

4-25-57 4007/ 19902.227 3

Record No. 4671

In the
Supreme Court of Appeals of Virginia
at Richmond

THOMAS C. BARNES

v.

W. R. MOORE, ADMINISTRATOR, ETC.

FROM THE CIRCUIT COURT OF LUNENBURG COUNTY

RULE 5:12—BRIEFS.

§5. NUMBER OF COPIES. Twenty-five copies of each brief shall be filed with the clerk of the Court, and at least three copies mailed or delivered to opposing counsel on or before the day on which the brief is filed.

§6. SIZE AND TYPE. Briefs shall be nine inches in length and six inches in width, so as to conform in dimensions to the printed record, and shall be printed in type not less in size, as to height and width, than the type in which the record is printed. The record number of the case and the names and addresses of counsel submitting the brief shall be printed on the front cover.

H. G. TURNER, Clerk.

Court opens at 9:30 a.m.; Adjourns at 1:00 p. m.

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RULE 5:12—BRIEFS

§1. Form and Contents of Appellant's Brief. The opening brief of appellant shall contain:

(a) A subject index and table of citations with cases alphabetically arranged. The citation of Virginia cases shall be to the official Virginia Reports and, in addition, may refer to other reports containing such cases.

(b) A brief statement of the material proceedings in the lower court, the errors assigned, and the questions involved in the appeal.

(c) A clear and concise statement of the facts, with references to the pages of the printed record when there is any possibility that the other side may question the statement. When the facts are in dispute the brief shall so state.

(d) With respect to each assignment of error relied on, the principles of law, the argument and the authorities shall be stated in one place and not scattered through the brief.

(e) The signature of at least one attorney practicing in this Court, and his address.

§2. Form and Contents of Appellee's Brief. The brief for the appellee shall contain:

(a) A subject index and table of citations with cases alphabetically arranged. Citations of Virginia cases must refer to the Virginia Reports and, in addition, may refer to other reports containing such cases.

(b) A statement of the case and of the points involved, if the appellee disagrees with the statement of appellant.

(c) A statement of the facts which are necessary to correct or amplify the statement in appellant's brief in so far as it is deemed erroneous or inadequate, with appropriate references to the pages of the record.

(d) Argument in support of the position of appellee.

The brief shall be signed by at least one attorney practicing in this Court, giving his address.

§3. Reply Brief. The reply brief (if any) of the appellant shall contain all the authorities relied on by him not referred to in his opening brief. In other respects it shall conform to the requirements for appellee's brief.

§4. Time of Filing. As soon as the estimated cost of printing the record is paid by the appellant, the clerk shall forthwith proceed to have printed a sufficient number of copies of the record or the designated parts. Upon receipt of the printed copies or of the substituted copies allowed in lieu of printed copies under Rule 5:2, the clerk shall forthwith mark the filing date on each copy and transmit three copies of the printed record to each counsel of record, or notify each counsel of record of the filing date of the substituted copies.

(a) If the petition for appeal is adopted as the opening brief, the brief of the appellee shall be filed in the clerk's office within thirty-five days after the date the printed copies of the record, or the substituted copies allowed under Rule 5:2, are filed in the clerk's office. If the petition for appeal is not so adopted, the opening brief of the appellant shall be filed in the clerk's office within thirty-five days after the date printed copies of the record, or the substituted copies allowed under Rule 5:2, are filed in the clerk's office, and the brief of the appellee shall be filed in the clerk's office within thirty-five days after the opening brief of the appellant is filed in the clerk's office.

(b) Within fourteen days after the brief of the appellee is filed in the clerk's office, the appellant may file a reply brief in the clerk's office. The case will be called at a session of the Court commencing after the expiration of said fourteen days unless counsel agree that it be called at a session of the Court commencing at an earlier time; provided, however, that a criminal case may be called at the next session if the Commonwealth's brief is filed at least fourteen days prior to the calling of the case, in which event the reply brief for the appellant shall be filed not later than the day before the case is called. This paragraph does not extend the time allowed by paragraph (a) above for the filing of the appellant's brief.

(c) With the consent of the Chief Justice or the Court, counsel for opposing parties may file with the clerk a written stipulation changing the time for filing briefs in any case; provided, however, that all briefs must be filed not later than the day before such case is to be heard.

§5. Number of Copies. Twenty-five copies of each brief shall be filed with the clerk of the Court, and at least three copies mailed or delivered to opposing counsel on or before the day on which the brief is filed.

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§7. Effect of Noncompliance. If neither party has filed a brief in compliance with the requirements of this rule, the Court will not hear oral argument. If one party has but the other has not filed such a brief, the party in default will not be heard orally.

IN THE

Supreme Court of Appeals of Virginia

AT RICHMOND

Record No. 4671

VIRGINIA:

In the Supreme Court of Appeals held at the Supreme Court of Appeals Building in the City of Richmond on Friday the 23rd day of November, 1956.

THOMAS C. BARNES,

Plaintiff in error,

against

W. R. MOORE, ADMINISTRATOR, ETC., Defendant in
error.

From the Circuit Court of Lunenburg County

Upon the petition of Thomas C. Barnes a writ of error and *supersedeas* is awarded him to a judgment rendered by the Circuit Court of Lunenburg County on the 8th day of June, 1956, in a certain motion for judgment then therein depending wherein Annie M. Buchanan was plaintiff and the petitioner and another were defendants; and it appearing from the certificate of the clerk of the said court that a *supersedeas* bond in the penalty of forty-five hundred dollars, conditioned according to law has heretofore been given in accordance with the provisions of sections 8-465 and 8-477 of the Code of Virginia, no additional bond is required.

RECORD

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JUDGMENT.

This cause came on the 11th day of April, 1956, to be heard upon the plaintiff's motion for judgment, the defendant's, Thomas C. Barnes' grounds of defense, and the defendant's, A. C. Love's grounds of defense; and by consent of counsel, trial by jury was waived; and the Court proceeded to hear and determine this case without the intervention of a jury.

On consideration whereof, the Court having heard all the testimony and evidence of both the plaintiff and the defendants and the arguments of counsel, is of the opinion that the trespass complained of was not a joint and several trespass but that each of the actors are responsible for their individual trespass; and that the said defendant, Thomas C. Barnes was guilty of gross negligence in cutting and removing the trees as alleged in the motion for judgment; and that the trees so cut and removed are, viz.:

26,325 ft. pine at \$60	\$1,576.50
7,285 ft. poplar at \$60	437.10
28,380 ft. oak at \$40	1,135.20
3,055 ft. gum etc. at \$35	106.93
Total	<hr/> \$3,255.53

And therefore, it is adjudged and ordered that the plaintiff, W. R. Moore, Administrator of Annie M. Buchanan, deceased, recover of and have judgment against Thomas C. Barnes in the sum of \$3,255.53 with interest thereon at six per cent from the 8th day of June, 1956 until paid, together with the costs of this proceeding.

On further consideration whereof, the Court is of the opinion that the evidence is insufficient to sustain a judgment against the defendant, A. C. Love; and therefore this action is dismissed as to the said defendant, A. C. Love, and that he recover of and from the plaintiff his reasonable costs by him in this behalf expended.

page 18 } And thereupon, the said defendant, Thomas C. Barnes, by counsel, moved the Court to suspend the execution of this judgment as he intends to appeal to the Supreme Court of Appeals of Virginia for a writ of error and an appeal, which motion the Court does grant; and the execution of this judgment is hereby suspended for a period of sixty days from this date or until the Court of Appeals has disposed of the same either by a denial of the writ of error or otherwise and upon the defendant's executing a suspending bond within a period of thirty days from this date in the penalty of \$4,500.00 with security approved by the Clerk and conditioned according to law.

And it is so ordered.

Enter 6/8/56.

G. E. M., JR.
Judge.

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NOTICE OF APPEAL AND ASSIGNMENTS OF ERROR.

The defendant, Thomas C. Barnes, hereby gives notice of his intention to apply to the Supreme Court of Appeals of Virginia for a writ of error and *supersedeas* to a final judgment entered in the above cause by the Circuit Court of Lunenburg County on the 8th day of June, 1956, and he does hereby file this as his Notice of Appeal under the rules of said Court.

The defendant, Thomas C. Barnes, does hereby make the following assignments of error:

1. The Court erred in establishing as an adjudicated fact that the defendant, Thomas C. Barnes, was guilty of gross negligence in cutting and removing trees and timber from the lands of Annie M. Buchanan designated in the Motion for Judgment.

2. The Court erred in holding that the defendant, Thomas C. Barnes, was liable for the manufactured value of the trees and timber cut and removed by him from the lands of Annie M. Buchanan prior to the 31st day of January, 1955.

3. The Court erred in holding that the defendant, Thomas C. Barnes, was liable for the manufactured value of the trees and timber cut and removed from the lands of Annie M. Buchanan after the 31st day of January, 1955.

4. The Court erred in entering the judgment of June 8, 1956.

SAMUEL H. ALLEN,
Counsel for Thomas C. Barnes.

SAMUEL H. ALLEN, p. d.
Kenbridge, Virginia.

Filed in the Clerk's Office August 2nd 1956.

J. T. W. Jr., Clerk.

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ASSIGNMENTS OF CROSS-ERROR.

The plaintiff in the above captioned action hereby gives notice of his assignments of cross-error as provided by Rule 5:1.4 of the Rules of the Supreme Court of Appeals, viz.:

1. The Court erred in not including in the judgment against the defendant, Thomas C. Barnes, the manufactured value of the timber and trees cut and delivered to the said defendant by Lee Cabiness.

2. The Court erred in not including in the judgment against the said Thomas C. Barnes the manufactured value of the timber and trees cut and left upon the premises.

Filed in the Clerk's Office Aug. 14, 1956.

J. T. WADDELL, JR., Clerk.

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Dan Buchannan.

page 23 } Virginia:

In the Circuit Court of Lunenburg County.

Buchannan

v.

A. C. Love and Thomas Barnes

DEPOSITIONS.

Evidence taken before Honorable G. E. Mitchell, Jr., Judge, in the captioned case on audograph disc and therefrom transcribed as follows:

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* * * * *

DAN BUCHANNAN

Examination by Mr. Neblett:

3. Q. Mr. Buchannan, will you please state your age, residence and occupation?

A. Sixty-eight. Lunenburg County.

4. Q. What is your relation to Mrs. Annie M. Buchannan?

A. She was my mother.

5. Q. Do you recall when your mother died?

A. I don't know the date exactly; it was last Fall.

6. Q. You are familiar with this action which was instituted by Mrs. Buchannan against Mr. Barnes and Mr. Love? Your mother was living at the time this action was brought?

A. Yes, sir.

7. Q. What had been her physical condition for some years prior to her death?

A. She had been in very bad health for the past five, six or seven years.

8. Q. Was she able to leave the house?

A. No, sir.

page 25 } 1. Q. Well who looked after her business more or less.

Dan Buchannan.

A. I looked after this property for her.

2. Q. Looked after the property. Now this notice of motion alleges that Mr. Barnes and Mr. Love cut the timber on this 82.63 acres of land. Are you familiar with that tract of land?

A. Yes, sir.

3. Q. I hand you a certified copy of the deed dated November 3, 1923 from E. M. Terry and wife to Dan Buchannan. Is that the deed to this property?

A. Yes, sir.

4. Q. As I just mentioned, I would like to file this as Exhibit "2." How did your mother, Mrs. Annie M. Buchannan, obtain title to this tract?

A. It came from my father's will.

(Certified copy of deed dated November 3, 1923 filed and marked Exhibit "2")

5. Q. Under your father's will. I hand you herewith a certified copy of Dan Buchannan's will, dated the 6th day of April, 1931, where I would like to refer to the fourth paragraph of this will—file this as Exhibit "3," wherein in ordinary words without the phraseology of the will, he left the rest and residue of his estate to his wife, Annie M. Buchannan. Is that correct to the best of your knowledge and belief?

A. Yes, sir.

page 26 } (Certified copy of Dan Buchannan's will filed
and marked Exhibit "3")

1. Q. How long have you known this tract of eighty-two acres of land?

A. I never knew it until Papa died. In fact, he showed me the lines before he died.

2. Q. Well that's been some years ago?

A. Yes, sir.

3. Q. Were you very familiar with it after his death?

A. I've had it surveyed twice, I ought to be.

4. Q. Had it surveyed twice. How was it Mr. Buchannan that you discovered that Mr. Thomas Barnes was cutting the timber, cutting and removing the timber, on this tract of land?

A. I just happened to go down there. I didn't know anything about it until I got down there.

5. Q. What did you find when you got down there?

A. I found four men sawing, two each to a saw.

Dan Buchanan.

6. Q. What did you say to these men?

A. I asked these men who they were working for and they said Mr. Thomas Barnes. And I asked them who did they buy this stuff from, and they said they bought it from Mr. Allen Love.

Objection by Mr. Gravatt: We object to that.
page 27 } Statement by G. E. Mitchell, Jr., Judge: I think it would be all right just to go in the record, of course, they are going to have to prove—

Statement by Mr. Gravatt: I object to somebody saying they bought something from Mr. Love.

Statement by G. E. Mitchell, Jr., Judge: Of course the Court understands they are going to have to prove the contract.

1. Q. These men were working for Mr. Barnes?

A. They said they were.

2. Q. Did you see Mr. Barnes on that occasion?

A. I met Mr. Barnes as I was coming out.

3. Q. What did you say to Mr. Barnes?

A. Well I asked him the same question.

4. Q. And what statement did he make to you?

A. He made the same statement.

5. Q. What was that statement? Just repeat the answer.

A. He bought it from Allen Love he said, and I told him it belonged to my mother.

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1. Q. How long did you talk to Mr. Barnes on this case?

A. I couldn't say to save my life. I stopped up there in a mudhole and we got out and I reckon we stayed there thirty minutes.

2. Q. After Mr. Barnes told you that he has purchased this timber from Mr. Love, did you and Mr. Barnes go to see Mr. Love?

A. Yes.

3. Q. Just state to the court what Mr. Love said to you, said to you and Mr. Barnes?

Dan Buchanan.

A. Well we stayed there a right good while and talked and—

4. Q. We can't hear you sir.

A. He told him about the timber he was cutting that he had sold him, and he said, I haven't sold you any timber. Thomas just stood and looked at him. I said, all right Thomas, what have you got to say about it; and he said you did sell me some timber.

5. Q. Then what did Mr. Love say?

page 29 } A. Well he said he hadn't. We went to see him several times, and sometimes he admitted he did sell it and sometimes he said he didn't sell it.

1. Q. He did admit selling it to him on several occasions?

A. Yes. He also said if we have cut down the timber we will have to pay for the timber.

2. Q. He made that statement, that if we have cut down timber we will have to pay for it?

A. Yes.

3. Q. What did Thomas say to that?

A. I don't know what Thomas said. I don't know whether he said anything or not.

4. Q. Now did you ask Mr. Barnes to furnish you with the number of feet he had cut off that place?

A. The first day I caught him there we went back to the mill and he gave me that statement there.

5. Q. Now as I understand it, Mr. Barnes did give you this statement at your request? He has pine there 36,325 feet, poplar 12,285 feet, oak 36,380 feet, and gum 5,055 feet, making a total of 90,045 feet of timber cut.

A. I think Mr. Daniel fixed that statement up.

6. Q. Mr. Daniel?

A. I think he did. I would say positive, but I think he did.

7. Q. What is the connection between Mr. Daniel and—

A. He works for Mr. Barnes.

8. Q. He works for Mr. Barnes. Now we would
page 30 } like to file that as Exhibit "4." I also hand you another statement here which is referred to as Cabaniss haul, pine 2,816 feet, poplar 7,139 feet, which makes a total of 9,955 feet.

A. He gave me that at the same time he gave me this. He gave them to me together.

1. Q. Now that is the timber that Mr. Cabaniss has delivered off of this tract of land?

A. That's what he says.

Dan Buchannan.

2. Q. What was the nature of the timber, the type of timber, that was cut in there?

A. I think he cut some of the largest poplar and some of the young stuff and left the rest of it there. He cut some of the largest pines too.

* * * * *

3. Q. Well what did Mr. Barnes tell you about the type of timber that Mr. Cabaniss had been cutting?

A. That's what he told me.

page 31 } 1. Q. What's that?

A. That's what he told me.

2. Q. Did he tell you where Mr. Cabiness had been delivering that timber?

A. He said he thought he had been carrying some over there to Burkville and brought him some down there.

3. Q. Did Mr. Barnes tell you anything about Cabaniss working for him?

A. He was hauling logs.

4. Q. Hauling logs. Did he tell you whether or not he was manufacturing this timber for himself or for Mr. Cabaniss?

A. He did not.

5. Q. But he did tell you it came off this tract of land?

A. Yes, sir.

6. Q. Did Mr. Barnes tell you where the lines were or how he knew where the lines were?

A. Well when I went down there he knew where the lines were just as good as I did.

7. Q. How was that now Mr. Buchannan?

A. When I went down to Mr. Barnes, he knew where the lines were as good as I did. He cut all around them he ought to have known.

8. Q. Cut all around them?

A. All except two little corners.

9. Q. Are the lines properly marked?

A. Yes, sir.

page 32 } 1. Q. Did he tell you where he obtained that information as to where the lines were? How he knew they were the lines?

A. I wouldn't say. I couldn't say to save my life.

2. Q. Well now when you first got there Mr. Buchannan, do you recall how many people were in the woods cutting?

A. Four.

Dan Buchanan.

3. Q. Four. About how large of an area did they cut over?

A. Well, eighty-one or two acres. I've forgotten which. Two tracts run pretty close together.

4. Q. How was that?

A. The two tracts that are on there run pretty close together. In acreage I would say I don't know whether it is eighty-one acres or eighty-two acres. They cut all though except two little corners.

5. Q. Two little corners. Was there any timber that was cut and left there?

A. Yes, sir.

6. Q. What kind of timber did they cut?

A. Pine, poplar, oak.

7. Q. Well so far as the quality was concerned?

A. Good body.

8. Q. Good body of timber. Was your mother interested in selling this timber that you know?

A. No, sir.

9. Q. Has anyone ever approached you to purchase this timber?

page 33 } A. Indeed they have, and she always left it up to me.

1. Q. And therefore you kept this timber, or your mother kept this timber, just kept it without any purpose of selling?

A. Yes, sir.

2. Q. I believe you had Mr. Milne to make an estimate of the timber that was cut off the place?

A. That's right.

CROSS EXAMINATION.

By Mr. Gravatt:

3. Q. Mr. Buchanan, can you tell me who owned the property adjacent to this property?

A. Mr. Love owned some of it.

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3. Q. Isn't it a fact that Mr. Love owns a number of tracts of land out there in what is known as Beach Forest in this general area?

Dan Buchanan.

A. That of ours is known as Beach Forest.

4. Q. Yes. But he owns a number of pieces of property out there to your knowledge, doesn't he?

A. That's right.

CROSS EXAMINATION.

By Mr. Allen:

5. Q. When you first saw Thomas Barnes, you stated that Mr. Barnes told you that he had purchased this timber on this property from Mr. A. C. Love, and then you and Mr. Thomas Barnes went to see Mr. Love, and I believe Mr. Love went down into the woods on the property with you and Mr. Barnes. Did he not?

A. The next day after I went to see him.

6. Q. And on that occasion Mr. Love told Thomas Barnes or told you in the presence of Thomas Barnes and your brother James Buchanan, that all of that property in there was his, that Thomas Barnes was cutting on, did he not?

A. Yes he did.

page 35 } 1. Q. And I believe on several other occasions Mr. Love told Mr. Barnes that the property he was cutting on, which later turned out to be your mother's property, belonged to Mr. Love?

A. He said it was his. That's what he told me.

2. Q. Mr. Love told you that in the presence of Thomas Barnes that that property was his?

A. We carried him down there.

3. Q. Now Mr. Buchanan, there is some timber that has been left lying on the ground there cut. Have you made any effort to sell that timber or to dispose of it?

A. Thomas said it was his.

4. Q. Thomas Barnes offered to purchase that timber from you did he not?

A. Never has.

5. Q. And you didn't make any effort to sell it?

A. It won't mine, it was his. He cut it. He cut it and carried the other away.

CROSS EXAMINATION.

By Mr. Gravatt:

6. Q. Just one thing. Mr. Buchanan, I believe you said that you had taken Mr. Love, gone down there with Mr. Love to this place?

Dan Buchanan.

A. Thomas and I together.

7. Q. You and Thomas together. And Mr. Love was under the impression that this property that Mr. Barnes was cutting on was part of his property?

A. After he got down there he said it was not.

8. Q. He said it was not after he got there?

page 36 } A. Yes, sir.

1. Q. How old is Mr. Love?

A. I don't know.

2. Q. But you do know he is a very old man?

A. Yes, sir.

3. Q. Do you know whether he can see very well or not?

A. No, sir, I don't.

4. Q. Do you know whether he is blind in one eye or not?

A. No, sir.

5. Q. This property out there at Beach Forest was divided up a number of years ago into small tracts wasn't it?

A. Yes, sir.

6. Q. Tracts running anywhere from eleven acres up to about forty acres, and it is all just woodland. Isn't that right?

A. Yes, sir.

7. Q. Practically none of these tracts of land are occupied by anybody's dwelling, no fences, and there is no way that—it would be very difficult for anybody to go in there and locate a tract and where the lines were unless they had a surveyor to do it, wouldn't it?

A. Well I've had our place surveyed twice.

8. Q. You've had it surveyed twice, and you know exactly where those lines are, but if a man had a piece of property down there in Beach Forest and had never had it surveyed and never walked around it, it would be very difficult for him to know anything about where the lines were?

page 37 } A. I don't reckon he would. But Mr. Love helped us put the line around it the last time we surveyed it, about seven years ago I expect.

1. Q. And when he got down and looked at this property he said that wasn't his property. Isn't that just what you told me?

A. He said—

2. Q. And when you took him down there and showed him where Mr. Barnes—

A. When we got to the first corner post Tom said to me, Stop. He said, Cousin Allen, I've brought you down here. I said, Mr. Love, whose land is on the other side, and he said

Dan Buchannan.

Dan Buchannan's, is what he said. I said, you are exactly right. We drove him around and drove him on down in the timber there and I asked him whose land that was. Thomas said I brought you right here some time ago. I stopped right here and I asked you whose land it was and you said it was yours. I said, Mr. Love whose land is this. He looked first on one side and then on the other, and he said this over here is Dan Buchannan's and this over here is mine.

CROSS EXAMINATION.

By Mr. Gravatt:

3. Q. Let me ask you another question while we are waiting for Mr. Allen. Was Mr. Love drinking on any of these occasions when you went down there with him?

A. He's been drinking for the last twenty years I reckon.

4. Q. I said was he drinking on these occasions when you and Mr. Barnes were talking to him?

A. He had a little drink just before we went down there.

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CROSS EXAMINATION.

By Mr. Allen:

1. Q. Mr. Buchanan, I believe you stated that you did not know of any offer that Mr. Barnes had made to purchase these logs that were lying on the ground?

A. He didn't make any to me.

2. Q. Did you know that on April 28, 1955, he offered to purchase those logs?

A. From who?

3. Q. From you, from your mother?

A. He never told me anything about it. I never heard of it.

4. Q. You were not advised of any offer that Mr. Barnes had made to purchase those logs that were lying on the ground?

Objection by Mr. Neblett: We object to that line of questioning Your Honor. Mr. Allen is referring to a letter that he wrote me, and I would be very glad to present that letter and make it an exhibit in this case.

Statement by G. E. Mitchell, Jr., Judge: That was sometime after this incident though wasn't it.

Statement by Mr. Allen: Yes. April 28th. Sometime after this, yes, sir.

Dan Buchanan.

5. Q. The time that you and Mr. Love and Mr. James Buchanan and Mr. Thomas Barnes went on the page 39 } property, I believe you first drove in there to a buggy axle.

A. James won't with us that time.

1. Q. Just you and Mr. Love and Mr. Barnes. Then you drove on down the road past the barn. Did Mr. Love tell you and Mr. Barnes that all that property in there was his?

A. He said the right-hand belonged to my father and mother and the left-hand was his.

2. Q. I'm talking about when he was at the barn there, down below the barn, didn't he say all that property was his?

A. He said the right-hand belonged to my mother and the left-hand was his.

3. Q. Didn't you go back out of there on that road and go back into where Mr. Barnes stopped cutting?

A. Yes, sir, where the equipment was on the other hill.

4. Q. And then didn't Mr. Love tell you at that time that that property was his, and later on he admitted that he didn't know exactly whose it was?

A. We went up there where the equipment was and I asked him, Mr. Love whose land is this. He said it belongs to Dan Buchanan.

5. Q. But he did tell you he sold it to Thomas Barnes, the timber on that property?

A. Thomas said he did.

6. Q. Mr. Love told you that too, didn't he?

A. Once or twice he said he did and once or twice he said he didn't.

page 40 } 1. Q. When was the timber last cut off of this property?

A. I couldn't tell you exactly. It was the last of February or the first of March.

2. Q. I mean prior to the time when Thomas Barnes and Cabaniss cut in there?

A. I reckon it was February. Sometime in February when they went in there.

3. Q. No, I'm talking about when, before they cut the timber?

A. It had never been cut off since Mama had it.

4. Q. Never been cut off of it?

A. We have had it for thirty odd years and not a piece has been cut off it, that I know of.

Dan Buchannan.

5. Q. What kind of timber predominated in that forest?

A. There was oak, pine and poplar.

6. Q. Mostly hardwood?

A. No. There was a lot of pine there, a lot of nice pine.

RE-DIRECT EXAMINATION.

By Mr. Neblett:

6. Q. I presume you gentlemen are familiar with this sketch which was taken from the plat book in the Clerk's Office, recorded in Plat Book 2, page 74, and I would like to ask Mr. Buchannan a certain question with reference to this plat. Mr. Buchannan, does that represent a plat of the property?

A. It looks like it.

7. Q. Do you have your glasses?

A. Yes, sir.

page 41 } 1. Q. Can you see it very distinctly?

A. Yes, sir.

2. Q. Now it refers to a road there. Is that an open road or just a—what kind of road is it?

A. It's on the back side of it.

3. Q. I don't know which side is north. Here's the north. How did you get into that particular place?

A. Thomas had a road coming in from the hard surface and it came in and struck this old road, it seems to me.

4. Q. Struck this old road. Well now how are the boundaries to this tract of land marked?

A. They are marked with buggy axles and chopped markings.

5. Q. Chopped over markings. Do you mean to say there are buggy axles at each of the corners?

A. There are five or six, anyway.

6. Q. Five or six?

A. Let me see, one, two, three, four, five, six.

7. Q. Would it be difficult for an ordinary man to find them?

A. Anybody could find them.

THOMAS BARNES

called as adverse witness.

8. Q. Will you please state your age, residence and occupation, Mr. Barnes?

A. Thirty-nine year sold. I operate a sawmill and farm and live at Kenbridge.

9. Q. How long have you been in the sawmill page 42 } business?

A. Fifteen years last January.

1. Q. You don't deny cutting certain timber on this Annie M. Buchannan tract, do you Mr. Barnes?

A. I cut timber on his part sold to me by A. C. Love.

2. Q. When was it that you started cutting this timber?

A. Along in January. The first load came to me on January 7th.

3. Q. January 7, 1955, and you continued to cut until Mr. Dan Buchannan and his brother advised you that it was his mother's land?

A. The snow came and the road got bad and I had a tract of timber out near the road and we moved out and cut that and came back. It was a small tract.

4. Q. This tract that you are speaking of that you cut, was that on the Buchannan property?

A. No.

5. Q. You were familiar with the lines, were you not, on the Buchannan property, or you are familiar with them now aren't you?

A. I am fairly familiar with the lines in there now.

6. Q. They are definitely marked by iron pins or buggy axles and etc. and also by chops. Is that correct? The ordinary man wouldn't have any trouble finding the lines?

A. If he looked for them he could find them.

page 43 } 1. Q. I believe you stated in your grounds of defense that you bought this timber from Mr. A. C. Love. Is that correct?

A. That's true.

2. Q. Did he sell it to you under a contract?

A. Mr. Daniel bought it for me, Harry Daniel. He buys the timber for me. Lee Cabaniss was after me a time or two in December to take this tract of timber over. He said he didn't have the equipment to get it out with and get it ready, and he wanted me to take it over.

Objection by Mr. Gravatt: Your Honor I object to what Lee Cabaniss said to him.

Thomas Barnes.

Statement by G. E. Mitchell, Jr., Judge: It explains something of the reason for his cutting the timber.

Statement by Mr. Gravatt: All right. For that purpose I do not object, but for the purpose of the parity of anything that these witnesses, for the impression it may have made on Mr. Barnes' mind, I think it is admissible, but for the proof or fact of anything that they have told him, I do not think it is admissible for that purpose and ask Your Honor if you would so consider it.

3. Q. When did Mr. Cabiness talk to you about this?

A. Sometime in December, about the middle of December, along about the 22nd or 23rd. I told Mr. Daniel to look the timber over and I said if you think it's worth the money, go ahead and buy it.

1. Q. How much did you buy the timber for?

page 44 } A. They told me they were paying \$10.00 a thousand and for the timber. I told Mr. Daniel if he thought it was worth \$10.00 a thousand to buy it.

2. Q. That was right cheap timber wasn't it?

A. Well it depends on where the timber is, what it is worth, how it is situated. I didn't know how it was. I see a lot of timber worth less and some worth more.

3. Q. This timber is situated not very far from a hard surfaced road, isn't it?

A. Well it's roughly a mile or more in there.

4. Q. And it is more or less level ground?

A. It's level ground but inclined to mire.

5. Q. You didn't have any particular difficulty in removing it either in January or February?

A. I had to take a tractor in there and get it out with that.

6. Q. And who pointed these lines out to you?

A. Well Mr. Daniel went in there and bought it and he took the log cutters in there and started it. I look after the logging most of the time myself. I went in there and went on down below the log cutters to get the lines straight on the east side. Another thing I went in there for was to tell Lee if I was going to cut it for him to let it alone, and if he was going to cut it I was going to let it alone. I got in there, on the back side down in there, to a post, an iron stob in the ground. I was there talking to Lee Cabaniss, and I told Lee about cutting it, and he said I'm not going to cut it, I'm going to cut some of Isaiah Jones's timber. So I asked Isaiah Jones if he knew anything about the lines to the property,

Thomas Barnes.

and he said yes sir. From the stob to the left
page 45 } belongs to a man from Chase City and from the
right back is my property.

1. Q. Well when you were making these inquiries, these gentlemen showed you where the lines were?

A. Well they came and showed Mr. Daniel, and Daniel took the log cutters out and showed them.

2. Q. And I assume Mr. Daniel showed you the lines?

A. Mr. Daniel showed them. Mr. Daniel showed Lester here who is my *forman* in the woods.

3. Q. I believe that Mr. Cabaniss had been cutting the timber on the Buchanan property prior to the time that you got it?

A. He cut timber on the Buchanan tract and also Dr. Ransome's and he cut some I understand that belonged to Mr. A. C. Love.

4. Q. As a matter of fact you—

Objection by Mr. Gravatt: We object to what he understands.

(Sustained)

5. Q. As a matter of fact Mr. Cabaniss delivered you some of the logs?

A. They came out of that territory. All of them didn't come off of the Buchanan tract.

6. Q. Well did you pay him for the logs?

A. Yes, sir.

7. Q. They came out of that territory. What do you mean by that?

A. Cabaniss cut timber off of more land than Buchanan's and so did I.

page 46 } 1. Q. But you don't mean to say that Cabaniss
just went there and cut timber indiscriminately
from one place to another do you?

A. No, he cut right on down the road, back all in there, all right in the same territory there.

2. Q. You understood from Cabaniss then that he was cutting it off of this tract where you were trying to buy. Is that right?

A. That's right.

3. Q. You don't know of anyone else that cut any timber off of there except you and Cabaniss. Isn't that correct?

Thomas Barnes.

A. No I don't know of any.

4. Q. Now about this contract of Mr. Daniels that you are familiar with. Did you have a written contract or oral contract?

A. Mr. Daniel came back and I asked him did he buy it, and he told me, he said, I bought it. I said did you get the contract. I don't know whether I asked him that or who he bought it from, anyway, I asked him who he bought it from and he said—I didn't know where he was going. I didn't know whose tract of timber they were cutting. He said some man up at Victoria, and he told me Mr. A. C. Love. And I said, did you get a contract—

Objection by Mr. Gravatt: We object to that. We object to him putting in all of that hearsay.

5. Q. Did Mr. Love sign a written contract?

page 47 } A. Mr. Daniel told me that Mr. Love said that if I worried—

1. Q. I will call Mr. Daniel for that. Did you ever pay Mr. Love anything for this timber that you cut over?

A. No, sir.

2. Q. Did you, Mr. Dan Buchanan and Mr. James Buchanan go to see Mr. Love on any occasion?

A. Yes, sir.

3. Q. What did Mr. Love tell you gentlemen?

A. He told us that that land in there was his, and so I got him and Dan and I to go out there and look at the piece of timber. When we drove up—I had taken him in there before. I drove up to the same place, and I said Mr. Love, here is where we stopped before, do you think this is your property here. Yes, all of this property in here is mine. We drove on down and we stopped at the same places I had stopped with him before. Then we came out and came back on the back side, no, on the south side, and that he seemed hesitant. He didn't know whether it was his or Mr. Buchanan's place or whose.

4. Q. Now the first time that you went with Mr. Love over this property, do you recall about when that was?

A. Was Mr. Buchanan over this property?

5. Q. Yes, sir.

A. It was about February 16th, because we stopped hauling logs—

6. Q. I am speaking of—I beg your pardon. I intended to

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ask you when was the first time that you and Mr.
page 48 } Love went over that property?

A. When that snow came, I couldn't do anything and I had to go and cut another tract of timber. And one of the truck drivers one morning said, you go over and take the shovel and open those mud holes up on that road up there so we can go back into Beach Forest and cut that timber. And so I went in there to see about this boy, see how he was getting along and see if he was doing the work like he should, and I looked over there and I saw Mr. Wallace, Mr. Ernest Wallace, and I stopped and went down there and started talking to him, and he said, ain't you cutting timber on the Dan Buchanan's tract, and I said not as I know of—

1. Q. I didn't ask you—just excuse me. What I am trying to get at is did Mr. Love ever go out there with you—

A. Yes, sir.

2. Q. Before you started cutting the timber?

A. Not before.

3. Q. Not before?

A. No, sir.

4. Q. Well after you started cutting the timber, did he ever go out there?

A. After I went out and saw Mr. Earnest Wallace and he asked me wasn't I cutting timber on the Dan Buchanan place. I said not that I know of. I'm cutting timber on the A. C. Love land. And he went down and showed me that stob.

5. Q. Who was that?

A. Mr. Ernest Wallace. He showed me the chopped line.

1. Q. He told you that was the Buchanan land,
page 49 } didn't he?

A. He asked me wasn't I cutting on the Buchanan land, and I told him no, I thought I was cutting on Mr. A. C. Love's land, that Mr. Love sold me the timber.

2. Q. But Mr. Wallace did tell you it was the Buchanan land, didn't he?

A. He asked me wasn't I cutting on the Buchanan land, the way I remember it.

3. Q. And you said no, that you were cutting on A. C. Love's land?

A. That's right.

4. Q. Then after Mr. Wallace had told you that you were cutting on the Buchanan land, did you get Mr. Love to come out there?

Thomas Barnes.

A. He said, you had better go and get Mr. Love to make sure.

5. Q. Well did you see Mr. Love?

A. Yes, sir.

6. Q. About how long was that after that conversation with Mr. Wallace did you and Mr. Love go there?

A. I went immediately. It was getting along about the middle of the day. I went and ate lunch and came back to Victoria. I didn't know where Cousin Allen lived. I stopped at the Ford place and asked Elvie Hardy where he lived. I told him what had happened. Elvie spoke up and said, well I remember at a sale Mr. A. C. Love bought some land at a sale from the Buchanan tract. Then he told me
page 50 } where Cousin Allen lived, and I went down to see Cousin Allen, and I asked him to go with me, and he told me to get James Hester and he would show me the lines. I went out to get James Hester and James Hester was hauling wood across from the house, a good distance from the house, and he said, Boss, I've got some young mules and I'm afraid they will run away. I can't leave these mules.

1. Q. Did James Hester go out there with you?

A. Not that evening.

2. Q. Did he go out there afterwards?

A. I carried him out there the next morning.

3. Q. Well did Mr. Love ever go with you there on the property to show you whether or not it was his property?

A. Yes, sir.

4. Q. Well when was that Mr. Barnes?

A. I came back and couldn't get James Hester to go with me and I told Mr. Love I would like for him to go. He said he couldn't go out there. He said, I can't go this evening but I will go in the morning at 10:00 o'clock. The next morning at 10:00 o'clock I went back and got him and took him out there.

5. Q. Did he show you where the lines were?

A. We stopped up there at the first buggy axle Mr. Wallace showed me. He said, I tell you all this land in here is mine. I drove on down to the chops, the first chops he showed me below the barn, and he said, all this land in here is mine I tell you. We went on down to the next chops Ernest Wallace showed me. He told me the same thing. We were cutting on the left side over here. I said Cousin Allen we are going on
page 51 } down here cutting farther. I drove him on down there in the pickup and showed him the trees we were fixing to cut. He said, I tell you all of this

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land in here is mine. Go on and cut it. He said cut everything in here just leave the ground.

1. Q. Was anyone else with you except Mr. Love on that occasion?

A. Mr. Herbert Gilbert?

2. Q. Herbert Gilbert?

A. Yes, sir.

3. Q. Was Mr. Love drinking on that occasion?

A. He took one drink before he left the house. Herbert Gilbert came in with a pint and he took a drink before he left the house. He took one drink and we left and went right on down there.

4. Q. Well did you or Mr. Daniel to your certain knowledge make any inquiry as to whether or not that was his land?

A. No sir I did not. I knew Cousin Allen had been a good business man and owned a lot of property, and I didn't check up on it.

5. Q. Didn't you ask Mr. Daniel to get a written contract from Mr. Love?

A. I had given him the contract before he left, or he had gotten it himself.

6. Q. Did Mr. Love ever sign that contract?

A. No, sir.

7. Q. Then after Mr. Wallace had told you, Ernest Wallace had told you that you were cutting on the Buchanan tract, you went and got Mr. Love and brought him out there?

A. He said, ain't you cutting on the Dan Buchanan tract. I told him I bought it from Mr. A. C. Love, and he said, you had better go and see Mr. Love about it. So I went to see him.

1. Q. Well didn't you have any suspicion after talking to Mr. Love that this property may belong to someone else, Mr. Barnes?

A. No, sir.

2. Q. Didn't Mr. Wallace's statement that you were cutting on somebody else's land put you in a position to either check the records or get someone else to verify those lines?

A. After Isaiah Jones told me he owned land in there and Mr. Love told me he owned it from where he was to the highway, Mr. Love told me all the land to the south, on the hill on the road was his and I would find a chopped line down the road from first one side to the other and I found it that way, and I saw him stand on the property and say it was his, I thought that was proof enough.

Thomas Barnes.

3. Q. You don't know how much land Mr. Love owns down there in Beach Forest do you?

A. No, sir. He owns several hundred acres.

4. Q. Do you know whether or not his bounds this tract where you cut the timber?

A. It does.

5. Q. Which side is it on?

A. The way I understand it, it is on the north, west, north and partly on the east side.

page 53 } 1. Q. I believe the records show that Mr. Love owns approximately 94 acres which more or less bounds this land. Are you familiar with that land?

A. If I am straight on the records in there—

2. Q. Would this plat help you any?

A. Is that supposed to be what Mr. A. C. Love owns.

3. Q. Do you recall whether or not you had to go through the A. C. Love property to get to the timber?

A. The way it looks to me we turned in here and went down this road here.

4. Q. Now the property on the left there as the plat shows belongs to Love. Do you know who owns the property on the right here, the right of the road that you go down that you were speaking of?

A. Mr. Dan Buchanan said their tract was down here on the right somewhere, but this map I can't get it straight. This is the tobacco barn here. This is where the first buggy axle is here. Mr. Ernest Wallace was back in here. This is the buggy axle here. This is the tobacco barn here.

5. Q. Now where were you cutting at that time on the Dan Buchanan property, do you remember, when Mr. Ernest Wallace told you that you were cutting on the Dan Buchanan property?

A. We were cutting back in here, and we went on way down here. Then we cut back in here.

6. Q. Was the Ransome property supposed to be a part of the Love property too?

page 54 } A. This is where we stopped at first, right here. I showed him that and he said all this back in here is mine. We went on down and stopped at the barn, the barn back here and the line, and I showed him the lines here, and he said, I tell you all this here is my property. We went on across here on the other side of this branch and Jones had told me where the lines were on the back side, back down here, and he said the lines comes across the branch and goes up on that

Thomas Barnes.

hill over here on the south side. He said there is a road goes through there and the line is first on one side of the road and then the other.

1. Q. Well the lines are pretty well marked down here on this side, aren't they?

A. These lines are marked, yes, sir.

2. Q. Well now when Mr. Ernest Wallace told you when you were cutting in there, did you stop cutting there?

A. I wasn't in there when he told me. The log cutters were in another tract of timber.

3. Q. Now you spoke of the Ransome timber, is that east of this property here?

A. Yes, sir.

4. Q. Were you supposed to buy that timber too?

A. Yes, sir.

5. Q. Did you ever cut any timber on the A. C. Love property, on this tract we were just speaking of?

A. The timber had been cut down to here I think.

page 55 } 1. Q. The timber had been cut?

A. Yes, sir.

2. Q. Now how long had that timber been cut?

A. Several years, three or four years.

3. Q. Did you cut that or someone else cut it?

A. No, sir. Someone else cut it.

4. Q. It was cut up to the Buchanan line, isn't that correct?

A. On the right. That's right.

5. Q. And that was the A. C. Love property?

A. That's right.

6. Q. Now do you know those other tracts there lots 34 and 33 that Mr. Love has an interest in or owns?

A. I'm not familiar much with this.

7. Q. Does that adjoin this tract, the Buchanan tract that you know of?

A. It looks like it does here.

8. Q. Do you know whether or not the timber has been cut off of that tract?

A. No, sir.

9. Q. You don't know?

A. No, sir.

10. Q. That's all I would like to ask the witness, however, I would like to file this certified deed in the records, copy of the plat and the certified deed as exhibits.

Thomas Barnes.

CROSS EXAMINATION.

By Mr. Gravatt:

11. Q. Mr. Barnes, do you know how old a man Mr. Love is?

page 56 } A. No, sir.

1. Q. You know he is quite old, and you know he is impaired somewhat?

A. What's that?

2. Q. You know he is somewhat impaired?

A. No, sir.

3. Q. Did you find him entirely clear in your conversations with him?

A. He was until we went back down there. It's just like Mr. Danny said there; he said, what timber are you talking about at first and then he came across and admitted that he had sold it.

4. Q. And he made all kinds of statements about whether he ever sold you any timber or not didn't he? He said he had not sold you any timber?

A. He made a statement or two like that at first.

5. Q. And then you say he said he did have a conversation with you about selling you some timber? Had you ever talked to Mr. Love about this timber until after you talked with Mr. Wallace about it?

A. No, sir.

6. Q. You never had?

A. Mr. Daniel bought it.

7. Q. So you don't know of your own personal knowledge what Mr. Love may have sold Mr. Daniel? You don't know of your own personal knowledge what Mr. Love may have sold Mr. Daniel, do you?

A. He sold Mr. Daniel what he sold Lee Cabaniss.

1. Q. Now wait a minute. I asked you a question. Do you know of your own personal knowledge what he sold Mr. Daniel? You were not there?

A. No, sir.

2. Q. You hadn't talked with him, so you don't know, do you, not of your personal knowledge?

A. No. I know what he told Mr. Daniel he sold it.

3. Q. How would you know if you didn't hear him tell it?

A. I wouldn't have sent Mr. Daniel out there if I couldn't have trusted him.

4. Q. Oh well now that's an entirely different matter. It's

Thomas Barnes.

not a question of who you trust, but it's a question of misunderstanding about a piece of property of this kind, and what I'm asking you is, you didn't hear any conversation between Mr. Daniel and Mr. Love?

A. No, sir, not the day he bought it.

5. Q. And so of your personal knowledge, you don't know what those conversations were?

A. I don't know what they—I know what Mr. Daniel told me when he came back.

6. Q. Well that's exactly what's not admissible in court is what Mr. Daniel told you, and what I'm asking is, you don't know anything of your own personal knowledge as to what Mr. Love's conversations with Mr. Daniel were?

A. I just know what Mr. Daniel told me when he came back.

1. Q. You also know that when you went to see page 58 } Mr. Love, the first time you talked with him, he denied that he had sold you any timber?

A. Not when I went in there to see him about the lines.

2. Q. Did you go with Mr. Buchannan? Were you there the time Mr. Buchannan went there?

A. I was there then, but I had been to see him before and taken him into the timber.

3. Q. All right. I'm going to ask you about that. Did he then deny that he had sold you any timber?

A. The time I went there with Mr. Buchannan?

4. Q. Yes?

A. He did at first.

5. Q. And then you took him back down to this piece of land you had been cutting on?

A. That's right.

6. Q. And you say that at first he seemed to think you were cutting on some of his property?

A. That's what he said.

7. Q. And then he got confused about it. He didn't know whether it was his property or Mr. Buchannan's property or whose property it was you were cutting on?

A. When we came back and went on the south side that was the first time.

8. Q. So that actually Mr. Love was confused about this matter wasn't he?

A. He didn't seem to be the day I took him out there to show me the lines and I asked him if I was on his page 59 } property when I told him Mr. Ernest Wallace told me he thought I wasn't.

Thomas Barnes.

1. Q. Now let me ask you this question. Was Mr. Love drinking any of these times you went in there with him?

A. He had a drink the morning he went out there to show us the lines.

2. Q. And it appears here that Mr. Love owns some six, seven or eight different parcels of land out there on three or more sides of this Buchanan property. All of this is right out in the woods isn't it, there are no dwellings. Is that right?

A. No dwellings.

3. Q. No fences. Nothing in the world but just wooded country and back in the interior of the woods at that, isn't it. Now would you expect an old man, eighty years old, who can't walk, who is blind in one eye and in the kind of mental condition that Mr. Love is in, to be able to go out there and point out to you the boundary lines on land of that nature under these conditions?

A. I took him in there and drove him down through the property and I made a good many stops. He said over to the north it goes over to the creek there.

4. Q. Well it does, doesn't it?

A. That's right.

5. Q. His property does and the Buchanan property does.

A. Over on the south it goes over on the hill to you hit a road up there and the line is from first one side of page 60 } that road to the other.

1. Q. Some of his property does that way and some of the Buchanan property does that way too doesn't it?

A. That's right.

2. Q. And you had been cutting on the Buchanan property it turned out? And that's how far you went in trying to identify and find out, and when you did that it was after you had made the mistake, wasn't it?

A. When Ernest Wallace told me he thought I was wrong, I went immediately and took Cousin Allen in there and asked him, showed it to him and what I had done, and showed him what I was fixing to cut, and asked him if it was his property, and he said, yes all of this is my property where you are cutting on.

3. Q. It goes over the creek on this side and goes over the hill on the other side?

A. That's right. The day Mr. Buchanan came in there I had Willie Hayes who was supposed to know where the lines were on the north side to take him in there and get the lines straight on the north side.

Thomas Barnes.

4. Q. Who does Willie Hayes represent?

A. He doesn't represent anybody. He was supposed to know where the lines were.

5. Q. Willie Hayes knew where the lines were?

A. He said he did.

6. Q. He said he did. Did you take him in there?

A. Yes, sir.

7. Q. Did he tell you?

A. He told me where the line was up on the north side.

1. Q. But he wasn't representing Mr. Love, he page 61 } was representing you, wasn't he?

A. That's right.

2. Q. He went in there at your request?

A. That's true.

3. Q. So you got all kinds of information on this property from different people?

A. I didn't mean to do wrong.

4. Q. Of course you didn't, and I want you to understand that I know that. When some of these people mentioned the Buchannans, why didn't you go to talk to Mr. Dan Buchannan or some of those people and find out about this thing instead of going up and getting Mr. Love in the shape he is in?

A. Because I bought it from him. Mr. Daniel bought it from him for me and I thought he ought to know where his own property was.

5. Q. Mr. Wallace had told you that the—showed you these things and told you that the Buchannans were the people that owned it. Did you ask Mr. Love—did you tell Mr. Love that Mr. Wallace had told you that this was the Buchannan property?

A. As well as I remember, when I went down there that evening I told him that Ernest Wallace said he thought I was cutting timber on the Buchannan tract.

6. Q. Did Mr. Love *mentioned* to you anything about Peter Fowlkes land?

A. He said I own all of this land in here over to where Peter Fowlkes land is.

7. Q. Over to Peter Fowlkes. Did you ever find where Peter Fowlkes land was?

page 62 } A. No. I knew Mr. Peter Fowlkes was on the east side there and I didn't look into that. After Isaiah Jones told me he bought some property in there and Mr. Love owned all the land in there to the road; that was

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on the east side, and Mr. Peter Fowlkes place was on the east of that.

1. Q. It wasn't on the east side of Buchanan's property was it? Peter Fowlkes land adjoins Mr. Buchanan's property?

A. I don't think so.

2. Q. The Love land lies between the Buchanan property and the Peter Fowlkes property doesn't it? Dr. Ransome is in between—the Buchannans are in there. Well, I don't just understand why after this man—Mr. Wallace lives back in this country doesn't he?

A. That's right.

3. Q. I don't understand why you didn't check a little more closely with Buchanan?

A. Well I would have I reckon. It's just the way circumstances came out there. Elvie Hardy told me that he remembered a sale and Cousin Allen buying some land that belonged to the Buchanan tract. After he told me that and Isaiah Jones told me he owned the land on the east side and a fellow in Chase City owned another part of it and from there to the highway belonged to Mr. A. C. Love. I took Mr. A. C. Love in there and he said the property was his. I thought the property must be his.

4. Q. But you didn't find out about whether it adjoined up to the Peter Fowlkes land?

page 63 } A. No, sir.

1. Q. And you didn't find out where the Buchanan land was, not until after you had gotten into trouble?

A. After Mr. Love said it was his, I thought it was his.

2. Q. Well you have been beating around in the woods to know that it takes a pretty alert and a pretty experienced man to be able to go back to a place and pick up a line in oak woods, doesn't it?

A. That's true, but Mr. Love had a field of tobacco there and he is in there every year, right there where I showed him, right where he was.

3. Q. Well I don't think I'm going to ask any more questions.

CROSS EXAMINATION.

By Mr. Gravatt:

4. Q. Mr. Barnes, you are not acting as any employee or agent of Mr. Love in any way, were you?

H. E. Daniel.

A. No, sir.

5. Q. You were acting as an independent individual yourself?

A. That's right.

CROSS EXAMINATION.

By Mr. Allen:

6. Q. How long have you known Mr. Love?

A. Mr. Love is distantly related to me. I have known of him off and on all of my life. This is the first time I have had any dealings with him.

page 64 } RE-DIRECT EXAMINATION.

By Mr. Neblett:

1. Q. Just one question I want to get straight here. I think those deeds show Mr. Barnes that Mr. Love owns 131.74 acres of land in that neighborhood that you were looking at just now. Now when Mr. Love said to you, I own all this land from here to Peter Fowlkes property. That was a considerable amount of land wasn't it?

A. Well the way that place is cut up in there and so many people own land here and there and the other, I thought maybe Mr. Peter Fowlkes might own some property in there later on, I mean before that. If he owned all the land from the highway over to Mr. Peter Fowlkes, what used to be Mr. Peter Fowlkes home, it would be a big territory.

2. Q. Possibly a thousand acres of land?

A. It might be.

H. E. DANIEL

called as adverse witness.

Examination by Mr. Neblett:

3. Q. What are your initials Mr. Daniel?

A. H. E. H. E. Daniel.

4. Q. How old are you Mr. Daniel?

A. Fifty-four.

5. Q. Where do you live?

A. Kenbridge.

H. E. Daniel.

6. Q. What is your occupation?

A. I work with Mr. Barnes.

7. Q. How long have you worked with Mr. Barnes?
page 65 }

A. About ten years.

1. Q. Ten years. I believe Mr. Barnes stated that you fixed contracts for him?

A. Well not especially. I am *forman* around the mill and look at some timber.

2. Q. Did you buy the timber from Mr. Love?

A. Yes, sir.

3. Q. When did you make this purchase?

A. On the 22nd of December, 1954.

4. Q. What was the understanding, were you to cut it at that time or when were you to cut the timber?

A. Well I told him we would go in there pretty soon, that it would be after Christmas or the first of the year.

5. Q. Well then, if I understand correctly, you bought it for Mr. Barnes for immediate cutting?

A. Yes, sir.

6. Q. Did you buy it under contract?

A. We didn't have a contract, not a written one.

7. Q. Did you offer Mr.—

A. I asked Mr. Love would he sign a contract, and he said well he would sign it but his word was as good as his bond.

8. Q. Did you have the contract prepared?

A. No, I didn't have it filled out. I had it in the truck.

9. Q. You had it in the truck?

A. Yes, sir. I didn't have it filled out.

10. Q. Did Mr. Love give you the boundaries to
page 66 } the property?

A. No, sir. Mr. Cabaniss, Lee Cabaniss, he took me down there and showed me the line on the west side and told me it went to the creek on the north, down that creek to the old pipe line, up the pipe line to another creek and back to the west side.

1. Q. Do you consider Mr. Cabaniss a reliable man so far as boundaries are concerned?

A. Well I don't know whether he knew or not, but he told Mr. Love exactly what he told me, and Mr. Love said that's right.

2. Q. Was Mr. Cabaniss present at the time you and Mr. Love made this contract?

H. E. Daniel.

A. Yes, sir.

3. Q. And did he take you down there and show you where these lines were?

A. Who?

4. Q. Mr. Cabaniss?

A. Yes.

5. Q. Do you know where Mr. Cabaniss is now?

A. No, sir.

6. Q. As a matter of fact he's been bringing timber into your mill for some time hasn't he?

A. He hasn't brought any there since 1954. I think that was the last he hauled.

7. Q. Well up to that time, he was your regular customer?

A. He hauled some there.

8. Q. Do you know where Mr. Cabaniss is now?

A. No, sir.

9. Q. Well how long have you known Mr. Cabaniss? page 67 }

A. I reckon I've known him around fifteen years.

1. Q. Now from the description that you gave and what Mr. Love told you and what Mr. Cabaniss showed you, how many acres of land was in this body of woods?

A. I don't know. Cabaniss told me it was over three hundred.

2. Q. Over three hundred acres?

A. I didn't walk all over it.

3. Q. Well how far did it extend, do you know?

A. It extended down the creek to the old pipe line.

4. Q. To the old pipe line?

A. Yes, sir.

5. Q. Well what kind of marker was there to show there was a line there?

A. It's a line on the front side and he told me it adjoined the creek.

6. Q. That's what Mr. Cabaniss told you?

A. Yes, sir.

7. Q. Did Mr. Love tell you that too?

A. Mr. Cabaniss told Mr. Love exactly what he told me, and Mr. Love said that's right.

8. Q. Mr. Love consented to it?

A. Yes, sir.

9. Q. Did you ever ask Mr. Love to go out there and show you the line?

A. No, sir, I didn't.

H. E. Daniel.

CROSS EXAMINATION.

By Mr. Gravatt:

10. Q. Mr. Daniel, how did you become aware page 68 } that there was any timber or wood over there to be purchased?

A. Well Mr. Cabaniss came down to the mill and he asked Mr. Barnes to go up there and look it over.

1. Q. Well Mr. Cabaniss is the man that interested you in this property?

A. No. Mr. Barnes told me to go.

2. Q. Yes, but Mr. Cabaniss is the man that brought it to your attention?

A. He took me and showed me the timber.

3. Q. And interested you in it, and you communicated to Mr. Barnes what Mr. Cabaniss had told you about the availability of the timber?

A. Yes, sir.

4. Q. And then you—did you go to see Mr. Love or did you and Mr. Cabaniss go to see Mr. Love?

A. Me and Mr. Cabaniss went.

5. Q. And where did you see Mr. Love?

A. We saw Mr. Love at Mr. Bates house. Next door to Mr. Love's house.

6. Q. Is that in Victoria?

A. Yes, sir.

7. Q. And that was on the 22nd day of December?

A. 22nd day of December.

8. Q. The day before Christmas Eve?

A. Christmas Eve is the 24th.

9. Q. 24th. Well several days before Christmas Eve. Well did you take anything to drink up there when you page 69 } went to see Mr. Love?

A. Mr. Love gave Cabaniss some money and he went and got a pint.

1. Q. I see. That was the first ceremony that has to be attended to?

A. Well I don't know whether that was the first or not. He took a drink.

2. Q. And then after you got the pint you got on the timber proposition?

A. Well I believe we talked about the timber some before we got the pint.

3. Q. And everything after Mr. Love got that drink and

H. E. Daniel.

got that pint there, everything that Mr. Cabaniss said Mr. Love said that's all right?

A. Well not especially. We talked about it some even before we took a drink.

4. Q. Just in expectation of getting the pint?

A. I don't think Mr. Love took enough to cause him to say anything he wouldn't have said.

5. Q. Well you don't think he would have been very disagreeable or unpleasant or contradictory to anybody that wanted to talk to him about anything while you all were up there entertaining him with that pint of whiskey do you?

A. We weren't trying to entertain him. It was his whiskey.

6. Q. All right. Well he was entertaining you all then?

A. Not especially. I wasn't interested in the whiskey.

7. Q. Did Mr. Cabaniss take a drink?

A. I think so.

page 70 } 1. Q. And that is the way you say you bought this timber? Mr. Cabaniss took you up to Mr. Love's and told him where he had some timber and Mr. Love said that's right?

A. He told Mr. Love where he showed me the lines or told me where the lines were and showed them to me, and Mr. Love said that's right.

2. Q. He said something—he said you go down a creek and what else?

A. You go down the creek—

3. Q. Go down the creek to an old pipe line, and where was the rest of the line?

A. Come up the pipe line to another creek on the south side.

4. Q. Up the pipe line to another creek on the south side, and then come on back to where?

A. The line on the west side.

5. Q. What is the line on the west side?

A. It was a chopped line.

6. Q. Chopped line. I see. Then when Mr. Cabaniss told you—told Mr. Love that he said, that's right?

A. That's right.

7. Q. And you all were talking about some timber out here in this Beach Forest tract where there are no fences, no land marks at all, just surveyors marks that has been surveyed there twenty-five or thirty years ago. When you all were trying to identify the line to get the line straight on where you were to cut timber up there where this old man was visiting at a neighbor's house, drinking a pint of liquor two or

H. E. Daniel.

three days before Christmas. And he just said that's all right and that's what you all took for the line. Is page 71 } that the way you went at it?

A. That's where he told me the lines were. I didn't know anything about it.

1. Q. Mr. Cabaniss was the man who told you where the lines were?

A. He was the one.

2. Q. So actually Mr. Cabaniss is the man that got you all into all of this trouble, isn't he?

A. I don't know about that.

3. Q. Huh?

A. Mr. Love said he knew where the lines were and that it was right.

4. Q. Do you know whether Mr. Love can walk or not?

A. He could walk that day.

5. Q. How far did he walk?

A. Well he walked out to the street and back to the house.

6. Q. Did he walk with a cane?

A. I think he had a cane.

7. Q. He was mighty feeble wasn't he?

A. Well he was a little feeble.

8. Q. It was pretty plain that he couldn't walk over the lines anywhere? You know he couldn't walk over the lines?

A. I don't know whether he could or not.

9. Q. Did you all ever talk anything about price?

A. Yes, sir. Mr. Cabaniss told me that he had bought it for ten dollars a thousand, and I—

page 72 } 1. Q. Mr. Cabaniss told you that he had bought it?

A. Yes, sir, and he wanted me to take it over.

2. Q. Mr. Cabaniss was the man that you said bought this timber from Mr. Love then?

A. I talked with Mr. Love about the price too.

3. Q. Well let's get this straight though. Mr. Cabaniss had bought this stuff from Mr. Love hadn't he?

A. Yes, sir.

4. Q. And what you were doing, you weren't up there to buy any timber from Mr. Love, you were up there to take over from Mr. Cabaniss what Mr. Cabaniss had bought from Mr. Love?

A. Mr. Cabaniss said he had bought it for ten dollars a thousand, and Mr. Love told us that we could take it and pay ten dollars a thousand.

5. Q. In other words, what you were doing was that you

H. E. Daniel.

were going to see if it would be satisfactory with Mr. Love for you all to take up where Mr. Cabaniss left off and pay him ten dollars a thousand for what Mr. Cabaniss had bought from him?

A. No, we weren't going to pay for what Mr. Cabaniss had bought.

6. Q. I thought you said Mr. Cabaniss had bought this timber from Mr. Love and was going to pay him ten dollars a thousand, and that you all were just going to take over Mr. Cabaniss's obligations?

A. What we cut we were to pay ten dollars a page 73 } thousand.

1. Q. That's right. But you were going to finish cutting what Mr. Cabaniss said he had bought from Mr. Love?

A. Yes, sir.

2. Q. And so actually what you all were doing, you were taking over and taking Mr. Cabaniss's place as the purchaser of some timber that Mr. Cabaniss said he had bought from Mr. Love beforehand?

A. Mr. Cabaniss said that he had promised to cut it and us to take it over so we could get it out.

3. Q. And you went really on what Mr. Cabaniss had shown you about the lines and told you about the lines?

he didn't have the proper equipment to haul it, and he wanted

A. That's right.

CROSS EXAMINATION.

By Mr. Allen:

4. Q. Mr. Daniel, this timber, before you went up there to Mr. Love's, had you seen it?

A. Yes, I walked around through it to see if it was worth ten dollars a thousand and if it was too rough for us to go in and get it. I didn't go over all of it.

5. Q. Had Mr. Cabaniss cut much of it before you walked over it?

A. Well yes, some of it was cut. Some of the largest poplar and pines were cut.

6. Q. Mr. Cabaniss had cut that prior to the time that you talked to him?

A. That's right.

7. Q. Did Mr. Cabaniss walk with you over it? page 74 }

A. Yes, sir.

1. Q. You all didn't give Mr. Cabaniss anything for his contract, did you?

A. No, sir.

R. B. Milne.

RE-DIRECT EXAMINATION.

By Mr. Neblett:

2. Q. Has Cabaniss left here?

A. No, sir.

3. Q. He is gone though isn't he?

A. Say what?

4. Q. He is gone isn't he?

A. I don't know. I haven't seen him in a long time.

5. Q. Have you made an effort to try to find out where he is?

A. No, sir.

6. Q. Not even since this suit came up?

A. No, sir.

R. B. MILNE

Examination by Mr. Neblett:

7. Q. Mr. Milne, will you please state your age?

A. Forty-two.

8. Q. Where do you live Mr. Milne?

A. Petersburg, Virginia.

9. Q. What is your occupation?

A. I am a consultant forester.

10. Q. How long have you been in this particular line of business?

page 75 } A. I have been a consultant forester for about ten years.

1. Q. Ten years. Will you please state to the Court your education and experience in this line of work?

A. I graduated from *Syracuse* University College of Forestry in 1937, and I worked for three years for Johns Manville in Charlottesville, Virginia buying land and timber, and I worked for about five years for the American Hardware Company in Petersburg, buying land and timber.

2. Q. So you have been in this line of work for quite a number of years?

A. Yes, sir.

3. Q. Mr. Milne, were you called in to make an estimate of the timber cut on this particular tract, what is known as the Annie M. Buchanan land?

A. Yes, sir.

R. B. Milne.

4. Q. Do you recall—did you make an estimate of the timber cut from this property?

A. Yes, sir.

5. Q. When was it that you made this estimate?

A. In May, 1955.

6. Q. Did you have anyone helping you on that occasion?

A. Yes, sir. I had Mr. A. B. Glover of Victoria to help me.

7. Q. What were Mr. Glover's duties?

A. He helped me locate the stumps and measure page 76 } suring.

1. Q. You did make an estimate of all the timber cut on that tract?

A. Yes, sir. We counted and measured each stump on the tract.

2. Q. Did you know where the lines were?

A. Yes, sir.

3. Q. Were there any questions in your mind about where the lines were?

A. They were very plainly marked?

4. Q. Plainly marked. Did they show the evidences of a survey?

A. Yes, sir.

5. Q. And your estimate came off of that tract?

A. That's correct.

6. Q. Known as the Buchanan tract. Would you please state to the Court in detail what your estimate shows?

A. It shows that about fifty-five acres of the property had been cut over. He could have cut in oak veneer logs about 8,299 feet, in oak tires about 24,407 feet; in oak lumber about 14,644 feet; in poplar veneer 4,761 feet; poplar lumber 22,403 feet; pine lumber 31,625 feet; gum veneer 1,090 feet; gum tires 3,204 feet and gum lumber 1,923 feet. With the gum I included miscellaneous parts such as beech and sycamore.

7. Q. Now what was the total amount of timber that was removed from the place there Mr. Milne?

A. 86,445 feet removed from the property.

page 77 } 1. Q. Was there any timber cut there and left there on the property?

A. Yes, sir, about 28,407 feet left that had been cut down.

2. Q. That was there in May I believe you said?

A. Yes, sir.

3. Q. What type of timber was it Mr. Milne, what grade, I mean?

R. B. Milne.

A. For this locality the timber was above average in size and grade.

4. Q. What in your opinion would be the fair stumpage value of the timber that was removed from that place?

A. I think \$2,800 or \$2,900 would be considered the stumpage value.

5. Q. Well now, would you explain your notes there, the manufactured value of this timber, for instance the oak veneer?

A. Veneer grade logs, oak and poplar, will bring about \$80.00 a thousand, sweet gum \$65.00, sycamore \$60.00. You would have to deduct about 15% from the volume I have given you here because of the difference between lumber account and the logging scale. Rough green lumber cut from pine is worth about \$60.00, poplar about \$50.00. Railroad tires or the equivalent will run about \$45.00 for oak, and about \$40.00 for hardwood switchtires. Miscellaneous hardwood lumber is worth about \$35.00 a thousand.

6. Q. Is that the manufactured value?

page 78 } A. Yes, sir.

1. Q. Now for the oak veneer, what is the stump value right in the woods there?

A. For any of these things if you deduct about \$25.00 from the delivered value where there has been a cost of cutting and delivering it, you would arrive at the stumpage value.

2. Q. That is for instance, oak veneer, which you fixed at \$80.00 a thousand, you deduct \$25.00—

A. That's right.

3. Q. And the stumpage value would be \$55.00?

A. That's right.

4. Q. Then you would take the oak—Now what do they use the oak veneer logs for?

A. For instance, it's something like a cheap table that instead of being solid oak it would be veneer.

5. Q. Then you take for instance oak tires there. Manufactured value would be \$45.00. Do I understand that you would deduct \$25.00 for labor and etc. from that and that would leave \$20.00 for stumpage?

A. That's right.

6. Q. Then you would take that poplar veneer. Now that is \$80.00. Is that an extremely good type of wood? What type of wood is it?

A. Well it's probably the butt cut or the first two cuts off the tree. It would probably be 14 or 16 inches or larger in diameter.

R. B. Milne.

7. Q. And then the poplar lumber I believe is 22,000 feet at \$50.00. Now the stumpage value of that would be what amount?

page 79 } A. \$25.00.

1. Q. \$25.00. And then the tires would be \$40.00, \$25.00 less would be \$15.00, gum and etc. at \$25.00 would be \$10.00. Is that correct?

A. Yes, sir.

2. Q. Now is that what these lumber companies are giving for manufactured products?

A. At that time that was the price of manufactured.

3. Q. Has it gone up or gone down?

A. Most of it has gone up.

4. Q. Most of it has gone up. You mean to say by that both the stumpage and also the manufactured value?

A. Yes, sir.

5. Q. About how much has it gone up since then?

A. Most of that stuff has gone up from \$5.00 to \$10.00 a thousand.

6. Q. Is that in stumpage?

A. In the stumpage value and also the manufactured value.

7. Q. Is that what the majority of the sawmills in the country are getting?

A. Now when a man buys this timber, he buys it as cheap as he can. He doesn't necessarily pay that for it.

8. Q. But we are speaking of the market value. You just stated it had gone up \$5.00 or \$10.00 a thousand?

A. Yes, sir.

9. Q. On the stumpage value. How much would it be in the manufactured value?

page 80 } A. That would be in both cases.

1. Q. Where do they include it, in the manufactured value or in the stumpage value?

A. Most of it is in the manufactured value.

2. Q. For instance, say I had 100,000 feet of pine, say from eight to twelve inches. How much would that sell for in 1955 on the stump?

A. It would bring somewhere around \$35.00.

3. Q. \$35.00?

A. That's right.

4. Q. How much is that same timber bringing today, from about eight to twelve inches?

A. Well the timber is *bring* about the same thing the lumber is bringing.

R. B. Milne.

5. Q. So therefore, the addition then of the lumber of the \$5.00 or \$10.00 is in the manufactured value?

A. Mostly in the manufactured value.

6. Q. Timber is scarce to purchase, isn't that true?

A. It's not so scarce as it is hard to buy.

7. Q. Why is that, people just don't want to sell it?

A. People want too much for it when they sell it.

8. Q. Now Mr. Milne I think you checked your notes on this report when you made your estimate, and is this the original of it?

A. Yes, sir.

Statement by G. E. Mitchell, Jr., Judge: I didn't exactly understand that 15% deduction that you spoke of in veneer logs.

page 81 } A. In my estimate I made it as if they were cutting the lumber. However, if a tree is cut in logs instead of lumber it would scale less because of the difference in the lumber scale and the log scale.

Statement by G. E. Mitchell, Jr., Judge: So your account there on the chart is the lumber account, the lesser account.

A. When I figured the value of the stuff, I figured it by the lesser account.

1. Q. Isn't there a note on your account that explains that?

A. Yes, sir.

(Report filed and marked Exhibit "8")

CROSS EXAMINATION.

By Mr. Allen:

2. Q. Mr. Milne, didn't I understand you to say that this timber on this eighty-one acres of land was above the average?

A. Above the average for this locality.

3. Q. For what locality?

A. Lunenburg County.

4. Q. Above the average for Lunenburg County. What experience have you had if any with timber in Lunenburg County?

R. B. Milne.

A. I have cruised a half a dozen tracts in this particular county.

5. Q. Where have you cruised tracts in Lunenburg County?

A. I cruised some places for Mr. Arvin, and I can think of one down here for Dr. Baskerville, a place down below Kenbridge.

1. Q. All of those places that you cruised were predominantly hardwood?

A. No, sir.

2. Q. The timber that was growing on this eighty-one acres in question was predominantly hardwood wasn't it?

A. Yes, sir.

3. Q. Do you know the market value of the timber in Lunenburg County at the time that you cruised it?

A. I know the value of the products cut from the timber.

4. Q. Do you know the stumpage value, what the sawmills in Lunenburg County or adjacent to Lunenburg County were paying for stumpage at that time?

A. I have no idea what they paid for stumpage. They paid as little as possible in order to get it.

5. Q. Do you know what timber in this locality was being sold for stumpage at that time?

A. I know what the finished products sold for, but not the timber.

6. Q. You just don't know what the stumpage on this eighty-one acres of land was worth at that time then on the market?

A. On the basis of the value of finished products, yes I do know what it was worth.

7. Q. I understand from your testimony, you testified as to the stumpage based on the finished produce value. I'm talking about the market value now of the stumpage, page 83 } what it was being bought and sold for.

A. Of course, it is worth as much as you can get for it. These people didn't want to sell it, and if they had sold it they wanted the full value of it.

1. Q. I understand that.

A. And the full value of it is the value of the product delivered less the cost of delivering it.

2. Q. I understand that, but my question is do you know what the stumpage value of this product was in Lunenburg County at the time that it was cut?

A. I don't know of any particular sale in Lunenburg County at this time?

R. B. Milne.

3. Q. You don't know what stumpage was being bought and sold for in Lunenburg County or in the State of Virginia at that time?

A. I know in the State of Virginia, in portions where I had something to do with the sale of the tracts.

4. Q. But you didn't have anything to do with the sale of timber in Lunenburg County?

A. Not in Lunenburg County.

CROSS EXAMINATION.

By Mr. Gravatt:

5. Q. Mr. Milne, let me ask you a question or two. What I understand from your testimony is that you have taken the manufactured value of this timber at the highest and best use that the timber could have been put to?

A. That's right.

6. Q. And that gives you your manufactured value?

A. That's right.

page 84 } 1. Q. And the thing about your testimony that gives me concern is how do you, upon what do you base your statement that the stumpage value would be about \$25.00 less a thousand?

A. It would cost that much to cut it and deliver it to the place where it was being used.

2. Q. Doesn't it cost more than that to get a sawmill man and cut timber? Most sawmill men charge more than \$25.00 a thousand for operating a sawmill and cutting timber. Isn't that right?

A. The cost would be \$25.00 but then he has to make a living on top of that.

3. Q. That's right, and he actually charges—it actually costs a man who has a—if you've got a tract of timber and you want to get it cut, you've got to pay more than \$25.00 a thousand to have it cut. It comes closer to \$35.00 a thousand doesn't it?

A. If you had somebody else to cut it, but if you cut it yourself that's a different proposition.

4. Q. Right. But if you do have somebody else to cut it, it would cost you somewhere in the neighborhood of \$35.00 a thousand, wouldn't it?

A. At the present time. At that time it would have been about \$30.00.

5. Q. About \$30.00 or \$32.00?

A. I think about \$30.00 would be a fair price.

E. N. (Curtis) Wallace.

6. Q. So that applying the rule that you have applied, the actual stumpage value, if the man didn't do the cutting himself, would be somewhere between \$30.00 and \$35.00 less than the manufactured value?

A. It would be \$30.00.

page 85 } 1. Q. I see. And that is simply based upon your method of getting at the value and is not based upon any comparative sales or knowledge of sales of similar tracts of timber in this community?

A. That's right.

E. N. (CURTIS) WALLACE

Examination by Mr. Neblett:

2. Q. What are your initials Mr. Wallace?

A. E. N.

3. Q. How old are you Mr. Wallace?

A. I will be fifty-six years old the 8th of September. I was born in 1900.

4. Q. Do you know this tract of land owned by the Buchanan's?

A. I've been knowing it since I was twenty years old.

5. Q. Have you lived down in that neighborhood practically all of your life?

A. Every since 1910.

6. Q. Since 1910?

A. Yes, sir.

7. Q. Are the lines well defined on this property?

A. I took a lantern and found them the 22nd night of November. That is the way I found them.

8. Q. Well as a matter of fact, all of that land was surveyed several years ago and known as the Beach Forest property, isn't it?

page 86 } A. Absolutely.

1. Q. Is that correct?

A. That's right.

2. Q. And are most of those lines well defined where those surveyors went along?

A. Well I know Mr. Dan Buchanan's tract mighty well, and I know Mr. Love's where it has been cut over.

3. Q. When was Mr. Love's tract cut over?

A. I would say five or six years ago by Mr. Houston from Keysville.

4. Q. Was it cut up to the Buchanan line?

E. N. (Curtis) Wallace.

A. Yes, sir, I think so.

5. Q. Cut up to the Buchanan line.

A. Yes, sir, and Mr. Ed was cutting—

6. Q. Mr. Who?

A. Mr. Ed Love.

9. Q. Now which side of this property was Eddie?

A. Back there towards facing Mrs. Ransome. I'd say on the west.

10. Q. Well most of these tracts—about how many of these tracts that lie around the Buchanan tract have been cut over in the last five or six years to your knowledge?

A. Well if you want me to start at my house, I can tell you every spot of land from my house.

11. Q. Well all right sir. Well on the south side?

A. That's what I'm starting on.

12. Q. Now who owns the land on the south side?

A. All right. I start first, Dr. Ransome next, Mr. Dan Buchanan next and Mr. Allen Love is the fourth man.

1. Q. Just four men?

page 87 } A. Right straight across, right on the branch.

2. Q. You own the land on the south?

A. Yes, sir.

3. Q. Has the timber been cut off of your place in the last few years?

A. Cut it off this year. It was cut off in June, twelve months ago now, this coming June.

4. Q. That was after the cutting took place—

A. Yes, sir. They started cutting in January, the first part of January I would say, somewhere along in there.

5. Q. Was he cutting at that time, Thomas?

A. No, sir. I would say he came to see about his team or to see how rough it was and I don't think he was working that day. He picked me up and carried me down there and wanted me to show him the lines.

6. Q. Asked you to show him the lines?

A. Yes, sir.

7. Q. Had he cut any in there at that time?

A. Yes, sir. He had cut some to the north. He told me he hadn't cut but about two or three loads to the south.

8. Q. Two or three loads?

A. That's right.

9. Q. And that was when he came to you to ask you to show him the lines?

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A. Yes, sir.

page 88 } 1. Q. About two or three loads, would that amount to much?

A. Not too much, but he had cut some back to the north I understand.

2. Q. And did you show him the lines on this occasion?

A. Yes, sir. I showed him where the buggy axle started on the west and I took him right straight down and showed where old man Henry Taylor lived back out there where Mr. Dan was living, in the old house place up there, and then took him to the east line. I took him and showed him that.

3. Q. Now whose land did you tell him it was?

A. I told him it was Dan's. I said Mr. Dan Buchanan's. I told him the old lady was living and Mr. Dan Buchanan was looking after the land for his mother.

4. Q. You did that at his request?

A. Yes, sir. I did it for a favor. I didn't know I was going to be in this court. I did not want to be in it.

5. Q. Did you take him all around the line Mr. Wallace?

A. No, sir. We didn't go any further than the east.

6. Q. And at that time Mr. Barnes had cut very little of the timber?

A. He hadn't cut very much of it. He hadn't cut too much of it.

7. Q. Did he continue cutting after that?

A. Well yes sir, but I didn't have the say so. I didn't have anything to say about it.

8. Q. Did you see him after that?

page 89 } A. Yes I saw him a plenty of times after that.

1. Q. Did he ever say anything to you about the lines after that?

A. Well he still said it was Cousin Allen's but I said it won't.

2. Q. And how many occasions did you tell him that it was Buchanan's?

A. Several times.

3. Q. And he would contend each time that it was Cousin Allen's?

A. Yes. Every time I told him I knowed it was Mr. Buchanan's instead of Mr. Love's.

4. Q. Did you tell Mr. Barnes on any of those occasions as to whether or not he should see young Mr. Dan Buchanan?

A. Yes. I told him where he could find Dan at and I told him he could find James at the supply company of Mr. Robert

E. N. (Curtis) Wallace.

Williams. And I said if you can't find them Thomas you can find Jake in Mr. Eddie Gee Hardware in Victoria, Virginia.

5. Q. And any of these gentlemen could tell him where the lines were?

A. Yes, sir.

6. Q. Have you ever heard of anybody disputing over the lines down there since you've been there except Mr. Barnes?

A. Well Thomas, I don't think, was disputing. I think he thought he was right, but he was mistaken. You see, that's why I was telling him. I told him to go to Mr. Waddell and he could tell him whether it had been changed from Mr. Dan Buchanan to Mr. Love or not. I told him that.

page 90 } 1. Q. You told him to come to Mr. Waddell?

A. Yes, sir.

2. Q. Whom do you mean, Tom Waddell, the Clerk?

A. Yes, sir, Mr. Tom Waddell, to see if the land had been changed from Mr. Dan Buchanan to Mr. Allen Love. And I said, Thomas, I can send you to Mr. Love's shareman James Hester, and he will tell you that this is Mr. Dan Buchanan's land you are cutting on because he's done come to me the 20th day of November, on Saturday, 1954, and said Mr. Ernest, somebody is cutting Mr. Dan Buchanan's timber over there where the old car used to set at on the branch. Well I was busy in the stripping room. I waited on to Monday night. I took the lantern, that was the 22nd day of November. The 22nd day of November I took the lantern, my wife went with me, and my coon hounds, and we went back over there, and I went to the line where Dan's came around there, and direct where James Hester told me there was cutting at. Well I went on then and saw the mule tracks. I told Mr. Allen about it the other day where the mules was at. He was down at the house.

3. Q. Who was down there?

A. Mr. Allen and Mr. Barnes, Thomas Barnes.

4. Q. Did they talk with you?

A. Yes they talked with me. So I tracked those mules that night with a lantern. I found them in a pole pen. It was made out of pole pens to keep them in there. Thomas won't in there but Cabaniss was. I went back then and I told my wife, well I can tell you what we can do, we won't have to go all over the woods, you see I'm tending to the Ransome place.

1. Q. The Ransome land. How far is the
page 91 } Ransome land from—

A. Dan's. It adjoins him on the south end.

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Well on the east it adjoins him again, another tract you see. It goes clean back to—the upper land belongs to a fellow in Chase City.

2. Q. Your reason then was to sort of check on the Ransome land?

A. Yes, sir. I come back here to this road where goes in there from the cross roads, where leads from Eddie Love's sawdust pile, and I took that line back there a ways and I went 300 yards through the thicket and I found this big poplar tree that was cut down on the Ransome land. I told my wife, I said, well it seems to me he's going back the other way and if he don't cut down but one tree I will let him go by, I won't tell Mr. Hardy. Mr. Hardy is the one that put me over it.

3. Q. You were looking after that tract?

A. Yes, sir.

4. Q. Now how long had this fellow Cabaniss been out there before Mr. Barnes?

A. I've been seeing Cabaniss in there before Mr. Love's shareman came in there. I have heard him in there I would say, the 15th of November was on Monday. I heard him somewhere in there on Tuesday or Wednesday.

5. Q. How far do you live from this property?

A. I don't reckon I live over a mile. I can *heard* them cutting wood over there at the barn. I've been knowing it every since I've grown up to be anything.

page 92 } 1. Q. Well James Hester knew where the lines were?

A. Yes, sir, good as I did, and I got three brothers that know it just as good as I do.

2. Q. It is generally known in the neighborhood where the lines are?

A. Sure. Morgan and Milford knew it, all three. Two younger brothers. They know the land in there just as good as I do.

CROSS EXAMINATION.

By Mr. Gravatt:

3. Q. Mr. Wallace, did Mr. Cabaniss cut any wood or anything on land that belonged to Mr. Love?

A. No, sir.

4. Q. Never did get on Mr. Love's land?

A. I don't think so. Mr. Love's land has been cut over.

5. Q. When did Mr. Cabaniss come in there and start cutting?

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A. The first that I knowed anything of it—I didn't know it that night, understand, but I had been told right after they had done it. I already knowed it before Thomas told me. That was the 22nd night of November, like I told you.

6. Q. November?

A. Yes, sir. That was in 1954 understand.

7. Q. I understand.

A. I went over there with my lantern. James Hester is Mr. Love's shareman. I saw where he was cutting
page 93 } on. I reckon that's where he made his mistake at.
Mr. Love's tract had been cut over.

1. Q. Was James farming on Mr. Love's land or Mr. Buchanan's land?

A. Sir?

2. Q. Did James Hester farm on Mr. Love's land?

A. He farmed on Mr. A. C. Love's land.

3. Q. He didn't raise any crops on Mr. Buchanan's land?

A. No, sir. On Mr. Buchanan's land what little had been tended there is in straw and little pine trees.

4. Q. Is there a barn in there on Mr. Love's property?

A. Yes, sir. James Hester makes tobacco on it every year.

5. Q. How far is that barn from Mr. Buchanan's property?

A. Well I'll tell you. It's not too far. I'll tell you this. James Hester's road, that's Mr. Love's shareman, goes like this here from one side to another, the back road. Mr. Dan Buchanan's line comes down here just like this. Every time he turns around with that mule he bound to turn around on Mr. Buchanan's patch of land.

6. Q. And that barn is very close to the line?

A. And too it ain't but just an acre and a half of tobacco, cross the field to the barn. Direct to the barn.

7. Q. Did you ever say anything to Mr. Cabaniss to call his attention that he was cutting—

page 94 } A. No, after they told me who was doing it, I
said I didn't want to have anything to do with him.
My wife's son had dealings with him. He came there and stole the same thing he brought in there and carried it back to Blackstone and sold the axle out of the truck. I told her, I said anything in the world like that, I don't want to have anything to do with him. J. C. came by there three or four times a day, going to work at the shoe shop at Victoria. He said, Ernest, you don't have to go over there and catch him in it; he said I can see who it is. It's Lee Cabaniss cutting those trees. I see him two or three times a day going by that road.

E. N. (Curtis) Wallace.

1. Q. Did you report anything to Mr. Buchanan about Cabaniss cutting anything in there?

A. Did I report anything to Mr. Buchanan?

2. Q. About the fact that Cabaniss was cutting anything on his property?

A. No. I never did go to Dan and tell him anything about it, him cutting it. I left it alone you understand because we had to strip tobacco on until about the 16th of December. I sold the last day. In other words, they closed in South Hill, but they didn't close in Kenbridge, and then my wife fell and her leg was all broke up. She stayed crippled up on until about the first of January. And then I went back over there and I took the east side of the land and trailed where Lee Cabaniss had done cut down enough to cut down twenty-three trees off of Dr. Ransome's property and he went a mile to do it, and I can show anybody where he cut it and how far he left Dan's land to go and get them.

3. Q. He went a mile—

page 95 } A. Every bit a good mile. Dr. Ransome owns where the pipe line went.

1. Q. What kind of a reputation has Lee Cabaniss got around—

A. Well when Thomas told me who was in there cutting that timber, I'm going to tell you exactly what I told him. I ought not to say it I reckon before this lady here, but I'm going to tell you exactly what I told him. I told him I wouldn't take his word as far as I could throw a mule you know by his—

2. Q. Tail. Is that his general reputation in this community?

A. He ain't got none. I just don't have anything in the world to do with him, if you want me to tell you the truth about it. Thomas Barnes is all right, but Cabaniss ain't. They got Thomas in it. They got Thomas started off in it from what he told me about it. He said he bought it and wouldn't tell him who he bought it from, and finally he went and told him he got it from Allen Love.

CROSS EXAMINATION.

By Mr. Allen:

3. Q. You said you sold your timber in June of 1955?

A. Yes, sir.

4. Q. Did you sell it by the thousand or by the lump?

E. N. (Curtis) Wallace.

A. I sold it by the lump and got burned up at it.

5. Q. You don't know anything about the value of that timber in there?

A. No, sir, I don't. I told you that the other day.

6. Q. You say you thought Thomas was acting page 96 } in good faith when he was in there cutting that timber?

A. Yes, sir I think so. I think Lee Cabaniss was the one that started him off in there in the beginning.

1. Q. At the time that Thomas was talking to you you thought—

A. I thought Thomas was right about it. Of course Cabaniss was generally leading him into it, but I told him he won't.

2. Q. I see. You thought Thomas was cutting the timber he had bought from Mr. Love, at least he thought that?

A. That's what Thomas thought, but I didn't know. I knew it belonged to Mr. Dan Buchannan, been knowing it since I was a grown boy you might say, twenty or thirty years ago.

3. Q. You don't think Thomas Barnes would have gone in there and cut the timber if he hadn't thought he had bought it, do you?

A. No, sir, I really don't think so. He ain't that blood.

4. Q. He's not that kind of man is he?

A. I was raised up with him. I don't think so.

5. Q. In fact you know he wouldn't have done it unless he thought he bought it?

A. No sir I don't think he would have done it if he had known it. I didn't mean to get Thomas in no trouble by telling him to go to Mr. Love's house. I done it for a favor.

6. Q. Did you tell Mr. Buchannan that Thomas was cutting the timber down there? page 97 }

A. No I didn't tell that. I could have went in there one day though to tell James about it. I thought I was going to tell him. I didn't know anything about it. I was going to tell James I wish he would keep his man from cutting on Dr. Ransome's land, but after I found out then that he buying it from Mr. Love, well I knew then it was wrong.

1. Q. Well Cabaniss was cutting billets and the pine out of there from November until about the middle of January?

A. No I don't think he was cutting no pines. He was cutting poplar.

2. Q. He cut the poplar?

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A. Yes.

3. Q. You know he cut poplar?

A. Yes, sir. I saw him.

4. Q. He cut the best poplar in there didn't he?

A. He got the best of course, I imagine, I reckon.

5. Q. It takes the best to make billets?

A. That's right. He was cutting the best on Dr. Ransome's I know that.

6. Q. And you don't know whether he cut any pine on Mr. Buchanan's or not?

A. I didn't see none of the pines down. Nothing but the poplar laps.

7. Q. You don't know whether he cut any pine or not?

A. No I do not.

8. Q. You don't know whether he cut any oak off of Mr. Buchanan's or not?

page 98 } A. What?

1. Q. I said you don't know whether Cabaniss cut any oak off of Mr. Buchanan's or not?

A. I don't know what you mean by that.

2. Q. Whether he cut any oak trees?

A. Oh, no I don't know about that now. I didn't see none of them down when I was looking at them.

3. Q. You don't know whether he cut any gum off of Mr. Buchanan's?

A. No I do not. I'll tell you the truth about it.

4. Q. Didn't you tell Thomas Barnes to go and see Mr. Love and get him in there and straighten him out about those lines?

A. Yes sir I did.

5. Q. Do you know if Thomas went to see Mr. Love that day and came back the next day with Mr. Love?

A. No I do not. I didn't see them. I'll be fair with you.

6. Q. But you did send him to Mr. Love and said Mr. Love will tell you where the lines are?

A. Yes I did. I told him that.

CROSS EXAMINATION.

By Mr. Gravatt:

7. You also told him to see Mr. Buchanan didn't you?

A. Sir?

8. Q. You told him to see Mr. Dan Buchanan, didn't you?

A. No. I told him to see Mr. Love and see if he was cutting

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on the—tell Mr. Love I said he was cutting on the
page 99 } Dan Buchanan tract of timber down.

1. Q. Didn't you state while ago that you advised
Thomas Barnes to see Dan Buchanan?

A. No, sir.

2. Q. Didn't you say that Dan Buchanan was looking
after his mother's affairs?

A. Yes I told him Dan was looking after his mother's
affairs. After I told him to go to see Mr. Love about this
timber, and I told him where he could find Dan at, up there
on the Keysville road right where Jasper Wilkins lived at,
where played over the radio.

3. Q. Did you advise him to see Mr. Tom Waddell if there
was any land transfer?

A. Yes sir I did. I did. I don't deny it.

4. Q. In other words you told Thomas you didn't know
whether Mr. Buchanan had sold the land to Mr. Love or not,
to go and see Mr. Love about it?

A. No I told him I knowed it won't sold and to go up there
and see him about it. I said Thomas, it's nothing in the world
to me, understand. I said, I've got nothing in the world
to do about this Thomas, but I'm doing it now to do you a
favor. That's why I told him, to save him from being in
trouble. I did all I could for Thomas and I ain't got a thing
against him.

5. Q. In other words, you told him to see Mr. Love and
Mr. Love could straighten him out?

A. Yes sir I told him that. I did that and that's just as
straight as anybody would tell you about it.

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Examination by Mr. Allen:

1. Q. I believe you testified as to your age and occupation
here this morning. I also understand that you testified that
you were *forman* for Mr. Thomas Barnes, and that Lee Cab-
aniss was bringing some logs to Mr. Barnes' mill in Ken-
bridge in the fall of 1954?

A. That's right.

2. Q. Were you counting the logs that Mr. Cabaniss and
other people brought there?

A. No, sir. I think Mr. Hamlett was checking the logs
at that time.

3. Q. Did you know where Mr. Cabaniss was bringing those

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logs from? Do you know today where he was bringing the logs from?

A. I don't know. Just what I heard.

4. Q. When did you first know that there was some timber in Beach Forest for sale?

A. When I went with Lee Cabaniss up there.

5. Q. Had you heard any conversation between Lee Cabaniss and Mr. Barnes about this timber prior to that date? The first thing you knew about it Mr. Barnes told you to go with Lee Cabaniss and look at the timber?

A. Yes, sir.

6. Q. Did you know the price on the timber at the time you left the mill?

A. Yes. Lee said it was \$10.00 a thousand, and it was my business to go and see if this timber was worth \$10.00 a thousand, and if it was for us to go ahead and buy it.

1. Q. Did you know whose timber you were going to look at?

A. No, sir.

2. Did you know the location of the timber?

A. No, sir. I had never been in Beach Forest before.

3. Q. Did you know that the timber was in Beach Forest?

A. Not when I left the mill.

4. Q. And you and Lee Cabaniss went to the locality in question?

A. Yes, sir.

5. Q. I believe you testified that Lee Cabaniss showed you the timber and showed you the lines?

A. Yes, sir.

6. Q. Had any of the timber on the eighty-one acres in question been cut at that time?

A. Yes, sir.

7. Q. What had been cut?

A. Some of the best pines, not so much pine, but some of the best pines and poplar.

8. Q. Do you have any idea how much pine and poplar had been cut off this eighty-one acres at that time?

A. No sir I don't. Some of the best trees that would make veneer.

9. Q. Did you cruise the timber to see whether it was worth \$10.00 a thousand or not?

A. Yes, sir. I didn't go all over the area that he told me was for sale, but I walked down through it, down the creek and back across there and across

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the other hill. I saw that there was enough for us to go in there.

1. Q. Had you had any experience with timber prior to that time?

A. Yes I had looked at timber before.

2. Q. How long have you been occupied with manufacturing or buying timber?

A. I had been around the mill since '46 I believe and I had been going out some just once and a while looking at people's timber.

3. Q. I understand that Lee Cabaniss showed you this timber?

A. Yes, sir.

4. Q. And he told you where the lines were?

A. Yes, sir.

5. Q. Now where did he tell you the lines were? You went in there in an easterly direction I understand. Where did he tell you the lines were on the north?

A. The creek.

6. Q. And on the east?

A. The pipe line on the east and up the pipe line to another creek and up that creek to the west line.

7. Q. And where was the west line?

A. The west line was a line across the front. It comes up above the barn and then goes down just below the barn.

8. Q. After you had viewed the timber, what if anything did you say to Cabaniss, or what did you and Cabaniss do?

A. I told him that I thought it was worth \$10.00
page 103 } a thousand and we would go and see the man. I
asked him who it was. He said Mr. A. C. Love.

1. Q. Is that the first that you knew who owned the property?

A. Yes, sir.

2. Q. Did you go to Mr. Love's home?

A. We went to his home, but he came out of the door at Mr. Bates.

Objection by Mr. Gravatt: Your Honor please, we don't want to keep on objecting. Can it be understood that any evidence that this witness offers here that is in the nature of hearsay, involving Mr. A. C. Love, we object to it.

3. Q. Did you talk to Mr. Love about this timber?

A. Yes, sir.

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4. Q. What was the nature of the conversation between you and Mr. Love about the timber?

A. After Mr. Cabaniss talked to Mr. Love and told him where he told me the lines were, Mr. Love said that was right and Lee told him what he wanted to do, for us to take it over and get it out, and Mr. Love said it was all right. I asked him if it was satisfactory to him, and he said it was. I said how do you want your money in a week or two weeks or when we finish it. He said any way you want to. Wait until you finish getting it all if you want to.

page 104 } 1. Q. Wait until you finish getting all of it?

A. Yes, sir. He said any way you want to.

2. Q. Was it agreed there that Mr. Barnes would buy the rest of that timber at \$10.00 a thousand?

A. Yes, sir.

3. Q. And you were to pay Mr. Love when you finished?

A. Yes, sir.

4. Q. And you said something here prior to this about Mr. Love having a drink. Was that before or after you had made the deal with him?

A. Well we had talked about it some and Mr. Love gave Lee some money and told him to go and get him a pint of liquor. He went and got a pint of liquor and he took a drink.

5. Q. And that's when you concluded the contract?

A. Yes, sir.

6. Q. Had you mentioned the price and the location of the timber?

A. Yes, sir.

7. Q. And the time you had to pay for it before he had this drink?

A. Yes, sir.

8. Q. Had you known Mr. Love prior to that day?

A. Yes, sir.

9. Q. How long had you known him?

A. I had been knowing him as much as thirty years.

10. Q. Did you ever transact any business with him before that time? Did you ever have an occasion to talk with him?

A. Well not no special business or anything.
page 105 } I knew him and spoke to him and talked to him.

1. Q. Had you ever heard him engaged in a conversation?

A. Yes, sir.

2. Q. Did you notice anything unusual about Mr. Love the morning that you bought the timber from him? Did he ap-

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pear to be rational? Did he appear to know what he was doing?

A. Yes, sir.

3. Q. Would you have bought the timber from him if you thought he didn't know what he was doing?

A. No, sir.

4. Q. At a later date did you meet with Mr. Love and the Buchannans and Mr. Barnes at Mr. Love's home?

A. Yes.

5. Q. Did Mr. Love make any statement to you at that time as to whether or not he sold this timber to you?

A. He said at first that he hadn't sold it to me and then after I told him about what I told you about Cabaniss coming there with me and all, he said yes, that's exactly right. He said, I told you that.

6. Q. He said that he had sold you the timber?

A. He told me in those very words.

7. Q. Well what did you tell Mr. Love on this night that you and Mr. Buchanan and Mr. Barnes went out there?

A. I told him—I asked Mr. Love when he said page 106 } that he hadn't sold me the timber, I said Mr. Love, don't you remember me and Mr. Lee Cabaniss coming here and Lee telling you where he told me the lines were, and he told him just as he told me—down the creek to the pipe line, and Mr. Love said, that's right. I told him all of that and he said, Yes I agree.

Examination by Mr. Gravatt?

1. Q. Mr. Daniel when you went back there and Mr. Love didn't remember about this conversation at all, didn't that make any impression upon you as to whether or not he was really competent to transact business or not?

A. Well at that time. That was after we had quit cutting timber.

2. Q. Sure it was.

A. And he did talk a little funny at that time.

3. Q. It looked kind of bad didn't it?

A. But I didn't see nothing before then.

4. Q. I see. Now the day you all were up there you say you went in and talked to Mr. Love about this timber matter. Mr. Cabaniss had some kind of arrangement with Mr. Love to cut some timber for him and pay him \$10.00 a thousand, and while the conversation was going Mr. Love took a little money and gave it to Mr. Cabaniss and said go down town and get us a pint of whiskey. And he got the pint of whiskey.

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He took a drink, and then Mr. Cabaniss said, well the lines on it go so and so and so and so and whatever, and Mr. Love said, that's right. Is that the way it was?

A. He told him about the lines before he took page 107 } the drink.

1. Q. He told him about it both times I reckon, didn't he?

A. Might have.

2. Q. And Mr. Love said, that's right. He agreed to it, and then when you got down to the question of paying the money, you said he said you could pay it to him any way you wanted to, it didn't make any difference to him?

A. Every two weeks or wait until we finished up and pay it all.

3. Q. Pay it any way you wanted to. Was that the way it was?

A. Yes, sir.

4. Q. All right. Now, how long have you known Mr. Cabaniss?

A. I reckon I've known Mr. Cabaniss fifteen years.

5. Q. What is your opinion as to his general reputation as to reliability?

A. Well I don't know. I wouldn't like to say.

6. Q. All right. Now how much timber have you ever bought?

A. I couldn't tell you exactly.

7. Q. How many transactions have you ever handled in purchasing timber for Mr. Barnes?

A. I don't remember right now.

8. Q. As many as two?

A. Yes, sir.

9. Q. As many as five?
page 108 } A. Yes, sir.

1. Q. As many as a dozen?

A. I don't know.

2. Q. Well now, have you ever bought any timber from anybody, any time, anywhere, by going in and sitting down in a man's house and telling him, we'll give you \$10.00 a thousand, and he says, well that will be all right. And then you just say we'll just pay for it whenever it suits us to pay for it, by the week or when we finish or whenever it suits us. Have you ever had any such transaction as that with Mr. Barnes or anybody else before at all in all of your experience?

A. I don't remember as I have, just exactly like that.

3. Q. Don't you think that any man that would just turn

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loose any sawmill operator to go into a tract of land to cut his timber, without going there and showing him the lines, without having any written contract, and without ever having any definite understanding about when he is going to be paid for it or how he is going to check up or settle up on how many thousand feet of timber he cuts or anything, don't you think that any man that makes a transaction of that kind that it is practically evident that he is incompetent to tend to business?

A. No, sir, I wouldn't say that.

4. Q. Well you never have sold any timber that way and never bought any that way before, have you?

A. I might have.

5. Q. I asked you the question, have you?

A. I don't remember right now whether I have
page 109 } or not.

1. Q. Well it certainly would have made some impression on you if you had. It is certainly unusual enough for you to remember. Don't you think so?

A. If this land had belonged to Mr. Love and we went on and bought this timber and paid for it, well we never would have thought anything about it.

2. Q. Have you ever on your own behalf or on Mr. Barnes' behalf before purchased a tract of timber without any kind of written memorandum of the terms of it whatever?

A. I think we have cut timber like that when we didn't have a written contract.

3. Q. I didn't say written contract. I said no written memorandum, not even a letter or anything written down on the back of an envelope or a blank check—

A. I think so.

4. Q. Just sit down and say we'll buy it and you'll sell it, and we'll pay you when we get ready?

A. We had an agreement of what we were going to do.

RE-DIRECT EXAMINATION.

By Mr. Allen:

5. Q. There is one question I failed to ask you. Was anything said about between you and Mr. Love as to when you were to cut the timber, get it out of there?

A. Nothing. I don't think there was anything said about it at the time. We told him we would go in there pretty soon, but no special time.

6. Q. At the time you viewed this timber, you stated that

H. E. Daniel.

the billets, the poplar billets and the best pine had been cut?

A. Yes.

7. Q. On this eighty-one acres. Will you tell page 110 } the court whether you considered the timber to be a high grade of timber, a medium grade of timber or low grade?

A. As far as I could see when I went in there, it seemed to be a low grade of timber to me. The pine was small, the oak was not a high grade oak, and the poplar was small. All the largest poplar had been cut.

1. Q. Was the timber growing close together on part of the tract or was it scattered all over the eighty-one acres?

A. It was pretty well scattered.

2. Q. At your mill, do you cut timber by the thousand, at Mr. Barnes' mill?

A. Yes, sir, sometimes we cut it by the thousand.

3. Q. Do you know how much Mr. Barnes charges to cut the timber by the thousand?

A. \$20.00.

4. Q. \$20.00 a thousand.

A. That's sawing, not logging and sawing.

5. Q. That's the logs on his mill yard?

A. Yes, sir.

6. Q. You don't have to go into the woods and cut the timber and bring it to the mill and saw it?

A. No, sir.

7. Q. Do you know what the charges are for logging and sawing by the thousand?

A. Well I would say around \$35.00.

8. Q. We are talking about now in January of 1955?

A. It was a little cheaper at that time. It would be from \$30.00 to \$35.00.

9. Q. \$30.00 to \$35.00?

A. Yes, sir.

page 111 } 1. Q. Did I understand you to testify as to the location of this timber, how far it was from the hard surfaced road?

A. No, sir, I didn't.

2. Q. How far was it from the hard surfaced road?

A. It's about—I would say a mile.

3. Q. What is the general terrain of the land? Is it level land that this timber was growing on?

A. No, sir, not very level, right hilly.

4. Q. You could get in there pretty easy in any kind of weather?

H. E. Daniel.

A. By building some bridges in the low places. Without a tractor in there it would be impossible.

CROSS EXAMINATION.

By Mr. Neblett:

5. Q. You were cutting it in the wintertime at that won't you?

A. Yes, sir.

6. Q. And I assume that you were cutting the best trees?

A. We were cutting everything that we could handle.

7. Q. Did you cut any under eight inches to your certain knowledge?

A. I don't think so.

8. Q. As a matter of fact you heard Mr. Milne testify here just now? You heard Mr. Milne, the State forester testify and his record shows that none of that timber was cut under nine inches; it was sometimes from nine to thirty-three inches.

You don't call that a poor grade of timber do you?
page 112 } A. That was inches on the stump?

1. Q. Yes, sir. Nine inches there, seven inches from the ground up. You see the number of trees, etc. There is the oak, pine, poplar and so on. You see that. Nine inches was the least that was cut. You don't deny that do you?

A. It's not much good to us I mean from outside the bark.

2. Q. That's right. As a matter of fact, most of the timber that you cut is nine inches?

A. It's a mighty small tree that is nine inches on the stump.

3. Q. When you get up to thirty-two inches, it's a right bit tree, isn't it?

A. Right good size tree. We didn't get very many trees that size.

4. Q. Here's some nine inches, 19 trees eleven inches, 22 trees twelve inches, 18 trees thirteen inches, 11 trees fourteen inches, 9 trees fifteen inches, 2 trees sixteen inches, and on the way up to twenty-seven inches. That's considered very good timber isn't it?

A. I didn't see that, because Mr. Cabaniss had cut in there before we went in there.

5. Q. Well you don't claim Mr. Cabaniss cut all of that timber in there?

A. He cut the most of that large timber.

6. Q. Well you all didn't cut any under nine inches, you know that?

H. E. Daniel.

A. Well I would say we did or we didn't.

7. Q. If you did, we haven't got a record of it?

A. There's no use to cut under nine inches.

page 113 } 1. Q. Well you all do cut timber sometimes
under nine inches, don't you?

A. Well we always call it eight inches from inside the bark. It's right small. We could happen to cut some once and a while.

2. Q. Did you cruise that timber before you bought it?

A. I walked down to the creek on the north side and down the creek to the pipe line and come across on the next hill. I didn't cruise the timber real close all over.

RE-DIRECT EXAMINATION.

By Mr. Allen:

3. Q. One other question. Have you ever heard anything about Lee Cabaniss's reputation for cutting other people's timber before this thing started?

A. No, sir.

4. Q. You hadn't heard his reputation discussed at all before this thing started?

A. No, sir.

5. Q. As far as you know, before he cut Mr. Love's and Mr. Buchanan's timber here he had an excellent reputation?

A. As far as I knew he did.

6. Q. You know whether Mr. Love went into this property with Mr. Lee Cabaniss and showed him the lines?

A. No, sir.

RE-CROSS EXAMINATION.

By Mr. Neblett:

7. Q. Daniel, you had never heard Lee Cabaniss's reputation discussed in the community down there where
page 114 } he lived?

A. Well I had been knowing Lee Cabaniss, but so far as his going and cutting timber on somebody's place without buying it, I didn't know that.

1. Q. Well you know what his general reputation is for truth and veracity, before this started?

A. Well I had heard things about him, but so far—

2. Q. You couldn't rely on him entirely could you?

A. Well I don't reckon you could.

THOMAS C. BARNES

Examination by Mr. Allen:

3. Q. I believe you stated you are 39 years of age, you live at Kenbridge, Virginia, and how long have you been in the sawmill business?

A. Fifteen years.

4. Q. Mr. Barnes, when did you first know that there was some timber for sale in this locality we are discussing now?

A. I didn't know what locality it was in until Mr. Daniel came back and told me where it was and who he bought it from.

5. Q. That was after he had bought the timber from Mr. Love?

A. That's right.

6. Q. I believe you testified this morning that in November or December of 1954 that Lee Cabaniss was bringing some logs to your mill?

A. I think the first he brought there was in December.

7. Q. December, 1954. What, if anything, did he say to you about buying this tract of timber from him?

page 115 } A. Well he asked me about taking over a good size tract of timber that he had bought and he didn't have the equipment to get it out. He said he wanted me to take it over if I would.

1. Q. When did he first suggest this to you?

A. It must have been about the middle of December, and he came back there along about the 22nd, and asked me about it again.

2. Q. So you sent Mr. Daniel to look at the timber?

A. That's right.

3. Q. And the next thing you knew he came back and told you he had bought it?

A. Yes, sir.

4. Q. Were you intending to cut this timber immediately or as soon as possible?

A. Yes, sir.

5. Q. When was the first time that you actually went upon the land in question?

A. I don't remember whether it was the morning we started cutting in there or a day or two afterwards. I don't remember exactly the date. Mr. Daniel took the log cutters in there and they started cutting.

6. Q. That was a day or two after he had bought the property?

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A. According to these tickets here they started hauling into the mill about the 7th day of January. How many days they were cutting in there before they started
page 116 } hauling them out, I don't know.

1. Q. I believe you stated that you went in there some time later to see something about the lines?

A. That's right, see about the log cutters and the logging operations.

2. Q. And you talked with Isaiah Jones on that occasion?

A. Yes, sir.

3. Q. And Isaiah Jones told you that all of the land from where he was standing to the road to the tar road belonged to Mr. A. C. Love?

A. Yes, sir.

4. Q. Then there came a snow, and you sent someone in there to drain the mudholes from the road, and that you went in there to check on them and had this talk with Mr. Wallace?

A. That's right.

5. Q. And Mr. Wallace told you that the timber you were cutting he thought was on the Buchanan property?

A. He asked me wasn't I cutting on the Buchanan property.

6. Q. Then what did you do?

A. I went to Cousin Allen Love.

7. Q. That's Mr. A. C. Love that you are talking about now?

A. That's right. I stopped by the Ford place there and found out exactly where Cousin Allen lived and then I went
page 117 } to see him.

1. Q. Was anyone at Mr. Love's home at that time?

A. Dick Wallace was there.

2. Q. Is that Mr. W. W. Wallace?

A. I don't know his initials.

3. Q. And you talked with Mr. Love about this timber?

A. Yes, sir.

4. Q. In the presence of Mr. Wallace?

A. That's right.

5. Q. Did you tell Mr. Love what Mr. Wallace had told you about this being the Buchanan tract?

A. Yes, sir.

6. Q. What, if anything, did Mr. Love say to you?

A. He said I know where you're cutting and that land in there is mine.

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7. Q. Then what did you say to him?

A. I said, well I would like for you to go down there with me to make sure it's yours. He said well I can't go today. Try to get James Hester to go with you. I went to get James Hester and he was off some distance from the house getting some wood. He said I can't get away. These mules would run away if I would leave them. He said, I can't go with you. I went back to Cousin Allen's and told him what James Hester had said. I told him that I had rather that he go with me. I said how about tomorrow, and he said all right. I said how about tomorrow at 10:00 o'clock, and he said all right.

8. Q. Was Mr. Dick Wallace still at Mr. Love's house when you went back?

A. Yes, sir.

9. Q. You made an appointment to go with him down on this piece of property the next morning at 10:00
page 118 } o'clock?

A. That's right.

1. Q. Did you go back to Mr. Love's home the next morning at 10:00 o'clock?

A. I did.

2. Q. Did you get Mr. Love and take him on this property?

A. I did.

3. Q. Who, if anyone, went with you, you and Mr. Love?

A. Herbert Gilbert.

4. Q. Now when you are going into this property from the tar road, in which direction do you enter?

A. Going east.

5. Q. Going east. You go in there in a easterly direction?

A. That's right.

6. Q. Where is the tar road on this?

A. It must be southwest.

7. Q. And you and Mr. Love and Herbert Gilbert went into the property on whose vehicle?

A. My pickup.

8. Q. Now where is the first place you went to when you went into this property?

A. I pulled up to this stob where Ernest Wallace had showed me and the buggy axle. I said, Cousin Allen, this is where Ernest Wallace said the Buchanan land corners. He said, that's my land there. I backed out into this little road, the old road now. The road we traveled came
page 119 } around here. We came in and stopped along here, there's a flue barn on Cousin Allen's—

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1. Q. Just a minute. There is a flue barn on Mr. Love's land where?

A. Right here.

2. Q. Would you put a pencil mark there please sir. What did you do then?

A. There were some chops on a hickory tree there. I said look out here now, you see these chops here. Yes, I tell you all of this land in here *in* mine. We got back in the truck again and drove on down here.

3. Q. Did you tell Mr. Love whether Mr. Wallace had told you that was the Buchannan land or not?

A. I told him, when I first got there, I said this is where Mr. Ernest Wallace showed me. This is the Buchannan property here.

4. Q. Facing east?

A. That's right. Mr. Ernest Wallace showed me the buggy axle here and came across here. The road goes around by the barn and comes on down in here. We came on down to this line here and I showed him the same thing Mr. Ernest Wallace had showed me here, some chops on some trees. He said, I tell you all this land in here is mine. It goes on over here across this creek up on the hill. I said, well how far does it go over to the south. He said it goes across the branch up on the hill and you will see a road down there. He said the line is first one side and then the other. I found it that way.

5. Q. Did he say whether it was a chopped line or not?

A. He said it was the line. I don't know whether he said it was a chopped line or not. I found a chopped line down that way.

page 120 } We followed this road down through the woods here, along down in here somewhere. Then we drove on down in here and come to some more pines. I said Cousin Allen, we are fixing to cut in these pines here now. I said, is this your timber here. He said all this land on back to Peter Fowlkes place is mine. That was just a few hundred yards from where Isaiah Jones was standing when he told me all the land from there to the highway belonged to Mr. A. C. Love. We were just a couple of hundred yards from where Isaiah Jones was standing. So I felt like I had the lines pretty straight, from where Isaiah Jones was back out this way. The day Mr. Dan Buchannan and James came in there—

1. Q. Now wait, just one other question. Did you go over

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here on the south boundary of this eighty-one acre tract and locate the line?

A. I went over there and found it myself.

2. Q. How is the line over there?

A. Plainly chopped.

3. Q. Is there a road anywhere near the line?

A. The road is first one side of the line to the other.

4. Q. Just as Mr. Love had explained it to you?

A. That's right.

5. Q. All right. Now what were you going to say about the day Mr. Buchanan came in there?

A. Mr. Buchanan came in there and they were stuck in a mudhole back up here. We had just about finished cutting. There was just a little timber up here, and I wanted to bring the log cutters over here, to cut on this side of the creek.

6. Q. As I understand it, you went in and cut the south side of this property?

page 121 } A. We started in here and cut all the way down here. Then we came back and went in here and started here and cut on around here. And then a day or two I had to bring the log cutters and let them go over the creek. He told me it went across the creek up on the hill.

1. Q. First you started at the—

A. At the barn.

2. Q. What is designated as Lot #27 here?

A. That's right.

3. Q. Did you cut some off of that?

A. Cut all of that.

4. Q. Then you went over here on #21?

A. No, we kept on down. Kept going down this ridge until we finished it. Then we came back and started somewhere in here and came up in here and wound back in here. The trees that are left down there are down in here, just below here. The boys lacked a day or two of finishing cutting in there. I had Willie Hayes to show me the line on the lower side of the creek, which is on the north side of the property.

5. Q. You were going to cut across the creek on the south side then and go to the north line?

A. That's right.

6. Q. And that was the purpose of having Willie Hayes in there?

A. I think, I won't say for sure, that Roy Wilks I think cut a tract of timber in there several years ago. I think he told me Willie Hayes run the line in there. Now somebody told

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me Willie Hayes helped survey in there or some-
page 122 } thing.

1. Q. And you said when you took Willie Hayes in there you met Mr. Dan Buchannan and Mr. James Buchanan?

A. That's right.

2. Q. And they told you you were cutting on their mother's property?

A. That's right.

3. Q. What did you do then?

A. Two or three of my men were there helping them get out of the mudhole. I told the boys not to cut any more logs and don't haul any more. Stop right now.

4. Q. Did you cut any timber after that?

A. No, sir. Not on that property.

5. Q. Did you get any of the logs out of there after that?

A. No, sir.

6. Q. Did you offer to buy from Mr. Buchannan the logs that were cut and lying on the ground?

A. Through you and Mr. Neblett.

Objection by Mr. Neblett: We object to that Your Honor. I would be glad to put that letter from Mr. Allen in the record here. We will just offer the letter here. (Defendant's Exhibit #1)

7. Q. Did you offer to buy the logs that were cut and lying on the ground from Mr. Buchannan or Mrs. Buchannan at that time for the sum of \$410.00?

A. What time are you referring to?

8. Q. That's in April of 1955?

A. You wrote the letter for me. Yes, sir.

9. Q. Any offer that was made to purchase that timber by me as your attorney was authorized by you?
page 123 } A. That's right.

1. Q. Did you see the timber on this eighty-one acres of land before your men started cutting it?

A. They were cutting in there, the log cutters—I don't remember how long they had been in there. Mr. Daniel took them in there and started them.

2. Q. What was the quality of the timber on this eighty-one acres that was being cut as to the grade of the timber. Was it a good grade, or medium grade or poor grade?

A. Well, we'll take the oak. Part of the oak was on the

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young side and of fair grade. Some of it was old and it looked like a fire had been through it and that was a very poor grade, and part of the oak was a very good grade. Over in the bottom was good grade oak. That on the southwest side where I reckon a fire went through it, the trees were hollow, were bad trees. On the north side of the place they were on the younger side. The poplar I cut was very good. There were some good trees in there before Mr. Cabaniss started cutting.

3. Q. At the time that you bought the timber through Mr. Daniel, was \$10.00 a thousand across the board for everything on it a very cheap price, or a very reasonable price or a high price?

A. It was a cheap price before Mr. Cabaniss went in there. After Cabaniss had went through there and cut the choice of the timber, \$10.00 a thousand was a fair price for it.

4. Q. Do you have any figures as to the number of feet of lumber or timber that you cut and removed from this property? I understand you were to pay Mr. Love by the thousand?

A. By the thousand.

5. Q. You were measuring it at your yard?

page 124 } A. As each log came off the truck.

1. Q. Did you keep a record of the logs as you measured them?

A. Yes, sir.

2. Q. Did you make a check of the number of trees that were left cut and left on the ground?

A. They were just cut and left on the ground.

3. Q. I believe your estimate is pretty close to that of Mr. Milne, the consultant forester?

A. That's true. The total that came out I understand was off of the Buchanan tract and Dr. Ransome's tract on the back side there.

4. Q. You did cut some timber off of Dr. Ransome's property?

A. I think so.

5. Q. Of course, that is not in issue now. Have you settled with Dr. Ransome?

A. Yes, sir.

6. Mr. Barnes, you have been in the sawmill business for some fifteen years and have been buying lumber during that time?

A. Yes, sir.

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7. Q. Have you also bought and sold land in Lunenburg County during that time?

A. Yes, sir.

8. Q. Do you own some land in Lunenburg County now?

A. Yes, sir.

9. Q. How many acres of land do you own in Lunenburg County?

A. About 900.

page 125 } 1. Q. What would be the fair market value of this eighty-one acres of land in January of 1955, after Lee Cabaniss had cut the best poplar and the best pine off of it?

A. Are you asking about the land?

2. Q. The land and the timber before Mr. Barnes went in there and started cutting any timber whatsoever?

A. I would say from \$2,200.00 to \$2,500.00.

3. Q. I believe you have in your answer filed a check in which you have offered to pay to Mr. Buchanan or to Mr. Love or to whomever the court determines that is entitled to this money the sum of \$20.00 a thousand for poplar and pine, \$10.00 a thousand for oak and \$5.00 a thousand for gum and hardwood. Is that correct?

A. Yes, sir.

4. Q. That's almost twice as much as you agreed to buy the timber from Mr. Love?

A. Twice as much for some. It was \$10.00 a thousand straight through. I lowered the gum back to \$5.00 and I put the poplar and pine at \$20.00 and the oak stayed the same.

5. Q. Mr. Barnes, have you ever cut timber on somebody's land willfully?

Objection by Mr. Neblett: We object to that Your Honor. We are not trying anybody else's land.

6. Q. Did you willfully and intentionally cut the timber on Mr. Buchanan's land knowing that it was Mr. Buchanan's land?

A. No, sir.

page 126 } 1. Q. If you had known it was Mr. Buchanan's land would you have cut the timber off of it?

A. No, sir I wouldn't have.

2. Q. All of the time that you were cutting and removing the timber from this land you were of the opinion that you were buying it from Mr. A. C. Love and it was your property?

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A. I thought it was his property.

3. Q. I mean this timber was your property?

A. That's right.

4. Q. You weren't intending at all to cut Mr. Buchannan's property?

A. No, sir.

Examination by Mr. Gravatt:

5. Q. Mr. Barnes, you didn't have any idea whose property this was, whose timber it was or anything at all. You had no information about it until you went in there and started cutting, did you?

A. Well, it's like I told you before. Lee Cabaniss said he bought it and had been cutting in there a month and a half, and then he took Mr. Daniel in there and showed it to him. I didn't know where Lee was getting the logs from that he was bringing down there. I didn't know where Mr. Daniel was going to buy this timber. I didn't know who he was going to see or where he was going. Lee said it was a man up near Victoria.

6. Q. So it wasn't until after you had begun your operations, begun cutting, that you found out that you were supposed to pay whatever you were to pay to Mr. Love?

A. No. Mr. Daniel came back on the 22nd of page 127 } December. He came back and told me—I asked him where did he go and if he had bought it. And he told me he went up and bought it from Mr. A. C. Love.

1. Q. Now did Mr. Cabaniss ever show you the lines on this property?

A. No, Mr. Cabaniss didn't show them to me, he showed them to Mr. Daniel.

2. Q. And Mr. Daniel showed you the lines?

A. He showed the log cutters. He took them in there and started them off.

3. Q. Mr. Cabaniss had pointed them out to him?

A. That's right.

4. Q. And then you say Willie Hayes showed you something about the line?

A. That was not at the beginning.

5. Q. I understand, but I'm just talking about all the people that you contacted about these lines, and Mr. Daniel and Mr. Cabaniss begun on the lines?

A. That's right.

6. Q. And then Isaiah who was it?

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A. Isaiah Jones.

7. Q. Isaiah Jones, he told you something about the lines?

A. That's right.

8. Q. And then you went to see somebody named Hester that Mr. Love had referred you to, and you wanted to find out something about the lines from him?

A. That's who Cousin Allen told me to go and see.

9. Q. That's right. And then you saw a man named Willie Hayes. Is he a colored man?

page 128 } A. That's right.

1. Q. And then you saw Mr. Wallace. Is that right?

A. I saw him at first.

2. Q. Well you had seen all of those people about the lines before you ever did take Mr. Love down there to get him to tell you anything about the lines?

A. No, sir.

3. Q. Well Cabaniss and Daniel had certainly looked at the lines before you took Mr. Love down there. Willie Hayes had looked at the line before—

A. No, sir.

4. Q. He had not. Isaiah Jones had told you about the lines before you consulted Mr. Love, and you had been to see this Hester man and he told you his mules would run away and he couldn't go with you right at that time?

A. That's right.

5. Q. And Mr. Wallace had told you about the lines?

A. That's right.

6. Q. And then you went to see Mr. Love and took him down there?

A. That's right.

7. Q. And after you took Mr. Love down there, you still had to go and see Willie Hayes to find out where the line was?

A. It's like you said, Cousin Allen couldn't do much walking. He told me the line went over the creek on the north side up on the hill.

8. Q. And he couldn't do much seeing either could he. He is totally blind in one eye, isn't he?

page 129 } A. I don't know about that.

1. Q. Well you see him go around with his eye closed up all the time. Didn't you notice that?

A. I didn't pay particular attention to it.

2. Q. You didn't pay any attention to it. You know he is an old man?

A. Yes, sir.

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3. Q. And you know he is impaired in body and in mind?

A. I don't know about that.

4. Q. Well have you ever known anybody that got to be eighty-two years old and wasn't?

A. A few people are not.

5. Q. I don't think he is incompetent. I don't think he is a man you would call *non compos mentis*, but he is certainly a man, because of his age and ability is not as alert and observant and as capable in respect to matters as he formerly has been. You certainly agree to that, don't you?

A. I don't know.

6. Q. And the time you took him down there, he went with a man named Gilbert. Is that right?

A. He rode with us.

7. Q. Was there any liquor on the trip that time?

A. We were ready to leave and Herbert came in and I asked Herbert to go with us. He came in with a pint of liquor, and he and Cousin Allen took a drink. I think they left it at the house. I don't remember for sure whether they took it with them or not. I don't remember them taking a drink after they got in the pickup. I'm sure they left it at the house.

page 130 } page omitted.

1. Q. It would have been pretty hard to get
page 131 } Mr. Love and Mr. Gilbert to drive down in Beach
Forest if they didn't take that pint of whiskey
with them. You know that don't you?

A. I think they left it at the house.

2. Q. You hope they left it at the house?

A. I'm sure they did. I don't want to say anything that's wrong.

3. Q. I understand. I'm not trying to imply in this cross examination that you are. I just want to get frank answers about it. You know that Mr. Love didn't want to get anybody into trouble?

A. I don't think he would.

4. Q. And his transaction started out with Lee Cabaniss. And let me ask you another question. How long have you known Lee Cabaniss?

A. I've known Lee Cabaniss ten, fifteen or twenty years.

5. Q. What is his general reputation—wait a minute. What do the people generally, if you have any knowledge of it, what do they say about him with respect to his being a reliable man?

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A. Before this happened?

6. Q. Any time that you know of?

A. Well I never heard of Lee taking timber off of anybody else's property myself, if that's what you mean.

7. Q. Up until this time?

A. I don't know of anything that Lee has done.

8. Q. That ain't what I asked you. You just answer my question and we'll get the answer. I said what do the people who know him, who are acquainted with him, what do they say about him with respect to his being a reliable, page 132 } trust-worthy man. Not your experiences, but what the people say. The people that know this man say that he is not reliable. Isn't that true? That's his reputation.

A. Well I found him not to be later, before that I didn't know.

1. Q. I'm not talking about what you found, but what is the general opinion and the general expression about him whenever his name comes up, when you come down to whether he is reliable or trust-worthy or not?

A. I don't think he is too reliable.

2. Q. Right. And you didn't have any definite information about that you say before you got into this transaction, or had you heard it before you go into this transaction?

A. Not in I don't know when.

3. Q. Now let me ask you another question. Is it your opinion, with all that you know about this matter, that Mr. Love got you into this situation you are in or that Lee Cabaniss got you into the situation you are in?

A. Well I think both got me into it.

4. Q. Do you think that Lee Cabaniss took advantage of you and Mr. Love both or do you think that Mr. Love and Lee Cabaniss took advantage of you?

A. I think Lee Cabaniss bought it from Cousin Allen in good faith just like I did.

CROSS EXAMINATION.

By Mr. Neblett:

5. Q. Mr. Barnes, I ask you this? Is that *you* handwriting?

A. That's mine.

page 133 } 1. Q. That's yours. I believe you fixed it at 90,000 feet, 90,045 feet, and that is what you gave Mr. Dan Buchanan?

Thomas C. Barnes.

A. That's right. All of it didn't come off of the Buchanan tract. That was all that we had cut and hauled out off of everybody's property.

2. Q. And you also gave him what Cabaniss had hauled?

A. That's true.

3. Q. 9,955 feet?

A. I don't know what tract that came off of.

4. Q. Well now what is the present footage there? Have you got that. It shows 65,045 feet.

A. On what tract are you speaking of.

5. Q. The Buchanan tract that you set up in your grounds of defense?

A. The total amount cut and removed from the Buchanan tract by estimate, 66,325 feet of pines, 7,285 feet of poplar, 23,380 feet of oak, 3,055 feet of gum.

6. Q. Now that is what you cut and removed?

A. Yes, from the Buchanan tract by estimate.

7. Q. Now to sort of work this out, this Cabaniss timber either came off the Ransome property or the Buchanan tract. Is that correct?

A. That's right.

8. Q. Did you pay for all of the timber on the Ransome tract that was cut? Did you settle—

A. I settled with Dr. Ransome.

9. Q. How many feet did you settle with Dr. Ransome for?

A. I settled with him for 4,110 feet of pine and poplar, 3,380 feet of oak.

page 134 } 1. Q. That's about 8,000 feet?

A. About 8,000 feet.

2. Q. Well now, how is it that you gave Mr. Buchanan a statement stating that you cut 90,000 feet?

A. There's a tract of land in between there that I thought was Dr. Ransome's. And he came in and he didn't claim it. He didn't have all of his records or whatever it was, which is 10,900 feet of pine and poplar by estimate, 4,120 feet of oak, 2,000 feet of gum.

3. Q. That's another tract that you cut on?

A. That's right.

4. Q. And you haven't settled for that yet?

A. That's right.

5. Q. And you claim Mr. Love sold you that?

A. That's right.

6. Q. And then there's no question about how much was

Thomas C. Barnes.

cut and left there. I think it is *alleges* here about 28,000 feet, cut and left there on the premises?

A. I don't have a total here I don't believe. I have logs cut and left on ground on Buchanan property 7,450 feet of pines, 5,295 feet of poplar, 15,370 feet of oak 1,955 feet of gum. We took international rules in there and measured those logs.

7. Q. It amounts to about 28,407 feet?

A. Right.

8. Q. You heard Mr. Milne's reports here, his estimates. You don't deny that that is about correct do you?

A. I saw the report that Mr. Allen had and it's not very far from our figure.

page 135 } 1. Q. There was 983 trees cut and removed from the premises with a board foot volume of 86,445 feet by the estimate made by Mr. Milne. Then there was 294 trees cut and left upon the premises with board foot volume of 28,407 feet. That is practically correct, isn't it? The total number of all trees cut is 1,277 with a board foot volume of 114,852 feet. That's practically correct, isn't it?

A. I think so.

2. Q. Now Mr. Barnes, that was fairly good timber wasn't it?

A. Like I said a while ago. It appears from the stumps that the poplar was very good poplar. We cut some of the biggest pines in there. The pines were a good grade of pines but the balance that was left in there was small and scattered. The oak was young and fair grade, on the north. The oak on the south side, southwest side, looked like a fire had been through it and that wasn't very good. The oak on the south-east side was a good grade.

3. Q. Do you have an estimate of how much Lee Cabaniss cut there before you went there?

A. I don't

4. Q. You don't have no idea?

A. No.

5. Q. You did use a few of the laps he left there?

A. We cut a few of the laps. We cut a lot of timber by the thousand. We try to clean up when we go in a place like we would if we were cutting and had bought the lumber.

1. Q. Now this record shows that you didn't cut any under nine inches. That's correct isn't it?

page 136 } A. Well we try not to cut under eight inches.

Thomas C. Barnes.

2. Q. Well you didn't cut any on this tract under nine inches?

A. No, most of that tract was hardwood and you don't cut hardwood as small as you do pine.

3. Q. I believe you stated that you gave Mr. Love \$10.00 a thousand feet. Wasn't that a very small amount?

A. It was, and like I said before. I went in and looked at it and if it had been worth more I would have gone in and told him, but after the choice of the pine and the choice of the poplar had been gotten out and since it was as much or more oak as anything else and we can't pay over \$5.00 for mixed hardwood, I considered it a fair price.

4. Q. In the offer that you made here, you stated in your grounds of defense, "defendant admits that the timber was cut and removed from subject property by his employees." Of the description, footage and value as follows: 26,325 feet \$20.00 per thousand. Now that is a very reasonable value for that timber, isn't it?

A. Well the reason I changed that was that there was offered a settlement out of court.

5. Q. You put it in your grounds of defense, didn't you?

A. Well Mr. Allen worded that.

6. Q. So you are offering here in your grounds of defense \$20.00 a thousand feet for the pine, \$20.00 a thousand feet for the poplar, \$10.00 a thousand feet for the oak and \$5.00 a thousand for 3,055 feet of gum. Why was it that you didn't make your Cousin Allen a similar offer?

A. Because I didn't think it was worth it. After everything turned up like it did I wanted to save all of this trouble. I wanted to pay out of court.

1. Q. In that conversation that you and Mr. Dan Buchanan had with Mr. Love, don't you remember Mr. Love making the statement that, Thomas, if we cut Dan Buchanan's timber we've got to pay for it?

A. I think so.

2. Q. Now when Mr. Love pointed those lines out to you did you point these lines out to him?

A. Yes, sir. I took him all around it. I mean, I would stay in front of him and see that he stayed right where I understood they were supposed to.

3. Q. Well when Mr. Ernest Wallace told you, Thomas, if you've got any question about it why don't you go up here

Thomas C. Barnes.

and let Tom Waddell show you, tell you about this land. You recall that statement don't you?

A. I don't remember.

4. Q. Well anyway you didn't see the records?

A. Well I thought that after Cousin Allen stood on the property and said this is my property, I thought that was as good evidence there was—as good as you could get.

5. Q. Now let's see Mr. Barnes, as I understood you you said—did I understand you to say that the land and timber was worth between \$2,200.00 to \$2,500.00?

A. Something like that. That was after the best pine and poplar had been cut off of it.

page 138 } 1. Q. Well now is there any land in Lunenburg County with that much timber on it, that the record shows here, that you can buy for \$150.00 *a* acre?

A. I reckon there is; plenty of it.

2. Q. Plenty of it? That has 114,000 feet of timber that you could buy for \$50.00 an acre?

A. Like I said, the choice timber had been cut off of it.

3. Q. I understand that, but most any scrubby pine woodland would sell for \$5.00 an acre, wouldn't it?

A. Well that didn't have pine on it.

4. Q. Well any type of scrubby wood?

A. Two acres had some pine on it, but the balance had oak on it, and you cut the oak off, you know how it is, you don't know when it ever will be worth anything else.

5. Q. What price did you put an acre when you went in there on that land?

A. I reckon that land is worth \$10.00 or \$15.00 an acre.

6. Q. Without timber on it?

A. Without timber on it. With the timber cut off.

7. Q. With the timber cut off at \$10.00 an acre. Do you know of any land in Lunenburg County you could buy for that?

A. Well I don't know. I would hate to have much money tied up in that, much more than that.

8. Q. I said do you know a place in Lunenburg County you could buy for that?

A. No, sir.

page 139 } RE-DIRECT EXAMINATION.

By Mr. Allen:

1. Q. I understood you to answer Mr. Neblett and Mr. Gravatt something about the Ransome timber. Did you pay

Thomas C. Barnes.

Dr. Ransome for all the timber that was cut off his property or just what you cut off of it?

A. He came around and brought an estimator with him around Easter here, and he measured something like Mr. Milne said they measured, measured the stump and measured the laps and measured the length from the stump to the laps and we arrived at the figure.

2. Q. For what you cut off of it? Did you pay him for what Lee Cabaniss cut off of it?

A. No, sir.

3. Q. Is it your habit or custom to buy timber without a written contract or written memorandum?

A. Occasionally when we buy a tract, if we are going in it right away from a reliable person, I consider it's all right. If it's going to be any length of time, we have a written contract.

4. Q. Do you do any custom cutting, cutting by the thousand for land owners, cutting their logs for them?

A. Occasionally.

5. Q. What does it cost to cut timber by the thousand?

A. Well cutting for a landlord just for a bill of lumber we would have to charge around \$35.00 or \$40.00 at that time. If I were cutting for a lumber company I would say we were getting about \$30.00 or \$35.00 a thousand, about \$30.00 or \$32.00.

page 140 } 1. Q. If I had some timber to bring to your mill in January of 1955, you would charge me \$35.00 to \$40.00 a thousand to log the timber and cut it at your mill?

A. If I were cutting a bill of lumber from you and had to cut it a special length and width for you see. Just to cut a tract of timber and cut anything and sell it on the general market like Burrouss or somebody like that, it would be around \$30.00 or \$32.00. Cutting hardwood is worth more than cutting pine. Hardwood you average a couple of thousand feet less than you can sawing all pine and poplar.

2. Q. What was it worth a thousand to cut this particular tract of timber?

A. Well as I said here before, about \$30.00 or \$32.00 for pine and poplar—I think it would be worth from \$32.00 to \$34.00.

3. Q. To cut it in the woods and haul it to your mill and manufacture the timber?

A. Yes, sir, as much oak and stuff as it was.

Thomas C. Barnes.

4. Q. Did you notice anything unusual or wrong with Mr. Love when you transacted this business with him?

A. The day I went in there when Mr. Ernest Wallace told me he thought I was cutting on the Buchanan tract, was the first time I had talked with him in several years. I didn't notice anything wrong with him.

5. Q. Did he appear to you that he knew what he was doing?

A. He did, but when we went back with Mr. Buchanan, then I began to wonder why he made out like he
page 141 } didn't remember. He seemed so rational about it
before when I took him out there and showed him
the lines.

RE-CROSS EXAMINATION.

By Mr. Neblett:

1. Q. Just a moment. I would like to refer back there to your notes on the timber if you please Mr. Barnes. There is pine there at 26,325 feet. Now after that pine that you made an offer of \$20.00 a thousand that is manufactured into lumber. What do you get for that lumber?

A. I think it's—of course we sell it by lengths and widths. A 2 x 8 would bring more than a 2 x 4. We were averaging about \$60.00 at that time, \$58.00 to \$62.00.

2. Q. \$58.00 to \$62.00. Then on that poplar, 7,000 feet of poplar at \$20.00 per thousand. What were you averaging at that time?

A. I think it would be around \$55.00 for that.

3. Q. Then the oak there at 28,000 feet. What were you getting for the oak?

A. Well we were selling the B-3 for \$30.00 to \$35.00. We were selling the other for \$45.00 to \$50.00 but we were delivering it to Lynchburg.

4. Q. And the gum at \$5.00 a thousand. What were you getting for that at that time for the manufactured value?

A. Well we were selling it for anything we could. It was mighty hard to sell gum boards at that time. Around \$30.00 to \$40.00.

5. Q. Now you have checked Mr. Milne's figures on the manufactured value. For instance oak veneer 8,000 feet at \$80.00.

A. I never have sold any oak veneer. Never had any around here that would pass up there.

page 142 } 1. Q. Well oak tires at \$45.00 a thousand feet?

A. Well that's a little high for a year ago. Mr.

W. Roland Walker.

Daniel told me the other day it averaged \$45.00 a few days ago and tires have picked up some since then.

2. Q. Well what was the price that you were getting for tires then?

A. I don't remember.

3. Q. Now the oak lumber was selling—he's got it \$35.00 a thousand. That's not out of line is it?

A. The oak lumber? No, sir.

4. Q. And then there is the pine lumber that he fixed at \$60.00. That's not out of line. As a matter of fact it is below the line isn't it?

A. I think it's a fair price. It was a fair price at that time.

5. Q. Then there was poplar lumber at 22,000 feet at \$50.00. What were you getting for poplar lumber?

A. I think I was getting around \$65.00 or \$70.00 for it. They were paying \$50.00 for it delivered to them green from the saw.

RE-CROSS EXAMINATION.

By Mr. Gravatt:

6. Q. Mr. Barnes, when you mentioned something about Mr. Love saying if we cut Dan Buchanan's timber we will have to pay him. That like having a duck dinner and you bring the duck. Isn't that what you thought he meant?

A. I don't know what he meant.

page 143 } 1. Q. Well you haven't got an idea that he meant anything except that you could take the \$10.00 that you were supposed to pay to him and pay that to Mr. Buchanan along with whatever else, did you?

A. Well what I thought he meant by that, I was willing to pay for what I got. I thought maybe he was talking about what Lee Cabaniss had cut and paid him for.

2. Q. Oh, I see. I see.

W. ROLAND WALKER

Examination by Mr. Allen:

3. Q. Will you please state your name, age and occupation?

A. W. Roland Walker, forty-two, lumber manufacturer.

4. Q. How long have you been engaged in buying and selling and dealing with lumber?

A. I started in my twenty-second year the fifth of this past March.

W. Roland Walker.

5. Q. You are the owner and operator of Kenbridge Manufacturing Company, I believe?

A. Yes, sir.

6. Q. Were you buying and selling timber in January of 1955?

A. Yes, sir.

7. Q. Are you familiar with prices of lumber at that time?

A. I think so.

page 144 } 1. Q. Are you familiar with growing timber in general in Lunenburg County?

A. Yes, sir.

2. Q. Have you been upon this eighty-one acres of land in Beach Forest, which has been described as the Buchannan tract?

A. Yes, sir.

3. Q. When did you go on this property?

A. Last Thursday.

4. Q. Did you cruise the eighty-one acres?

A. Yes, sir.

5. Q. Did you go upon it for the purpose of ascertaining the value of the land and the timber?

A. Yes, sir.

6. Q. Have you ever bought and cut any timber out in Beach Forest?

A. One tract.

7. Q. When was that?

A. In 1944 I believe it was.

8. Q. You are familiar with the timber then in general in Beach Forest?

A. Yes, sir.

9. Q. Is it slow, medium or rapid growing timber?

A. Slow.

10. Q. Are you an appraiser for any bank in Lunenburg County?

A. For the Bank of Lunenburg.

11. Q. You are also one of the directors for the Bank of Lunenburg?

A. Yes, sir.

page 145 } 1. Q. After cruising this eighty-one acres of land in question, did you arrive at the value of the land and timber prior to the time any timber was cut off of it whatsoever?

A. The best I could sir.

W. Roland Walker.

2. Q. What in your opinion was the fair market value of this land and timber prior to the time that Lee Cabaniss or Thomas Barnes cut any timber off of it?

A. The best I could determine sir, I put it at a top value of \$3,000.00. That was land and timber.

3. Q. That was before anything was cut off of it whatsoever?

A. Yes.

4. Q. Did you arrive at the value of the land and timber after Cabaniss had cut the best pine and poplar?

A. Well no. I was looking at it as it was at that time.

5. Q. Was the timber on this eighty-one acres of land an inferior, poor, medium, fair or high-grade of timber?

A. I would say from poor to medium. Cabaniss had cut the best pine and poplar and gum, what

6. Q. Poor to medium. Taking into consideration that would be a fair price for Thomas Barnes to pay for stumpage in January of 1955?

A. Well from the evidence I've heard turned in here I understand that he paid \$10.00, which is a very reasonable price.

7. Q. Reasonably low or reasonably high?

A. I thought it was reasonably low. However after going into look at it I don't think it was too far from the value.

1. Q. Not too far from the value. Was the timber on this eighty-one acres of land above the average for growing timber in Lunenburg County?

A. No, sir.

2. Q. Was it average?

A. I didn't think so.

3. Q. Was it below average?

A. A little below average. Now if I know what you are speaking of average. I don't know whether you determine the size or the quality?

4. Q. I mean in quality. Mr. Milne said it was above average for timber in Lunenburg County.

A. Well I would like to clarify myself. Speaking of pine which we are more interested in for manufacturing, there was nothing wrong with the quality of the timber because the older the timber is the tougher the timber because the older the timber is the slower it grows and the more dense it is the stronger it is, but it produces smaller lumber, and lumber to us is priced by size, more than it is by grade.

W. Roland Walker.

5. Q. What were the mills in Lunenburg County paying for standing timber, pine standing timber in January of 1955?

A. Well it depends entirely on the size and the grade and the trouble it was to get out. I would say it ranged from \$18.00 to \$25.00 probably.

6. Q. Considering this standing timber before any had been cut by Cabaniss or by Mr. Barnes, what would you consider to be the very top value for the standing timber in pines?

A. Would it be permissible for me to refer to page 147 } the estimator's account?

1. Q. Yes, sir.

A. According to the number of trees—I think I have it right, that I made a note of. According to the number of trees of pine that were cut it averaged about sixty *fee* per tree, which would be a very small tree, and I would say that \$20.00 would be a very good price for them. There were 402 trees, a total of 24,579 feet, just a fraction over sixty feet to a tree, which is a very small pine.

2. Q. Now that was timber that was cut and removed. Now according to the figures of Mr. Milne, there were 364 oak trees with a four foot volume of 35,676 feet cut and removed. What would be the top market value on oak at that time from this tract of timber?

A. Around \$8.00 to \$10.00.

3. Q. Around \$8.00 to \$10.00 a thousand would be the stumpage value?

A. Yes, sir.

4. Q. There were 179 poplar trees with a volume of 21,945 feet that was cut and removed. What would that be?

A. That would carry the same value per thousand as pine would, generally speaking.

5. Q. That was around \$20.00. There were 38 trees gum trees and mixed hardwood cut with a board foot volume of 4,245 feet according to the figures of the consultant forester. What would be the top price on gum and mixed hardwood?

A. So far as we are concerned sir we don't like to pay for gum because you no more than get your sawing
page 148 } out of it. You have to pay something, so I would say \$5.00. That's all it's worth. We are paying at our mill today \$35.00 for four quarter boards.

1. Q. What price did you put on this oak per thousand?

A. \$8.00 to \$10.00.

W. Roland Walker.

CROSS EXAMINATION.

By Mr. Gravatt:

2. Q. You mentioned—you estimated the value of the land and timber on this place to be about \$3,000.00 before any of this stuff was cut off of it?

A. Yes, sir.

3. Q. What is your estimate of the value after it's been cut off?

A. After the whole thing has been taken off?

4. Q. Right now. If you went down there tomorrow or put a value on it today. What would that be?

A. Well I would like to tell you how I arrived at my answer.

5. Q. I would like to know.

A. There are eighty-two acres, fifty-five of which have been cut over. I took the timber and put it down at a value of \$20.00 a thousand for pine and poplar, either \$8.00 or \$10.00, I think it was \$8.00 on the oak and \$5.00 on the gum. On the Twenty-six acres that remained I put \$40.00 an acre. There remained some timber that nobody had gone in. The land that had been cut over I put \$10.00 an acre and that's the way I arrived at it and I think you will find that it is around \$3,000.00.

1. Q. Is that the present value of it?

page 149 } A. Yes, sir.

2. Q. Well what was the value of it before it was cut?

A. Well I would say \$3,000.00 before it was cut sir.

3. Q. That's right. Now what is the value of it?

A. Well take the 26 acres and multiply it by forty and the remaining 55 at \$10.00 and you will have it. That will give it to you sir.

4. Q. You said 26 acres at \$40.00 and the other 55 at \$10.00. Is that what you said?

A. I believe I did, yes, sir. I believe it would take \$30.00 to make \$3,000.00.

5. Q. Well I asked you about the value of it now and by doing what you told me to I get \$1,590.00 for the present value of the property after what has cut off of it that is going to be cut. And that gives you about \$1,410.00 is the difference between the value before they cut it and the value now.

A. I didn't arrive at \$1,400.00 on the timber. That must not have been the way I worked it out. I must have estimated it \$30.00 an acre for the remaining 26 acres.

W. Roland Walker.

6. Q. Do you buy any timber Mr. Walker and have an independent sawmill operator go in and cut it and log it and deliver the lumber to you?

A. Yes, sir.

7. Q. How much do you pay for that?

A. That depends sir on the—

8. Q. I mean how much do you pay for the cutting operations?

page 150 } A. That depends on the type of timber that he cuts, and the terrain of the territory. I would say on this particular piece of timber that in 1955 it would be around \$35.00.

CROSS EXAMINATION.

By Mr. Neblett:

1. Q. \$35.00 a thousand?

A. That's right.

2. Q. On the stump?

A. That's the costs of logging and sawing the logs.

3. Q. Now Mr. Walker, did you estimate the number of feet of timber that wasn't cut?

A. No, sir, I did not try to estimate that. I walked over it. I didn't try to get an idea what was left.

4. Q. Well to give us some sort of idea, how many feet do you think are down there?

A. Well there's not so much left.

5. Q. About twelve or fifteen acres left?

A. I think according to that list there is supposed to be twenty-six acres, I thought.

6. Q. Mr. Milne, you know him I assume?

A. Yes, I saw him today.

7. Q. And he estimated the timber that was cut off of the place as 114,850 feet, and I believe he said that it would be around \$20.00 a thousand feet for the market value.

A. Only the pine and poplar.

8. Q. Only the pine and poplar?

A. Yes, sir.

9. Q. Isn't that a pretty cheap way of buying timber. Timber is worth so little now that you can't buy it, isn't that true?

A. Yes he did say that.

page 151 } 1. Q. What's that?

A. I said he did it.

2. Q. Well I'll not say intentionally but so grossly negligent, it's almost intentional now isn't it?

W. Roland Walker.

A. I wouldn't say that. Not in this case.

3. Q. You know the distinction between gross negligence and willfull—

A. Well knowing the man involved I would say it was.

4. Q. You knew Lee Cabaniss too didn't you?

A. Yes, sir.

5. Q. You know what his reputation is for truth and veracity?

A. I don't think it is so good.

6. Q. It's been that way for a number of years?

A. As far as I'm concerned.

7. Q. You wouldn't let Lee Cabaniss hook you into a deal like that would you Mr. Walker?

A. I never knew Lee Cabaniss to steal, but he hasn't got the best reputation in the world, no.

8. Q. You wouldn't trust him in a proposition like this, now would you?

A. Well it would depend on the conditions involved.

9. Q. You would get Sam Allen to come up here and check the records, wouldn't you?

A. It is mighty seldom we check the record in buying timber sir. It might be negligence, but I don't imagine we've had the record checked in one case out of ten.

page 152 } 1. Q. Yes, but if you had some question about whose land it was you certainly would, wouldn't you?

A. Well I take it sir that the transaction was made with Mr. Love—

2. Q. Well we are just talking about a general proposition?

A. Well I don't figure Mr. Barnes thought—

3. Q. Well we are not talking about Mr. Barnes, but you certainly wouldn't buy a tract of timber if there was some question about who owned the timber unless you made a further investigation into it?

A. If that question came up prior to my buying it, no.

4. Q. But even after you had bought it, and a man told you, now look here, now this is Dan Buchanan's timber, wouldn't you have investigated that?

A. I probably would have taken the owner in there and he said it was his, I wouldn't have.

5. Q. Now you would have made further investigations now wouldn't you Mr. Walker?

A. Not if I had the owner on the spot, I don't think so.

6. Q. You mean to say that when the owner sells you a

W. Roland Walker.

piece of land and you have information that it belongs to someone else, and you would take the owner's word?

A. I would take the owner's word in preference to anyone else.

7. Q. That doesn't necessarily mean that you are not negligent, does it?

A. Well it depends on what extent you mean page 153 } negligent.

1. Q. Now let me see, you placed the value of that timber, the land and timber at \$3,000.00 for 82 acres of land before any of the timber was cut off?

A. Yes, sir.

2. Q. Could you tell from your examination when was this tract of land cut over, before these people began to operate it?

A. No, sir, I couldn't.

3. Q. As a matter of fact it had been thirty or forty years, and the timber that was cut was generally very good timber, wasn't it?

A. I imagine the grade was all right.

4. Q. From your definition of the texture of it, it was older timber, slower growing timber. Isn't that true?

A. When I'm speaking of that, I'm speaking of pine. Now the oak didn't look at all good.

5. Q. None of it was cut under nine inches. That shows a very good grade of timber there.

A. It shows that it must have been mighty short. The diameter of the stump doesn't always determine the size of your tree because the tree can taper or else it can grow short. It looks like your footage as compared with the number of trees cut speaks for itself.

6. Q. You don't mean to say these trees had a large diameter at the bottom and tapered off to nothing?

A. I'm making my statement on the number of trees cut and footage produced, as to what size the tree is concerned, I will accept his—

7. Q. You will accept his?

A. Oh, yes, indeed.

page 154 } 1. Q. Now what do you give for pine timber, manufactured and delivered?

A. Well we buy it according to size. I would say today pine lumber will average around \$60.00 or \$70.00.

2. Q. Now this gentleman fixed the oak veneer there, would you look over that?

G. L. Hawthorne.

A. I don't know a thing in the world about oak veneer sir. I never had any experience with it.

3. Q. Just look at the oak, pine and poplar and gum.

A. I think possibly that his oak tires are a little high, his oak lumber is about the right price for that time. I don't know about the poplar veneer. The poplar lumber is about the right price, so are the tires.

4. Q. As a matter of fact, most of them are just a little below the prices now, isn't that true?

A. There's not too much difference. It's gone up about \$5.00.

RE-DIRECT EXAMINATION.

By Mr. Allen:

5. Q. How long have you known Thomas Barnes?

A. Ever since he was a kid. It must have been twenty years.

6. Q. What kind of reputation does he have?

A. There is none better.

7. Q. Have you ever heard of Mr. Barnes cutting timber on somebody else's place willfully?

A. No, sir.

8. Q. Did he have a good reputation for truth and veracity?

A. Yes, sir.

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G. L. HAWTHORNE

Examination by Mr. Allen:

1. Q. Would you please state your name, your age and your occupation?

A. G. L. Hawthorne.

2. Q. Do you want to tell how old you are?

A. I'm sixty-seven years old.

3. Q. Where do you live Mr. Hawthorne?

A. Kenbridge.

4. Q. You say you cruise timber?

A. Yes, sir.

5. Q. How long have you been in the timber business?

A. I went in there when I was seventeen. It would be about fifty years.

6. Q. You have been in the timber business about fifty years. Have you been buying and selling and manufacturing timber in Lunenburg County during those fifty years?

A. Yes, sir.

G. L. Hawthorne.

7. Q. Have you previously operated a sawmill and saw-mills of your own, have you not?

A. Yes, I did.

8. Q. Who do you cruise timber now for Mr. Hawthorne?

A. R. S. Burrouss Lumber Company.

9. Q. You buy timber for R. S. Burrouss?

A. Yes, sir.

10. Q. That's all you do now I believe?

A. Yes, sir.

page 156 } 1. Q. Have you ever bought and cut any timber in Beach Forest?

A. Yes, sir. Land and timber.

2. Q. Bought land and timber in Beach Forest. Have you been upon this 81 acres of land in question within the past month?

A. Yes, sir.

3. Q. When did you go on it?

A. Last Thursday.

4. Q. What was your purpose of going on it? Did you go on it to see what the value of the land and the timber was, to appraise it?

A. Yes, sir.

5. Q. Did you arrive at any opinion as to the value of the land and timber in January of 1955 before any of the trees were cut off by anyone whatsoever?

A. Yes.

6. Q. What in your opinion was the land and timber worth in January of 1955 before anything had been cut off of it at all?

A. I would say around \$2,500.00.

7. Q. What in your opinion was the stumpage value of the growing timber on this 81 acres of land in January of 1955 before anything had been cut off of it? I would like for you to answer me as far as oak, pine, poplar and gum are concerned.

A. Just take it as a whole as to what the total amount would be.

8. Q. No, if you were going to buy it for R. S. Burrouss, what you would have been willing to pay for the pine stumpage, the poplar stumpage, the oak stumpage and
page 157 } gum stumpage before anything was cut off of it at all?

A. I would say in January of 1955, we had \$20.00 on pine and poplar, about \$8.00 on oak and no stumpage on gum at all.

G. L. Hawthorne.

1. Q. You didn't have any price on gum? You weren't buying gum?

A. We didn't have any price on it.

2. Q. So the pine and poplar would be \$20.00, the oak would be \$8.00 and no price on the gum whatsoever?

A. That's right.

3. Q. Taking into consideration the fact that the best pine and the best poplar had been cut off this 81 acres of land by Mr. Lee Cabaniss at the time Thomas Barnes bought it for \$10.00 a thousand, in your opinion was that a fair, low or high stumpage value?

A. I think that would be a good fair stumpage value.

4. Q. Is the timber in Beach Forest a slow, medium or rapid growing timber?

A. Slow.

5. Q. How long have you *know* Thomas Barnes?

A. I've been knowing him most of his life.

6. Q. Do you know his reputation for truth and veracity?

A. I think so.

7. Q. Is it good or bad?

A. Good.

8. Q. Do you know his reputation for fair dealing in timber and timber contracts?

A. Yes, sir.

page 158 } 1. Q. Is it good or bad?

A. Best.

2. Q. Have you ever known him to intentionally cut anybody else's timber?

A. Never did.

3. Q. Never heard of him intentionally cutting anybody else's timber?

A. No, sir.

4. Q. What is your opinion Mr. Hawthorne is the value of the land and the timber that is left growing on that land there, this 81 acres at the present time?

A. I would say from \$10.00 to \$12.00 an acre.

5. Q. \$10.00 to \$12.00 an acre for the 81 acres now?

A. Yes, sir.

CROSS EXAMINATION.

By Mr. Neblett:

6. Q. Mr. Hawthorne, did you ever go on this tract before it was cut?

G. L. Hawthorne.

A. No, sir.

7. Q. You don't know what Lee Cabaniss cut?

A. No, sir.

8. Q. Or what Mr. Barnes cut?

A. I've got some idea that Lee Cabaniss cut because I saw some of the land that it looked like Thomas hadn't cut on.

9. Q. How much then did Lee Cabaniss cut off of the place?

A. Well I wouldn't know.

10. Q. You don't know, just have an idea?

A. Have no idea in the world.

page 159 } 1. Q. And I believe you said this is very slow growing timber?

A. Yes, sir, slow growing.

2. Q. When as a matter of fact you cut the timber off of this tract of land it would take fifty years for it to come back there, isn't that true?

A. Well that depends on how you cut it.

3. Q. You checked this and came up here to testify today, didn't you? I said you went over there and looked at the land?

A. Yes, sir.

4. Q. And came up here to testify for Mr. Barnes?

A. That's right.

5. Q. And you looked the land over?

A. Yes, sir.

6. Q. And you just testified to the nature of the land and the quality of the trees. Now isn't that a type of land where you remove the timber that it will be very little value to the land?

A. That's right.

7. Q. And that wasn't very bad timber. You heard Mr. Milne testify here that 114,000 feet of timber had been removed from that property?

A. Yes, sir.

8. Q. And none of it was under nine inches in diameter?

A. That's on the stump.

9. Q. That's on the stump. As a matter of fact these timber men get down to six inches on the stump don't they?

A. Yes, sir.

page 160 } 1. Q. And this is three inches above that?

A. That is when you want to cut pulp wood.

2. Q. Yes, that's what most of you timber men do, go down and get every bit of it?

A. Yes, sir.

G. L. Hawthorne.

3. Q. And this man had a choice there of cutting what he wanted, and he didn't go down below nine inches, and you say the 114,000 feet that the estimate shows and you said there was some other. Did you estimate that Mr. Hawthorne, the timber that was left on this property?

A. No, sir, I didn't estimate it.

4. Q. You didn't estimate it. Well how many acres was it. The part that wasn't cut?

A. I don't know. I looked at the timber that had been cut.

5. Q. Did you look at any of the timber *had* hadn't been cut?

A. Yes, sir, we saw some of it.

6. Q. Well how many feet of timber had been cut on that 81 acres?

A. I don't know.

7. Q. Well you're not prepared to tell the court then what the fair value of that property is?

A. Well I told what I thought.

8. Q. Well you are not telling what you know but what you think. Is that right?

A. Exactly right.

9. Q. Well I don't care to ask you anything else.

A. Well who can tell me a man who knows how much was on it.

page 161 } 1. Q. Well you went over there and made an examination of it.

A. I can give you my opinion of it.

2. Q. You can't tell us how much is there that hasn't been cut, and there is 114,000 feet that has already been cut there. Now what would you say that 114,000 feet was worth that has been cut?

A. Well you would have to separate it to tell what was there.

3. Q. Well you are not in position to say are you frankly what it was worth?

A. No I wouldn't say to the dollar.

4. Q. As a matter of fact, when a man doesn't want to sell property, there is a difference, isn't there?

A. Well I would suppose it would be.

5. Q. If you've got a tract of timber you don't want to sell?

A. I know what I bought eighty acres of land close to it for.

G. L. Hawthorne.

6. Q. When was that?

A. In '44.

7. Q. In '44. And timber was rather cheap then?

A. Yes, sir, and I bought it for \$700.00.

8. Q. I reckon you could in '44. That was twelve years ago and that's when you fellows made a lot of money then too, wasn't it?

A. Well you made some with it too.

RE-DIRECT EXAMINATION.

By Mr. Allen:

9. Q. Mr. Hawthorne, do you consider the timber on this 81 acres of land or the timber in Beach Forest page 162 } above or below the average timber in Lunenburg County?

A. I thought I was putting it at a fair average. I would say a fair average. I consider it a medium price timber and—

1. Q. No, what I'm asking, is the quality or grade of timber in Beach Forest above or below the average grade of timber or quality of timber in Lunenburg County?

A. I would say it is below.

2. Q. And this growing timber on this 81 acres of land, would that be above or below the average standing timber in Lunenburg County, the quality of it?

A. I would say in Lunenburg County below.

3. Q. Below the average?

A. Yes, sir.

4. Q. So you wouldn't consider this timber on the 81 acres to be a high grade of timber?

A. I certainly wouldn't.

RE-CROSS EXAMINATION.

By Mr. Neblett:

5. Q. Mr. Hawthorne, you are a timber man, are there many tracts of timber left in Lunenburg County now?

A. Not very many I don't think.

6. Q. Are there a half of dozen good tracts left in the County now?

A. Well I don't know, but I don't know of that many.

7. Q. You don't know of that many?

A. I know of two or three.

B. W. Love.

8. Q. Outside of the Hazelwood tract and page 163 } several other small tracts that's about all the timber left in the county, isn't that true?

A. Yes, sir.

1. Q. And most of it is of this type of timber isn't it?

A. Yes, sir.

2. Q. What is the stumpage value of some of the best timber that we have?

A. Some of the best?

3. Q. Yes.

A. I would say \$35.00 or \$40.00.

4. Q. In fact it goes up as high *was* \$45.00 or \$50.00?

A. Well we buy it sometimes that way. I haven't got the stumpage price with me.

5. Q. As a matter of fact, you timber men try to buy it just as cheap as you can, don't you?

A. That's true.

6. Q. That's the only way you can stay in business?

A. It's along your same line.

Motion by Mr. Gravatt: With respect to Mr. A. C. Love, I think this record is entirely devoid of any proof whatsoever that would sustain any judgment against him, and both the plaintiff and co-defendant—their evidence, and I think we should strike the evidence and dismiss Mr. Love from this suit.

B. W. LOVE

Examination by Mr. Gravatt:

7. Q. You are B. W. Love, are you not?

A. That's right.

8. Q. And Mr. A. C. Love is your father?

page 164 } A. Yes, sir.

1. Q. Mr. Love, how old is your father?

A. He's 82.

2. Q. What is his physical condition so far as his being able to walk and to get around?

A. I don't think he has hardly been out of his yard other than this one time that I know of that he did go with Thomas. I don't think he has been to the Post Office or been anywhere for about a year or so. If he has, it's not to my knowledge.

3. Q. Your father has formerly been a very active business man in dealing with property of all kinds, hasn't he?

B. W. Love.

A. He has at that.

4. Q. What is the condition of his eye sight?

A. Well as everybody that knows him very well, even way back years ago, he couldn't get a driving permit on that account some years ago, ten, twelve or fifteen years ago maybe, a long time ago, because of his eye sight. He only has one eye and a man of his age and it is very hard for him to see if he is on his front porch you would probably be within ten feet of him before he recognized me, very close to him.

5. Q. What has been your observation of any change in your father's mental condition within the last few years, if any?

A. I will testify to that. Of course, you all know that I have a great deal of respect for my father, and I don't want to say anything here that would in any ways leave any opinion, however, I am positive that he hasn't been in a condition to attend to any business certainly within the last
page 165 } ten years. He turned over to me for that reason part of his business, his gasoline business that he had he gave it to me in 1944 for that reason. He has been a great worry to me and my family, not because of anything we felt he couldn't help from doing, but he has disposed of a lot of his property that nobody can account for. Nobody knows what became of any portion of it, and it has been brought to my attention numbers and numbers of times that we should do something to save what he's got, but that's a right rough thing to have to do to an old man. I know that a great deal of people in this county still hold a great deal of respect for him. I don't believe that he could tend to any type of business, not even as much as to pay his light bill or his phone bill or his water bill. Those kind of things don't seem to make any impression on him. Some days you talk to him he will talk pretty rational. Another day you talk to him nothing gets together.

1. Q. Do you have any idea that your father has had any intention of misleading anybody with respect to this property?

A. I know he hasn't had any intention of misleading anybody in connection with this thing.

2. Q. Have you undertaken to talk to him about this transaction both with me and with Mr. Weaver and with other people?

A. Several times.

3. Q. Have you ever been able to get any understanding

B. W. Love.

from him about what took place with respect to this property?

A. The only answer that I have gotten that he has stuck with and said to me a number of times, that he hadn't sold any timber.

page 166 } Objection by Mr. Allen. I object Your Honor.

This obviously is not the best evidence. Mr. Love should come here and testify in person, if they want to introduce any evidence as to what he did and what he didn't do.

Mr. Gravatt: Your Honor please, I am not offering this testimony for the purpose of showing either that Mr. Love did sell the property or didn't sell the property. I'm simply offering it with respect to the old man's mental condition, his memory and what he knows about what transpired. I am not trying to impeach Mr. Barnes or anybody else, but I am trying to get before the court the situation that this old man is in, and the situation that I am in as his attorney.

1. Q. I asked you if you had been able to get any understanding from him about what had transpired with respect to this property?

A. The only answer that I have had from him is that he hasn't sold any timber that didn't belong to him, and that is as much of an answer as I have gotten.

2. Q. What is his disposition so far as his people that might want anything from him to come in and persuade him to do whatever they might want him to do?

A. My father drinks a lot of whiskey. I can't put it any other way. He is hard to—I think a certain amount of that possibly is his age and his condition. We do the best we can to keep that down to a minimum, but there are lots of people

who will come by there, see him and if he has any
page 167 } money in his pocket he will give it to them and

send them to the liquor store and they will bring whiskey back to him and whether he gets the change back or whether he doesn't, or what becomes of the balance of his money, I don't know. He would write checks for things that he didn't owe to these people. He had to take his account taken out of his—his bank account through the *corporation* of the local bank, taken out of his name and put in my mother's name to partly stop some of that. Does that answer what you want to know.

1. Q. Well is he a person that is easily influenced by other

B. W. Love.

people especially his companions and people that he is with when he is drinking, easily influenced by them in business matters and any other matters?

A. Very easily.

CROSS EXAMINATION.

By Mr. Allen:

2. Q. He is a generous man, is he not, Mr. Love?

A. Yes, sir.

3. Q. He has been good and kind to people in Lunenburg County all of his life?

A. I think he has done as much for the good colored people and the poor white people as any man that ever lived in Lunenburg County.

4. Q. And he is held in high esteem by the colored and white?

A. I think he is.

5. Q. Have you taken any action before the court Mr. Love to have your father declared incompetent?

A. No, sir.

page 168 } 1. Q. Do you know when was the last time he transacted any business as far as buying or selling any real estate?

A. No, sir.

2. Q. Do you know when was the last time he entered into an agreement concerning the rental of real estate?

A. No, sir. I don't think he has done anything—I just don't know. I don't think he's done anything like that in some time. He's got some stuff that goes on, but I don't think he has handled any new agreements in a long time. If he has, I don't know.

3. Q. You don't know when he last bought or sold any real estate?

A. I am sure he hasn't bought anything in a long, long time, not to amount to anything.

4. Q. Did you know that on October 23, 1951, he sold some real estate in Lunenburg County to Mr. W. A. Allman?

A. No, sir.

5. Q. You don't deny that he did do that?

A. No, sir.

6. Q. He owns the building in Victoria which is occupied by the Lunenburg County School Board, does he not?

A. Yes, sir.

Dan Buchannan.

7. Q. He rents that to them doesn't he?

A. Yes, sir.

8. Q. You live in Blackstone, I believe, Mr. Love?

A. Yes, sir.

9. Q. How often do you see your father?

A. I try to see him every week or every two weeks. As a matter of fact I try to come every week, but I don't always do it.

page 169 } 1. Q. How often were you seeing him back in the Fall of 1954 and the early part of January, 1955?

A. I can't answer that accurately, Mr. Allen. For the last twenty years, since I have been away from here, I've tried to come back about once a week or once every two weeks.

2. Q. You can't tell the court that your father was not mentally capable of transacting business with Mr. Barnes in January of 1955, can you?

A. Yes, sir, I certainly can.

3. Q. Do you have a doctor's certificate or any medical evidence of that kind?

A. No, sir, nothing but my own knowledge.

4. Q. Just your own opinion?

A. That's right.

DAN BUCHANNAN

Examination by Mr. Neblett:

5. Q. You have heard the testimony of the timber men. I believe you have been in the timber business for some years, haven't you?

A. Yes, sir.

6. Q. What in your opinion is the value of this property, the land and the timber before the cutting?

A. Well I would say about \$6,000.00, land, timber and all.

7. Q. Land, timber and all. What value, after cutting the timber, did that leave to the land?

A. Do you want me to tell you what I offered page 170 } to sell it?

1. Q. I don't think you can tell that, because that doesn't have anything to do with this case. What in your opinion was the value of the timber on that property?

A. It ought to be worth about \$4,000 or \$5,000.

2. Q. \$4,000?

A. And \$500 or something like that.

James Buchanan.

3. Q. I believe it has been testified here that it is a slow growing type of timber. Is that true?

A. It's been there long enough to grow. It's been there over thirty years.

4. Q. It's been there over thirty years. I believe you testified this morning that it was cut about thirty years ago? Is that correct?

A. It hasn't been cut since my father owned it and it's been thirty or thirty-five years.

5. Q. Well after you remove the timber, what position does that leave the land in, the value of the land?

A. Very little.

6. Q. Very little. How long would it take that land to develop the timber?

A. Forty or fifty years I reckon.

7. Q. I believe you stated that you all were not trying to sell it?

A. We weren't interested in it. We expected to sell land, timber and all together if it ever was sold.

8. Q. Therefore you fix the damage to the land and timber at about \$4,000?

A. That's right.

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JAMES BUCHANNAN

Examination by Mr. Neblett:

1. Q. You are a brother to Mr. Dan Buchanan?

A. Yes, sir.

2. Q. Where do you work?

A. Victoria Supply Company.

3. Q. Do they handle lumber and buy and sell timber and manufacture lumber, etc.?

A. Yes, sir.

4. Q. What has been your position in reference to selling this timber on the land?

A. Selling timber?

5. Q. Yes. Did you have any idea of selling the timber on this tract of land?

A. No, sir. Pa told us before he died that he wanted it for his children.

6. Q. Wanted it for his children?

A. And my mother said the same thing.

7. Q. Do you know the value of land and timber. Have you had any experience with it?

George Johnson.

A. I've had right much experience with timber.

8. Q. How much timber would you say was on this place?

A. How much timber would I say was on it?

9. Q. Yes, sir, the value of the timber?

A. I would put the timber value at \$5,000.00.

10. Q. Well after cutting the timber off of this tract of land does it leave any value?

page 172 } A. I wouldn't give \$10.00 an acre for it.

1. Q. I believe your brother testified that it was a slow growing type of timber. That the longer it stayed there the better it got. Do you know when it was cut off of there some years ago?

A. It was cut before my father had it.

CROSS EXAMINATION.

By Mr. Allen:

2. Q. Have you had any offers to buy this timber before it was cut Mr. Buchanan?

A. My brother had had several offers. He tended to the farm.

3. Q. You didn't have anything to do with it?

A. No, sir. They came to him about it. It wasn't for sale, and my mother was getting old and she said she wanted to leave it for the children.

Mr. Neblett:

4. I think the record will show that there has been quite a number of inquiries, but he never had any offer, and he told them it wasn't for sale. Isn't that right?

A. Yes, sir.

GEORGE JOHNSON

Examination by Mr. Neblett:

5. Q. Your name is Mr. George Johnson?

A. Yes that's right.

6. Q. Mr. Johnson I believe you have been in the timber and lumber business for some years?

A. Yes, sir.

page 172a } 1. Q. How long have you been in this line of work?

A. Forty years.

2. Q. Forty years. Have you looked at this timber, this Buchanan tract sir, the timber that has been cut off of it?

George Johnson.

A. Yes, sir.

3. Q. Was it a fairly good type of timber, or what type of timber was it?

A. It looked like it was a fair grade.

4. Q. I believe there is testimony here that it is somewhat of a slow growth?

A. Yes, sir.

5. Q. In the long run, is that a better grade of timber than the fast growing timber?

A. It's a denser grade.

6. Q. What in your opinion is the value of the timber that was cut off of that property?

A. I thought around \$3,500.00 or \$4,000.00.

7. Q. Well then, after the timber has been removed, does that leave any special value to the land?

A. No, sir.

8. Q. How long do you reckon it would take for the timber to grow back there?

A. Well it would take a good long while, because it is mostly oak in there and there is nothing to re-seed there.

9. Q. Well the type of land, is it a very good type of land as used for agricultural purposes?

A. No, sir.

page 173 } 1. Q. The value of it then was—

A. Growing timber.

CROSS EXAMINATION.

By Mr. Allen:

2. Q. Mr. Johnson, where do you work now sir?

A. Say what?

3. Q. Where do you work?

A. I farm.

4. Q. Farming?

A. Yes, sir. I live in Nottoway County.

5. Q. You are not engaged in the lumber business at all now?

A. Not right now.

6. Q. When was your last connection with the lumber business?

A. It's been ten or twelve years.

7. Q. You haven't dealt with the buying and selling of timber in ten years?

George Johnson.

A. No, sir, only to sell some of my own.

8. Q. You say you haven't bought or sold timber other than your own in the past ten years since you stopped operating a mill?

A. That's right.

9. Q. You are not exactly up on the market of timber at this time?

A. Not right now.

10. Q. You didn't know exactly what the market value was in 1955, did you?

A. No.

page 174 } RE-DIRECT EXAMINATION.

By Mr. Neblett:

1. Q. You know that the value differs when a man doesn't want to sell his timber and that where he does?

A. Yes, sir.

RE-CROSS EXAMINATION.

By Mr. Allen:

2. Q. You testified that this timber was worth \$3,500.00 or \$4,000.00 before any of it was cut?

A. Yes, sir.

3. Q. How did you arrive at that price Mr. Johnson?

A. Well I just looked at the timber and made an estimate of what was there.

4. Q. You didn't count the trees?

A. No, sir.

5. Q. You just looked at it and said, well in my opinion it looks like it would be worth between \$3,500.00 and \$4,000.00?

A. Yes sir that's right.

6. Q. You didn't count the oak, you didn't count the gum, you didn't count the pine, poplar or anything like that?

A. No, sir.

RE-CROSS EXAMINATION.

By Mr. Gravatt:

7. Q. Mr. Johnson, how many thousand feet did you estimate were there?

A. I figured around 100,000 feet.

8. Q. Around 100,000 feet?

George Johnson.

A. Yes, sir.

page 175 } 1. Q. And at what price a thousand did you put
it?

A. Around \$35.00.

2. Q. Well isn't that a right high price for oak and gum and some of those mixed hardwoods?

A. Well I reckon it was for some of it.

3. Q. Well the testimony here shows that there was a considerable amount of that type of timber on this tract?

A. Yes, sir, right much oak timber.

4. Q. Right much oak. Well you didn't put the oak at \$35.00 did you?

A. Yes, sir. You average it up it would be about \$35.00.

Q. Well what did you put the pine at if you averaged the oak up to it and got \$35.00?

A. I put pine about \$40.00.

6. Q. About \$40.00 and what percentage of it did you think was oak?

A. Well I didn't go in there. We just took a general view of it.

7. Q. Well if oak timber is worth \$10.00 a thousand and pine timber is worth \$40.00 a thousand, and you've got a hundred thousand feet of timber, you can't tell what that hundred thousand feet of timber is unless you can tell how much is pine and how much is oak do you?

A. No, sir.

8. Q. Huh? Well can you give us any estimate as to what your conclusions were about it?

page 176 } A. Well I was more or less guessing. Mr. Buchanan and I just walked over it and made a guess at it.

1. Q. All right. That's all right. You just guessed that you thought maybe it might be worth around \$3,500.00. It might be worth—would you say that your guess might be off as much as half?

A. I don't think so. I don't think it's that far wrong.

2. Q. Well you've got the difference between \$10.00 a thousand and \$40.00 a thousand, your guess can be that far wrong mighty easy, can't it?

A. I don't think so.

DR. H. E. WHALEY

Examination by Mr. Gravatt:

3. Q. Please state your name and occupation?

A. H. E. Whaley, physician. Harry Eustin.

4. Q. How long have you been practicing medicine Dr. Whaley?

A. Thirty-nine years.

5. Q. How long have you been in the Town of Victoria?

A. Thirty-five years.

6. Q. Are you acquainted with Mr. A. C. Love of Victoria?

A. Yes, sir.

7. Q. How long have you known Mr. Love?

A. Thirty-five years.

8. Q. I believe you have been his physician and his family physician for a good many years?

A. Yes, sir.

page 177 } 1. Q. Dr. Whaley, do you consider that Mr. A. C. Love has been competent to attend to ordinary business transactions anytime in the last two or three years?

A. No I don't think so.

2. Q. Do you think he was competent to attend to business in either November or December of 1954 or in January of 1955?

A. Probably not. Part of the time he is much more competent than others. Part of the time he doesn't know what he is doing at all.

3. Q. How long has it been approximately, since he has been able to come from his home up town?

A. I don't reckon he's been up there for a couple of years or more.

4. Q. He is a man well past 80 years of age, is he not?

A. I think he is 82 years old.

5. Q. And he is quite feeble physically, is he not?

A. Yes, sir.

CROSS EXAMINATION.

By Mr. Allen:

6. Q. Doctor, I understood you to say that sometimes Mr. Love was able to transact business and sometimes he was not?

A. That's true.

7. Q. In other words, sometimes he has rational spells and sometimes me is not rational?

A. Everybody knows he drinks a lot of whiskey and some-

Dr. H. E. Whaley.

times he is drunker than others, but he is drunk
page 178 } most all of the time.

1. Q. I see. When he is sober he is able to transact business?

A. Sometimes he is and sometimes he's not.

2. Q. A person that did not know Mr. Love, that he was in the habit of drinking to excess, would be free to transact business with him. In other words, his disability is not apparent to common observation to the ordinary person. Is that correct?

A. That's probably true, yes.

3. Q. And in January of 1955, if a person that did not know Mr. Love and did not know that he was inclined to drink to excess, would feel free to transact business with him?

A. Well I think that it was before that that they thought that he was handling his financial matters so irresponsibly they fixed it so that he even couldn't carry a bank account of his own money.

4. Q. Yes, sir. I am not referring to the family now, I am referring to the stranger above, to the general public, that goes in to transact business with him.

A. He doesn't drink so much whiskey, but maybe it just takes what an ordinary person wouldn't do anything with. He has just *dranked* it for so long.

5. Q. In other words, if Mr. Love *isn't* drinking in January of 1955, if he hadn't been drinking, he was perfectly capable of transacting business?

A. I don't know that he would be. That is contradicting what I just said.

6. Q. That is just what I'm trying to straighten out here. I understood you to say if he was not drinking
page 179 } that he was competent?

A. He is more competent when *is* isn't drinking than when he is drinking, but he is just in that state of mind where you don't know what he is going to do. He might do something that's all right and then it might be all off. I don't know what he's going to do.

1. Q. Well that fact would not be apparent to a layman like me?

A. Probably not. It would depend on what sort of condition he was in whether it would be apparent or not.

2. Q. If he weren't drinking, according to a layman, he would be perfectly all right to transact business?

A. He might appear that way.

Dr. H. E. Whaley.

3. Q. No proceedings have been taken, as far as legal proceeding, to have him declared incompetent?

A. Not to my knowledge.

RE-DIRECT EXAMINATION.

By Mr. Gravatt:

4. Q. Knowing him as you do, you wouldn't have attempted entering into a contract with him in January of 1955, would you Dr. Whaley?

A. No. To demonstrate how he does, I was by there about two weeks ago, and he insisted on giving me a check. The check wasn't any good. I didn't ask him for the check. He insisted on giving it to me. That doesn't show that he knew what he was doing.

5. Q. He hasn't had a bank account in at least two years, has he?

A. I don't think so.

page 180 } 1. Q. Of course that was done by the banks in
corporation with his family?

A. Yes, by his family.

CROSS EXAMINATION.

By Mr. Neblett:

2. Q. I just want to ask Dr. Whaley one question. Didn't I understand you to say your name was Harry Eustin?

A. Yes.

CROSS EXAMINATION.

By Mr. Allen:

3. Q. I understand that you would not have entered into a contract with Mr. Love in January of 1955?

A. No, sir.

4. Q. I also understand from the testimony, that the common layman, not being a medical authority, would consider Mr. Love as being capable of entering into agreements?

A. At that time yes sir.

W. M. (DICK) WALLACE

Examination by Mr. Allen:

5. Q. You are Mr. W. M. Wallace?

A. That's right.

6. Q. Where do you live Mr. Wallace?

A. I live down here about four or five miles from Reedy Church.

7. Q. How old are you?

A. Sixty-seven.

8. Q. What is your occupation?

A. Well for the last three years, doing nothing. Try to make a living farming.

page 181 } 1. Q. Mr. Wallace, it has been testified that you
were at the home of Mr. A. C. Love in February
of 1955 when Mr. Thomas Barnes came there one afternoon.
Is that correct?

A. Yes that's right.

2. Q. Is that correct?

A. That's correct.

3. Q. Do you recall any conversations between Mr. Barnes and Mr. Love?

A. I do.

4. Q. What was the conversation about?

A. After Mr. Barnes walked in the room and had a seat, Mr. Love asked him how he was getting along with his timber business or logging. He told him he won't doing so good. He said he was doing it on the other man's from what Mr. Ernest Wallace said. At first I didn't know what Mr. it was, he is my brother. He said I'm on the wrong man, cutting the wrong man's timber. He said, well I don't reckon you are. He said most of those bushes down there belong to me and Ed; as well as I recollect it's about what he used. He said well I want you to go with me down there and show me that line. I don't want to cut nobody's timber. Mr. Love said, well, I can't go with you this evening. He said I don't feel good and it's sort of cold too. It was in cold weather. He said, well when can you go with me. He said I will go with you tomorrow. He said at what time. He said around 10:00 or 11:00 o'clock. He said, all right. He said, I'll tell you what to do. He said, get some of those folks that live down there close to that place, close to that timber to show you the lines. He said, maybe they can show it to you better

W. M. (Dick) Wallace.

than I can. He said, get James Hester, he knows
page 182 } where the line is. He said, I done seen James
Hester. He said he didn't know where the line
was.

1. Q. Let me ask you this. Did Mr. Barnes come in there
and talk to Mr. Love and leave?

A. Yes sir he did.

2. Q. On that afternoon, did he come back?

A. He come back and in the last round when he did come
back and got ready to go, I asked him, I said, Thomas don't
you think it is nearer around by my house than it is straight
down through Kenbridge. I was just walking or caught a
ride or something. He said, it may be, I'll take you home
after I see about some little stuff.

3. Q. So you had been at Mr. Love's home most of the
afternoon?

A. Yes, sir. Mr. Love had been poorly a day or two and
I was in town and stepped around to see him. It was a cold
windy evening, and he had a good fire and plenty of wood.

4. Q. And you said Mr. Love told Thomas that he knew
where he was cutting?

A. Yes, sir, that's right. He said—

5. Q. All of those bushes down there were his?

A. Mine and Ed's he said.

6. Q. Mine and Ed's. And he told Mr. Barnes to get
James Hester to show him the line?

A. That's right. At first he told him to get some of the
people who lived close by, and then he said, I'll tell you, get
James Hester. He ought to know where the line is.

1. Q. Did Mr. Barnes leave after Mr. Love told
page 183 } him to get James Hester?

A. Yes sir he did. He went away and stayed a
while and come back.

2. Q. Came back. What did he tell Mr. Love then about
James Hester?

A. He said James Hester said he didn't know where the
lines were. He had something to say about telling him some-
thing about some mules, that he couldn't handle them in the
woods. He had his mules out at work I believe and couldn't
leave them.

3. Q. And you said then that Thomas made an engagement
with Mr. Love to come back the next morning at 10:00 o'clock?

A. That's right.

4. Q. To take him down on the property and show him the
lines?

W. M. (Dick) Wallace.

A. Yes, at 10:00 or 11:00 o'clock.

5. Q. Mr. Wallace, how long have you known Mr. Love?

A. Well I've been knowing him all the time. Every since I was a little fellow with a dress on. I reckon sixty-five years maybe. Sixty years anyhow. I was six or seven years old and I had been knowing him all the time and had been in hollering distance of him all the time. There ain't another one like him. He's the best in the world.

6. Q. On the date, in January or February of 1955, when Thomas Barnes was in there talking with Mr. Love, did Mr. Love appear to know what he was doing?

A. I didn't see a thing wrong. No more than I always have. Of course, his age has something to do with his tending to business, I mean, going here and yonder
page 184 } tending to business, but you take him in his talking, telling you what he'll do, his mind is all right.

1. Q. Had you been in the market to buy any land or any timber at that time, would you have transacted business with Mr. Love?

A. Just as quick as I would fifty years ago. He is noted for laughing, he's noted for taking a drink, and he is mighty smart after he takes a couple of drinks if not smarter.

2. Q. Much smarter.

A. What I mean, he is brighter. He knows how to tend to business.

3. Q. You would have felt perfectly safe in transacting business with him at that time?

A. Yes, sir. I certainly would.

CROSS EXAMINATION.

By Mr. Gravatt:

4. Q. Mr. Wallace, what else did you all have there except a nice warm fire and wood?

A. Well I was taught not to tell any tales out of school. I was taught not to do that. I'll tell you, what we had was liquor.

5. Q. I understand that.

A. Well I heard Wilson just now explain how it happened you see. And any time I go to see him, I know what room he's in, and if it's convenient to carry him a little eye-opener, I call it, I always carry it to him.

W. M. (Dick) Wallace.

CROSS EXAMINATION.

By Mr. Neblett:

6. Q. Now this Ed that you are referring to, is page 185 } that his brother?

A. That's his brother. He had some property down there right close to him.

CROSS EXAMINATION.

By Mr. Gravatt:

1. Q. Let me ask you one other question Mr. Wallace. Did Mr. Barnes mention to Mr. Love when Mr. Love said something about he and Ed owning all of the bushes down there, did Mr. Barnes say, well—or most of the bushes down there, did Mr. Barnes say anything about Mr. Buchanan might own some or—

A. He said Ernest Wallace had told him that he was on the Buchanan land. He said, no I don't reckon you are. He said me and Ed own the most of them bushes down there. He said, well I want you to show me that line. He said, well I can't do it this evening and went on to tell him when he would.

The foregoing transcript of the evidence was this day tendered to me and filed August 2, 1956.

G. E. MITCHELL, JR., Judge.

* * * * *

A Copy—Teste:

H. G. TURNER, Clerk.

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