth in the Court's Memorandum Letter dated February 13, 1987, which copy of Opinion Letter is attached hereto and made a part of this Order, the plaintiffs, Larry K. Little and Douglas M. Hunt, are the title owners and have the right of possession as against Lester Group, Inc., f/n/a Lester Lumber Company, of the following 191 acre tract of land, more or less, situated on Turkey Cock Mountain, Franklin County, Virginia, and described as follows:

FILED/FRANKLIN CO.
CLERK OF CIRCUIT COURT
WM. J. WALKER JR.
3/17/87
copy
3/17/87
Main Street
Mount, Va. 24131

BEGINNING at an existing iron pipe located in the northern bank of a branch, Amos' corner in George Wallser's western line; thence, with said branch the following courses and distances: N. 52 degs. 15' W. 78.58 feet to a stake; N. 1 deg. 00' W. 66.96 feet to a stake; N. 60 degs. 13' W. 178.77 feet to a stake; N. 3 degs. 12' E. 168.76 feet to a stake; N. 36 degs. 22' W. 81.13 feet to a nail in a stone pile; thence, crossing said branch with Amos' line, S. 55 degs. 38' 10" W. 465.47 feet to a stake; thence, continuing with Amos' line, S. 88 degs. 29' 45" W. 1452.00 feet to a stake; thence, leaving Amos' line, N. 26 degs. 35' W. 1181.41 feet to a stake; thence, N. 31 degs. 50' E. 1633.22 feet to a stake; thence, N. 56 degs. 42' 30" E. 1320.00 feet to a stake; thence, N. 34 degs. 40' E. 693.00 feet to a stake; thence, S. 58 degs. 34' E. 1485.00 feet to a stake and stone at a marked maple in George Wallser's western line; thence with said Wallser's line, S. 17 degs. 57' 20" W. 3259.74 feet to the point and place of BEGINNING, containing 193.07 acres, more or less, all according to a survey by Clotus Craven, R.L.S., dated October 26, 1981, and of record in the Clerk's Office Circuit Court of Franklin County, Virginia, in Deed Book 370, Page 1964.

BEING the same land conveyed to Larry K. Little and Douglas M. Hunt, by deed dated March, 1983, from Walter V. Roberts and Virginia S. Roberts, his wife, and of record in the aforesaid Clerk's Office in Deed book 370, Page 1960.

All of which the defendant objects to the findings of the Court and the entrance of this Order; and, it is,

FURTHER ORDERED that 31 days from the date of this Order, unless Notice of Appeal has been filed by the defendant with an Appeal Bond in the sum of \$500.00. The Clerk of this Court shall file this Order with the Deeds in his office indexing this Order in the Grantor Index in the names of Larry K. Little and Douglas M. Hunt, as well as Lester Group, Incorporated, f/n/a Lester Lumber Company, and Lester Lumber Company; and,

THE CLERK is FURTHER ORDERED to remove this cause from the docket.

ENTER this the 17th day of March, 1987.

B. W. Lewis
Judge

We have seen this Order:

[Signature]
Counsel for Plaintiffs

We have seen this Order and object to the findings of the Court:

Philip Theodore
Counsel for Defendant

Philip Theodore not appearing on the date of the entry of this order but consenting to its entry with objections noted, by telephone 3/17/87

3/17/87

B. W. Lewis

II. ASSIGNMENTS OF ERROR

- 1. THE COURT ERRED IN FINDING THAT LITTLE AND HUNT'S PREDECESSORS IN TITLE OBTAINED VALID TITLE TO THE PROPERTY AT A TAX SALE WHEREIN THE TAXES ON THE PROPERTY WERE NOT, IN FACT, DELINQUENT AND THE LESTER GROUP DID NOT RECEIVE PROPER NOTICE OF SUCH TAX SALE.**
- 2. THE COURT ERRED IN RULING THAT THE LESTER GROUP DID NOT PROPERLY PUT LITTLE AND HUNT'S PREDECESSORS IN TITLE ON NOTICE OF THE CLAIM OF THE LESTER GROUP EVEN THOUGH AT THE AUCTION SALE WHEREIN LITTLE AND HUNT'S PREDECESSORS IN TITLE PURCHASED THE PROPERTY; THE LESTER GROUP ANNOUNCED AT THE AUCTION SALE ITS CLAIM TO THE PROPERTY AND FURTHER SPECIFICALLY NOTIFIED THE TRUSTEE, PRIOR TO THE SALE, IN WRITING OF THE LESTER GROUP'S CLAIM TO THE PROPERTY.**

3. THE COURT ERRED IN RULING THAT THE CASE WAS CONTROLLED BY PRUITT V. FERGUSON, 224 Va 507, 297 S.E.2d 714 (1982). THE RULE OF PRUITT V. FERGUSON RELATING TO THE EFFECT OF A CLERK'S RECORDING ERROR ON TITLE IS DISTINGUISHABLE AND FURTHER THE COURT ERRED IN ALLOWING LITTLE AND HUNT TO ASSERT THE RULE IN PRUITT V. FERGUSON SINCE LITTLE AND HUNT DID NOT THEMSELVES HAVE SUFFICIENT TITLE TO ASSERT PRUITT V. FERGUSON.

STATE OF NORTH CAROLINA

RANDOLPH County.

This Deed Made this _____ day of

March _____, A. D. 19⁸³ by and between _____

Walter V. Roberts and wife, Virginia S. Roberts

of the County of Randolph and State of North CarolinaPart ies of the first part, and _____

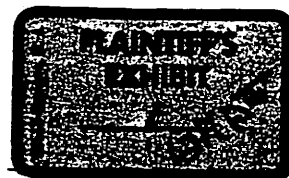
Larry K. Little and Douglas M. Hunt

of the County of Davidson and State of North Carolinapart ies of the second part:

WITNESSETH, that the said part ies of the first part, in consideration of
TEN DOLLARS AND OTHER VALUABLE CONSIDERATIONS (\$10.00 et al) -- Dollars
 to them paid by the part ies of the second part, the receipt of which is hereby
 acknowledged, have bargained and sold, and by these present do grant, bargain, sell and
 convey unto the said parties of the second part _____ and
 their heirs, all that certain tract or parcel _____

_____ of land, situate, lying and being in
Southeast Magisterial
District Township Franklin County, State of
Virginia

~~North Carolina~~ and more particularly described and defined as follows:



✓ BEGINNING at an existing iron pipe located in the northern bank of a branch, Amos' corner in George Wallser's western line; thence with said branch the following courses and distances: North 52° 15' West 78.58 feet to a stake; North 1° 00' West 66.96 feet to a stake; North 60° 13' West 178.77 feet to a stake; North 3° 12' East 168.76 feet to a stake; North 36° 22' West 81.13 feet to a nail in a stone pile; thence crossing said branch with Amos' line, South 55° 38' 10" West 465.47 feet to a stake; thence continuing with Amos' line, South 88° 29' 45" West 1452.00 feet to a stake; thence leaving Amos' line, North 26° 35' West 1181.41 feet to a stake; thence North 31° 50' East 1633.22 feet to a stake; thence North 56° 42' 30" East 1320.00 feet to a stake; thence North 34° 40' East 693.00 feet to a stake; thence South 58° 34' East 1485.00 feet to a stake and stone at a marked maple in George Wallser's western line; thence with said Wallser's line, South 17° 57' 20" West, 3259.74 feet to the point and place of BEGINNING, being 193.07 acres, more or less, all according to a survey by Clotus Craven, R.L.S., Asheboro, North Carolina, dated October 26, 1981.

For back reference see deeds recorded in Deed Book 268, Pages 16, 17 and 18; Deed Book 192, Page 373, Franklin County Registry.

TO HAVE AND TO HOLD the aforesaid tract or parcel

of land and all privileges and appurtenances thereto belonging, to the said parties of the second part, their

heirs and assigns, to their only use and behoof forever.

And the parties of the first part, for t hemselves their heirs, executors and administrators, covenants with the said parties of the second part, their heirs and assigns, that they are seized of said premises in fee, and have the right to convey the same in fee simple; that the same are free and clear from all incumbrances, and that they will warrant and defend the said title to the same against the lawful claims of all persons whomsoever.

IN TESTIMONY WHEREOF, the said parties of the first part to these presents ha ve hereunto set their hands, and seal s, the day and year above written.

SIGNED, SEALED AND DELIVERED
IN THE PRESENCE OF

Charles H. Anderson, Jr.
Janet R. Anderson

Walter V. Roberts (Seal)
Virginia S. Roberts (Seal)
Virginia S. Roberts (Seal)
Virginia S. Roberts (Seal)

STATE OF NORTH CAROLINA

County of RANDOLPH

ss.

I, W. VANCE ROBERTS, JR. a Notary Public
for said County and state _____ do hereby certify that
Walter V. Roberts and wife, Virginia S. Roberts

XXX

XXX, personally appeared before me this day and
acknowledged the due execution of the foregoing (or annexed) instrument;

Let the instrument and the certificate be registered.

WITNESS my hand and notarial seal, this 17 day of March

My commission expires: Feb. 19, 1986



STATE OF _____

County of _____

ss.

I, _____
for said County and state _____ do hereby certify that

and

_____ wi _____, personally appeared before me this day and
acknowledged the due execution of the foregoing (or annexed) instrument;

Let the instrument and the certificate be registered.

WITNESS my hand and _____ seal, this _____ day of _____, 19 _____

P.A.M.CO

Form R. D. 825

DEED

Walter V. Roberts and wife,

Virginia S. Roberts

To

Larry K. Little and

Douglas M. Hunt

Consideration, - - - - \$ 10.00 et al

Dated day of March 1983

Filed for registration on the day of , 19 , at o'clock

 M., and registered in the office of Registrar of Deeds for County, NC Virginia

 day of , 19 , at o'clock in Book of Deeds, on Page , &c.

Register of Deeds.

Drawn By

GAVIN AND PUGH ATTORNEYS

P.O. BOX 786, Asheboro, NC

27204-0786

PLAINTIFF' S EX. NO. 2 -

**MAP; Too large to be reasonably incorporated into appendix. Can be viewed
in the Clerk's Office.**

35								
1	2	3	4	5	6	7	8	9

Lawyers Title Insurance Corporation

Schedule A

OWNER'S POLICY

CASE NUMBER	DATE OF POLICY	AMOUNT OF INSURANCE	THE POLICY NUMBER SHOWN ON THIS SCHEDULE MUST AGREE WITH THE PREPRINTED NUMBER ON THE COVER SHEET	POLICY NUMBER
R-45148	3/21/83 at 2:06 P.M.	\$50,000.00		85-00-017432

1. Name of Insured:

LARRY K. LITTLE AND DOUGLAS M. HUNT

2. The estate or interest in the land described herein and which is covered by this policy is:

FEE SIMPLE

3. The estate or interest referred to herein is at Date of Policy vested in:

Larry K, Little and Douglas M. Hunt



4. The land referred to in this policy is described as follows:

Located in the County of Franklin, State of Virginia:

BEGINNING at an existing iron pipe located in the northern bank of a branch, Amos' corner in George Wallser's western line; thence with said branch the following courses and distances: North 52° 15' West 78.58 feet to a stake; North 1° 00' West 66.96 feet to a stake; North 60° 13' West 178.77 feet to a stake; North 3° 12' East 168.76 feet to a stake; North 36° 22' West 81.13 feet to a nail in a stone pile; thence crossing said branch with Amos' line, South 55° 38' 10" West 465.47 feet to a stake; thence continuing with Amos' line, South 88° 29' 45" West 1452.00 feet to a stake; thence leaving Amos' line, North 26° 35' West 1181.41 feet to a stake; thence North 31° 50' East 1633.22 feet to a stake; thence North 56° 42' 30" East 1320.00 feet to a stake; thence North 34° 40' East 693.00 feet to a stake; thence South 58° 34' East 1485.00 feet to a stake and stone at a marked maple in George Wallser's western line; thence with said Wallser's line, South 17° 57' 20" West, 3259.74 feet to the point and place of BEGINNING, being 193.07 acres, more or less, all according to a survey by Clotus Craven, R.L.S., Asheboro, North Carolina, dated October 26, 1981.

AND BEING THE SAME PROPERTY CONVEYED TO Larry K. Little and Douglas M. Hunt from Walter V. Roberts and Virginia S. Roberts, wife, by deed dated March 1983, recorded in Deed Book 370, page 1960 in the Clerk's Office of the Circuit Court of Franklin County, Virginia.

ROANOKE BRANCH OFFICE

Countersignature Authorized Officer or Agent

Roanoke, Virginia

R-45148

pr

Issued at (Location)

VIRGINIA:

IN THE CIRCUIT COURT OF FRANKLIN COUNTY

FRANKLIN COUNTY, a body politic :
Vs. : B I L L
JAMES GRANT, his heirs, devisees, ;
assigns, and any unknown heirs :

TO THE HONORABLE LANGHORNE JONES, JUDGE OF SAID COURT:

Your complainant, Franklin County, Virginia, respectfully shows unto the Court the following:

(1) That by grant dated 1854, by virtue of Land Office Treasury Warrant 15268, James Grant was granted one hundred ninety one (191) acres of land lying and being in Franklin County on Turkey Cock Mountain, and bounded as follows:

BEGINNING at a black gum in Iabez Smith's line on the Big Branch; thence with said Smith's line, North 15 1/2 East 196 poles, cropping two branches to a red oak; thence new lines, North 57 West 90 poles to pointers on the top of said mountain; thence along the top, South 35 West 82 poles to a bunch of chestnut sprouts, South 51 West 80 poles to a chestnut oak, South 30 West 56 poles to a chestnut oak, South 33 1/2 East 72 poles to a chestnut oak, East 88 poles to a bunch of chestnut sprouts, North 54 East 28 poles to a maple on the aforesaid branch, and down the same as it meanders South 35 East 35 poles to the BEGINNING.

Which grant was recorded in the Clerk's Office of the Circuit

Court of Franklin County, Virginia, on the 12 day of March,

1457 in deed Book 748-369, and which land adjoins the lands of Martie Walker, and others.

(2) That there is due and owing to the County of Franklin, the complainant herein, the delinquent taxes on the said real estate for three years, which delinquent taxes are assessed on the above real estate in the name of James Grant, and which your complainant alleges are prior liens thereon.

(3) That the Board of Supervisors of Franklin County, Virginia, on the 20 day of May 1957, passed a resolution that the said lien of taxes be enforced for said delinquent taxes against the above real estate, as provided by law.

(4) That your complainant desires to release its rights as the purchaser of the real estate for said delinquent taxes due thereon and hereby elects to enforce its lien against said real estate for the payment of the aforesaid delinquent taxes, as provided by Section ⁵⁸⁻¹¹⁰¹ 58-1014 of the Code of Virginia of 1950 and other sections relative thereto in Article ^{IX} Nine of said Code;

(5) Your complainant does not know whether the said James Grant is living, or dead, nor does he know whether if dead he left any heirs, but your complainant has been unable to get in touch with same, nor does your complainant know the names of said heirs. However, your complainant desires that an order of publication may be awarded against the said James Grant, and also against any of his unknown heirs as being parties unknown, and against his devisees and assigns.

IN CONSIDERATION WHEREOF, and forasmuch as your complainant is without remedy, save in a Court of Equity, your complainant prays that the said James Grant, or the heirs of the said James

Grant who are unknown, his devisees or assigns, may be made party defendant to this Bill; and may an order of publication be awarded against the said James Grant, or against all unknown heirs of the said James Grant; may all proper accounts be taken and inquiries directed; that the said real estate may be sold for your complainant's lien; that your complainant may be allowed its proper cost herein, including a reasonable attorney fee; and may your complainant have all such further and general relief in the premises as the nature of its case may require, and to equity may seem meet.

FRANKLIN COUNTY, VIRGINIA

By: Russell L. Davis
Counsel

Russell L. Davis, p.q.
Main Street
Rocky Mount, Virginia

VIRGINIA:

IN THE CIRCUIT COURT OF FRANKLIN COUNTY

FRANKLIN COUNTY, a body politic :
V. : A F F I D A V I T
JAMES GRANT, his heirs, devisees, :
assigns, and any unknown heirs :

Russell L. Davis, Attorney for Franklin County, Virginia,
makes the following statements under oath:

That on the 20th day of May, 1957, the Board of Supervisors
of Franklin County, Virginia, passed a resolution giving them
authority to enforce a lien of delinquent taxes against the real
estate of James Grant; that James Grant owned a tract of land in
Union Hall Magisterial District, Franklin County, Virginia, con-
taining One Hundred Ninety One (191) Acres, which Grant was
dated 1854; that the said James Grant departed this life many
years ago, and that his heirs, devisees and assigns are unknown.

Given under my hand this the 25th day of February, 1959.

Russell L. Davis (SEAL)

Subscribed and sworn to before me, Dolores F. Hudson, a
Notary Public in and for the County of Franklin, State of Virginia,
this the 25th day of February, 1959.

My commission expires: December 2, 1961.

Dolores F. Hudson
Notary Public
(Commissioned as Dolores France)

The object of this suit is to sell the land of which James
Grant owned on Turkey Cock Mountain, Franklin County, Virginia, for
the payment of delinquent taxes thereon.

State of Virginia, to-wit:

In the Clerk's Office of the Circuit Court for the County of Franklin, at the Court House thereof, on the 25 day of February, 1959

Franklin County, a body politic

Plaintiff,

} IN CHANCERY

Against

James Grant, his heirs, devisees,
assigns, and any unknown heirs

Defendant,

The object of this suit is to sell the land of which James Grant owned
on Turkey Cock Mountain, Franklin County, Virginia, for the
payment of delinquent taxes thereon.

And an affidavit having been made and filed that the Defendant a, James Grant, his
heirs, devisees, assigns, and any unknown heirs

is are not a resident of the State of Virginia, it is ordered that they do appear here within ten days after due publication hereof, and do what may be necessary to protect their interest in this suit,

And it is further ordered that a copy hereof be published once a week for four weeks in The Franklin News-Post and that a copy be posted at the front door of the Court House of this County, and that a copy of this order be mailed to _____

Russell L. Davis, P. Q.

A Copy---Teste:

Clerk

STATE OF VIRGINIA, FRANKLIN COUNTY, TO-WIT:

I, Edwin Greer, Clerk of the Circuit Court of Franklin County, in the State of Virginia, do hereby certify that on the 25 day of February, 1959, I posted a copy of the within Order of Publication at the front door of the Court House of the County of Franklin, Virginia.

Given under my hand this 25 day of February, 1959

Edwin Greer, Clerk

(Insert Names and P. O.)

STATE OF VIRGINIA, FRANKLIN COUNTY, TO-WIT:

I, Edwin Greer, Clerk of the Circuit Court for the County of Franklin, State of Virginia, do hereby certify that on the _____ day of _____, 195____, I mailed a copy of the within Order of Publication to the Defendants _____

Given under my hand this _____ day of _____, 195 _____

Clerk

RECEIVED

AUG 20 '84

HUTCHINSON & HUGHES
ATTORNEYS AT LAW

RECEIVED
AUG 20 '84
NECHERSON & WATERS,
ATTORNEYS AT LAW

VIRGINIA:

IN THE CIRCUIT COURT OF FRANKLIN

FRANKLIN COUNTY, a body politic :
v. : DECREE OF REFERENCE
JAMES GRANT, his heirs, devisees, :
assigns, and any unknown heirs :

This day this cause which has been regularly matured, set for hearing, and docketed, came on this day to be heard upon the Bill of Complaint and exhibits therewith; upon proper proof of the due execution of the Order of Publication against James Grant, his heirs, devisees, and assigns, if they be living, and against the defendants sued by the general description of "parties unknown", ten days having elapsed since the completion thereof, and they still failing to appear; and was argued by counsel.

On consideration whereof the cause is referred to Willard R. Finney, one of the Commissioners in Chancery of this Court, who will inquire and report as follows:

(1) Who are the owners of the real estate mentioned and described in the Bill in this cause as containing 191 acres of land on Turkey Cock Mountain, in Franklin County, Virginia, as set out in a Grant to James Grant, dated 1854, and known as Land Office Treasury Warrant #15268, which Grant was recorded in the Clerk's Office of Franklin County, Virginia, on the _____ day of

(2) What liens are against the property, and priority, and by whom held.

(3) What is the fee simple and annual rental value of the real property.

(4) Whether the real property is susceptible of partition in kind amongst the owners in any of the modes prescribed by law; and if not—

(5) Whether any of the owners is willing to take the whole property and pay to the others such sums of money as their interest may entitle them to; and if not—

(6) Whether the interest of those who are entitled to the subject or its proceeds will be promoted by a sale of the entire subject and division of the proceeds; and if so—

(7) Whether the proper parties are before the court in this cause to enable the court to effect such sale.

(8) Any other matter, specially stated, which the Commissioner may deem pertinent or which any party may request to be so stated.

ENTER:

4/14/59

L. Jones,
Judge

VIRGINIA:

IN THE CIRCUIT COURT OF FRANKLIN COUNTY

FRANKLIN COUNTY, a body politic

VS.

JAMES GRANT, his heirs, devisees,
assigns, and any unknown heirs

*
*
* REPORT OF COMMISSIONER IN
* CHANCERY
*
*

TO: THE HONORABLE LANGHORNE JONES, JUDGE OF SAID COURT:

The undersigned Commissioner in Chancery respectfully reports unto the Court that pursuant to a Decree of Reference entered in this cause on April 14, 1959, he proceeded to take Depositions in this cause on November 25, 1959; said Depositions are herewith filed and made a part of this Report. Your undersigned Commissioner in Chancery, acting under the direction of the said Decree reports to your Honor as follows:

I.

Who are the owners of the real estate mentioned and described in the Bill in this cause as containing 191 acres of land on Turkey Cock Mountain, in Franklin County, Virginia, as set out in a Grant to James Grant, dated 1854, and known as Land Office Treasury Warrant #15268, which Grant was recorded in the Clerk's Office of Franklin County, Virginia.

Your undersigned Commissioner reports that as far as the records in the Clerk's Office of the Circuit Court of Franklin County, Virginia, are properly kept and indexed that James Grant was the owner of the 191 acres of land lying and being on Turkey Cock Mountain in Franklin County, Virginia. This land was granted to James Grant by a Grant dated June 13, 1845, from James McDowell,

FILED 7 DAY OF Jan 1960

TESTE

129

CLERK

Governor of the State of Virginia. This Grant was made by virtue of a Treasury Warrant #15268; said tract of land being described in said grant as follows:

BEGINNING at a black gum in Iabez Smith's line on the Big Branch; thence with said Smith's line, North 15 1/2 East 196 poles, cropping two branches to a red oak; thence new lines, North 57 West 90 poles to pointers on the top of said mountain; thence along the top, South 35 West 82 poles to a bunch of chestnut sprouts, South 51 West 80 poles to a chestnut oak, South 30 West 58 poles to a chestnut oak, South 33 1/2 East 72 poles to a chestnut oak, East 88 poles to a bunch of chestnut sprouts, North 54 East 26 poles to a maple on the aforesaid branch, and down the same as it meanders South 35 East 35 poles to the BEGINNING.

The records of the Clerk's Office show that this grant was not placed on record in said Clerk's office until March, 1957, and it is now of record in Deed Book 148, page 369. A copy of the Deed is filed in this cause.

From the Depositions and from the records of the Clerk's office, your undersigned Commissioner was unable to determine whether James Grant is deceased, and if he is deceased, who were his heirs. Considering the date of the grant, it would appear that James Grant died, seized, and possessed of the above described tract of land.

II.

What liens are against the property, and priority, and by whom held.

Your undersigned Commissioner reports that he is unable to find any liens against this property except the unpaid taxes for the years 1955, 1956, 1957, 1958, 1959.

Your Commissioner reports that the following taxes are due:

Year 1955	\$47.63	
Year 1956	45.03	
Redemption Fee	.50	
Year 1957	53.02	
Year 1958	39.77	
Year 1959	38.61	
TOTAL		\$224.56

A statement from the treasurer's office and clerk's office, is herewith filed and made a part of this report, which also shows the above delinquent taxes. This is computed through December 31, 1959. The taxes for 1960 will of course be pro-rated as of the date of sale.

III.

What is the fee simple and annual rental value of the real property.

The Evidence taken in this cause indicates that the land has no rental value whatsoever, and that the fee simple value is approximately \$500. It is rough land, uncultivated, and no buildings are located on it.

IV.

Whether the real property is susceptible of partition in kind amongst the owners in any of the modes prescribed by law.

The Commissioner reports that since the heirs of James Grant are not known, it is not possible to determine whether this land could be partitioned in kind amongst the owners. Considering the location of the land and the fact that it is uncultivated, it is thought that it is not susceptible of partition in kind.

V.

Whether any of the owners is willing to take the whole property and pay to the others such sums of money as their interest may entitle them to.

Again, since it is impossible to determine the heirs, if any, of James Grant, it is not possible to determine whether any of the owners is willing to take the property and pay the remaining heirs their respective interest for the land. The heirs were proceeded against by order of publication duly posted on the front door of the Court House, and by publication as prescribed by law in the FRANKLIN NEWS POST. None of them have appeared or answered.

Whether the interest of those who are entitled to the subject or its proceeds will be promoted by a sale of the entire subject and division of the proceeds.

Your undersigned Commissioner reports that it would be to the benefit of the plaintiff that this land be sold at public auction and the proceeds used to pay all costs and the remainder applied on the delinquent taxes as hereinabove listed. The plaintiff has a lien on the property by virtue of the delinquent taxes.

VII.

Whether the proper parties are before the Court in this cause to enable the Court to effect such sale.


Your Commissioner reports that the defendant, his heirs, devisees and assigns, and any unknown heirs, have been proceeded against by order of publication as set forth above. Therefore, the Party Defendants have been properly proceeded against, and for that reason, the Court should order this tract of land sold to satisfy the delinquent tax liens. Your undersigned Commissioner reports that under the Code of Virginia, under which this suit has been brought, that it is in order for the Court to decree that the delinquent taxes are a judgment lien against the real estate involved in this suit and said lien may be enforced as a judgment lien is enforced between individuals.

VIII.

Any other matter, specially stated, which the Commissioner may deem pertinent or which any party may request to be so stated.

Your Commissioner reports that there has not been brought to his attention any other matters pertinent to this cause.

All of which is respectfully submitted this the 7th day of January, 1960.


Willard R. Finney
Special Commissioner

I certify that I have this day notified the attorney for the Plaintiff that I would on this day file the above report. A copy of this report has this day been delivered to the Attorney for the Plaintiff.

Willard R. Finney
Special Commissioner

Commissioner charged 7-28-100
Willard R. Finney

VIRGINIA:

IN THE CIRCUIT COURT OF FRANKLIN COUNTY

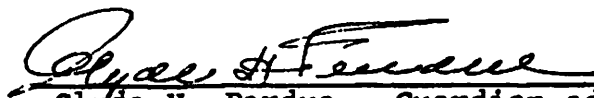
FRANKLIN COUNTY, A BODY POLITIC :

VS. :

ANSWER OF INFANT DEFENDANTS
OR INSANE DEFENDANTS BY
THEIR GUARDIAN AD LITEM

JAMES GRANT, his heirs, devisees,
assigns, and any unknown heirs :

The joint and several answers of any infant defendants, or any insane defendants who might be parties to this suit and designated as parties unknown, by Clyde H. Perdue, their Guardian ad Litem, assigned to defend their interest in this cause; these defendants for answer to the Bill of Complaint say that by reason of their status as defendants, non sui juris, being infants or insane persons, they are incapable of understanding the matters involved in this suit, and ask that no decrees be entered to their prejudice.



Clyde H. Perdue - Guardian ad Litem
for any defendants who might be
infants, or who might be insane,
and designated under the general
term as heirs unknown.

*Filed
2-25-60*

1955 -	4234	5.29	71.00
1956	4228	2.75	45.03
			<u>92.66</u>
			50
			<u>\$ 93.16</u>

James Grant
191 acres

TREASURER'S OFFICE
FRANKLIN COUNTY, VA.
ROCKY MOUNT, VA.

195...

You will find taxes listed below as requested:

1959	Name	No.	Dist.	Acres	\$ 38.61
	Name	No.	Dist.	Acres	\$ 38.61
1958	Name	No.	Dist.	Acres	\$ 39.77
1957	Name	No.	Dist.	Acres	\$ 53.02
	Name	No.	Dist.	Acres	\$
Total					\$ 131.40

We will be glad to give you any further information you may request.

Yours very truly,

G. HUGH TURNER, Treasurer.

Taxes back of are collected by the Clerk of the Court.

PLEASE RETURN THIS NOTICE WITH YOUR REMITTANCE

VIRGINIA:

IN THE CIRCUIT COURT OF FRANKLIN COUNTY

FRANKLIN COUNTY, A BODY POLITIC :

VS. : DECREE OF SALE

JAMES GRANT, his heirs, devisees,
assigns, and any unknown heirs :

This day this cause came on again to be heard upon the papers formerly read, and upon the Answer of Clyde H. Perdue, Guardian ad Litem for the infant defendants, and upon the Report of Willard R. Finney, the Commissioner in Chancery, which Report was filed on the 7th day of January, 1960, and no exception has been taken thereto, and was argued by counsel.

ON CONSIDERATION WHEREOF, it appearing to the Court that more than ten days have elapsed since the filing of said report, and no exception has been taken thereto, the said report of the Commissioner in Chancery is hereby ratified, confirmed and approved; and,

It further appearing from said Report that James Grant is the owner of 198 acres of land, lying and being on Turkey Cock Mountain, in Franklin County, Virginia, which is the same land that was conveyed to the said James Grant by a grant dated June 13, 1845, from James McDowell, Governor of the State of Virginia, by virtue of Treasury Warrant No. 15268, and which grant was recorded in the Clerk's Office of Franklin County, Virginia, on the 12th day of March, 1957, in Deed Book 148, at Page 369, and which land is more particularly described by metes and bounds in

said grant; and

It further appearing to the Court that there are delinquent taxes against said land for the years 1955, 1956, 1957, 1958 and 1959, in the total amount of \$224.56, which delinquent taxes have been computed through December 31, 1959, and which taxes are still delinquent, and the said land has not been redeemed by any of the heirs of the estate of James Grant, or by any person; and

It further appearing to the Court that Russell L. Davis, an attorney of Rocky Mount, Virginia, was authorized by the Board of Supervisors at a regularly held meeting on the 20th day of May, 1957, to proceed by bill in equity to sell the tract of land, as is provided for in the Code of Virginia, for the lien of delinquent taxes due the County of Franklin; and

It further appearing that the said James Grant is dead, and it is not known who are his heirs, devisees and successors in title, and they have been properly proceeded against by Order of Publication under the general description of parties unknown, as will appear from a certificate of the Franklin News Post dated February 25, 1959, and none of them have appeared or answered; and

That it would be to the benefit of the complainant, Franklin County, Virginia, that the land be sold at public auction, and Russell L. Davis is hereby appointed a Commissioner for the purpose of making sale of the real estate, at public auction to the highest bidder at the front door of the Court House in Rocky Mount, Virginia, after due advertisement thereof, by advertising same once a week for two consecutive weeks in a newspaper published in Rocky

Mount, Virginia, upon the terms of cash.

But before the said Commissioner shall act herein he shall enter into bond before the Clerk of this Court in at least the penalty of \$500, conditioned upon his faithful performance herein.

ENTER:

12/5/60

L Jones
Judge

RECEIVED

AUG 20 '84

Certificate of Publication

HUTCHERSON & RHODES
ATTORNEYS AT LAW

The Franklin News-Post

KERMIT W. SALYER, Publisher

Phone ROCKY MOUNT HU 3-5378

Rocky Mount, Virginia March 10, 1960

This is to certify that the attached legal advertisement, re:

Franklin County, a Body Politic, vs. James Grant
etc.

his heirs, devisees was published for two consecutive

weeks in The Franklin News-Post, a newspaper published at Rocky

Mount, County of Franklin, State of Virginia, and having a general

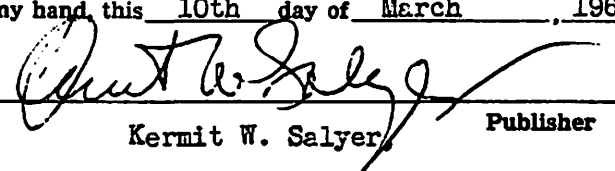
circulation in said County commencing on the 3rd

day of March, 1960 and that the charge for same

is \$ 14.00, ~~receipt of which is hereby acknowledged~~

~~indged~~

Given under my hand this 10th day of March, 1960


Kermit W. Salyer,

Publisher

LEGAL

COURT SALE OF VALUABLE TRACT OF LAND

Pursuant to a Decree entered in the Circuit Court of Franklin County, Virginia, on the 15th day of February, 1960, in the Chancery cause of Franklin County, a Body Politic, vs. James Grant, his heirs, devisees, assigns and any unknown heirs, I will, on

SATURDAY, MARCH 19, 1960
At 12:00 O'CLOCK NOON

at the front door of the Court House at Rocky Mount, Virginia, offer for sale at public auction to the highest bidder all that certain tract or parcel of land containing One Hundred Ninety One (191) Acres, more or less, situate, lying and being on the West-Cock Mountain in Franklin County, Virginia, near the Pennsylvania County and the Henry County line, and it being the same land that was granted to James Grant by James McDowell, Governor of the Commonwealth of Virginia, by Grant dated June 30, 1845, and which Grant was recorded March 12, 1957, in the Clerk's Office of the Circuit Court of Franklin County, Virginia, in Deed Book No. 148, at Page No. 369.

TERMS OF SALE: Cash

RUSSELL L. DAVIS,

Commissioner

J. Edwin Greer, Clerk of the Circuit Court of Franklin County, Virginia, do hereby certify that Russell L. Davis has executed the required bond in above cause.

3/3/10c

VIRGINIA:

IN THE CIRCUIT COURT OF FRANKLIN COUNTY

FRANKLIN COUNTY, A BODY POLITIC

V.

JAMES GRANT, his heirs, devisees,
assigns, and any unknown heirs

:

:

:

:

R E P O R T

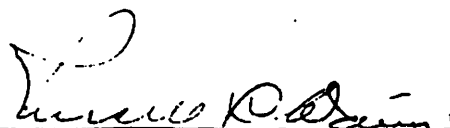
TO THE HONORABLE LANGHORNE JONES, JUDGE OF THE CIRCUIT
COURT OF FRANKLIN COUNTY, VIRGINIA:

Your undersigned Commissioner begs leave to report that in pursuant of a former Decree entered in this cause on the 25th day of February, 1960, authorizing the undersigned Commissioner to make sale of the James Grant tract of land, containing 191 Acres, more or less, and lying on Turkey Cock Mountain, he advertised same for sale at Public Auction to the highest bidder on Saturday, March 19, 1960, at 12:00 o'clock Noon, at the front door of the Court House in Rocky Mount, Virginia, upon the terms of cash. The sale was well attended and there were many bidders, and the highest bid of Thirty Two Hundred Dollars (\$3,200.00) was the bid of W. L. and P. G. Saunders of Chatham, Virginia. The said purchasers are ready to pay the cash price therefor.

The land bought a fair value and your Commissioner recommends confirmation of the sale and the respective purchasers desire the deed to be made without delay.

Respectfully submitted,

BY:



Russell L. Davis, Commissioner

VIRGINIA:

IN THE CIRCUIT COURT OF FRANKLIN COUNTY

FRANKLIN COUNTY, A BODY POLITIC :

V. : D E C R E E

JAMES GRANT, his heirs, devisees, :
assigns, and any unknown heirs :

This day this cause came on again to be heard upon the papers formerly read and upon the Decrees heretofore entered, and upon the Report of Sale of Russell L. Davis, the Commissioner herein, to which Report there is no exception taken, and was argued by Counsel.

UPON CONSIDERATION WHEREOF, it appearing to the Court that on the 25th day of February, 1960, a Decree was entered in this cause directing Russell L. Davis, to make sale of the said land, after due advertisement thereof, upon giving bond; and,

It further appearing that the said Russell L. Davis duly advertised the said real estate by posting hand bills in and around the vicinity of the property, and by advertising same in the Franklin News Post for two consecutive weeks, and it further appearing that the Commissioner has complied with the Decretal Orders in all respects, and further, from the Report of the said Russell L. Davis, the land sold in these proceedings brought a fair value and the purchasers desire to pay in cash, the purchase price therefor; the Report and the Sale therein mentioned are hereby RATIFIED, CONFIRMED and APPROVED, and the said Russell L. Davis, is hereby directed to make, execute and deliver a Deed to the purchasers, W. L. and P. G. Saunders, upon the payment of the purchase price of Thirty Two Hundred Dollars (\$3,200.00), Cash, and the said

Commissioner is directed to report his further proceedings here-
under to the Court.

It is further ADJUDGED, ORDERED and DECREED that the
said Commissioner shall be allowed the sum of \$ 160⁰⁰,
as Attorney fees, and after having paid the costs of this suit,
hold the balance in his hands until further order of this Court.

And this cause is continued.

4/5/66, ENTER
L. Jones, JUDGE

RECEIVED

AUG 20 '84

HUTCHERSON & RHODES
ATTORNEYS AT LAW

VIRGINIA:

IN THE CIRCUIT COURT OF FRANKLIN COUNTY

FRANKLIN COUNTY, a body politic)

vs.)

JAMES GRANT, his heirs, devisees,)
assigns, and any unknown heirs)
-----)

PETITION

Your Petitioner, Russell L. Davis, Commissioner in the above-styled suit, respectfully shows unto your Honor that upon the sale of the real estate mentioned and described in the Bill in this cause, he has collected all the money due from the sale thereof and has disbursed the money arising from the sale of the real estate in accordance with the Report of Willard R. Finney, Commissioner in Chancery of this Court, and in accordance with a former Decree entered by your Honor herein; and,

That after the payment of all delinquent taxes, costs and 5% commissions to the Commissioner herein, there remains a balance in his hands of \$2,636.87, and that the heirs of James Grant cannot be reached after due diligence has been exerted on your Commissioner's part to find them.

Your Petitioner prays that an Order may be entered directing your Commissioner to pay into Court the above amount of \$2,636.87 in accordance with Section 8-750 of the Code of Virginia, and that the Clerk of this Court be directed to deposit in a savings account in the Peoples National Bank of Rocky Mount, Virginia, the amount going to the heirs of James Grant, deceased.

W OFFICES
DAVIS, DAVIS,
RAINE
MOORE, VA.

Respectfully submitted this the 12 day of November, 1970.

Russell L. Davis
Russell L. Davis

Filed in the Clerk's Office of the Circuit
Court of Franklin County the 12
day of November
19 70.

Wm. J. Walker, Jr., Clerk

By Ann C. Walker Deputy Clerk.

RECEIVED

BOOK 34 PAGE 339

AUG 20 '84

HUTCHERSON & RHODES
ATTORNEYS AT LAW

VIRGINIA:

IN THE CIRCUIT COURT OF FRANKLIN COUNTY

FRANKLIN COUNTY, a body politic)

vs.)

D E C R E E

JAMES GRANT, ETC.)

This day this cause came on again to be heard, upon the papers formerly read and upon the Settlement of Russell L. Davis, the Commissioner herein, and was argued by Counsel.

Upon Consideration Whereof, and it appearing to the Court that Russell L. Davis, the Commissioner herein, has collected the purchase price for the sale of the real estate and has disbursed the money arising from the sale thereof according to the Settlement Record, paying the costs of suit, taxes, and attorney fee, the said Settlement and disbursements made by the said Commissioner are hereby ratified, confirmed and approved and the said Commissioner is directed to report his further proceedings herein to the Court. *and he is directed to pay said balance to the parties: entered there to.*

ENTER 11/12/70

L. J. M.
Judge

VIRGINIA:

BOOK

34 PAGE 341

RECEIVED
AUG 20 '84
HUTCHERSON & RHODES
ATTORNEYS AT LAW

IN THE CIRCUIT COURT OF FRANKLIN COUNTY

FRANKLIN COUNTY, A body politic)

vs.)

DECREE

JAMES GRANT, ETC.)

This day this cause came on again to be heard upon the papers formerly read and upon the Petition of Russell L. Davis, Commissioner herein, requesting payment into Court of the amount of \$2, 636.87 due the heirs of James Grant, deceased, and was argued by Counsel.

Upon Consideration Whereof, it appearing to the Court that the heirs of James Grant are unknown and cannot be ascertained and found and that they are due the amount of \$2, 636. 87 as set out in the Petition.

It is Ordered that the funds to which the above parties are entitled be placed on a savings account in the Peoples National Bank of Rocky Mount, Virginia, and made payable to the heirs of James Grant on identification or order of this Court and the said savings account placed in the Clerk's Office of this Court and under control of this Court.

ENTER

11/12/70

L. Jones

Judge

BOOK

34 PAGE 340

RECEIVED
AUG 27 '84
HUTCHINSON & RHODES
ATTORNEYS AT LAW

VIRGINIA:

IN THE CIRCUIT COURT OF FRANKLIN COUNTY

FRANKLIN COUNTY, a body politic)

vs.)

D E C R E E

JAMES GRANT, ETC.)

This day this cause came on again to be heard upon the papers formerly read and upon the Report of receipts and disbursments of Russell L. Davis, Commissioner herein, and was argued by Counsel.

Upon Consideration Whereof, it appearing to the Court that the said Russell L. Davis has properly collected and disbursed the money arising from the sale of the real estate mentioned and described in the Bill in this cause, and the object of this suit having been accomplished, it is Ordered that same be stricken from the docket and the said Russell L. Davis and his bondsman are hereby releaved on account of the bond as executed by them in this cause.

ENTER

11/14/70


Judge

FRANKLIN COUNTY, VA.

861

No.	DATE.			GRANTOR.	GRANTEE.	Doll.	Cts.
	Month.	Day.	Year.				
1				Poincoteau	Cephas	John Poincoteau Jr	30 355
					John J.	Jas. W. Dillon	30 357
					Cephas	J. P. & Jas. H. Holland	30 157
				Pillaman	Wm. H.	John Way	30 501
				Huston	Christo. P.	W. C. Beckett	30 511
2				Pollard	C. J.	C. A. Channing	30 543
					Same	Jane Childress	30 544
				Powell	Chas. B.	David L. Odinal	30 578
				Price	Cyrus	Isaac Hargerson	31 102
				Poincoteau	Cephas	Ignatius P. Mitchell	31 134
3				Pollard	Challan J.	James P. Mosdor	31 163
					Same	Wm. B. Morris	31 167
				Poffit	Jos. P.	Elijah Griffith	31 216
				Pillaman	David	James Martin	31 316
				Poffit	Jos. P.	Wiley J. Via	31 334
4				Pillaman	James	Wm. H. Hurl	31 359
				Powell	Charles' adm.	Wm. H. Bracken	31 395
					Same	Wm. L. Cross	31 396
				Pice	Cyrus	Showers S. Price	31 1162
					John W.	Reuben Brown	31 511
5				Powell	Wm's heirs	William Powell	32 11
					Same	Same	32 59
					Chas. B.	Phimmon Smith	32 63
				Powers	Wm. J.	H. J. Hickman	32 85
				Pice	Cyrus	Geo. W. Price	32 92
6					Charity	J. H. S. & C. Price	32 148
				Pillaman	Mos. H.	Flaming Pillaman	32 151
				Pelut	Jacob O.	Geo. J. Simmons	32 515
				Pice	Cyrus' heirs	Cyrus Price's heirs	32 554
				Powell	C. S. Conie	Ed. J. Mitchell & J. R. Cabell	32 557
7				Pice	Edmund	Ellen W. Dobyns	32 615
					John W.	B. G. Granitt	32 671
					Same	John Boon	33 19
					John J.	Christo. B. Jamison	33 47
				Pelut	Jacob C.	B. B. Boon	33 92
				Poincoteau	Richard	Ed. W. B. Hale	33 131
				Pillaman	Plan's. assee	John W. B. Bowling	33 143
				Punty	Han Klin	W. H. Dickinson	33 152
				Pillaman	John	Medad Pillaman	33 202

PLAINTIFF'S
EXHIBIT

Trinity	Jesse Corn	Ben. H. Talum	✓ 33 22
Nice	Fredmund	Henry Jameson	✓ 33 24
Poincleyter	John W.	Christopher J. Poincleyter	✓ 33 26
Trinity	Jesse Corn	William Belcher	✓ 33 26
Nice	John W.	Seith Richardson	✓ 33 27
Poincleyter	Robert	Ro. O. Scott	✓ 33 38
Powell	J. H.	R. B. Turner	✓ 33 40
Powers	Wm. J.	D. P. Hickman	✓ 33 42
Powell	H. N. W. S. G. R.	Geo. E. Dennis	✓ 33 43
Williamson	George	Brown Hill Chustus	✓ 33 44
			✓ 33 46

GENERAL INDEX GRANTEE.

DATE.			GRANTOR	Book.	Page
Month	Day	Year			
Minor	William		John Cla. Kson	5	135
Mitchell	William		Gabriel Malloy	7	65
Mills	William		Jonas Easley	9	254
	Same		James Mills	11	39
Mitchell	William J.		W. J. & Jane Mason	13	74
	Same		Stephen Mitchell's heirs	13	371
	Same		William Turner	13	370
	Same		Archibald Mitchell's heirs	14	179
Washington	Jos. & Pinclope		White	14	114
William J.	Washington		Wood	17	147
Washington	Solomon		Hasty Come	19	32
William J.	Robert		Bondurant	16	154
William J.	Jacob		Bondurant & by comr	20	136
Washington	Bowkin		Preston	21	178
Same	James H.		Ross	21	113
Wm J.	Augustine		Gallins	26	339
Washington	S. P. Robinson		S. M. Martin sal.	29	117
Wash. C.	John P.		Boys	29	117
Same	Isa		Holland	29	130
Same	J. J. & C.		Sansbony	29	154
Wm D.	Mos. J.		Mitchell	31	47
Same	Perry		Hunter	32	137
Wm J.	C. L.		Powell Comr	32	587
W. C.	M. S.		Allen	33	115
Same	F. W.		Pagerson	33	119
Same	R. W. & Sallie E.		Poage	33	155
Mills	Wilson		George Boitnoll	34	398
Mitchell	Wm W.		Mos. J. J. Mitchell	36	216
	Washington		J. W. & M. A. Guzin	38	178
	Same		Wm P. Holland	38	179
	W. J. & P.		W. E. Mitchell	38	170
	Wm J.		Jos. E. Bean	38	551
	Wash. C.		Wm B. M. & M. P. Turner	40	357
	Virginia S.		Lucy A. Mitchell	45	63
Mills	Wilson		E. D. & Lucian Looney	45	234

GENERAL INDEX—GRANT JR.

DATE.			GRANTOR.	GRANTEE.	BOOK.	PAGE.
Month	Day	Year				
Graham			Jacob and Thomas	Christon C. Long	✓ 1	374
Arthur			James	Jacob Weaver	✓ 2	438
Graham			Joseph	Samuel Hylm	✓ 4	564
			John	Samuel Frantz	✓ 12	433
Leahy			James	Isaac Lemon	✓ 14	326
Gray			John	Thomas Fowler	✓ 15	106
			Same	Same	✓ 16	1
→ Grant			James	Willis G. Cousins	✓ 19	175
			Same	Henry Bowman	✓ 20	423
Graham			Jacob corn	William Jannoy	✓ 23	201
			Same	Isaac Snuffer	✓ 23	203
			Same	Samuel Radford	✓ 23	204
			Same	George Radford	✓ 23	206
			Same	Same	✓ 23	208
			Same	Samuel Radford	✓ 25	351
→ Leahy			John H.	Marianne - Dickie	✓ 25	438
Grant			James	J. H. Pearson	✓ 27	346
Leahy			John W.	B. W. Saw	✓ 38	527
Leahy			Ida F. J. J.	B. C. Wright	✓ 42	405
Leahy			John A.	A. R. Lee	✓ 47	130

BROADDUS, EPPERLY, BROADDUS & WILLIAMS

ATTORNEYS AT LAW
MARTINSVILLE, VIRGINIA

100 E. MAIN STREET

COPY

October 23, 1970

Mr. Ralph B. Rhodes
Hutcherson & Rhodes, Attorneys
Rocky Mount, Virginia

Re: Lester Lumber Company, Inc. vs. Burton C.
Jessup, et als

Dear Dusty:

We have been advised that you went forward and sold the Lester Lumber Company property containing 191 acres on last Saturday, October 24, and that it was purchased for \$4,000.00. I assume that it was purchased by someone other than the noteholder.

This is to advise that our client, Lester Lumber Company, does claim title to this property and does further claim possession of the same.

Accordingly, this is to put you on actual notice that there is a claim of title against this property and you should not therefore convey your deed as Trustee to the purchaser until such time as your title is proven superior to the title of Lester Lumber Company, Inc.

We will be happy to discuss this matter with you if you so desire, but I think in all fairness you should advise the purchaser that we do claim legal title to this property and we dispute any interest that he may claim by virtue of the sale from you to him.

Yours very truly,

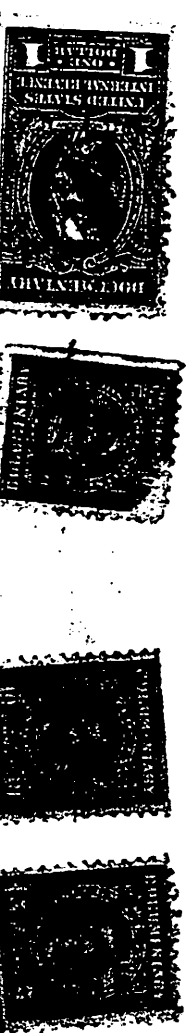
BROADDUS, EPPERLY, BROADDUS & WILLIAMS


Ebb H. Williams, III

EHWIII/nwt

cc: Mr. George Rea





THIS DEED, made and entered into this the 28th. day of November, 1945, by and between CLYDE H. PERDUE, SPECIAL COMMISSIONER, as hereinafterwards shown, party of the first part, and the LESTER LUMBER COMPANY, INC., OF Martinsville, Virginia, party of the second part.

WITNESSETH: THAT WHEREAS, in a certain suit in Chancery depending in the Circuit Court of Franklin County, Virginia, under the short style of *S.P.M. v. W.C. Cobbs*, S.P. Brown, et al v. Eller J. Cobbs, et als, by a decretal order of the said Court, entered on the 28th. day of November, 1945, the said party of the first part was authorized and directed to convey, with Special Warranty of Title, to the said party of the second part, its successors or assigns, the real property hereinafterwards described — all of which will more fully and at large appear by reference to the proceedings in the Court and cause aforesaid.

NOW, THEREFORE, in consideration of the premises, and the sum of \$1,045.00 cash in hand paid, the receipt of which is hereby acknowledged, the said party of the first part, Special Commissioner, as aforesaid, in execution of the authority and directions of the decretal order aforesaid, doth, by these presents, grant, bargain, sell and convey, with Special Warranty of Title, unto the said party of the second part, its successors or assigns, just such right, title and interest, and only such right, title and interest, as S.P. Brown and the heirs and next of kin of W.C. Cobbs, deceased, may own in the following described tracts or parcels of land, to-wit:



TRACT NO. (1). That certain tract or parcel of land, containing 168 acres, more or less, situate, lying and being near High Knob on the east side of Turkey Cock Mountain, in the Union Hall Magisterial District of Franklin County, Virginia, and adjoining the lands of W.W.Cobbs, et als.

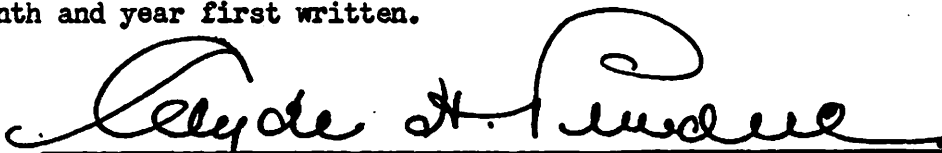
It being the same tract or parcel of land acquired by the said S.P.Brown and W.C.Cobbs from N.E.Clement, Special Commissioner, by deed, bearing date on the 24th. day of February, 1921, and now of record in the Clerk's office of the Circuit Court of Franklin County, Virginia, in Deed Book No. 70., at page No. 547., to which said deed reference is hereby made for a more complete description of this said property.

TRACT NO. (2). That certain tract or parcel of land, containing 191 acres, more or less, situate, lying and being on the east side of Turkey Cock Mountain and taxed in the Union Hall Magisterial District of Franklin County, Virginia, and adjoining the above described tract or parcel of land; said land being in the Union Hall Magisterial District of Franklin County, Virginia.

TRACT NO. (3). That certain tract or parcel of land, containing 105 acres, more or less, situate, lying and being on the east side of Turkey Cock Mountain in the Union Hall Magisterial District of Franklin County, Virginia,.

Both of the tracts or parcels of land, described as Tract No. (2)., and Tract No. (3)., being two of the same tracts or parcels of land acquired by the said S.P.Brown and W.C.Cobbs from N.E.Clement, Special Commissioner, by deed, bearing date on the 24th. day of February, 1921, and now of record in the Clerk's office of the Circuit Court of Franklin in Deed Book No. 70., at page No. 547., to which said deed reference is hereby made for a more complete description of the three tracts or parcels of land above mentioned and described.

IN WITNESS WHEREOF, I have hereunto set my hand and seal this the
day, month and year first written.


SPECIAL COMMISSIONER, AS AFORESAID. (SEAL).

STATE OF VIRGINIA,
COUNTY OF FRANKLIN.

I, Peter H. Dillard a Commissioner in Chancery of and for the Circuit Court of Franklin County, Virginia, hereby certify that Clyde H. Perdue, Special Commissioner, as aforesaid, whose name is signed to the foregoing deed, bearing date on the 28th. day of November, 1945, personally appeared before me in my State and County aforesaid, and duly acknowledged the same.

GIVEN under my hand this the 29 day of November, 1945.

Peter H. Dillard
COMMISSIONER IN CHANCERY, AS AFORESAID.

VIRGINIA, FRANKLIN COUNTY, To-Wit:

In the office of the Clerk of the Circuit Court for
County of Franklin the 10 day of Dec.
1945, this deed was presented, and with the cer-
tificate annexed, admitted to record at 11.55
o'clock 9 M.
Teste J. W. Baynes Clerk

With Revenue Stamps of the value
of 1.65 placed on same and
cancelled according to law.

(Bud) Thomas L. Cobb
 R. F. Smith
 Chatham Co

Bentley Smith
 1507 Grandin Ave
 Rocky Mount, Va

- Tom Eanes -

Book 286 - P 446
 283 - P 412
 283 - 415

Cobb Lumber

Carolina Lumber
 DEED
old Eanes Lumber

Henry County, Va
 LESTER LUMBER COMPANY, INC.

Page - ~~168~~ 168
 140 105
 191

FROM 464 AD
 UNION HALL DIST
 PERDUE, CLYDE H., SPECIAL COM'R
 E 105A

191A
 168A
 464A

Received for Record
 10 Day of Dec 1941

Recorded in Deed Book
 104 Page 319
 J. W. Waiper Clerk

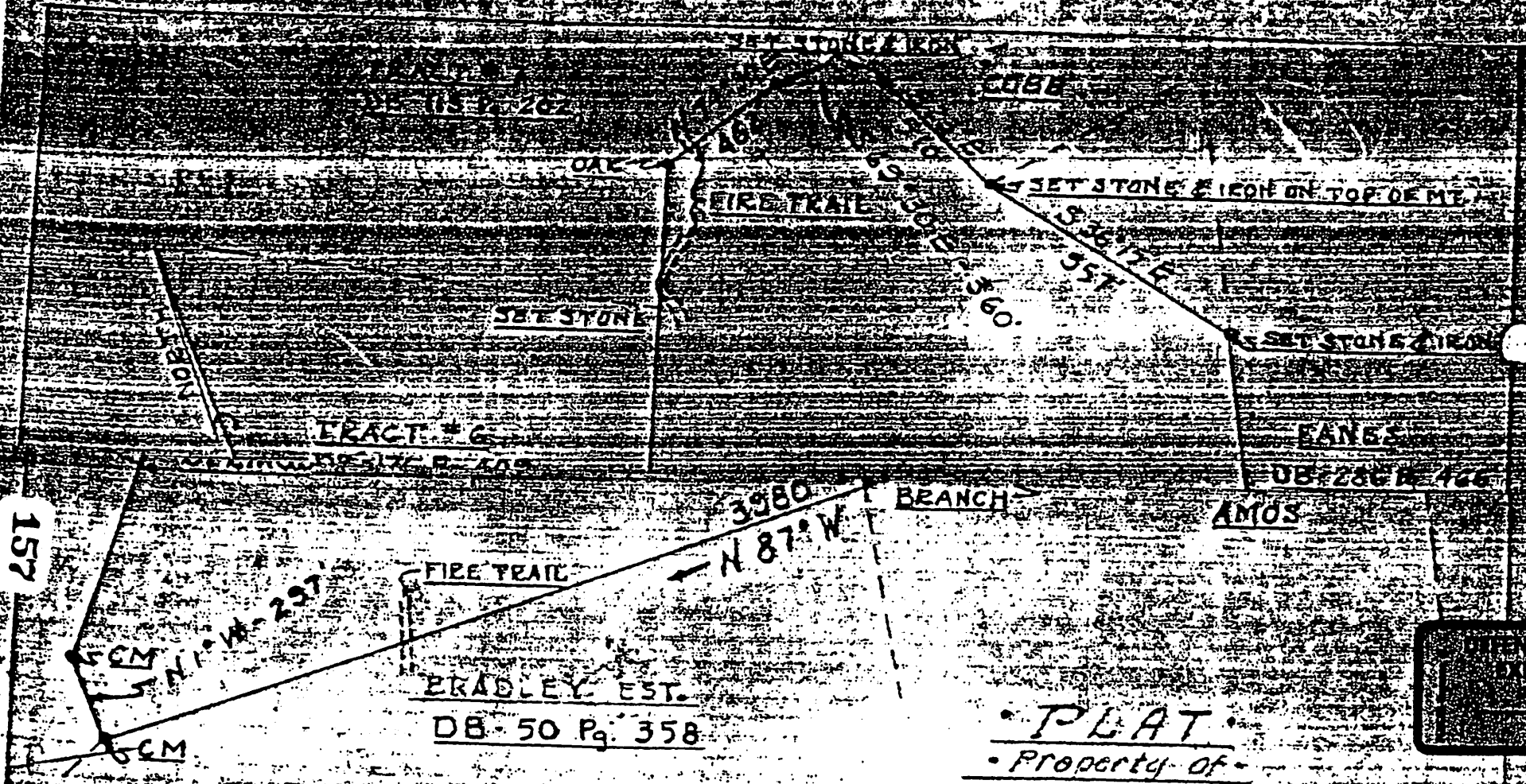
(1370)

132
 110
 100
 3:22
 1 6:52

12/10/41
 11:20 AM

Clyde H. Perdue
 Attorney at Law
 Rocky Mount, Virginia

157



DEFENDANT'S
EXHIBIT

PLAT
Property of
LESTER LUMBER CO.

Filed in the Clerk's Office of the Circuit
Court of Franklin County the 2
day of March
1971

By Wm. J. Walker, Jr., Clerk
Deputy Clerk

Book 4 page 122

UNION HALL DIST. FRANKLIN CO. VA.
Legal Ref. D.B. 104 Pg. 319 Franklin Co.
Survey made from deeds of adjoining property
Survey Date: March 1962 - Scale: 1" = 500'
Survey & map by: C. Meredith - E.L.S. 16
Certs. Nos. 97 & 351 - Roonke, Va.

DEFENDANT'S EX. NO. 4 -

**PLAT; Too large to be reasonably incorporated into appendix. Can be viewed
in the Clerk's Office.**

DEFENDANT'S EX. NO. 5 -

**PLAT; Too large to be reasonably incorporated into appendix. Can be viewed
in the Clerk's Office.**

EXHIBIT 1

CHAIN OF TITLE FOR LESTER LUMBER COMPANY, INC.

1041 9

(1)

This deed made and entered into this the 28th day of November 1945, by and between Clyde H. Perdue, Special Commissioner, as hereinafterwards shown, party of the first part, and the Lester Lumber Company Inc., of Martinsville, Virginia, party of the second part.

Witnesseth: That whereas, in a certain suit in Chancery depending in the Circuit Court of Franklin County, Virginia, under the short style of S. P. Brown et al v. E. L. W. Cobbs, et als, by a decretal order of the said Court, entered on the 28th day of November 1945, the said party of the first part was authorized and directed to convey, with Special Warranty of Title, to the said party of the second part, its successors or assigns, the real property hereinafterwards described, all of which will more fully and at large appear by reference to the proceedings in the Court and cause aforesaid.

Now therefore, in consideration of the premises, and the sum of \$1,045.00 cash in hand paid, the receipt of which is hereby acknowledged, the said party of the first part Special Commissioner, as aforesaid, in execution of the authority and directions of the decretal order aforesaid, doth by these presents, grant, bargain, sell and convey, with Special Warranty of Title, unto the said party of the second part, its successors or assigns, just such right, title and interest, and only such right, title and interest, as S. P. Brown and the heirs and next of kin of W. C. Cobbs deceased, may own in the following described tracts or parcels of land, to-wit:

Tract No. (1) That certain tract or parcel of land containing 106 acres, more or less, situate, lying and being near High Knob on the east side of Turkey Cock Mountain, in the Union Hall Magisterial District of Franklin County, Virginia, and adjoining the lands of W. W. Cobbs, et als.

It being the same tract or parcel of land acquired by the said S. P. Brown and W. C. Cobbs from N. E. Clement, Special Commissioner, by deed bearing date on the 24th day of February 1921, and now of record in the Clerk's office of the Circuit Court of Franklin County, Virginia, in deed book No. 70, at page No. 547, to which said deed reference is hereby made for a more complete description of this said property.

Tract No. (2) That certain tract or parcel of land containing 181 acres, more or less, situate, lying and being on the east side of Turkey Cock Mountain and taxed in the Union Hall Magisterial District of Franklin County, Virginia, and adjoining the above described tract or parcel of land; said land being in the Union Hall Magisterial District of Franklin County, Virginia.

Tract No. (3) That certain tract or parcel of land containing 105 acres, more or less, situate, lying and being on the east side of Turkey Cock Mountain in the Union Hall Magisterial District of Franklin County, Virginia.

Both of the tracts or parcels of land, described as Tract No. (2) and Tract No. (3) being two of the same tracts or parcels of land acquired by the said T. D. Brown and W. C. Cobbs from H. M. Clement, Special Commissioner, by deed bearing date on the 24th day of February 1921, and now of record in the Clerk's office of the Circuit Court of Franklin in Deed Book No. 70, at page No. 147, to which said deed reference is hereby made for a more complete description of the three tracts or parcels of land above mentioned and described.

In Witness whereof, I have hereunto set my hand and seal this the day-month and year first written.

Clyde H. Perdue, ^{Special Commissioner}
~~Commissioner in~~ (SEAL)
~~Chancellor of Aforesaid~~

VIRGINIA:

IN THE CIRCUIT COURT OF FRANKLIN COUNTY.

BROWN, S. P. &
COBBS, THOMAS S.

V.

BILL IN CHANCERY.

COBBS, ELLER J., COBBS,
W.C., Jr., COBBS, MILNER F.,
COBBS, JOHN H., COBBS, CHARLES
L., COBBS, WALTER H., WILCOX,
ELLA J., TURNER, NATLIE R., &
TOMELTY, CATHERINE L.

To the Honorable, A.H.Hopkins, Judge of the Circuit Court of Franklin
County, Virginia.

Your Complainants, S.P.Brown and Thomas S.Cobbs, would respectfully
show unto your honor:

(1). That by deed, bearing date on the 24th. day of February, 1921,
and now of record in the Clerk's office of the Circuit Court of Franklin County,
Virginia, in Deed Book No. 70., at page No. 547., one W.C.Cobbs and the said
S.P.Brown acquired from N.E.Clements, Special Commissioner, etc., the following
described real estate, to-wit:

Tract No. (1). That certain tract or parcel of land,
containing 168 acres, more or less, situate, lying and
being near High Knob on the east side of Turkey Cock
Mount in Franklin County, Virginia.

Tract No. (2). That certain tract or parcel of land,
containing 191 acres, more or less, situate, lying
and being on the east side of Turkey Cock Mountain
in Franklin County, Virginia, and adjoining the above
mentioned tract or parcel of land.

be D. Ardure
Herring at Law
of Richmond, Virginia

Tract No. (3). That certain tract or parcel of land, containing 105 acres, more or less, situate, lying and being on the east side of Turkey Cock Mountain in Franklin County, Virginia.

(2). That some time ago the said W.C.Cobbs departed this life, intestate, leaving as his heirs and next of kin the following named persons, to-wit: 1. Eller J.Cobbs, age 66 years, his widow, who is entitled to her dower interest in the one-half, undivided, interest which the said W.C.Cobbs owned in the three tracts or parcels of land, above mentioned and described; 2. W.C.Cobbs, Jr., a son, who is entitled, subject to the dower interest of his mother, Eller J. Cobbs, as aforesaid, to a one-ninth interest in the said W.C.Cobbs one-half, undivided, interest in the above mentioned tracts or parcels of land; 3. Mildred F.Cobbs, a daughter, who is entitled to a like interest; 4. John H.Cobbs, a son, who is entitled to a like interest; 5. Charles L. Cobbs, a son, who is entitled to a like interest; 6. Walter H.Cobbs, a son, who is entitled to a like interest; 7. Ella J. Wilcox, a daughter, who is entitled to a like interest; 8. Natalie R.Turner, a daughter, who is entitled to a like interest; 9. Catherine L. Tomelty, a daughter, who is entitled to a like interest; and 10. Thomas S.Cobbs, a son, and one of your Complainants, who is entitled to a like interest in said property.

(3). That the other one-half, undivided, interest in the three tracts or parcels of land, above mentioned and described, belongs to and is the property of the said S.P.Brown, who now owns the same jointly with the widow and heirs and next of kin of the said W.C.Cobbs, deceased.

(4). That the object of this suit is to compel partition, in some manner prescribed by law, of the land, above mentioned and described, and/or the timber ~~growing~~ now standing any, either or all of the three tracts or parcels of land, above mentioned and described.

Your Complainants aver that the above mentioned land is not subject to a division kind but that the welfare of all parties concerned would be greatly promoted by a sale of the said land, and/or the timber standing on the same, for the purpose of dividing the proceeds of the sale amongst those entitled thereto according to their respective interest.

Your Complainants aver that none of the co-owners are willing to take the said property, and/or the timber and pay to the other co-owners the fair value of the same.

(5). Your Complainant, S.P.Brown avers that he has the right to maintain this suit, in that, he is the owner of a one-half, undivided, interest in the three tracts or parcels of land, above mentioned and described; and the said Thomas S.Cobbs, one of your Complainants, avers that he is the owner of a one-eithteenth, undivided, interest in the said real estate, subject to the dower interest of his mother, Eller J.Cobbs, as aforesaid, and that he has the right to maintain this said suit.

(6). That the land, above mentioned and described, is mountain land, and that the principal value of the same consists of the timber now standing on the same, and for this reason your Complainants are asking the Court for the right to compel partiton of the land, and/or the timber, which ever may, as this suit progresses, appear to be most advantageous to the interest of all parties concerned.

NOW, THEREFORE, in as much as your Complainants are without a remedy, save in a Court of equity, where matters of this sought are only and properly cognizable, your Complainants pray:

First; That Eller J. Cobbs, W. C. Cobbs, Jr., Mildred F. Cobbs, John H. Cobbs, Charles L. Cobbs, Walter H. Cobbs, Ella J. Wilcox, Natalie R. Turner, and Catherine L. Tomelty may, by proper process, be made parties defendant to this bill, and be required to answer the same, but answer under oath is hereby expressly waived.

Second: That all proper accounts may be ordered and taken.

Third: That partition of the land, above mentioned and described, and/or the timber now standing on the same, or any part of the same, or any and all tracts of the same, maybe compeled in some manner prescribed by law, preferably by a sale of the said land and timber now standing on the same, or any tract, or part of of any tract of the same; or by a sale of the timber on any tract, or part of the same, or by a sale of the timber on all or any tract of the same.

Fourth: That all such other and further things may be ordered and done as may be necessary for a complete disposition of this cause; and for such other and further relief, both general and special, as to equity may seem meet and the nature of the case may require.

And your Complainants will ever pray, etc.....

S. P. BROWN & THOMAS S. COBBS,

BY COUNSEL.

IN THE CIRCUIT COURT OF FRANKLIN COUNTY.

BROWN, S.P., ET AL

" V.

REPORT OF SPECIAL COMMISSIONER.

COBBS, ELLER J., ET ALS

To the Honorable, A.H.Hopkins, Judge of the Circuit Court of Franklin County, Virginia.

Your undersigned Special Commissioner begs leave to report unto your honor: .

That acting in strict conformity with a decretal order of the Court entered in the above entitled matter on the 20th. day of October, 1944, he proceeded to offer and expose for sale at public auction to the highest bidder at the front door of the Courthouse, located on east Main Street in the town of Rocky Mount, Franklin County, Virginia, on Saturday, the 11th. day of November, 1944, the three tracts or parcels of land, mentioned and described in the bill in these proceedings.

Your undersigned begs leave to report that the Lester Lumber Company, Inc., of Martinsville, Virginia, who was the highest bidder at the said sale became the purchaser of Tract No. (1)., containing 168 acres, more or less for the sum of \$630.00; that ~~Said Company~~ *Said Company*, who was the highest bidder at said sale, became the purchaser of Tract No. (2)., containing 191 acres, more or less, at the sum of \$260.00; and that the said ~~Company~~ *Company*, who was the highest bidder at the said sale, became the purchaser of Tract No. (3)., containing 105 acres, more or less, for the sum of \$155.00.

Your undersigned Special Commissioner begs leave to report that the said purchasers, namely: The Lester Lumber Lumber Company, Inc., ~~which~~ ~~requested~~ requested time to examine the title to the respective tract purchased by them, as aforesaid, before paying the purchase money; that upon examining the title to the said property they discovered a flaw in the chain of title, which is to say, an examination of the title to the said property disclosed that while the deed to W.C.Cobbs and S.P.Brown from N.E.Clements, Special Commissioner, which said deed, bears date on the 24th. day of February, 1921, and is now of record in the Clerk's office of the Circuit Court of Franklin County, Virginia, in Deed Book No. 70., at page No. 547., conveys a fee simple title to the whole of these three tracts or parcels of land, and the said W.C.Cobbs and S.P.Brown were of the opinion that they had purchased the whole of the said property, ~~their~~ grantor, or the vendor through whom they claim title only owned a one-half, undivided, interest in the said property. In short, in so far as the record's in the Clerk's office, taken at their face value is concerned, the said W.C.Cobbs and S.P.Brown only own a one-half, undivided, interest in the said property; the other one-half, undivided, interest, or the interest of Dr. John R. Cabell, belongs to G.W.Gammon, W.B.Guerrant and J.C.Shelhorse, or to their heirs, these said parties having acquired the one-half, undivided, interest of Dr. John R.Cabell by virtue of a deed from James F.Harrison, Special Commissioner, which said deed, bears date on the 27th. day of April, 1903, and is now of record in the Clerk's office of Pittsylvania County, Virginia, in Deed Book No. 117., at page No. 32.

Your undersigned Special Commissioner begs leave to report that the said S.P.Brown and the heirs and next of kin of the said W.C.Cobbs contend that they own a fee simple title to the whole of this said property by virtue of the fact that the deed to them from the said N.C.Clements, Special Commissioner, conveys a fee simple title to the whole ; they thought, and were of the

opinion that they had purchased ~~in~~ a fee simple title to the whole; that they have paid all the taxes against the said property since it's purchase, and that they have claimed the said property, as a whole, against the World for a period of more than 15 yea-rs.

Your undersigned Special Commissioner begs leave to report that he is of the opinion that the purchasers, above named, should not be required by the Court to accept title to the respective tracts or parcels of land purchased by it, as aforesaid, until this objection to the title to the three tracts or parcels of the land, mentioned and described in the bill in these proceedings, had been removed.

All of which is most respectfully submitted this the 12th. day of December, 1944.


SPECIAL COMMISSIONER, AS AFORESAID.

70/547

All these the following signatures and dates.

J. A. Dyer

M. J. Dyer

W. A. Dyer
W. A. Dyer

State of Virginia, Franklin County Court.

I, J. W. Crum, a notary public for the said County in the State of Virginia do hereby certify that J. A. Dyer and M. J. Dyer whose names are signed to the within deed bearing date on the 21 day of December 1920 has acknowledged the same before me in my County and State aforesaid.

Given under my hand and seal the 21 day of December 1920.

J. W. Crum N.P.

My Commission expires December 2 1924.

Virginia:

In Franklin County, Clerk's Office the 5th day of March 1921

The foregoing deed with the certificate of acknowledgment thereon endorsed was this day admitted to record at 9 AM.

Lee J. Thompson, Clerk

This deed made this the - 4th. day of February 1921 between
US Clement Special Commissioner of the Circuit Court
of Montgomery County in the following cause of Part
Gratts etc vs Calene Gratts etc. Part of the first
part and W. C. Griggs and S. P. Brown parties
the second part. Whereas in the above styled
cause is pending in said court, the object of which
was to see the real estate of Gratts decd. as mentioned
and described in the bill and proceedings of said
cause, and divide the proceeds among the
parties to said suit according to their respective
interests, and whereas pursuant to a decree entered
in said cause at the September term of said court
1919, party of the first part was directed to
sell the lands mentioned in said cause
pursuant to the terms of said decree and
whereas on the 22 day of October 1919 he
sold the land hereinafter described and
conveyed to the parties of the second
part and they complied with the terms
of said decree and whereas the said sale
was duly reported to the court by
another decree entered in said cause
at the November term 1919 said sale was
duly confirmed and said decree also affirmed

said the said sale is hereby confirmed to said decree
by a deed with ~~special warranty of title~~ which they had
paid all the purchase price and whereas said parties
of the second part have paid all said purchase price
to the party of the first part, therefore this deed witnesses
that for and in consideration of the purchase price and
the entire consideration, the purchase price and
having been paid by the parties of the second part
unto the party of the first part the receipt where
is hereby acknowledged the said party of the first
part hereby grants, sells and conveys unto the
parties of the second part with special warranty
of title the certain tracts of land lying in the

County of Franklin, Virginia, as follows: That certain tract of land lying in said County near High Knob, and Big Ants and Place, on East side of Turkey Koch Mountain containing about 168 acres; that certain other tract of land, adjoining the above tract on the East side of said Mountain containing about 191 acres; also that certain other tract of land lying in said County on East side of Turkey Koch Mountain containing 105 acres; it being the same land conveyed to D.B. Watts and by J.S. Treasaway Justice, in whose deed the metes and bounds are given to said land which is of record in the Clerk's office of Franklin County, Va. D.B. - Page - and said deed dated 21st. June 1897, which is also also referred to for a more particular description unless the following signatures may be seen -

County of Pittsylvania, Court
I, E. E. Friend Deputy Clerk of the Circuit
Court of the County aforesaid in the State of Virginia
do certify that N. E. Bierment Special Commissioner,
whose name is signed to the writing hereto
annexed, dated the 24 day of February 1921, was
acknowledged the same before me in the
Clerk's Office of said Court.
Given under my hand this 25 day
of February 1921
E. E. Friend Deputy Clerk

Virginia. In Fauquier County, Clerk's Office Mar 7 1881
The foregoing deed with the Certificate of
acknowledgment thereon endorsed with Revenue
Stamps of the value of Fifty Cents placed on
same, cancelled according to Law used

of Franklin did by a deed entered in the 1st of June 1844 and
 Combs vs. Greer J. Robertson at its October Term 1843 order that
 the said Jno. P. Lee who was appointed a special commissioner for
 the purpose should convey to the said Juliana Robertson the tract
 of land purchased by her in the said suit, containing 141 acres,
 2 roads and 33 poles, and whereas the said Lee did by deed dated
 on the 1st day of October 1844 attempt to convey the said land to the
 said Juliana Robertson, which deed is of record in the Clerk's Office
 of the county court of Franklin County, deed-book 45, page 45, but there
 being a mistake in the boundaries of land set out in said deed
 whereby only a portion of the land intended to be conveyed is
 actually conveyed, and inasmuch it is the intention of this deed
 to correct the said mistake and to fully carry out the directions of
 the said decree. Now therefore this indenture witnesseth, that for and
 in consideration of the premises and the sum of five dollars,
 the receipt whereof is hereby acknowledged, the said party of the
 first part doth hereby grant and convey ~~unto~~ unto the said party
 of the second part, with special warranty, the said tract of land
 lying and being in the county of Franklin, state of Virginia and bound-
 ed as follows: Beginning at a rock in the old Robertson line thence
 N. 56.5.6 poles to point, N. 29.6.41 1/2 poles to dogwood point, N. 10 1/2 E. 34 poles to chestnut snag, N. 6.5 W. 14 poles to a rock, N. 77
 W. 12.5 poles to a Spanish oak on the road, N. 22.5 W. 15 poles to a coral-
 wood stump, N. 36.31.24 poles to a red oak, S. 71 W. 35 poles to point, S. 56.25 poles to a small gum on an old road, thence with said road
 S. 27 E. 46 poles and 17 links to a red oak, S. 56.18 poles to a red
 oak, S. 16 E. 37.5 poles to a double post oak, S. 20 E. 24 poles to a
 red oak, S. 25 E. 36 poles to a small red oak, S. 81.5 E. to the beginning,
 containing 141 acres, 2 roads and 33 poles, more or less.

Witness the following signature and seal.

Jno. P. Lee commissioner (seal)

Virginia

In Franklin County Court Clerk's office 7th day of April 1897-

This deed from Geo. P. Lee Commissioner to Juliana Robertson bearing date on the 17th day of August 1896 was this day acknowledged before me in my said office by the said Geo. P. Lee and admitted to record.

etc.

at 10 o'clock

This deed made this the 26th day of December 1896 between Samuel L. Iruduan Trustee as hereinafter set out party of the first part and D.B. Giatto party of the second part.

Whereas by deed dated 7th day of July 1894 and of record in Clerk's Office of Pittsylvania County Court W.D. Mitchell and wife conveyed to the aforesaid parties of the first part certain lands including the same hereinafter described to secure certain debts set out in said deed and whereas said deed provided that if the debts therein secured were not paid when due then the said Trustee after advertising the time, place and terms of sale for fifteen days by hand bills posted in the neighborhood, should sell at public auction said lands upon the terms therein named and whose default was made in the payment of the debt secured in said deed and the beneficiary in said deed requested the party of the first part to advertise and sell said lands at auction and whereas said Trustee did advertise said lands in accordance with the terms of said deed and offer said lands at auction and whereas the said party of the second part being the highest bidder became the purchaser of the lands hereinafter described at the price of \$205.00 and has complied with the terms of sale and has paid the purchase price in full. Now therefore this deed witnesseth that the said parties of the first part for and in consideration of the premises and the aforesaid sum of \$205.00 in hand paid the receipt whereof is hereby acknowledged hereby gives, grants, bargains, sells and conveys unto the said party of the second part with special warranty the undivided one half interest of W.D. Mitchell

m and to the following lands on Jenkins Rock Mountain
 Franklin County, heretofore owned jointly by Thomas
 W. J. Mitchell and John R. Cabell and adjoining the
 lands of W. W. Cobbs and others and described as follows
 namely: A tract of 168 acres conveyed by deed from Augustine
 Collins and wife to Wm. J. Mitchell & dated 12th day of July of
 1860 and recorded in Clerk's Office of Franklin County Court.
 The miles and bounds whereof are as follows viz: Beginning
 at a corner sourwood in Bryer & Reynolds line, thence
 with their line S. 83° 6' 14" pole to point, S 49° 6' 55" pole to a
 small pine, thence a new line S 63 1/2° E 42 poles to a small pine,
 S 30° W 62 poles to a chestnut oak, S 63° W 64 poles to point, N
 80° W 82 poles to a pine near the aforesaid creek & 23 1/2
 W 155 poles crossing the creek to a chestnut oak on top
 of the mountain N 15° W 32 poles to the beginning & also
a tract of 117 3/4 acres it being the same tract of land conveyed
 by deed from Thomas C. Muse Esq. to James R. Grant &
 record in Franklin County Court Clerk's Office and
 dated 30th of November 1860 beginning at point in Henry
 W. Walker's line, thence with said line S 17 1/4° E 241 poles to
 point, thence with said old marked line S 51° E 66 poles to
 point on a branch in John Ellis' line with said
 line N 34° E 242 poles crossing 3 branches to a small post oak,
 on the N side of the old road in Robert K. House line, thence
 along said road N 33 1/2° W 80 poles & 2 1/2° W 24 poles N 78° W 12
 & 83 1/2° W 20 poles & 66 1/2° W 20 poles to the beginning.
Also that certain other tract of 191 acres conveyed by deed
record in Clerk's Office of Franklin County Court from
William C. Cozine to James R. Grant and fully described in volume
No 15268 from the Governor of Virginia to said Cozine and also
that other tract of 105 acres of land conveyed by deed bearing date
15th February 1840 from Benjamin Henry &c to James Grant
bounded as follows, beginning viz at a corner red oak on
Snow Creek thence South 28 degrees E 60 poles to David Schrie
corner post oak, thence S 69° W 32 poles to a poplar, thence S 1°
E 118 poles to a post oak in the order line, thence South 72 1/2° E 42
poles to Thomas J. Gray's corner red oak in the road, thence N 29°

to a pole to a post oak, thence to a pole to a poplar on the creek
and thence to degrees N 69 poles to the beginning. all of the
above lands were conveyed by age from Charles L. Powell Comm
in said of Dutcher & Reynolds to James Grant to W. J. Paterick
and J. R. Labell and are described in said deed as 19 1/2 acres and 240
acres, the 406 and 11 1/2 acres under new survey turning out the
200 acres. Given under my hand and seal
James L. Fredway Trustee

County of Pittsylvania, to-wit:

J. W. B. Shepherd, Clerk of the County Court for the
County aforesaid, in the State of Virginia, do certify that James L. Fredway, Trustee whose name is
signed to the writing hereto annexed, bearing date on the 26 day
of December, 1896, has acknowledged the same before me,
in the Clerk's Office of the County Court of the County aforesaid.

Given under my hand this 19th day of January 1897

W. B. Shepherd Clerk

Virginia

In Franklin County Court Clerk's Office the
21st day of April 1897. The foregoing Deed, with the certificate
of Acknowledgment thereon endorsed, was this day admitted
to record.

Attest: J. W. B. Shepherd Clerk

remnant
of Deed
remnant
The deed made this 16 day of Aug in the year 1895 - between pro
R. Guenant and R., his wife parties of the first part and and
S. Guenant, party of the second. Whereas the said pro. R.
Guenant and Daniel Guenant hold in coparcenary certain lands
lying and being in the County of Franklin, by inheritance
from their father, Peter M. Guenant, and their mother, Salie
A. Guenant (who was before marriage Salie A. Saunders) and
whereas the said parties have agreed upon a division of the said
lands and agree to make deeds to the same to each other according
to the said division and whereas the lands to be divided are

State of Virginia

Pittsylvania County Court

I do Stone a Notary Public in and for the County and state aforesaid do certify that B A Pullen whose name is signed to the above writing bearing date the 8th day of February 1878 has acknowledged the same before me in my County aforesaid and that Sallie E Pullen wife of the said B A Pullen whose names are signed to the above writing bearing date the 8th day of February 1878 personally appeared before me in the County aforesaid and being examined by me privately and apart from her husband and having the writing aforesaid fully explained to her she the said Sallie E Pullen acknowledged the said writing to be her act and declared that she had willingly executed the same and does not wish to retract it Given under my hand this 10th day of February 1878

Lo Stone M. P.

State of Virginia

Pittsylvania County Court

I Wm D Mitchell a Notary Public for the County of Pittsylvania do certify that Wm A J Finney whose name is signed to the above writing bearing date 8th February 1878 personally appeared before me in my County aforesaid and acknowledged the same I also certify that Elizabeth J Finney the wife of Wm A J Finney whose names are signed to the above writing bearing date Feb 8 1878 personally appeared before me in the County aforesaid and being examined by me privately and apart from her said husband and having the said writing fully explained to her she the said Elizabeth J Finney acknowledged the same to be her act and declared that she had willingly executed the same and does wish to retract it Given under my hand this the 20th February 1878

Wm D Mitchell J. P.

In Franklin County Court Clerk's Office the 2nd day of March 1878


This Deed from Prince A Pullen and Sallie E Pullen his wife Wm A J Finney and Elizabeth J Finney his wife to Benjamin F Campbell and Whitmel A Campbell was exhibited in said Office and admitted to record

Site Jas Burson C. F. L.

and Book 32 page 587

and Cabell This deed made this 4th day of March Anno Domini one thousand eight hundred and seventy eight between Charles L Powell, a Commissioner acting under a decree of the Circuit Court of Franklin County, made on the 18th July 1874 in the case of Mitchell & Reynolds against James Grants administrator and others, of the one part and William T Mitchell and John R Cabell of the other part, Witnesseth that in obedience to said decree the said Charles L Powell doth grant unto the said William T Mitchell and John R Cabell. ~~with Special Warranty~~

and Book 32 page 588

mines Three parcels of land situated on Turkey Creek Mountains in Franklin County one embracing one hundred and sixty one acres, one embracing two hundred and forty acres, and one embracing one hundred and sixty eight acres. all of which were held by the said James Grant at the time of his death and are mentioned and described in the proceedings in the suit aforesaid, to have and to hold all three of said parcels of land, to them the said William T Mitchell and John R Cabell their heirs and assigns forever. Witness the following signature and seal
C. L. Powell, 

In Franklin County Court Clerk's Office the 5th day of March 1878. This Deed from C. L. Powell (a Commissioner) to William T Mitchell and John R Cabell was acknowledged before me in my said Office by the said C. L. Powell and admitted to record.

Notary J. C. Carpenter C. P. O.

Allen M R
on 5 seed
Powell Comm

*
- Gammal

This deed made 11th day of Feby 1878 between L H Powell Commissioner appointed by the Circuit Court of Franklin of the 1st part and M R Allen of the second part witnesses that L H Powell as Commissioner in the consideration of four hundred & seventy five dollars cash in hand paid doth grant unto M R Allen all the right vested in him as said Commissioner to a certain lot or parcel of land known as the Hunt mill tract being on Hunts Creek near its mouth containing in acres more or less Witness the following signature and seal this 11th day of Feby 1878

L H Powell Commissioner

County of Franklin to wit
I Saml H Board a Justice of the peace for the County aforesaid in the State of Va do certify that L H Powell whose name is signed to the writing above bearing date on the 11th day of Feby 1878 has acknowledged the same before me in my Court aforesaid given under my hand this 11th day of Feby 1878
Saml H Board J.P.

In Franklin County Court Clerk's Office the 7th day of March 1878

This deed from L H Powell (a Commissioner) to M R Allen was exhibited in said Office and was to record

Dee J. Burpen C. C. C.

Friday April 3 1874 cont.

with his said report, collect the same and after paying the accrued and unpaid Costs of this suit, pay the residue to the plaintiff on account of his judgment against the defendants. And the Court doth further, order that the same Commissioner after he shall have duly advertised the same do by way of public auction rent to the highest bidder, the property heretofore rented until the 1st day of January 1875 taking from the lessee enough cash to pay the expenses of renting, and as to the residue of the rent, a bond with good personal security, due at the expiration of said lease and that he report the same to Court.

Payne's Adm^r
against
Willis & others

The Court doth order that ^{Justice Marshall receiving in} this cause do withdraw from the papers the Certificate of deposit returned with his report of March 31, 1874 and out of the same pay all of the unpaid Costs of this suit including the fee for publication.

Mitchell & Reynolds
against
Grants Adm^r & al.

This Cause this day again came on to be heard on the papers formerly read, the report of Commissioner Greer filed March 18 1872, the exceptions thereto & the report of Commissioner G. C. Dennis of this date and was argued by Counsel. On Consideration whereof the Court doth sustain said Exception to Commissioner Greer's report and excluding the debt therein reported in favor of Pleasant Dickinson's Adm^r for reasons stated in said Exception, doth confirm said report in all other respects. And the Court being satisfied from the report of Commissioner Dennis that the price offered for the lands directed to be sold by him is inadequate and that said land should be subjected to resale, doth adjudge order and decree that said G. C. Dennis Commissioner, after having advertised the same as directed by the decree of August 1872 proceed to offer said lands again for sale by public auction either on the premises or elsewhere in the County of Franklin as to him may seem best, on the same terms as are provided in the said decree of August 1872 and said Commissioner shall make report how he has executed this decree.

Notson & Midway
against
Cook

[Signature]

This day this Cause came on to be further heard on the papers formerly read and the order made in this Cause on the 17 day of October 1873 suspending these proceedings: On consideration whereof and for reasons appearing to the Court, it is ordered that the said order of the 17th October 1873 be annulled and vacated and the Court doth adjudge, order and decree that G. E. Dennis who has been heretofore appointed a Commissioner to make sale of the lands in the proceedings mentioned do proceed to make sale.

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Monday Decr 1st 1874

Debt return by Chancery Order Book D p 37-

against
Geo E. Richards & others

The defendants George E. Richards and Richard
Hence this day with the leave of the Court filed their separate
Answers to the plaintiffs bill, to which the plaintiffs replied
generally.

Geo. E. Richards

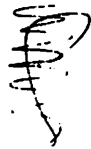
against
Thomas Pinchard

It appearing to the Court that this Cause
has been regularly entered and set for hearing at the next term
on Monday to be heard on the bill of the Plaintiff, the exhibits filed
herewith and the proceedings at the sittings aforesaid, taking the said
bill for confessed, and was argued by Counsel: On consideration
whereof the Court doth adjudge, order & decree that one of the
Commissioners of this Court do take the following account:
1st An Account of all the real estate held by the defendant or to
which he was entitled at the date of the aforesaid judgment, or other
lien that may be proceeding in this Cause.

2nd An Account of the annual value of the rents and profits of
said real estate.

3rd An Account of all the liens by judgment, or otherwise upon
said real estate, ascertaining and showing the same according
to priority.

And the Commissioner shall examine, state and settle said accounts and make report thereof to this Court, together with any matter specially stated, deemed pertinent by himself, or required by either of the parties to be so stated.

Mitchell & Reynolds 
against
Grants Admrs. &c.

This Cause this day again to be heard on the papers formerly read, and the report of Commissioner George E. Dennis filed this day, to which there is no exception, and was argued by Counsel: On consideration whereof the Court doth consider said report and the state of said Cause, referred to; and it appearing that William M. Mitchell, the purchaser of the real estate in said report mentioned is a creditor of the estate of the decedent, same being and entitled to the whole of the proceeds of sale on account of his claims heretofore proved in this Cause. The Court doth ~~adjudge~~ ^{adjudge} order and decree that the three bonds executed to him on 4th June 1874, each for \$40.00 ^{or} 1/3 payable respectively one, two and three years after date be cancelled and surrendered to him by the Clerk of this Court, to be credited on his claims against the estate of John Grant for their full amount. The Court doth further, ~~adjudge~~ ^{adjudge}

377

Wednesday July 15 1874. Cont.

order and decree that Charles L. Powell, who is herein appointed a Commissioner in the last part do by proper deed with his seal convey the title conveyed to William M. Mitchell and in his behalf jointly, the lands in the bill and proceedings mentioned; the said William M. Mitchell consenting by Counsel and desiring the conveyance to be so made and acknowledging that the objects of this suit have been obtained it is ordered that the Cause be stricken from the docket.

Dec 11 1830

Journal

Hatchers suit

This day the Cause came on to be heard when she has been formerly read and the report of James Nelson Esq. Commissioner of the Court doth read. The defence made on this issue is the following. It is alleged that the land which was sold to the defendant Thomas H. Hatchers is not equal to the debt owing from the defendant Thomas H. Hatchers to the purchaser Thomas M. Hatchers, which debt has heretofore been decided in this Cause to be the first lien upon said land. The Court doth adjudge, order and decree, that the Clerk of this Court do surrender, to the said Thomas M. Hatchers his bonds returned and filed with the record aforesaid in payment of so much of his debt; and that Hugh Nelson who is hereby appointed a Commissioner for this purpose, do by process deed or the special Warranty convey the said land to the said Thomas M. Hatchers at the ends of this rule, process and that this Cause be discontinued.

Dec 11 1830

Journal

Hatchers suit

This day the Cause came on to be heard when the Cause was formerly read and the report of James Nelson Esq. Commissioner of the Court doth read. The defence made on this issue is the following. It is alleged that the land which was sold to the defendant Thomas H. Hatchers is not equal to the debt owing from the defendant Thomas H. Hatchers to the purchaser Thomas M. Hatchers, which debt has heretofore been decided in this Cause to be the first lien upon said land. The Court doth adjudge, order and decree, that the Clerk of this Court do surrender, to the said Thomas M. Hatchers his bonds returned and filed with the record aforesaid in payment of so much of his debt; and that Hugh Nelson who is hereby appointed a Commissioner for this purpose, do by process deed or the special Warranty convey the said land to the said Thomas M. Hatchers at the ends of this rule, process and that this Cause be discontinued.

Wiles Cursons
and
James R. Grant
to
James R. Grant

27 Dec 1847
24 Dec 1849
27 Aug 1850
2/327

191 acs - Stained by James Grant by Long Grant

21 / 327

Blackwater runs down the same and measures 109 0. 20 poles to a Elmnet in Henry Smiths line S. 15 W. 96 poles to a road oak S. 26 E. 34 poles to a hickory in Arthur Arningtons line with it South 15. W. 44 poles to a road oak thence South 82 W 25 poles to the beginning containing 437 acres be the same more or less. to have and to hold the above descried land to the said Daniel Mitchell and his heirs forever. In witness whereof the above named parties have hereunto set their hands and affixed their seals this day and date written

Henry Smith 
Susan Smith 

State of Virginia Franklin County: to wit

Mr Solomon Parley and Abram J. Holland Justices of the Peace for the County and State aforesaid do certify that Henry Smith whose name are signed to the writing above bearing date on the 6th day of July 1850 have acknowledged the same before us in our County aforesaid. Given under our hands this 6th day of July 1850.

S. Parley JP.
A. J. Holland JP.

State of Virginia Franklin County: to wit.

Mr Solomon Parley and Abram J. Holland Justices of the Peace in and for the County and State aforesaid do certify that Susan Smith the wife of Henry Smith whose name are signed to the writing above bearing date on the 6th day of July 1850 personally appeared before us in the County aforesaid and being examined by us privately and apart from her husband and having the writing aforesaid fully explained to her she the said Susan Smith acknowledged the said writing to be her act and declared that she had willingly executed the same and does not wish to retract it. Given under our hands this 6th day of July 1850.

S. Parley JP.
A. J. Holland JP.

In the Clerk's Office of Franklin County Court the 5th day of August 1857.

This deed of bargain and sale between Henry Smith Jr and Susan his wife of the one part and Daniel Mitchell of the other part was exhibited into the said office and together with the certificates heron undered admitted to record.

Teste.

M. G. Carpenter. C. F. C.

21/37

Grant

Witness

James Grant
Sept 1857

This Indenture made this the 29th day of December in the year of our Lord one thousand eight hundred and forty nine Between Willis G. Cousins of the County of Pittsylvania in the State of Virginia of the one part and James R. Grant of the latter part Whereas a certain form

Grant of the ~~same~~ of Franklin by a certain deed bearing date the 16th day of August in the year of our Lord one thousand eight hundred and forty five and recorded in the Clerk's Office of the County Court of Franklin did give grant bargain and sell unto the said Willis G. Cousins his heirs and assigns all that certain tract or parcel of Land situate lying and being in the County of Franklin on the waters of Turkey Creek Creek together with the tenements and premises thereto ~~hereto~~ belonging or in any way appertaining in trust for the benefit of a certain family Smith and by which deed the said Willis G. Cousins his heirs and assigns and the survivor or survivors of them was and were empowered on failure of the said James Grant to perform certain acts and deeds therein mentioned to sell said property. And whereas the said James Grant failed to perform the requirements contained in said deed the said Willis G. Cousins in execution of the trust above created did on the 18th day of September 1847 after giving fifteen days notice of the time and place of sale by written advertisements set up at the various public places near the place of sale reports to sell the said tract or parcel of land lying and being in the County of Franklin on the waters of Turkey Creek Creek.

together with the tenements and premises thereto belonging
or in any wise appertaining and which property was
conveyed to the said James Grant by James M. Dowse
esquire Governor of the Commonwealth of Virginia on the
20th day of June 1845 by virtue of Land Office Treasury
Warrant No. 15268 containing one hundred and ninety
one acres be the same more or less and bounded by the lands
of John W. Calaway, George W. Clement and others at
which sale the said tract or parcels of land was cried out
to the highest bidder for the sum of Twenty five dollars
Now this Indemnity Witnesseth that the said Willis G. Cousins
in performance of his duties as trustee of and for the
said Jacob Smith and for and in consideration of the sum
of Twenty five dollars aforesaid good and lawful money
of Virginia to him the said Willis G. Cousins in hand paid
by the said James R. Grant at or before the sal-
ing and delivery of these presents and which he the said
Willis G. Cousins doth hereby acknowledge hath given
granted bargained and sold and by these presents do give
grant bargain and sell unto the said James R. Grant
his heirs executors and administrators the tract or parcels
of Land and premises as above mentioned and described
to have and to hold the said tract or parcels of land
and premises unto the said James R. Grant his heirs
and assigns forever and the said Willis G. Cousins the
said tract or parcels of Land and premises unto the said
James R. Grant his heirs and assigns forever

defend by these presents agreeably to the title vested in me
by the Trust aforesaid and none other from and against all
and every claim or claims demand or demands and against
all persons claiming by through or under him in witness
whereof the said Willis G. Cousins have hereunto set his hand
and affixed his seal the day and year first above written.
Willis G. Cousins

Pittsylvania County, to wit:

We Albert G. Smith and Abigail A. Moorman Justices of the Peace for the County aforesaid in the State of Virginia do hereby certify that Miles G. Cousins a party to a certain deed bearing date 29th December 1849 and hereto annexed personally acknowledged before us the same to be his act and deed and desired us to certify the said acknowledgment to the Clerk of the County Court Franklin in order that the same may be recorded. Given under our hands & seals this 29th day of December 1849.

Albert G. Smith

A. A. Moorman

In the Clerk's Office of Franklin County Court the 27th day of August 1850

This Indenture of bargain and sale between Miles G. Cousins of the one part and James R. Grant of the other part was exhibited into the said Office and together with the certificate hereto indorsed admitted to record.

Teste.

M. G. Carpenter C. J. C.

This Indenture made and entered into this 16th day of August 1850 between James Arnold (a Commissioner acting under a decree of the Circuit Superior Court of Law & Chancery for Franklin County, pronounced the 16th day of May 1850 at the suit of Daniel B. Hunt versus plaintiff against Mary Barnett others Defendants of the one part and Thomas Craig of the other part. Whereas by a decree pronounced in the said suit by the said Court on the ___ day of ___ William Craig was appointed a Commissioner to view the lands mentioned in the bill and proceedings of the said suit, and by virtue of the said decree he sold the said lands, and the said Thomas Craig being the highest bidder therefor became the purchaser of a tract called the lower division or lot no. 1 containing one hundred & seventy five acres at the price of \$577.50 & which said purchase money it appears has been fully paid, and whereas the said James Arnold was by the decree first herein mentioned appointed a Commissioner to convey to the said Thomas Craig by deed with special warranty the tract or parcel of land so purchased by him as aforesaid, all of which will more fully appear by reference to the record and proceedings of the Court aforesaid.

Willis Greene (Trustee)

and

James Grant and Anna his
wife

to

Henry Bowman

1st class - enclosed PTT

2 Sept 1875

2 Sept 1878

2 Sept 1878

2 6/4/23

1/423

they acceded thereto and also all costs & charges attending
execution of this trust & effecting the sale aforesaid, and the
same if any pay to the said Joseph Todd or his legal
representative. In testimony whereof the said Parties have here-
unto set their hands & seals the day and year first within written.

Joseph Todd, Esq.
Lewis Potter, Esq.
Henry P. Law, Esq.




In the Clerk's Office of Franklin County about the 7th day of
November, 1828.

This Deed of Trust from Joseph Todd to Lewis Potter, for
the purposes herein expressed, was acknowledged in the said Office
by the said Todd and Henry P. Law and submitted to record
(Teste)

M. C. Carpenter, C. J. C.

— This Indenture made and entered into this the 3^d day of September in the year of Christ one thousand eight hundred forty eight, between William C. Cousins of the County of Pittsylvania and State of Virginia of the one part, James C. Grant and Anna his wife of the County of Franklin and State aforesaid of the second part, and Henry Bowman of the said last mentioned County and State of the other part. Whereas by a Deed of Trust duly executed by the said James Grant to the said William C. Cousins for purposes therein mentioned, bearing date on the 16th day of August 1845 and duly recorded in the County Court of Franklin aforesaid, reference thereto may more fully appear, the said William C. Cousins after duly advising the time and place of sale pursuant to the provisions of said Deed on the 15th day of September 1847 reported the said land for sale by way of auction to wit: One Hundred and five Acres of Land more or less bounded by the lands of Walter Terry and others in the said Deed mentioned, also the tract of One Hundred and thirty one Acres more or less on the waters of Turkey Creek bounded by the lands of John M. Callaway and others, likewise referred to in said Deed; and a certain Gaber Smith became the purchaser of said Tracts of Land at the price of one Hundred and thirty five Dollars and where as also the said Gaber Smith with the assent of the said William C. Cousins and the said James Grant and Anna his wife hath sold his claim to the legal title of said One Hundred and five Acres of Land more or less bounded by Walter Terry and others as aforesaid, and his interest therein to the said Henry Bowman at the price of Two Hundred Dollars. Now this Indenture Witnesseth that the said William C. Cousins and James Grant and Anna his wife for and in consideration of the promises aforesaid and the consideration of the sum of Two Hundred Dollars to be paid by the said Henry Bowman to them, they the said William C. Cousins and James Grant and Anna his wife have granted bargained and sold unto the said Henry Bowman their heirs and assigns

and Henry Bowman all that Tract of land or parcel of
 lying in the county of Franklin and bounded by the
 of Saker Terry and others containing one Hundred
 and six Acres more or less together with all and singular the
 appurtenances thereto belonging or in any wise appertaining
 to the said Henry Bowman and his heirs & assigns forever
 and the said Ellen G. Cousins doth for himself his heirs execu-
 tors and administrators covenant and agree to and with the said
 Henry Bowman his executors & administrators to warrant and
 defend a good and lawful Title to the said tract or
 parcel of Land free from the claim of himself and his heirs
 but against no other person or persons whatever, it being the
 design of these presents to convey to the said Henry Bowman
 such title to the said tract of land as may be vested in the said
 Willis G. Cousins as Trustee and in the said Anna wife of
 the said James Grant and more others. In Testimony whereof
 the Parties to these presents have hereunto set their hands and
 affixed their seals the day and date first before written.

Willis G. Cousins 
 James Grant. 
 Anna ^{his} Grant 

Pittsylvania County Court:

We James A. Mitchell and A. H. Moorman Justices of
 the peace in the County aforesaid in the State of Virginia
 do hereby certify that Willis G. Cousins and James Grant parties
 to a certain deed bearing date on the 2^d day of September 1848.
 and hereunto annexed personally appeared before us in our County
 aforesaid and acknowledged the same to be their act and deed
 and desired us to certify the said acknowledgement to the Clerk
 of the County Court of Franklin in order that the said deed may
 be recorded. Given under our hands and seals this the 2^d day of
 Sept. 1848.

James A. Mitchell 
 A. H. Moorman. 

Allegheny County Court.

The James A. Mitchell and Achilles H. Moorman Justices of the Peace in the County aforesaid in the State of Virginia do hereby certify that Anna Grant the wife of James Grant parties to a certain deed bearing date on the 1st day of September 1845 and hereto annexed heretofore admitted before us in our County aforesaid and being testified by us privily and apart from her husband and having the deed aforesaid fully explained to her she the said Anna Grant acknowledged the same to be her act and deed and declared that she had willingly signed sealed and delivered the same and that she wished not to retract it. Given under our hands and seals this the 2nd day of September 1848.

James A. Mitchell
Achilles H. Moorman

James Grant
to

William J. Cousins Trustee

16 Aug 1875
16 Aug 1845
1 Sept 1875
19/175

received \$100.00 - interest from 1 Oct 1940
\$100.00 - interest from 1 Oct 1941
\$100.00 - interest from 1 Oct 1942

2 Tracts of land

A one hundred & five acres

B 191 acres lying on waters of Truckee Lake etc.

such. Now therefore this indenture witnesseth that for and in consideration of the sum of one dollar in hand paid to the said Washington Mumley & his wife by the said Moses G. Carper at and before the sealing and delivery of these presents the receipt whereof is hereby acknowledged, hath granted bargained and sold unto the said Moses G. Carper all our right, title and interest, which we now have or may hereafter have in and to the estate of John Wright dec'd both real and personal, also all our right title and interest in and to the down estate of Elizabeth Wright, Widow of the said John Wright dec'd, & had of Cattle, one horse, 7 head of Hog, all growing crop of Corn & Tobacco. To have and to hold the same unto the said Moses G. Carper forever, upon trust Nevertheless that in default of payment of the aforesaid debt and interest together with the expenses of this deed on or before the 1st day of January next, the said M. G. Carper as soon as he conveniently can after advertising the time and place of such intended sale in the Neighboring newspapers previous thereto being requested by either of the creditors aforesaid, proceed to sell to the highest bidder for ready money, the aforesaid interests in said estates and property aforesaid, less 10% and the money arising from such sale, the said Moses G. Carper, shall in the first place pay or satisfy the debt or debts due to the said John A. Smith, and in the next place pay and satisfy the aforesaid Stephen Stuber the aforesaid debts and the residue if any arising from such sale he shall in the next place pay it over to the said Washington Mumley or his legal representatives. In witness whereof the parties have hereunto affixed their hands & seals the day and date first above written, signed sealed and delivered

in the presence of
his trust

William B. Beach Jr
Hiram Mills

Washington Mumley & his wife

In the Clerk's office of Franklin County Court the 5th day of September 1925

This Deed of Trust from Washington Mumley to Moses G. Carper for the purposes herein expressed was acknowledged in the office by the said Mumley and admitted to record as to him,

Teste




Moses G. Carper. C. F. C.

James Grant This Indenture made this the 16th day of August in the year of our Lord one thousand eight hundred and forty five. Between James Grant of the County of Franklin in the State of Virginia of the first part. Willis G. Cousins Trustee of Grant the second part. and Jabez Smith of the County of Pittsylvania and State aforesaid of the third part. whereas the said James Grant is greatly indebted to the said Jabez Smith in the following sums of money, to wit, the sum of one hundred dollars with lawful interest thereon from the 1st day of October 1820 the sum of one hundred dollars with lawful interest thereon from the 1st day of October 1821. the sum of One hundred dollars with lawful interest thereon from the 1st day of October 1822 for which sums of Money suits have been instituted in the Superior Court of Franklin County, which suits more fully appear by reference to the records of the Court aforesaid.

and the sum of Eight dollars and fifty cents due by Bonds dated the 1st day of August 1822 with lawful interest thereon from the date, which the sums of money with the lawful interest thereon accruing the said James Grant is willing and desirous to secure. And this Indenture witnesseth that for and in consideration of the premises, and also for the further consideration of One dollar of lawful money of Virginia to the said James Grant in hand paid by the said Willis G. Cousins at and before the sealing and delivery of these presents the receipt whereof is hereby acknowledged by the said James Grant hath given granted bargained and sold released and confirmed, and by these presents doth give grant bargain sell assign and confirm to the said Willis G. Cousins his heirs and assigns forever. Two tracts or parcels of Land to wit one tract containing one hundred and five acres more or less, and bounded by the lands of Walker Terry, William H. Gregory, William Shortt & others which is the same tract or parcel of Land the said James Grant purchased of John M. Banks which will more fully appear by reference to that Deed, which was duly recorded in the Clerk's office of Franklin County, and one tract containing One hundred and thirty one acres more or less situate lying and being in the County of Franklin on the waters of Turkey Creek Creek and bounded by the Lands of John M. Callaway, George W. Clement & others also the following personal property, to wit, One Gray Stud Horse, two cows, two calves, one small bull, sixty head hogs, three sheep, four Beds, bedsteads and furniture for same, One Clock, One Cupboard and contents, three tables, one iron one glass wheel, one cotton wheel, One Shot gun two carry Pouches six pole axes 1 iron Hoe, also, All sort Carpenters tools except saws & with all and singular the appurtenances to the said Tracts or parcels of Land belong.

ing or use anywise appointing and all the estate right title and interest of the said James Grant in and to the lands granted or intended to be hereby granted tracts or parcels of lands and premises. To have and to hold the said hereby granted or intended to be hereby granted tracts or parcels of lands and premises with the appurtenances together with all the personal property hereby conveyed unto the said William G. Lewis, his heirs, executors administrators, and assigns forever and the said James Grant for himself his heirs executors and administrators, doth hereby covenant and agree to and with the said William G. Lewis his heirs executors administrators and assigns forever, that he will warrant and forever defend a good and lawful right and title to the aforesaid tract or parcels of lands and premises together with all the personal property hereby conveyed unto the said William G. Lewis his heirs and assigns, free from the claims or claims of the said James Grant and his heirs, and of all persons claiming under him, and against the claims or claims of all and every person or persons whatsoever.

This indenture is made in full trust and special confidence, that in the event the said James Grant fails to pay to the said Jacob Smith the several sums of money as aforesaid, with the lawful interest which may accrue thereon within the whole or in part, on or before the 1st day of January 1847, then and in that case the said William G. Lewis trustee as aforesaid or in case of his death his executor or executors shall at the request of the said James Grant and Jacob Smith or either of them after having given fifteen days notice thereof by way of advertisements set up at different public places near the tracts of lands aforesaid proceed to sell to the highest bidder for ready money at public auction upon the premises or some other suitable place, the two tracts or parcels of land and premises together with all the personal property hereby conveyed; and out of the proceeds of such sale first pay all costs and charges attending the execution of the trust and effecting the sale aforesaid, then pay to the said Jacob Smith his debt as aforesaid with the interest which may have legally accrued thereon, and the surplus if any, pay to the said James Grant or his legal representatives. In testimony whereof the said parties have hereunto set their hands and affixed their seals, the day and year first above writtun.

James Grant 
William G. Lewis 
Jacob Smith 

Pittsylvania County, to wit,

We James A. Mitchell and W. Litcher Justices of the peace in the County aforesaid, in the State of Virginia, do hereby certify, that James Grant a party to a certain deed, bearing date on the 16th day of August 1825 and hitherto unrecorded, personally appeared before us in our County aforesaid and acknowledged the same to be his act and deed, and desired us to certify the said acknowledgment to the Clerk of the County Clerk of Franklin, in order that the said Deed may be recorded, given under our hands and seals this the 16th day of August 1825.

James A. Mitchell *W. Litcher*

In the Clerk's office of Franklin County Court the 1st day September 1825

This Deed of Trust from James Grant to Willis G. Cousins for the purpose herein expressed was exhibited into the office and together with the certificate hereon and said admitted to record

Teste

Moses G. Carpenter, C. C. C.

Indenture This Indenture made this 21st day Augt. 1825 between Oliver P. Singfield of the County of Franklin and State of Virginia of the one part and Alexander Ferguson of the same County and State of the other part: whereas the said Oliver Singfield is justly indebted to J. D. Borth & Ferguson in the sum of twenty three dollars & cents due by Bond the 1st day of September 1822 and also an apd due J. D. Borth & Ferguson the 1st day of Sept. 1825 amounting supposed to be under twenty dollars and also the sum of fifteen dollars due John Gray which Tenak Smith is his security for which said several sums of money together with the interest thereon as due to J. D. Borth & Ferguson and also the said debt which the said Tenak Smith is his security for the said Oliver Singfield is willing and anxious to secure to the said J. D. Borth & Ferguson as his creditor and the said Tenak Smith as his security. Now therefore this Indenture witnesseth that for and in consideration of the sum of one dollar in hand paid to the said Singfield by the said Alexander Ferguson at and before the making and doing of these presents the receipt whereof is hereby acknowledged both granted bargained and sold unto the said Alexander Ferguson a certain

CHAIN OF TITLE FOR LARRY K. LITTLE AND DOUGLAS M. HUNT

STATE OF NORTH CAROLINA

RANOLPH County.

This Deed Made this _____ day of

March _____ A. D. 1983 by and between

Walter V. Roberts and wife, Virginia S. Roberts

of the County of Randolph and State of North Carolina

Parties of the first part, and

Larry F. Little and Douglas M. Hunt

of the County of Davidson and State of North Carolina

parties of the second part:

WITNESSETH, that the said parties of the first part, in consideration of
 TEN DOLLARS AND OTHER VALUABLE CONSIDERATIONS (\$10.00 et al)---Dollars
 to them paid by the parties of the second part, the receipt of which is hereby
 acknowledged, have bargained and sold, and by these present do grant, bargain, sell and
 convey unto the said parties of the second part and
 their heirs, all that certain tract or parcel

_____ of land, situate, lying and being in
 Southeast Magisterial
 District _____ Franklin County, State of
 Virginia
 and more particularly described and defined as follows:

BEGINNING at an existing iron pipe located in the northern part of a branch,
 Amos' corner in George Wallser's western line; thence with said branch the
 following courses and distances: North 52° 15' West 78.58 feet to a stake;
 North 1° 00' West 66.96 feet to a stake; North 60° 13' West 178.77 feet to a
 stake; North 3° 12' East 168.76 feet to a stake; North 36° 22' West 81.13 feet
 to a nail in a stone pile; thence crossing said branch with Amos' line, South
 55° 38' 10" West 465.47 feet to a stake; thence continuing with Amos' line,
 South 88° 29' 45" West 1452.00 feet to a stake; thence leaving Amos' line, North
 26° 35' West 1181.41 feet to a stake, thence North 31° 50' East 1633.22 feet to
 a stake; thence North 56° 42' 30" East 1320.00 feet to a stake; thence North 34°
 40' East 693.00 feet to a stake; thence South 58° 34' East 1485.00 feet to a
 stake and stone at a marked maple in George Wallser's western line; thence with
 said Wallser's line, South 17° 57' 20" West, 3259.74 feet to the point and place
 of BEGINNING, being 193.07 acres, more or less, all according to a survey by
 Clotus Craven, R.L.S., Asheboro, North Carolina, dated October 26, 1981.

For back reference see deeds recorded in Deed Book 268, Pages 16, 17 and 18;
 Deed Book 192, Page 375, Franklin County Registry.

TO HAVE AND TO HOLD the aforesaid tract or parcel

of land and all privileges and appurtenances thereto belonging, to the said parties of the second part, their

heirs and assigns, to their only use and behoof forever.

And the parties of the first part for t themselves their heirs, executors and administrators, covenants with the said parties of the second part, their heirs and assigns, that they are seized of said premises in fee, and have the right to convey the same in fee simple; that the same are free and clear from all incumbrances, and that they will warrant and defend the said title to the same against the lawful claims of all persons whomsoever.

IN TESTIMONY WHEREOF, the said parties of the first part to these presents have hereunto set their hands, and seal, the day and year above written.

SIGNED, SEALED AND DELIVERED
IN THE PRESENCE OF

Charles H. Anderson, Jr.
Grant R. Anderson

Walter V. Roberts (Seal)
Virginia S. Roberts (Seal)

_____ (Seal)

Recorded
3/21/83

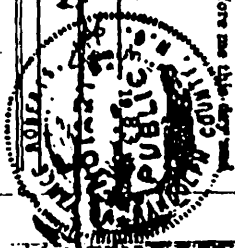
STATE OF NORTH CAROLINA
County of RANDOLPH ss.

I, Walter V. Roberts, Jr. a Notary Public
for said County and state Walter V. Roberts and wife, Virginia S. Roberts
do hereby certify that

XXXX personally appeared before me this day and
acknowledged the due execution of the foregoing (or annexed) instrument:

Let the instrument and the certificate be registered.
WITNESS my hand and notarial seal, this 17 day of March

My commission expires Feb, 19, 1956 Walter V. Roberts, Jr.



STATE OF _____ ss.
County of _____

I, _____ do hereby certify that
for said County and state _____

and _____ personally appeared before me this day and
acknowledged the due execution of the foregoing (or annexed) instrument:
Let the instrument and the certificate be registered.
WITNESS my hand and seal, this _____ day of _____ 19____

P.A.M.CO

Form R. D. 915

DEED

Walter V. Roberts and wife,
Virginia S. Roberts
To
Larry K. Little and
Douglas M. Hunt

Consideration, \$ 10.00 et al

Dated _____ day of March 1956

Filed for registration on the _____ day of _____ 19____ at _____ o'clock
M., and registered in the office of Register of Deeds for _____ County, North Carolina
day of _____ 19____ at _____ o'clock
in Book _____ of Deeds, on Page _____, ss.

Register of Deeds.
Given by
GAVIN AND PUGH ATTORNEYS
P.O. BOX 786, Asheboro, NC
27204-0786

STATE OF _____ ss.
County of _____

The foregoing (or annexed) certificate of _____

is adjudget to be correct, in the instrument and the certificate be registered.

This _____ day of _____ A.D. 19____

Clerk

Clerk

THIS DEED, made and entered into this the 3rd day of December, 1970, by and between RALPH B. RHODES, Substitute Trustee, party of the first part, and WALTER V. ROBERTS, party of the second part;

WHEREAS, by a certain deed of trust bearing date of March 12, 1962, Burton C. Jessup and Catherine K. Jessup, his wife, conveyed unto T. R. Wall, Trustee, a certain tract or parcel of land hereinbelow described, lying and being in Southeast Magisterial District of Franklin County, Virginia, which deed of trust is of record in the Clerk's Office of the Circuit Court of Franklin County, Virginia, in Deed Book 193, at page 329; and,

WHEREAS, thereafter T. R. Wall died and by an order dated September 10, 1970, Ralph B. Rhodes was appointed Substitute Trustee in the place and stead of T. R. Wall; and,

WHEREAS, default was made in the debt secured, and the beneficiary requested the substitute trustee to execute said deed of trust by selling the property; and,

WHEREAS, after advertising such sale in accordance with the terms of the said deed of trust in accordance with the statutes in such cases made and provided, the said property, as hereinafter described was sold on Saturday, October 24, 1970, at twelve o'clock noon at the Courthouse, in Rocky Mount, Franklin County, Virginia, and Walter V. Roberts, being the highest bidder became the purchaser thereof at the price of Four Thousand (\$4,000.00) Dollars, all of which has been duly paid in cash; and

WHEREAS, in accordance with the statutes in such cases made and provided, the names of the persons on whose behalf this deed is executed are Burton C. Jessup and Catherine K. Jessup;

NOW, THEREFORE, THIS INDENTURE:

Subscribed & sworn to
 Robert V. Roberts
 John C. Rhodes, Jr.
 2215

W I T N E S S E T H:


THAT FOR AND IN CONSIDERATION of the premises and for Four Thousand (\$4,000.00) Dollars, cash in hand paid, the receipt whereof is hereby acknowledged, the said Ralph B. Rhodes, Substitute Trustee, party of the first part, doth hereby grant, bargain, sell and convey, with Special Warranty of Title, unto the party of the second part, all that certain tract or parcel of land situate, lying and being on Turkey Cock Mountain, in the Southeast Magisterial District of Franklin County, Virginia, and being more particularly described as follows:

BEGINNING at a black gum in Jabez Smith's line on the big branch; thence with Smith's line; N. 15-1/2° E. 196 poles, crossing two branches to a red oak; thence a new line, N. 57° W. 90 poles to pointers on top of said Mountain; thence along top of mountain, S. 35° W. 42 poles to a bunch of chestnut sprouts; thence S. 57° W. 80 poles to a chestnut oak; S. 30° W. 56 poles to a chestnut oak; S. 33-1/2° E. 72 poles to a chestnut oak; thence E. 88 poles to a bunch of chestnut sprouts; N. 54° E. 28 poles to a maple on the aforesaid branch, and down the same as it meanders, S. 35° E. 35 poles to the point of BEGINNING, CONTAINING 191 ACRES, MORE OR LESS; and,

Being the same property conveyed to Burton C. Jessup and Catherine K. Jessup from W. L. Saunders, et al, by deed bearing date of August 15, 1961, which deed is of record in the Clerk's Office of the Circuit Court of Franklin County, Virginia, in Deed Book 192, at page 373.

TO HAVE AND TO HOLD unto the said party of the second part his heirs and assigns forever in fee simple.

WITNESS the following signature and seal:

 (SEAL)
Ralph B. Rhodes, Substitute Trustee.

STATE OF VIRGINIA

COUNTY OF FRANKLIN, to-wit:

I, Evelyn S. Stillburn, a Notary Public of and for the County of Franklin, in the State of Virginia, hereby certify that Ralph B. Rhodes, Substitute Trustee, whose name is signed to the foregoing deed, bearing date on the 3rd day of December, 1970, has this day personally appeared before me in my State and County aforesaid and acknowledged the same.

Given under my hand this 14th day of December, 1970.

My commission expires June 17, 1972.

Evelyn S. Stillburn
Notary Public.

In the Clerk's Office of the Circuit Court of Franklin County, Virginia, this instrument is admitted to record on the 14 day of December, 1970, at 9:05 P. M, and with the certificate of acknowledgment thereto annexed. The taxes imposed by Sec. 58-54 and Sec. 58-54.1 of the Code of Virginia, in the amount of \$4.00 have been paid.

Teste: Wm. J. Walker, Jr. Clerk

THIS DEED made and entered into this 15th day of August, 1961, by and between W. L. SAUNDERS & MILDRED A. SAUNDERS, his wife, and P. G. SAUNDERS & GLADYS N. SAUNDERS, his wife, parties of the first part, and BURTON C. JESSUP and CATHERINE K. JESSUP, parties of the second part.

WITNESSETH:

That for and in consideration of the payment of the sum of FOUR THOUSAND (\$4,000.00) DOLLARS, cash in hand paid by the parties of the second part unto the parties of the first part, the receipt whereof is hereby acknowledged, the said parties of the first part doth hereby grant, bargain, sell and convey, with General Warranty of Title, unto the parties of the second part, the following described real estate lying and being in Snow Creek Magisterial District, Franklin County, Virginia, on Turkey Cock Mountain, containing 191 acres, more or less, adjoining the lands of Martie Walker, J. J. Oakes, John Harold Amos, and lying about twenty (20) miles southeast of Rocky Mount, at or near the Pittsylvania County and Henry County Line, and it being the same tract or parcel of land which was granted to James Grant by James McDowell, Governor of the Commonwealth of Virginia, by Grant dated June 30, 1845, and which Grant was recorded March 12, 1957 in the Clerk's Office of the Circuit Court of Franklin County, Virginia, in Deed Book 148 at page 369, and more particularly described by a survey as follows:

BEGINNING at a Black Gum in Jabex Smith's line on the Big Branch; thence with said Smith's line N 15 1/2 E 196 poles crossing two branches to a Red Oak, thence a new line N 57 W 90 poles to pointers on the top of said mountain; thence along the top S 35° W 82 poles to a bunch of chestnut sprouts, S 57° W 80 poles to a chestnut Oak, S 30° W 56 poles to a chestnut oak, S 33 1/2 E 72 poles to a chestnut oak, E 88 poles to a bunch of



COLEMAN B. YEATTS
ATTORNEY AT LAW
CHATHAM, VIRGINIA

chestnut sprouts, N 54 E 28 poles to a maple on the aforesaid branch, and down the same as it meanders, S 35 E 35 poles to the BEGINNING, containing 191 acres, more or less, and being the exact same land conveyed to W. L. Saunders and P. G. Saunders from Russell L. Davis, Commissioner, by deed bearing date on the 7th day of April, 1960 and recorded in the Clerk's Office of the Circuit Court of Franklin County in Deed Book 175 at page 193.

The parties of the first part covenant that they have the right and power to convey the aforesaid real estate, that they have done no act to encumber the same, that the said parties of the second part shall have quiet enjoyment of the said land, free from all encumbrances, and that they will execute such other and further assurances of title as may be requisite.

WITNESS the following signatures and seals:

W. L. Saunders (SEAL)
Mildred A. Saunders (SEAL)
P. G. Saunders (SEAL)
Gladys N. Saunders (SEAL)

STATE OF VIRGINIA

COUNTY OF PITTSYLVANIA, to-wit:

I, Peggy Fox Reynolds, a Notary Public of and for the county and state aforesaid, do certify that W. L. SAUNDERS and MILDRED A. SAUNDERS, his wife, and P. G. SAUNDERS and GLADYS N. SAUNDERS, his wife, whose names are signed to the foregoing deed, bearing date on the 15th day of August, 1961, have this day personally appeared before me in my county aforesaid and acknowledged the same.

Given under my hand this 30th day of August, 1961.

My commission expires January 7, 1963.

Peggy Fox Reynolds
 Notary Public

With Present State of this value
 (1) 1960 in same and
 (2) 1961 according to law.

For the Clerk of the Circuit Court for the County of Franklin the 30 day of August 1961, this deed was presented, and with the certificate annexed admitted to record at Lee o'clock A.M.
Edwin Green Clerk

COLEMAN B. YEATTS
 ATTORNEY AT LAW
 CHATHAM, VIRGINIA

175 . 193

THIS DEED, made and entered into this the 7th day of April, in the year 1960, by and between RUSSELL L. DAVIS, Commissioner, as hereinafter mentioned, party of the first part, and W.L. SAUNDERS and P. G. SAUNDERS, share and share alike, parties of the second part;

W I T N E S S E T H:

THAT WHEREAS, on the 25th day of February, 1960, it was Decreed and Ordered by the Circuit Court of Franklin County, Virginia, in the Chancery cause of Franklin County, A Body Politic v. James Grant, his Heirs, Devisees, Assigns, and Any Unknown Heirs, that Russell L. Davis, who was thereby appointed a Commissioner for the purpose should, at public auction, upon the terms of cash, make sale of that certain tract or parcel of land, containing One Hundred Ninety One Acres (191), more or less, known as the James Grant land on Turkey Cock Mountain, after first having advertised the time, the term and place of sale, and,

WHEREAS, the said sale was advertised by posting hand bills in and around the vicinity of the property, and by two weeks' advertisement in the Franklin News Post, and,

WHEREAS, the said Russell L. Davis, Commissioner, as aforesaid, in pursuance of said Decretal Order, advertised the said real estate for sale on Saturday, March 19, 1960, at 12 o'clock Noon, at the Front Door of the Court House at Rocky Mount, Virginia, after having complied in all respects with the said Decretal Orders, and having executed Bond in the penalty fixed by the Court, with approved surety, and at said sale, W. L. Saunders and P. G. Saunders of Pittsylvania County, Virginia, being the highest bidders, became the purchasers of said land for



LAW OFFICES
DAVIS, DAVIS & DAVIS
ROCKY MOUNT, VA.

b7c 175 - 194

the price of Thirty Two Hundred Dollars (\$3,200.00), they being the highest bidders for same, and,

WHEREAS, the whole of the purchase money has been paid in cash, and,

WHEREAS, the said sale, by Decree entered on the 1st day of April, 1960, was ratified, confirmed and approved, and Russell L. Davis, was appointed a Commissioner to make, execute and deliver a Deed to the purchasers of the land so bought by them in this proceeding; and,

WHEREAS, in pursuance of the statutes on such cases made and provided, the names of the parties on whose behalf this conveyance is made are the Heirs, Devisees, Assigns, and any Unknown Heirs of James Grant.

NOW, THEREFORE, FOR AND IN CONSIDERATION of the sum of THIRTY TWO HUNDRED DOLLARS (\$3,200.00), to him in hand paid, by the said W. L. Saunders and P. G. Saunders, agreeably to the terms of said Decretal Order, at and before the sealing and delivery of this Deed, the receipt of which is hereby acknowledged, the said Russell L. Davis, Commissioner, as aforesaid, in order to carry into effect the said sale, made as aforesaid, in pursuance of said Decretal Order, doth hereby bargain, sell, grant, deed and convey with Covenants of Special Warranty of Title unto the said W. L. Saunders and P. G. Saunders, share and share alike, parties of the second part, all that certain tract or parcel of land, containing One Hundred Ninety One (191) Acres, more or less, situate, lying and being on Turkey Cock Mountain, in Snow Creek Magisterial District, Franklin County, Virginia, adjoining the lands of Martie Walker, J. J. Oakes, John Harold Amos, and lying about Twenty (20)

LAW OFFICES
DAVIS, DAVIS & DAVIS
ROCKY MOUNT, VA.

175 195

Miles Southeast of Rocky Mount, at or near the Pittsylvania County and Henry County Line, and it being the same tract or parcel of land which was granted to James Grant, by James McDowell, Governor of the Commonwealth of Virginia, by Grant dated June 30, 1845, and which Grant was recorded March 12, 1957, in the Clerk's Office of the Circuit Court of Franklin County, Virginia, in Deed Book No. 148, at Page No. 369, and more particularly described by a survey as follows:

BEGINNING at a Black Gum in Jabez Smith's line on the Big Branch; thence with said Smith's line N. 15 1/2 E. 196 Poles crossing two branches to a Red Oak, thence a new line N. 57 W. 90 poles to pointers on the top of said mountain; thence along the top S. 35 deg. W. 82 poles to a bunch of chestnut sprouts, S. 57 deg. W. 80 poles to a chestnut Oak, S. 30 deg. W. 56 poles to a chestnut oak, S. 33 1/2 E. 72 poles to a chestnut oak, East 88 poles to a bunch of chestnut sprouts, N. 54 E. 28 poles to a maple on the aforesaid branch, and down the same as it meanders, S. 35 E. 35 poles to the BEGINNING.

TO HAVE AND TO HOLD unto them, the said W. L. Saunders and P. G. Saunders, share and share alike, their heirs and assigns forever.

WITNESS the following signature and seal.

Russell L. Davis (SEAL)
Commissioner

STATE OF VIRGINIA,

COUNTY OF FRANKLIN; to-wit:

I, Dobson F. Henderson, a Notary Public in and for the County of Franklin, State of Virginia, do hereby certify that Russell L. Davis, Commissioner, whose name is signed to the foregoing Deed bearing date on the 7th day of April, 1960, has this day personally appeared before me in my county and state aforesaid and acknowledged the same.

LAW OFFICES
DAVIS, DAVIS & DAVIS
ROCKY MOUNT, VA.

Given under my hand this the 7th day of April, 1960.

My commission expires: December 2, 1961

Robert T. Davidson
Notary Public
Commissioned as Notary Public

VIRGINIA, FRANKLIN COUNTY, To Wit
In the office of the Clerk of the Circuit Court for the County of Franklin the 7 day of
April 1960 this deed was presented, and with the certificate annexed
admitted to record at 12:15 o'clock M.
Teste Robert T. Davidson Clerk

With Revenue Stamp of the value
of \$5.85 placed in same and
operated according to law

Expire, Governor of the Commonwealth of Massachusetts

To all to whom these Presents shall come, Greeting, Know that

conformity with a survey made on the *Thirtieth day of May*, One thousand eight hundred and forty five, by virtue of Land Office Survey warrant No. 5268

there is granted by the said Commonwealth, unto *James Grant*

a certain Tract or Parcel of Land, containing *One hundred and twenty* acres, lying and being in Franklin County, on Turkey Creek mountain, and Bounded as follows, viz: Beginning at a Black Oak, on Selby Smith's line on the Big Branch, thence with said Smith's line N. 16 1/2 E 196 Poles crossing two branches to a Black Oak, thence new line N. 57 W. 90 poles to a point on the top of said mountain, thence along the top S. 35 W. 152 Poles to a Branch of Chestnut Sprouts, S. 57 W. 80 Poles to a Chestnut Oak, S. 35 W. 56 Poles to a Chestnut Oak, S. 33 E. 72 Poles to a Chestnut Oak, S. 18 Poles to a Branch of Chestnut Sprouts N. 53 E. 28 Poles to a maple on the aforesaid branch and down the same as the meanders, S. 35 E. 38 Poles to the Beginning, with its appurtenances.



James Grant
and his heirs forever

James Grant

WITNESSED, FRANKLIN COUNTY, MAY 11

1845, at the County of Franklin the 12

March 1845

Edwin Green Com

21 / 327

Blackwater mine down the same as it runs 1/2 by 0.20
Poles to a Elmnet in Henry Smiths line S. 15. W. 96 poles
to a road oak S. 26 E. 34 poles to a hickory in Arthur
Arringtons line with it South 65. W. 44 poles to a road oak
thence South 82 W 25 poles to the beginning containing 43
acres be the same more or less. to have and to hold the
above descried land to the said Daniel Mitchell and his
heirs forever. In witness whereof the above named parties
have hereunto set their hands and affixed their seals this
day and date written

Henry Smith 
Susan Smith 

State of Virginia Franklin County Court

We Solomon Parley and Abram J. Holland Justices
of the Peace for the County and State aforesaid do certify
that Henry Smith whose name are signed to the writing
above bearing date on the 6th day of July 1850 have acknowl-
edged the same before us in our County aforesaid. Given
under our hands this 6th day of July 1850.

S. Parley JP.
A. J. Holland JP.

State of Virginia Franklin County Court.

We Solomon Parley and Abram J. Holland Justices
of the Peace in and for the County and State aforesaid do
certify that Susan Smith the wife of Henry Smith whose
name are signed to the writing above bearing date on the
6th day of July 1850 personally appeared before us in the
County aforesaid and being examined by us privily and
apart from her husband and having the writing aforesaid
fully explained to her she the said Susan Smith acknowl-
edged the said writing to be her act and declared that she
had willingly executed the same and does not wish to retract
it. Given under our hands this 6th day of July 1850.

S. Parley JP.
A. J. Holland JP.

In the Clerk's Office of Franklin County Court the 5th day of August 1857.

This Deed of bargain and Sale between Henry Smith Jr and Susan his wife of the one part and Daniel Mitchell of the other part was returned into the said office and together with the certificates heron endorsed admitted to record.

Teste.

M. G. Carpenter. C. F. C.

21/37

Grant

for sale

Census

9-11-15

17 1858

This Indenture made this the 29th day of December in the year of our Lord one thousand eight hundred and forty nine Between Willis G. Cousins of the County of Pittsylvania in the State of Virginia of the one part and James R. Grant of the other part Whereas a certain farm

Grant of the ~~County~~ of Franklin by a certain deed bearing date the 16th day of August in the year of our Lord one thousand eight hundred and forty five and recorded in the Clerk's Office of the County Court of Franklin did give grant bargain and sell unto the said Willis G. Cousins his heirs and assigns all that certain tract or parcel of land situate lying and being in the County of Franklin on the waters of Turkey Cock Creek together with the tenements and premises thereto ~~belonging~~ belonging or in any wise appertaining in trust for the benefit of a certain Gabriel Smith and by which deed the said Willis G. Cousins his heirs and assigns and the survivor or survivors of them was and were empowered on failure of the said James Grant to perform certain acts and deeds therein mentioned to sell said property. And whereas the said James Grant failed to perform the requirements contained in said deed the said Willis G. Cousins in execution of the trust above created did on the 18th day of September 1857 after giving fifteen days notice of the time and place of sale by written advertisements set up at various public places near the place of sale report to sell the said tract or parcel of land lying and being in the County of Franklin on the waters of Turkey Cock Creek.

X
together with the tenements and premises thereto belonging
or in any wise appertaining and which property was
conveyed to the said James Grant by James McDowell
esquire Governor of the Commonwealth of Virginia on the
30th day of June 1845 by virtue of Land Office Treasury
Warrant No 15268 containing one hundred and ninety
one acres be the same more or less and bounded by the lands
of John W Calaway, George W Clement and others at
which sale the said tract or parcel of land was cried out
to the highest bidder for the sum of Seventy five dollars
Now this Indenture Witnesseth that the said Willis G Cousins
in performance of his duties as trustee of and for the
said Baby Smiths land for and in consideration of the sum
of Seventy five dollars aforesaid good and lawful money
of Virginia to him the said Willis G Cousins in hand paid
by the said James R Grant at or before the val-
ing and delivery of these presents and which he the said
Willis G Cousins doth hereby acknowledge hath given
granted bargained and sold and by these presents do give
grant bargain and sell unto the said James R Grant
his heirs executors and administrators the tract or parcel
of Land and premises as above mentioned and described
to have and to hold the said tract or parcel of land
and premises unto the said James R Grant his heirs
and assigns forever and the said Willis G Cousins the
said tract or parcel of Land and premises unto the said
James R Grant his heirs executors and administrators

defined by these presents agreeably to the full extent in me
by the Trust aforesaid and none other from and against all
and every claim or claims demand or demands and against
all persons claiming by through or under him in witness
whereof the said Willis G Cousins have hereunto set his hand
and affixed his seal the day and year first above written.
Willis G Cousins

Pittsylvania County, to wit:

We Albert G. Smittle and Achilles H. Moorman Justices of the Peace for the County aforesaid in the State of Virginia do hereby certify that Willis G. Cousins a party to a certain deed bearing date 29th December 1849 and hereto annexed personally acknowledged before us the same to be his act and deed and desired us to certify the said acknowledgment to the Clerk of the County Court Franklin in order that the same may be recorded. Given under our hands & seals this 29th day of December 1849.

Albert G. Smittle *Esq.*
A. H. Moorman *Esq.*

In the Clerk's Office of Franklin County Court the 27th day of August 1850

This Indenture of bargain and sale between Willis G. Cousins of the one part and James R. Grant of the other part was exhibited into the said Office and together with the certificate heron underwritten admitted to record.

Teste.

M. G. Carpenter C. J. C.

7 This Indenture made and entered into this 16th day of
s.d. August 1850 between James Arnold (a Commissioner acting
under a decree of the Circuit Superior Court of Law & Chan-
cery for Franklin County, pronounced the 16th day of
May 1850 at the suit of Daniel B. Hunt versus plaintiff
the against Mary Barnett others Defendants of the one part
mon and Thomas Craig of the other part: Whereas by a decree
here pronounced in the said suit by the said Court on the ____ day
of ____ William Craig was appointed a Commissioner to
9/14 pose the lands mentioned in the bill and proceedings of the
said suit, and by virtue of the said decree he sold the said
lands, and the said Thomas Craig being the highest bidder
therefor became the purchaser of a tract called the lower division
or lot no. 1 containing one hundred & seventy five acres at the
price of \$577.50 & which said purchase money it appears has
been fully paid: and whereas the said James Arnold was
by the decree first herein mentioned appointed a Commissioner
to convey to the said Thomas Craig by deed with special
warranty the tract or parcel of lands so purchased by
him as aforesaid, all of which will more fully appear by
reference to the records and proceedings of the suit aforesaid.

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legally accords them and also all costs & charges attending
the execution of this trust & effecting the sale aforesaid, and the
surveys if any pay to the said Joseph Todd or his legal
representatives. In testimony whereof the said Parties have here-
unto set their hands & seals the day and year first within written.

Joseph Todd, Esq.
Lewis Potter, Esq.
Henry P. Law, Esq.

In the Clerk's Office of Franklin County about the 7th day of
November, 1848.




(This Deed of Trust from Joseph Todd to Lewis Potter, for
the purposes herein expressed, was acknowledged in the said office
by the said Todd and Henry P. Law and admitted to record
(Teste.

M. C. Carpenter, C. J. C.

1. The indenture made and entered into this the 3rd day of Septem-
ber, in the year of Christ one thousand, eight hundred and forty
2. eight, between William C. Cousins of the County of Alleghania and
3. State of Virginia, of the one part, James Grant and Anna
4. his wife of the County of Franklin and State aforesaid, of the
5. second part, and Henry Brownman of the said last mentioned
6. County and State of the other part. Whereas by a Deed of Trust
duly executed by the said James Grant to the said William C.
Cousins for purposes therein mentioned, bearing date on the
16th day of August 1845 and duly recorded in the County Court
of Franklin aforesaid, reference thereto may more fully appear.
The said William C. Cousins after duly advertising the time
and place of sale pursuant to the provisions of said Deed,
on the 18th day of September 1847 exposed the said land for sale
by way of auction to wit: One hundred and five Acres of
Land more or less bounded by the lands of Blaher Terry and
others in the said Deed mentioned, also the tract of One hundred
and ninety one Acres more or less on the waters of Turkey



Cock Croft bounded by the lands of John M. Callaway and others, likewise referred to in said deed; and a certain Gaber Smith became the purchaser of said Tracts of Land at the price of one Hundred and thirty five Dollars and where- as also the said Gaber Smith with the assent of the said Lillis C. Cousins and the said James Grant and Anna his wife hath sold his claim to the legal title of said one Hundred and five Acres of Land more or less bounded by Walker Terry and others as aforesaid, and his interest therein to the said Henry Bowman at the price of Two Hundred Dollars. Now this Indemnitee Witnesseth that the said Lillis C. Cousins and James Grant and Anna his wife for and in consideration of the promises aforesaid and the consideration of the sum of Two Hundred Dollars to be paid by the said Henry Bowman to them, they the said Lillis C. Cousins and James Grant and Anna his wife have granted bargained and sold and do by these presents grant bargain and sell unto

the said Henry Bowman all that Tract piece or parcel of Land lying in the County of Franklin and bounded by the Lands of Walker Terry and others containing one Hundred and five Acres more or less together with all and singular the appurtenances thereto belonging or in any wise appertaining to the said Henry Bowman and his heirs & assigns forever and the said Lillis C. Cousins doth for himself his heirs executors and administrators covenant and agree to and with the said Henry Bowman his executors & administrators to warrant and defend a good and lawful title to the said tract or parcel of Land free from the claim of himself and his heirs but against no other person or persons whatever, it being the design of these presents to convey to the said Henry Bowman such title to the said tract of Land as may be vested in the said Lillis C. Cousins as Trustee and in the said Anna wife of the said James Grant and none other. In Testimony whereof the parties to these presents have hereunto set their hands and affixed their seals the day and date first before written

Lillis C. Cousins 
James Grant 
Anna Grant 

Pittsylvania County Court:

We James A. Mitchell and A. H. Moorman Justices of the peace in the County aforesaid in the State of Virginia do hereby certify that William G. Cousins and James Grant parties to a certain deed bearing date on the 2^d day of September 1848. and herunto annexed personally appeared before us in our County aforesaid and acknowledged the same to be their act and deed and desired us to certify the said acknowledgement to the Clerk of the County Court of Franklin in order that the said deed may be recorded. Given under our hands and seals this the 2^d day of Sept. 1848.

James A. Mitchell 
A. H. Moorman. 

Pittsylvania County Court:

We James A. Mitchell and Achilles H. Moorman Justices of the peace in the County aforesaid in the State of Virginia do hereby certify that Anna Grant the wife of James Grant parties to a certain deed bearing date on the 2^d day of September 1848 and herunto annexed personally appeared before us in our County aforesaid and being examined by us privily and apart from her husband and having the deed aforesaid fully explained to her she the said Anna Grant acknowledged the same to be her act and deed and declared that she had willingly signed sealed and delivered the same and that she wished not to retract it. Given under our hands and seals this the 2^d day of September 1848.

James A. Mitchell 
A. H. Moorman. 

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sack. Now therefore this indenture witnesseth that for and in consideration of the sum of one dollar in hand paid to the said Elashington Nunley & his wife by the said Moses G. Carper at and before the sealing and delivery of these presents the receipt whereof is hereby acknowledged, hath granted bargained and sold unto the said Moses G. Carper all our right, title and interest, which we now have or may hereafter have in and to the estate of John Elright Decd both real and personal, also all our right title and interest in and to the down estate of Elizabeth Elright widow of the said John Elright decd, 3 head of Cattle, one horse, 7 head of Hog, all growing crop of Corn & Tobacco. To have and to hold the same unto the said Moses G. Carper forever, upon trust nevertheless that in default of payment of the aforesaid debts and interest together with the expenses of this deed on or before the 1st day of January next, the said M. G. Carper as soon as he conveniently can after advertising the time and place of such intended sale in the Neighborhood, or weeks previous thereto being requested by either of the creditors herein, proceed to sell to the highest bidder for ready money, the aforesaid interests in said estates and property aforesaid, except 10¢ and the money arising from such sale, the said Moses G. Carper, shall in the first place pay or satisfy the debt or debts due to the said John A. Smith, and in the next place pay and satisfy the aforesaid Stephen Stiles the aforesaid debts and the residue if any arising from such sale he shall in the next place pay it over to the said Elashington Nunley or his legal representatives. In witness whereof the parties have hereunto affixed their hands & seals the day and date first above written,

signed sealed and delivered

in the presence of

William B. Beach
Hiram Mills

Elashingtonⁱⁿ & Nanelieⁱⁿ

In the Clerk's office of Franklin County on the 5th day of September 1925

This Deed of Trust from Elashington Nunley to Moses G. Carper for the purposes herein expressed was acknowledged in the office by the said Nunley and admitted to record as to him,
Tute

Moses G. Carper, C. F. B.

This Indenture made this the 16th day of August in the year of our Lord one
 thousand eight hundred and forty five. Between James Grant of the County of
 Franklin in the State of Virginia of the first part. Willis G. Cowins Trustee of
 Grant the second part, and Jabez Smith of the County of Pittsylvania and
 State aforesaid of the Third part, whereas the said James Grant is greatly
 indebted to the said Jabez Smith in the following sums of money to wit, the sum
 of one hundred dollars, with lawful interest thereon from the 1st day of October
 1840 the sum of one hundred dollars with lawful interest, thereon from the 1st
 day of October 1841. the sum of One hundred dollars with lawful interest
 thereon from the 1st day of October 1842 for which sums of Money suits
 have been instituted in the Superior Court of Franklin County, which suits
 more fully appear by reference to the records of the Court aforesaid.

the sum of Two dollars and cents the cost of the suits above referred to, and the sum of Eight dollars and fifty cents due by Bond dated the 8th day of August 1866 with lawful interest thereon from the date, which debts or sums of money with the lawful interest thereon accruing the said James Grant is willing and desirous to secure. And this Indenture witnesseth that for and in consideration of the premises, and also for the further consideration of One dollar of lawful money of Virginia to the said James Grant in hand paid by the said Willis G. Cousins at and before the sealing and delivery of these presents the receipt whereof is hereby acknowledged, he the said James Grant hath given, granted, bargained and sold, released and confirmed, and by these presents doth give grant bargain sell assign and confirm to the said Willis G. Cousins his heirs and assigns forever, Two tracts or parcels of Land, to wit one tract containing one hundred and five acres more or less, and bounded by the lands of Walker Terry, William H. Gregory, William Shorter & others which is the same tract or parcel of Land the said James Grant purchased of John M. Banks which will more fully appear by reference to that Deed, which was duly recorded in the Clerk's office of Franklin County, and one tract containing One hundred and ninety one acres more or less situate lying and being in the County of Franklin on the waters of Turkey Creek and bounded by the Lands of John M. Callaway, George W. Clement & others also the following personal property, to wit, One Gray Stud Horse, two cows, two calves, one small bull, Sixty head hogs, three sheep, four Beds, bedsteads and furniture for same, One Clock, One Cupboard and contents, three tables, one Iron

one flax wheel, one cotton wheel, one shot gun two carry D blights six
pole axes 1 iron Hoe. also the other Carpenter's tools except out saw &c
with all and singular the appertinances to the said tracts or parcels of Land belong-
ing or in any wise appertaining and all the estate right title and interest of the said
James Grant in and to the said granted or intended to be hereby granted tracts or
parcels of Lands and premises. To have and to hold the said hereby granted
or intended to be hereby granted tracts or parcels of Lands and premises with
the appertinances together with all the personal property hereby conveyed unto the
said Willis G. Cousins, his heirs, executors administrators, and assigns forever and
the said James Grant for himself his heirs executors and administrators, doth
hereby covenant and agree to and with the said Willis G. Cousins his heirs execu-
tors administrators and assigns forever, that he will warrant and forever defend as
good and lawful right and title to the aforesaid tract or parcels of Lands
and premises together with all the personal property hereby conveyed unto the
said Willis G. Cousins his heirs and assigns, free from the claim or claim of the
said James Grant and his heirs, and of all persons claiming under him, and
against the claim or claims of all and every person or persons whatsoever
This Indenture is made this 1st day of March 1867, in full confidence that in
the event the said James Grant fails to pay to the said Jacob Smith the
several sums of money as aforesaid, with the lawful interest which may accrue
thereon within in the whole or in part, on or before the 1st day of January 1867, then
and in that case the said Willis G. Cousins trustee as aforesaid, or in case
of his death his executor or executors shall at the request of the said James Grant

174 and Jacob Smith or either of them after having given fifteen days notice thereof by way
of advertisement, set up at different public places near the tracts of Lands aforesaid
proceed to sell to the highest bidder for ready money at public auction upon the
premises or some other suitable place, the two tracts or parcels of Land and premises
together with all the personal property hereby conveyed, and out of the proceeds of such
sale first pay all costs and charges attending the execution of this trust and effecting
the sale aforesaid, then pay to the said Jacob Smith his debt as aforesaid, with
the interest which may have legally accrued thereon, and the surplus if any, pay
to the said James Grant or his legal Representatives. In testimony whereof the
said parties have hereunto set their hands and affixed their seals, the day and year
first above writtten.

James Grant *Wm*
Willis G. Cousins *Wm*
Jacob Smith *Wm*

Pittsylvania County, to wit,

We James A. Mitchell and W. Litcher Justices of the peace in the County aforesaid, in the State of Virginia, do hereby certify, that James Grant a party to a certain deed, bearing date on the 16th day of August 1825 and hereto annexed formally appeared before us in our County aforesaid and acknowledged the same to be his act and deed, and desired us to certify the said acknowledgment to the Clerk of the County Court of Franklin, in order that the said Deed may be recorded hence under our hands and seals this the 16th day of August 1825.

James A. Mitchell *W. Litcher*
W. Litcher *W. Litcher*

In the Clerk's office of Franklin County Court the 1st day September 1825

This Deed of Trust from James Grant to Willis G. Lewis for the purpose herein expressed was exhibited into the office and together with the certificate hereon endorsed admitted to record

Teste

Moses G. Carpenter C. C. C.

Indenture This Indenture made this 21st day Augt. 1825 between Oliver P. Kingfield of the County of Franklin and State of Virginia of the one part and Alexander Ferguson of the same County and State of the other part: whereas the said Oliver Kingfield is justly indebted to J. D. Borth & Ferguson in the sum of twenty three dollars and 18 cents due by Bond the 1st day of September 1824 and also an a/c due J. D. Borth & Ferguson the 1st day of Sept. 1825 amounting upwards to be under twenty dollars and also the sum of fifteen dollars due from Gray which Tenah Smith is his security for which said several sums of money together with the interest thereon as due to J. D. Borth & Ferguson and also the said debt which the said Tenah Smith is his security for the said Oliver Kingfield is willing and anxious to secure to the said J. D. Borth & Ferguson as his creditor and the said Tenah Smith as his security. Now therefore this Indenture witnesseth that for and in consideration of the sum of one dollar in hand paid to the said Kingfield by the said Alexander Ferguson at and before the sealing and delivery of these presents the receipt whereof is hereby acknowledged both granted bargained and sold unto the said Alexander Ferguson a certain