Return to
FILE COPY
Clerk, Supreme Court of Appeals
Richmond, Va.

207 VA 516

Record No. 6323

In the

Supreme Court of Appeals of Virginia

at Richmond

JAMES ALLEN SMITH

v.

C. C. PEYTON, SUPERINTENDENT OF THE VIRGINIA STATE PENITENTIARY

FROM THE CORPORATION COURT OF THE CITY OF NORFOLK, PART TWO

RULE 5:12 BRIEFS

§5. Number of Copies. Twenty-five copies of each brief shall be filed with the clerk of this Court and three copies shall be mailed or delivered by counsel to each other counsel as defined in Rule 1:13 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.

HOWARD G. TURNER, Clerk.

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

IN THE

Supreme Court of Appeals of Virginia

AT RICHMOND.

Record No. 6305

VIRGINIA:

In the Supreme Court of Appeals held at the Supreme Court of Appeals Building in the City of Richmond on Tuesday the 30th day of November, 1965.

MOUNTAIN MISSION SCHOOL, INCORPORATED,
Appellant,

against

BUCHANAN REALTY CORPORATION AND
LESTER COAL COMPANY, INCORPORATED,
Appellees.

From the Circuit Court of Buchanan County
Frank W. Smith, Judge

Upon the petition of Mountain Mission School, Incorporated, an appeal is awarded it from a decree entered by the Circuit Court of Buchanan County on the 26th day of May, 1965, in a certain proceeding then therein depending wherein Lester Coal Company, Incorporated, was plaintiff and the petitioner and another were defendants; upon the petitioner, or some one for it, entering into bond with sufficient security before the clerk of the said circuit court in the penalty of three hundred dollars, with condition as the law directs.

RECORD

★ ★ ★ ★ ★

page 44]

★ ★ ★ ★ ★

Received and filed 22nd day of Dec. 1962

JENNINGS L. LOONEY, Clerk

STIPULATION OF COUNSEL

It is stipulated and agreed by and between the undersigned I. M. Lambert, Attorney for Lester Coal Company, Incorporated, S. H. Sutherland and Geo. C. Sutherland, and Carl C. Gillespie, Attorneys for Mountain Mission School, Incorporated, and Pobst & Coleman, Attorneys for Buchanan Realty Corporation, as follows:

(1) That the description of the land in controversy between Mountain Mission School, Incorporated, and Buchanan Realty Corporation is as follows:

Said tract of land is situate principally on the drainage of the Paw Paw Fork of Knox Creek, and also partly on the ridge between the said Paw Paw Fork of Knox Creek and Race Fork of Knox Creek, and perhaps a little on the ridge between the waters draining into Knox Creek and into said Race Fork of Knox Creek, same being more particularly described by metes and bounds as follows, to-wit:

Beginning at a beech on the north side of a spur and a common corner with a 35 acre surface tract (31.16 acres by recent survey) of Mountain Mission School; thence N 57° 41′ E. 1876.08 feet to a stake on hillside (S 57° 41′ W 335 feet from center line of Horse Hollow); thence S 58° 36′ E 561.18 feet to a stake (West 125 ft. from center line of Horse Hollow); thence up Horse Hollow S 1° 17′ W 1360.48 ft. to a tack in root of a lynn stump (3 lynns growing from one (1) stump); thence S 7° 07′ E. 1996.96 feet to a down chestnut on ridge; thence along ridge between Race Fork and Paw Paw Creek of Knox Creek S

page 45]

66° 25′ W. 447.75 feet to 2 black oaks; thence S. 70° 57′ W. 507.07 feet to a chestnut stump and chestnut oak; thence N 73° 52′ W 204.68 feet to a white oak; thence S 75° 47′ W 382.86 ft. to a chestnut oak and hickory; thence down the ridge between Paw Paw Creek and Horse Hollow N 10° 43′ W. 588.30 feet to a stake; thence N 2° 05′ W. 303.27 feet to a locust; thence N 25° 13′ E. 456.15 feet to a chestnut oak on a knob; thence N 14° 30′ W 127.36 feet to a chestnut oak; thence N 22° 14′ E. 539.30 feet to a stake on knob between Rachel and Dog Hollows; thence down spur between Rachel and Dog Hollows N 53° 04′ W 375.40 feet to a stake on spur; thence N 17° 46′ W 424.00 feet to a stake on spur; thence N 53° 59′ W 791.78 feet to the point and place of beginning, containing 115.63 acres more or less.

A plat of the aforesaid land and other adjoining lands is here filed as a part of this Stipulation, marked "Exhibit Map," and is asked to be read and considered as being a part hereof.

(2) That the aforesaid land in controversy is covered by the 2500 acre grant from the Commonwealth of Virginia to Charles A. Lohnert, A. J. May and Charles T. Painter, dated August 5, 1876, and recorded in the Office of the Clerk of the Circuit Court of Buchanan County, Virginia, in Grant Book No. 2, page 127, and is also covered by the 2000 acre survey to Jonathan Hurley, dated November 17, 1875, which survey was on December 28, 1886, recorded in said Clerk's office, in Deed Book A, page 242.

(3) That the land in controversy, as hereinbefore described, is also covered by 750 acres of land formerly
page 46] claimed by H. G. Charles and which was conveyed to W. F. Genheimer by R. E. Williams, Special Commissioner in the chancery cause lately pending in the Circuit Court of Buchanan County, Virginia styled *E. E. Smith, Treasurer* vs. *A. C. Stacy et als,* by deed dated July 14, 1938, and recorded in said Clerk's office in Deed Book No. 78, page 562.

(4) That there is no controversy between the parties to this suit as to the ownership of the 203.5 acre tract of land, known as the Mailen Charles tract, adjoining the above described land, it being stipulated and agreed that Mountain Mission School, Incorporated, is the owner of the fee simple title to said land, except for a tract of approximately 35 acres

the coal, oil, gas and other minerals, rights, privileges and easements on which are claimed by Buchanan Realty Corporation, and not by Mountain Mission School, all of which minerals etc. are described and designated in prior deed or deeds severing the minerals from the surface of said tract, and the surface of which is owned by Mountain Mission School, Incorporated. A description of that part of said 35 acres (found to be 31.16 acres by recent survey) covered by the 2500 acre grant is as follows:

Beginning at a beech on the north side of a spur and a common corner with Mountain Mission School 750 acre tract, thence up spur between Dog and Rachel Hollows S 53° 59′ E 791.78 feet to a stake on spur; thence S 17° 46′ E 424.00 feet to a stake on spur, S 53° 04′ E 375.40 feet to a stake on knob between Dog and Rachel Hollows; thence along ridge S 22° 14′ W 539.30 feet to a chestnut oak; thence leaving the ridge and down Rachel Hollow N 51° 59′ W 1992.96 feet to a sycamore at the mouth of Rachel Hollow; thence N 62° 30′ E 794.00 feet to the point and place of beginning, containing 26.51 acres.

(5) That by sundry mesne conveyances, as set out in the Answer of Buchanan Realty Corporation filed in page 47] this cause on January 6, 1961, the title of the grantees of the 2500 acre grant aforesaid passed to and is now vested in Buchanan Realty Corporation, but by this Stipulation it is denied by Mountain Mission School, Incorporated that by said deeds Buchanan Realty Corporation acquired the true title.

(6) That the deeds and other title papers alleged by Buchanan Realty Corporation in its Answer filed in this cause on January 6, 1961, correctly and accurately set forth all the chains or links in the title of Buchanan Realty Corporation in support of its claim to the land in controversy.

(7) That Mountain Mission School, Incorporated, claims title to the land in controversy under and by virtue of the following deeds:

(a) Deed from Shadrick Dotson to H. G. Charles, dated July 6, 1889, and recorded December 30, 1889, in said Clerk's office, in Deed Book "G," page 222.

(b) Deed from R. E. Williams, Special Commissioner in the chancery cause of *E. E. Smith, Treasurer etc.* vs. *A. C.*

Stacy et als, to W. F. Genheimer, dated July 14, 1938, and recorded August 18, 1938, in said Clerk's office, in Deed Book No. 78, page 562.

(c) Deed from W. F. Genheimer to the First National Bank of Williamson, dated June 3, 1940, and recorded June 7, 1940, in said Clerk's office, in Deed Book No. 83, page 88.

(d) Deed from the First National Bank of Williamson to Mountain Mission School, Incorporated, dated
page 48] February 19, 1943, and recorded February 23, 1943, in said Clerk's office, in Deed Book No. 90, page 104.

All of said deeds cover and include the land in controversy in this suit, but by this Stipulation it is denied by Buchanan Realty Corporation that by said deeds Mountain Mission School, Incorporated, acquired the true title to the land in controversy.

(8) That is spite of the foregoing stipulations any parties to this suit may hereafter introduce any evidence which they may desire and which is pertinent to any of the issues involved in this suit.

★ ★ ★ ★ ★

This 6th day of December, 1962.

I. M. LAMBERT, Attorney
For
LESTER COAL COMPANY, INCORPORATED.

GEORGE SUTHERLAND and
CARL C. GILLESPIE, Attorneys
For
MOUNTAIN MISSION SCHOOL, INCORPORATED.

POBST & COLEMAN, Attorneys
For
BUCHANAN REALTY CORPORATION.

page 49]

★ ★ ★ ★ ★

Received and filed this Nov. 5, 1964

ELSIE L. SAYERS, Deputy Clerk

STIPULATION

as to contents of certain papers and as to certain other facts hereinafter stated, which Mountain Mission School, Incorporated, offers and desires to introduce in evidence in the above styled chancery suit. As the Court will see from an examination of these papers Buchanan Realty Corporation agrees as to the existence and contents of the papers hereinafter stated, and also agrees as to certain facts, but specifically objects to their introduction as evidence in this case, for the various reasons assigned in each objection.

page 50]

★ ★ ★ ★ ★

E. E. SMITH, TREASURER OF
BUCHANAN COUNTY, VIRGINIA COMPLAINANT

VS.)(BILL IN CHANCERY

A. C. STACY, J.H. STINSON, JOHN H. LESTER,
GREEN CHARLES, H. G. CHARLES,
JOHN H. DOTSON, AND ALICE WALDRON
DEFENDANTS

"To the Honorable Circuit Court of Buchanan County, Virginia:

"Your Complainant, E. E. Smith, Treasurer of Buchanan County, Virginia, would respectfully represent as follows:

"That he is the duly elected, qualified and acting treasurer of Buchanan County, Virginia, and as such Treasurer, your complainant recovered judgment against his predecessor in office, A. C. Stacy and the sureties on his official bond, J. H.

Stinson, John H. Lester, Green Charles, H. G. Charles, John H. Dotson and Alice Waldron, for the sum of $136,493.75, with interest thereon from the 1st day of January, 1928, and $857-.73 cost, which judgment was rendered by the Circuit Court of Buchanan County, Virginia, on the 27th day of April, 1928, in the chancery cause of the Board of Supervisors of Buchanan County, Virginia, *E. E. Smith, Treasurer*
page 51] *of Buchanan County, Virginia* v. *A. C. Stacy Et Als,* the decree entering said judgment in said cause being recorded in the Clerk's Office of said County, in Chancery Order Book No. 6, page 449, an attested copy of which decree is filed herewith and as a part hereof, marked Exhibit No. 1, and that said judgment was duly docketed in the Clerk's Office of said County in Judgment Lien Docket No. 5, page 202, an abstract of which is filed herewith and as a part thereof, marked Exhibit No. 2.

"That said judgment, nor any part thereof has ever been paid, and that same is due and owing by the defendant therein to the complainant, E. E. Smith, Treasurer of Buchanan County, Virginia, for the use of the county funds of Buchanan County, Virginia, and the funds of the several magisterial districts of said county and for the use of the county and district and school funds of said county and districts.

"That each of the aforesaid defendants own real estate in Buchanan County, Virginia, on which said judgment is a lien.

"That the rents, issues and profits of the real estate owned by said defendants will not in five years pay off and discharge the aforesaid judgment.

"IN CONSIDERATION WHEREOF, and in as much as your complainant is without remedy in the premises, save in a court of equity, your complainant comes and prays that the said A. C. Stacy, J. H. Stinson, John H. Lester, Green Charles, H. G. Charles, John H. Dotson, Alice Waldron, S R. Hurley, Andy H. Baker, Martha, J. Stacy, Mary Dotson, S. G. Wright, Trustee, F. E. Morgan, Trustee, First National Bank of Grundy, a Corporation, Pikeville National Bank, a Corporation, be made parties defendant to this bill, and be required to answer the same, but not under oath,

page 52] the oath being expressly waived under statute; that process issue against said defendants; that all proper and necessary decrees may be entered, inquiries directed and accounts taken; that if it shall appear that the rents, issues and profits of said real estate will not satisfy said Judgment in five years, that the real estate of the said defendants, or so much thereof as may be necessary and proper, *by* sold to satisfy said judgment;

★ ★ ★ ★ ★

On the 22nd day of November, 1929, a decree was entered in said suit, found, in Chancery Order Book No. 7, page 141, and after reciting facts maturing said cause, adjudged as follows:

"AND the Court is further of the opinion that the Complainant is entitled to an accounting in this cause and doth adjudge, order and decree that F. W. Smith, one of the Commissioners in Chancery of this court, do take and state an account and report to the court the following:

"(2) All the lands owned by the following seven defendants, to-wit: A. C. Stacy, J. H. Stinson, John H. Lester, Green Charles, H. G. Charles, John H. Dotson and Alice Waldron, which are situate in Buchanan County, Virginia, on which the judgment sued on by complainant is a lien.

"(3) All the liens against all of said real estate in the order of their priorities, including the delinquent page 53] and unpaid taxes against same.

"(4) Whether the rents, issues and profits of said real estate of said seven defendants, and the 30 acres of land conveyed by A. C. Stacy to Andy H. Baker, as aforesaid, will in five years pay off and discharge the aforesaid judgment of your complainant."

On the 16th day of April, 1930, F. W. Smith, Commissioner in Chancery, pursuant to said decree, filed his report in said cause, containing 169 typewritten pages, which said report showed that it was made pursuant to the foregoing decree, and that it was made after due notices to all of the parties; and to all other persons, who might be interested, by notices duly published in the local newspaper. Among the tracts of

land reported as belonging to H. G. Charles, said report says, beginning on page 5:

"(4) 750 acres, more or less, on Knox Creek, described by metes and bounds in deed from

SHADRICK DOTSON and NANCY JANE DOTSON, HIS WIFE
TO)(DEED
HARVEY CHARLES
Deed Dated: July 6, 1889
Recorded: December 30, 1889
Deed Book "G," page 222

"The above deed contains the following clause:

"And said Dotson also obtains an *Leam* on said land until the purchase money is paid.'

"This deed, however, shows consideration for the conveyance to be $1,000.00 in hand paid, receipt of which is acknowledged in the deed. This is the home place where H. G. Charles now lives. There is nothing in the deed book to page 54] show that this lien has been satisfied, but, as already stated, the deed shows the consideration to have been paid in full.

"There is a plat and certificate of title to H. G. Charles, of 43 acres, on Knox Creek, which was sold for taxes in the name of Martha Charles and purchased by H. G. Charles, of record in Deed Book "H," page 487. This tract of 43 acres, according to the information given your Commissioner by H. G. Charles, is a part of and is included in the 750 acre boundary next above mentioned.

"There is also a court right to 175 acres survey in the name of H. G. Charles, which is of record in Deed Book "M," page 440. This 175 acres is also included in the above boundary of 750 acres conveyed by Shadrick Dotson to H. G. Charles as set out above.

"There is also a deed from John C. McCoy and Polly McCoy J. H. Charles and Comfort Charles, L. G. Stacy and Cyrena Stacy to H. G. Charles, dated February 26, 1895, recorded January 20, 1897, in Deed Book "R," page 93, conveying 50 acres of land on Knox Creek and Horse Branch boundary of 750 acres.

"It seems there are several conveyances affecting the title to this 750 acres and the several deeds were taken for the purpose of clearing up certain defects in the title to some of this land."

By decree entered on the 1st day of May, 1930, Chancery Order Book No. 7, page 230, reciting the filing of the report of F. W. Smith, Commissioner in Chancery on the 16th day of April, 1930, and an exception thereto by H. G. Charles affecting a matter of priority between he and his co-sureties on the bond of A. C. Stacy.

"And there being no exception or objection to the said report by the said A. C. Stacy, the court is of the
page 55] opinion and *and* doth adjudge, order and decree that said report be, and same is hereby approved, ratified and confirmed insofar as it concerns the property of the said A. C. Stacy.

"And the Court doth defer his decision on said exception until further consideration thereof, and doth also defer confirmation of the report insofar as it concerns the property of the sureties, until said exception has been passed upon," and orders the sale of the lands of A. C. Stacy. ***

"The Court is therefore, of the opinion and doth adjudge, order and decree as follows, to-wit:

"*FIRST*: That R. E. Williams and H. Claude Pobst, who are hereby appointed Special Commissioners for the purpose, with the express provision that either one or both of them may act, shall, unless the defendants, or someone for them, shall pay off and discharge the judgment lien sued on within 30 days from the date hereof, proceed to sell the real estate owned by the said A. C. Stacy and shown by the report of said F. W. Smith, Commissioner in chancery, or a sufficient part thereof to pay off and discharge the judgment lien sued on."

That thereafter, the said Special Commissioners, Pobst and Williams, sold the land of A. C. Stacy and leased some of the coal belonging to Green Charles, J. H. Stinson and H. C. Charles, and collected from the lessees the rents and royalties thereafter and at certain intervals filed their report of their action, one of which reports, was filed on the 10th day of April 1936, and among the receipts show.

In 1934, page 2,

"July 20 — Virginia Lee Coal Corporation, royalty on lands of H. G. Charles, to June 30, 1934 — $1,081.80"
On October 20, page 2,
Virginia Lee Coal Corporation, royalty on land H. G. Charles to Sept. 30, 1934 — $1,147.20
page 56] page 3, January 19
Virginia Lee Coal Corporation, royalty on land of H. G. Charles to Dec. 30, 1934 — $1,244.90
Jan. 30
Virginia Smokeless Fuel Corporation, royalty on lands H. G. Charles to December 31, 1934 — $75.00
March 25, page 3
Virginia Smokeless Fuel Corporation, royalty on lands of H. G. Charles — $75.00
April 22, page 4
Virginia Lee Coal Corporation, royalty on coal H. G. Charles land to March 31, 1935 — $868.30
April 27, page 4
Virginia Smokeless Fuel Corporation royalty on land of H. G. Charles — $75.00
May 29, page 4
Virginia Smokeless Fuel Corporation, royalty on H. G. Charles land — $75.00
July 20,
Virginia Lee Coal Corporation, royalty on coal H. G. Charles land to June 30, 1935 — $1,369.10
October 23 — page 5
Virginia Lee Coal Corporation, royalty on lands of H. G. Charles to Sept. 30, 1935 — $1,552.50

DISBURSEMENTS

1934
Aug. 30 — By paid E. E. Smith, Treasurer, on A. C. Stacy judgment for H. G. Charles — $1,058.16
Nov. 8 — By paid E. E. Smith, Treasurer, on A. C. Stacy judgment for H. G. Charles — $1,320.26
1935
Feb. 1 — By paid E. E. Smith, Treasurer on Stacy judgment from the lands of the following: H. G.
page 57] Charles — $1,143.50
1935

Aug. 5 — Paid E. E. Smith, Treasurer, on A. C. Stacy judgment for the following: H. G. Charles — $1,601.18

On the 15th day of April, 1936, a decree was entered in said cause, Chancery Order Book No. 9, pages 150-156, confirming the report of Special Commissioners, H. Claude Pobst and R. E. Williams, filed on the 10th day of April, 1936, among which the decree confirmed the report showing collections from the lands of H. G. Charles, as set out in said report and the disbursements as set out in said report.

The report of Special Commissioners, Pobst and Williams, filed on the 27th day of February, 1937, page 6 of said report showing disbursements:

1936

Feb. 1

Paid E. E. Smith on A. C. Stacy judgment from H. G. Charles land — $1,690.11

Page 7, May 6, 1936

Paid E. E. Smith, Treasurer on A. C. Stacy judgment for H. G. Charles — $1,254.30

Page 8

July 31, 1936

Paid E. E. Smith, Treasurer on A. C. Stacy Judgment, for H. G. Charles — $1,695.69

Dec. 5, page 9

Paid A. H. Goff, Clerk, delinquent taxes on H. G. Charles land — $5,120.45

1936

Dec. 5

Paid A. H. Goff, Clerk, delinquent taxes on H. G. Charles land — $1,321.34

Dec. 5

Paid E. E. Smith, Treasurer, taxes on H. G. Charles land — $3,393.60

page 58] Decree confirming report of Special Commissioners, Pobst and Williams, and the settlement in said report, entered April 20, 1937, in Chancery Order Book No. 9, page 472, showing the disbursement on page 6.

1936

February 1 — Paid E. E. Smith, Treasurer, on A. C. Stacy judgment from H. G. Charles lands — $1,690.11

May 6 (page 7) — Paid E. E. Smith, Treasurer, on A. C. Stacy judgment, for H. G. Charles — $1,254.30

July 31 (page 8) — Paid E. E. Smith, Treasurer, on A. C.

Stacy judgment for H. G. Charles — $1,695.69
December 5 (page 9) — Paid A. H. Goff, Clerk, delinquent taxes on H. G. Charles lands — $5,120.45
December 5 — Paid A. H. Goff, Clerk, delinquent taxes on H. G. Charles lands — $1,321.34
December 5 (page 9) — Paid E. E. Smith, Treasurer, taxes on H. G. Charles lands — $3,393.60

* * * * *

That by decree entered on the 27th day of April, 1937 in Chancery Order Book No. 9, page 488,

page 59] "And it being suggested to the Court by Special Commissioners, R. E. Williams and H. Claude Pobst, that a number of the liens reported against the sureties of A. C. Stacy by F. W. Smith, Commissioner in Chancery, have been paid, and that additional judgments and other liens have been obtained against said sureties since the filing of the report of F. W. Smith, Commissioner:

"The Court doth, therefore, adjudge, order and decree that W. H. Van Landingham be, and he is hereby appointed a *Apecial* Commissioner for the purpose and is directed to take and state an additional account in this cause and report to the Court as follows:

"(1) All the present liens against the real estate of H. G. Charles, Green *Uharles,* John H. Lester, John H. Dotson, J. H. Stinson and Alice Waldron, which are of record in Buchanan County, Virginia, in the order of their priorities.
"(2) The amounts and dates of all payments made on the judgment sued on, made from the assets of the six sureties of A. C. Stacy.
"(3) Any other matters deemed pertinent by the Special Commissioner or requested by any of the parties to this cause."

Special Commissioner, W. H. Van Landingham, Jr., on the 29th day of October, 1937, filed his report in said cause, consisting of 139 type-written pages, in which report it is recited, the report was made after due notice to the parties,

and to all persons by publication in the local newspaper; and among other things, reports the judgment of Complainant against A. C. Stacy and his sureties is referred to as the "Big Judgment."

"TAXES AGAINST H. G. CHARLES

1930	450 acres, Paw Paw Fork of Knox Creek D. L. Book 6, page 204	232.75
1931	450 acres, Paw Paw Fork of Knox Creek D. L. Book 6, page 273	232.75
page 60] 1932	450 acres, Paw Paw Fork of Knox Creek, D. L. Book 7, page 64	232.75
1933	450 acres, Paw Paw, D. L. Book 7, page 141	196.00
1934	450 acres, Paw Paw, D. L. Book 7, page 220	196.00
1935	450 acres, Paw Paw, D. L. Book 8, page 3	196.00
1936	450 acres, Paw Paw	196.00"

On Land Book for Buchanan County, Virginia, for the year 1931, H. G. Charles is assessed with taxes on 450 acres of land on Paw Paw, under the heading "mineral lands" and in the column the value of land is $900.00 and in the column of coal, iron and other minerals is the value of $4,900.00. Total taxes $232.75.

It is agreed that the land books for the following years of 1932, 1933, 1934, 1935, and 1936, the charges are the same and the value of the lands the same, and the difference in the amount of taxes is the tax rate.

On page 56 of said report is,

LIEN NO. 7

BANK OF GRUNDY, INC.
VS.)(JUDGMENT
DAVID McCLANAHAN, JAMES RUNYON,
ARLIN MATNEY AND H. G. CHARLES

Judgment, Principal, Interest and Attorney's fees $1,742.37

LIEN NO. 10 (Page 59)

H. G. CHARLES AND MINNIE CHARLES
TO)(DEED OF TRUST
R. E. WILLIAMS, TRUSTEE
SECURES:

(a) $5,000.00 note given on February 26, 1931;

(b) $1,000.00 note given on March 3, 1931;
page 61] (c) $4,000.00 note given on March 24, 1931.

NOTE See Deed of Trust, Trust Deed Book No. 4, page 161 — next hereinafter copied.

COPY

THIS DEED OF TRUST, made and entered into on this the 18th day of November, 1931, by and between H. G. Charles and Minnie Charles, his wife, parties of the first part, and R. E. Williams, Trustee, party of the second part:

WITNESSETH: That for the purpose of securing the debts hereinafter mentioned, the said parties of the first part hereby sell, grant and convey unto the said R. E. Williams, Trustee, that certain tract or parcel of land containing about 940 acres, situate in Pike County, Kentucky, on Andy's Branch of Tug River, and on said Tug River at and near the mouth of said Andy's Branch, and having been conveyed to the said H. G. Charles by George J. Walker, by sundry deeds, recorded in the Office of the Clerk of the County Court of Pike County, Kentucky, it being intended hereby to convey, and the said parties of the first part do hereby convey to the said R. E. Williams, Trustee, all the land which they own, and to which they are legally or equitably entitled, situate in Pike County, Kentucky, on said Andy's Branch; and reference is hereby made to the records of the said Clerk's Office for a more particular description of the aforesaid lands.

And the said parties of the first part do further grant, sell and convey unto the said R. E. Williams, Trustee, another tract of land, situate in Buchanan County, Virginia, containing 2200 acres, situate, lying and being on Knox Creek and its waters, and on Devils Branch, Middle Elk Creek and Upper Elk Creek and several other smaller branches, all waters of Knox Creek of Tug River, and being the same land granted to Samuel L. Graham, Mitchell B. Davis and
page 62] Jacob Baldwin, by the Commonwealth of Virginia, on August 28, 1885, and recorded in the Registrar of Land Office (now Secretary of the Commonwealth) at Richmond, Virginia, in Grant Book 120, page 223, reference to which said grant and title papers of the said H. G. Charles of record in the Office of the Clerk of the

Circuit Court of Buchanan County, Virginia, is here made for a more particular description of said 2200 acres of land, and said tract of land is also described in deed to said H. G. Charles from T. D. Compton, Special Commissioner of Buchanan Circuit Court in the Chancery Cause of *W. L. Dennis et al* v. *T. D. Compton Administrator et al,* dated May 27, 1908, and recorded in the Office of the Clerk of the Circuit Court of Buchanan County, Virginia, in Deed Book 37, pages 43 *etseq.*

But this conveyance is made in trust, nevertheless, to secure the payment of three certain notes, all executed by the said H. G. Charles, payable to E. R. Boyd, John W. Flannagan and H. Claude Pobst, and endorsed by the said E. R. Boyd, John W. Flannagan and H. Claude Pobst, said notes being more particularly described as follows, to-wit:

Note for $5000.00, dated February 26, 1931, payable four months after its date.

Note for $1000.00, dated March 3, 1931, payable four months after its date.

Note for $4000.00, dated March 24, 1931, and payable four months after its date.

All of which said notes were discounted at Bank of Grandy, Incorporated, Grundy, Virginia, and by said Bank transferred and assigned as collateral security to Fifth-Third Union Trust Company of Cincinnati, Ohio, and are now held by said Fifth-Third Union Trust Company; and said Bank of Grundy having been placed in the hands of Amos Breeding, Receiver, this deed of trust shall and does further secure said notes, no matter by whom held, and secures the endorsers thereof in any amount they may have to pay on page 63] same; and this deed of trust shall and does further secure the renewal or renewals of said *note* notes, or any or either of them, in whole or in part no matter by whom held and also secures the total amount represented by said notes, whether said notes are hereinbefore correctly described or not.

If the owner or holder of said notes, or any or either of them, or the owner or holder of any renewal or renewals of said notes, or any or either of them, shall make written demand on the said H. G. Charles for the payment of any or all of said notes, and said notes be not paid at the expiration

of sixty days from said written demand, then the said Trustee, on written request made to *hem* by the owner or holder of said notes, or any or either of them, or by the owner or holder of *lthe* renewal or renewals of said notes, or any or either of them, as aforesaid, then said Trustee shall proceed to sell the aforesaid real estate, or so much thereof as may be necessary to pay off and discharge such of said notes as may remain unpaid, after having advertised the same by typewritten notices posted at least thirty days prior to date of sale, one copy posted at the front door of the court house of the county wherein the land to be sold lies, and at least four other copies posted in public places in said county and within five miles of some of the land to be sold, and a copy of which said notices shall be served on the said H. G. Charles at least thirty days prior to the day of said sale as notices are required to be served by the laws of the State of Virginia, said sales shall be made at the front door of the court house wherein the land to be sold lies and shall be at public auction, to the highest bidder, on the following terms, to-wit: for one-fifth in cash on day of sale and balance on credit of six, twelve, eighteen and twenty-four months, equal payments, for which deferred payments the said trustee is authorized and empowered to take such security as in his opinion is to the best interest of all parties concerned.

The proceeds of said sale or sales shall be by page 64] said trustee disbursed and distributed as follows:

FIRST: To the costs and expenses of conducting said sale or sales, including a commission of 5% to said trustee for making said sale or sales.

SECOND: To the payment of any taxes which may be due or owing on the said land.

THIRD: To the payments of the notes or renewals secured hereby.

FOURTH: The residue, if any, shall be paid to the said H. G. Charles or his assigns.

WITNESS the following signatures and seals:

H. G. Charles (SEAL)
Minnie Charles (SEAL)

LIEN NO. 11 (Page 60)

FIFTH-THIRD UNION TRUST COMPANY
V.)(JUDGMENT
H. G. CHARLES
DATED: July 22, 1932
Principal, Interest and Attorney's fee and cost, $13,611.02

LIEN NO. 16 (Page 63)

JOHN W. RATLIFF and
V. C. SMITH, TRUSTEES
V.)(JUDGMENT
H. G. CHARLES and MINNIE CHARLES,
T. R. DAVIS and REECE DAVIS

JUDGMENT GRANTED: April 8, 1935

Principal, Interest, Attorney's fee and cost, $3,036.50

It is agreed John W. Ratliff and V. C. Smith were Trustees for the Bank of Grundy, Inc., and its receivers.

page 65] LIEN NO. 17 (Page 63)

AMOS BREEDING, RECEIVER
OF THE BANK OF GRUNDY, INC.
VS.)(JUDGMENT
MINNIE CHARLES and H. G. CHARLES
GRANTED: January 2, 1936
DOCKETED: January 8, 1936
Principal, Interest, Attorney's Fee and Cost $662.41

LIEN NO. 18 (Page 64)

H. CLAUDE POBST
VS.)(JUDGMENT
H. G. CHARLES and JOHN W. FLANNAGAN, JR.
GRANTED: April 13, 1936.
Principal, Interest, Attorney's Fee and Cost $1,523.64

LIEN NO. 20 (Page 65)

F. H. COMBS, RECEIVER OF
BANK OF GRUNDY, INC.
VS.)(JUDGMENT
H. G. CHARLES and JOE HACKNEY

JUDGMENT GRANTED: July 11, 1936
DOCKETED: February 9, 1937
Principal, Interest, Attorney's Fee and Cost, $622.98.

This report of W. H. Van Landingham, after exceptions thereto was not wholly confirmed but re-committed to him by decree entered on the 3rd day of December, 1937, and of record in the office of the Clerk of said Court, in Chancery Order Book No. 10, page 203, "the original report of your undersigned Commissioner was re-committed to him for the purpose of correcting any errors therein in re-
page 66] porting the liens against H. G. Charles, and for the purpose of taking evidence on whether or not the rents, issues, and profits from the lands and real estate, holdings of H. G. Charles would in five years pay off the liens against the same "(Re-Committal Report, page 1), which Re-Committal report was filed on the 8th day of January, 1938; and *containes* the following:

LIEN NO. 10 (Page 7)

H. G. CHARLES and MINNIE CHARLES
TO)(DEED OF TRUST
R. E. WILLIAMS, TRUSTEE

This deed of trust, which secures a $5,000.00 note, a $1,000.00 note and a $4,000.00 note, represents the same obligations as those set out in the original report as Lien No. 11, and Lien No. 18. These three notes are the obligations of H. G. Charles, and though one of them has been paid, yet it was paid by a surety, which will not affect the liability of H. G. Charles for the full amount.

By a decree confirming the report of Special Commissioner W. H. Van Landingham, filed on the 29th day of October, 1937, and his recommittal report filed the 8th day of January, 1938, R. E. Williams was appointed Special Commissioner to sell the lands of H. G. Charles.

Thereafter, on the 7th day of June, 1938, R. E. Williams, Special Commissioner, filed his report of the sale of H. G. Charles land in which he recites that, part of the notice and advertisement of the sale of said lands, was by typewritten notices posted at different places in Buchanan County, Vir-

ginia, and part of them within five miles of the land to be sold. A copy of the typewritten notices posted is attached to and made a part of the Commissioner's report.
page 67] The report likewise shows the main facts of the lands to be sold, in an abbreviated form of the notice of sale, shown on the posted notices, was published in eight newspapers having a general circulation in the section of the country where this land is located. On page 1 of this typewritten notice of the sale is the following:

"(4) 750 acres of land in fee simple, lying on Knox Creek acquired by H. G. Charles (conveyed to him as Harvey) from Shadrick Dotson and wife by deed of record in the Clerk's Office in Deed Book "G," page 222."

Page 5 of this report shows that Tract No. 4, of 750 acres on Knox Creek and Paw Paw was combined with two other tracts and sold to W. F. Genheimer, this being prompted by the Commissioner's Report showing the first lien on these three tracts to be a mortgage in favor of the Federal Land Bank of Baltimore, and said sale being had subject to said mortgage.

On page 10 of said report is found:

"Your Commissioner reports that the following tracts of land sold by him as aforesaid, did not sell for an amount sufficient to pay the taxes due thereon as reported by W. H. Van Landingham, Special Commissioner, and the 1937 taxes due on said tracts. The tracts sold which did not sell for enough to pay the taxes are as follows:

"(3) 685 acres sold to W. F. Genheimer, together with Tract No. 4, of 750 acres, and Tract No. 23, of a boundary for the sum of $2250.00. The taxes due on the 685 acres for the years 1930 to 1937, inclusive, exclusive of interest and penalty, amount to $2,112.05."

"Tract NO. 4, which was sold as containing 750 acres has been assessed as 450 acres, and the taxes due on the said 450 acres for the years 1930 to 1937, inclusive, exclusive of interest and penalty amount to $1678. 25."
page 68] "Your Commissioner recommends that in all cases where the taxes due on the respective tracts of land amount to more than the lands sold for, that the ex-

cess taxes be exonerated by this Court, and that proper order be entered exonerating such excess taxes as provided by Section 6268 of the Code of Virginia."

By decree entered on the 8th day of June, 1938, this report of sale by Special Commissioner, R. E. Williams, was confirmed, the reference in said report to Tract No. 4 of 750 acres being on page 5.

On page 4 of said decree it is said:

"At said sale the following lands of H. G. Charles, lying in Buchanan County, Virginia, were sold to the respective persons hereinafter indicated, and named, with the amounts paid by the purchasers as indicated below. The references to the numbers below correspond to the number set out in the typewritten notice or advertisement of sale, copy of which is attached to and made a part of this report."

By decree entered on the 14th day of July, 1938, the deed executed to W. F. Genheimer for the lands shown in the report to have been purchased by him, was confirmed.

The report of Special Commissioner, R. W. Williams, concerning receipts and disbursements filed the 7th day of April 1939, contains the following:

Page 3
1938
April 28, Paid *H. Claude Pobst, Trustee, on judgment* vs. *A. C. Stacy Et Als* — $7,075.00
1938 — page 4
June 13 — Paid *H. Claude Post, Attorney,* judgment Nos. 4 and 4-A against *H. G. Charles, interest,* cost and attorney's fee — $6,101.30
June 11 (Page 4) — Paid H. Claude Pobst, Trustee, balance due on judgment of E. E. Smith, Treasurer V. A. C. Stacy Et Als — $27,291.30

By a report of Special Commissioner, R. E. Williams, filed on the 31st day of January, 1940, showing col-
page 69] lections and disbursements, are the following items:

Page 2
1939
April 20 — Paid *H. Claude Pobst, Assignee, of judgment in*

favor of Fifth-Third Union Trust Co. v. *H. G. Charles* — $2,000.00
page 3
1939
Oct. 24 — Paid *F. H. Combs, Receiver of the Bank of Grundy, judgment* vs. *H. G. Charles* — $280.16
Page 3
1939
Oct. 24 — Paid *H. Claude Pobst, Assignee, judgment of Fifth-Third Union Trust Company* vs. *H. G. Charles* — $4,580.81

Decrees confirming these reports, as well as said reports, show vouchers for all disbursements made by said Commissioner.

By decree entered January 15, 1947, confirming the report of R. E. Williams and H. Claude Pobst, Special Commissioners, showing receipts and disbursements, it is reported:

Page 3
1939
April 21 — By amount paid *F. H. Combs, Receiver of Bank of Grundy, on judgment* v. *H. G. Charles* — $1,400.00
Page 3
April 21 — By amount paid *H. Claude Pobst on judgment of Fifth-Third Union Trust Company* v. *H. G. Charles* — $4,000.00
Page 3
October 24 — By amount paid *H. Claude Pobst, Assignee, of judgment of Fifth-Third Union Trust Company* v. *H. G. Charles* — $2,352.73
Page 4
1940
Feb. 28 — By amount paid *F. H. Combs, Receiver of Bank of Grundy of judgment* vs. *H. G. Charles* — $190.41
Page 4
Feb. 28 — By amount paid *H. Claude Pobst, Assignee on judgment of Fifth-Third Union Trust Company* v. *H. G. Charles* — $1,925.40

page 70] OBJECTION

In spite of the foregoing stipulation, Buchanan Realty Corporation, by counsel, objects and excepts to the introduc-

tion of the evidence of the appointment of Wm. H. Van Landingham as Special Commissioner, to report additional liens against the lands to be sold in the *Stacy* case; to the introduction of the Van Landingham report as to such liens; to the introduction of the deed of trust from H. G. Charles and wife to R. E. Williams; to the introduction of the decree confirming the said report; to the introduction of the report of R. E. Williams, Special Commissioner, showing sales of certain of the lands of H. G. Charles, deceased; and to the report of said Williams, Special Commissioner, showing certain payments of the proceeds from said sales, for the following reasons:

(a) Because all of said facts are immaterial to any issue in this suit.

(b) Because the only lands of H. G. Charles which could have been sold in this suit are those owned by him at the time of the sale, and at that time, and for a long time prior to the institution of said suit against him, the said H. G. Charles did not own the lands in controversy in this suit, because he had theretofore conveyed all the coal, oil, gas and other minerals, with certain mining rights and privileges to John W. *Flannagain,* by the deed hereinbefore referred to and designated in another exception in this paper.

(c) Because the deed of trust does not convey, or have any connection with any of the land in controversy in this suit but only conveys 940 acres in Pike County on Andy Branch and 2200 acre grant to Graham, Davis and Baldwin.

page 71]

★ ★ ★ ★ ★

In the deed from F. H. Combs, Receiver, to Buchanan Realty Corporation, dated December 28th, 1944, it is recited:

WHEREAS, on July 27, 1944, A. S. Richardson, H. Claude Pobst and about one hundred and twenty others, all being depositors in the Bank of Grundy, Incorporated, presented in open court in said cause their petition asking that all of the assets of the said Bank of Grundy, Incorporated, as of the close of business May 12, 1944, (same to include all cash received or collected by F. H. Combs, Receiver, since that

date) be sold to a corporation to be organized for the purpose under the name of Buchanan Realty Corporation, said corporation to be composed of the creditors, or depositors, of said closed Bank, or to such creditors or depositors as might elect to take stock in said new corporation, which petitions asked said court to sell all of said assets as aforesaid for the total sum of $35,551.71;

It is further stipulated and agreed that prior to the time the Bank of Grundy closed, F. H. Combs and H. Claude Pobst were attorneys for said Bank, and con-
page 72] tinued to represent it and its receiver until F. H. Combs was appointed its receiver, and after that time F. H. Combs continued to represent said bank and its receiver. H. Claude Pobst and F. H. Combs, and Dr. A. S. Richardson were directors and stock-holders of the Bank of Grundy, Inc. prior to its closing, which occurred on May 18, 1931, and were among the stock-holders and directors of the Bank of Grundy, Inc. at the time it was placed in the hands of a Receiver, and continued to be stock-holders of said Bank until its assets were sold to Buchanan Realty Corporation, which corporation now claims the coal land in controversy in this suit.

They were active promoters of Buchanan Realty Corporation, which was organized and chartered for the sole purposes of purchasing the assets of the Bank of Grundy, Inc., which, at that time was in the hands of the Receiver. H. Claude Pobst, F. H. Combs and Dr. A. S. Richardson were stockholders in the newly created corporation, (Buchanan Realty Corporation), elected on its first Board of Directors, and by the Board of Directors, or the stock-holders named as officials of said corporation.

These directors of the newly formed corporation of Buchanan Realty Corporation were among the first to conceive the idea and formulate the plan for the creation of this corporation and its consequent purchase of the assets of the Bank of Grundy, Inc. These same parties were active for the creditors of the Bank of Grundy, Inc. in affecting the sale of its assets to Buchanan Realty Corporation.

H. Claude Pobst and Dr. A. S. Richardson were among those who signed the application for the charter of Buchanan Realty Corporation.

page 73] Mountain Mission School claims title to the land and coal in controversy by the following

conveyances; the adverse possession thereunder and the estopper, of Buchanan Realty Corporation, and its *predecesonns* in title, to claim anything contrary to the purport and intent of the following deeds in its chain of title, to-wit:

(1) Shadrick Dotson to Harvey Charles, July 6, 1889, Deed Book "G," page 222.

(2) R. E. Williams, Special Commissioner, to W. F. Genheimer, July 14, 1938, Deed Book 78, page 562.

(3) W. F. Genheimer and wife to First National Bank of Williamson, June 3, 1940, Deed Book 83, page 88.

(4) First National Bank of Williamson to Mountain Mission School, Inc. February 19, 1943, Deed Book 90, page 104.

Copies of which are attached.

This deed made the 6th day of July, 1889, by and between Shadrick Dotson and Nancy Jane, his wife, of the first part and Harvey Charles of the second part all of the county of Buchanan and state of Virginia.

WITNESSETH

THAT for the consideration of $1,000.00, in hand paid by the party of the second the receipt hereby acknowledged by the party of the first part, doth grant, at title with general warranty the following described land, lying and situate in the county of Buchanan and state of Virginia, containing 750 acres being the same more or less a part of different surveys one survey made in the name of John Brown 50 acres, one in the name of Johahan Hurley, 200 acres, 2 in the name of Joseph Coleman 150 acres, one survey in the name of Johahan Hurley, Sr. 250 acres, and all conveyed to Jonahan Hurley, Sr. and from the heirs of Jonahan Hurley to Shadrick Dotson and bounded as follows:

Lying at the mouth of Paw Paw fork of Knox Creek and beginning at a mulberry at the mouth of Mill page 74] Creek thence running up mill creek with the line of a 50 acre survey made as the name of John Brown to a gum on the bank of *siad* creek thence with said creek to a bunch of lynns thence with a conditional line wit said Dotson, John B. Hurleys heirs to the ridge between mill creek and Paw Paw and with said line to the Paw Paw Creek to a sourwood near a sarfi fence crossing Paw Paw to a

beech thence with a conditional between said Dotson and Harvey Charles to the top of the ridge between the Rachel and Dogwood hollow and with said line to the ridge between Paw Paw and Roce for and *rom* the ridge to a chestnut and down the spur between dark and horse hollows to the line of J. M. Thornsburg and with said line crossing Knox Creek to a gum near the buck fork and with said line to the top of the ridge between cedar and knox and down the ridge with the line of a 685 acre survey made in the name of Samuel R. Hurley to 2 cumbers, thence crossing knox creek to a beech a corner of a 250 acre survey made in the name of Jonahan Hurley, Sr. thence running with the line of head of the quick silver and down a spur to the beginning.

SHADRICK DOTSON (SEAL)
NANCY JANE DOTSON (SEAL)

OBJECTION

In spite of the stipulation as to the existence of the foregoing deed, counsel for Buchanan Realty Corporation objects and excepts to the admission of this deed as evidence in this case, for the following reasons:

(a) Because it is immaterial to any issue in this case.
could have been sold and conveyed in the above styled suit

(b) Because the only real estate of H. G. Charles, which is that which was then owned by H. G. Charles.
page 75] It has been, or will be shown in the case at bar, that, by deed dated 1st. day of May 1920, and on the 30 day of May, 1920 recorded in Deed Book No. 53, page 212 in this Clerk's Office, the said H. G. Charles conveyed to John W. Flannagan, Jr., all of the coal, oil, gas and other minerals, with certain rights, privileges, and Buchanan Realty Corporation now owns all the property so conveyed to said Flannagan.

(c) Because this deed does not show, or tend or purport to show, that Dotson had *Acquired* the true title to any of said land.

page 76] THIS DEED made and entered into this the 14th day of July, 1938, by and between R. E. WILLIAMS, SPECIAL COMMISSIONER, of the Circuit

Court for Buchanan County, Virginia, in the Chancery Cause therein pending, wherein E. E. Smith, Treasurer of Buchanan County, Virginia, is the complainant and A. C. Stacy et als are the defendants party of the first part, and W. F. GENHEIMER party of the second part.

WITNESSETH

THAT whereas on April 27, 1928, in the Chancery Cause of *Board of Supervisors of Buchanan County, Virginia,* vs. *A. C. Stacy, and others,* pending in said court, a judgment was rendered in favor of E. E. Smith, Treasurer of Buchanan County, Virginia, against A. C. Stacy, Green Charles, H. G. Charles, John H. Dotson, John H. Stinson, John H. Lester and Alice Waldron, for the sum of $136,493.75, with interest thereon from January 1, 1928, and $857.73 costs, which judgment was duly docketed in the office of the Clerk of said court, in Judgment Lien Docket No. 5, page 202, and;

WHEREAS at first November Rules 1929, said E. E. Smith, Treasurer, as aforesaid, filed his bill in Chancery in said court making A. C. Stacy, J. H. Stinson, John H. Dotson, John H. Lester, Green *Dharles,* H. G. Charles, Alice Waldron, S. R. Hurley, S. G. Wright, Trustee, F. E. Morgan, Trustee, First National Bank of Grundy, a corporation, Pikeville National Bank, a corporation, Andy H. Baker, Martha J. Stacy and Mary E. Dotson, parties defendants thereto, and;

WHEREAS process was by the Clerk of said court, issued on said Bill, against said defendants on October 23, 1929, returnable to first Monday in November, 1929, and was duly served upon or accepted by all of said defendants prior to said return day, and;

WHEREAS, rules were duly taken on said Bill, by the Clerk of the said Court taking said bill as confessed; and

page 77]

WHEREAS Decree was entered by said court in said cause on November 22, 1929, in confirming said rules, and adjudicating that the complainant was entitled to an accounting in said cause, and appointing F. W. Smith, one of the Commissioners in Chancery of said court, to take and state an account and report to the court among other things, all of the lands in Buchanan County, Virginia, on which said

judgment was a lien, and which were owned by the defendants, A. C. Stacy, J. H. Stinson, John H. Lester, Green Charles, H. G. Charles, John H. Dotson and Alice Waldron, all of the liens against all of said lands in the order of their priorities, including the delinquent and unpaid taxes against same; whether the rents, issues, and profits of said real estate of said seven defendants, and another tract of land not herein concerned would in five years pay off and discharge the aforesaid judgment; and any other matters deemed pertinent by the Commissioner or required by any party to said suit.

WHEREAS the said F. W. Smith, Commissioner in Chancery as aforesaid, fixed on January 13, 1930, as the time and the law office of said Commissioner in Chancery in the town of Grundy, Buchanan County, Virginia, as the place for the taking of said accounting, providing in his notice thereof that if for any reason said accounting should not be commenced on said date or from time to time, and if necessary or convenient, from place to place, until the same should be completed, and

WHEREAS, before proceeding to take said accounting and make said report, said Commissioner in Chancery, F. W. Smith, gave all of said defendants due and ample notice of the time and place of his sitting and of *lthe* fact that said accounting might be continued and adjourned as hereinbefore stated, and

WHEREAS said Commissioner in Chancery, F. W. Smith, pursuant to said notice opened said accounting at said time and place, and not being able to complete the accounting and report on that day, continued and adjourned it page 78] from day to day and from time to time until April 14, 1930, when it was completed, and

WHEREAS said Commissioner in Chancery reported in said report all the lands owned by the said A. C. Stacy, John H. Dotson, Green Charles, H. G. Charles, J. H. Stinson and Alice Waldron, in Buchanan County, Virginia, on which said judgment was a lien; and also reported on the liens against all of said real estate, in the order of their priorities, including the delinquent and unpaid taxes against same, and also reported that the rents, issues, and profits of said real estate would not in five years pay off and discharge the liens against same, and

WHEREAS, said report was duly filed by the said F. W.

Smith Commissioner in Chancery in the office of the Clerk of said court, on April 16, 1930; and

WHEREAS, by Decree entered in said cause on May 1, 1930, the aforesaid report of F. W. Smith, Commissioner in Chancery, was approved, ratified, and confirmed, and in said decree the Court adjudicated that the rents, issues and profits of said real estate owned by all of the defendants, would not in five years pay off and discharge the aforesaid judgment; and

WHEREAS, Decree was duly entered in said cause, providing that, unless the defendant or someone for them should pay the judgment sued on within thirty days, then, H. Claude Pobst and R. E. Williams were appointed Special Commissioners for the purpose, and directed to sell the lands belonging to A. C. Stacy, at public auction, to the highest bidder, at the front door of the Court House of Buchanan County, Virginia, after advertisement thereof for thirty days, as provided by said decree, said decree being dated May 1, 1930; and

WHEREAS, none of the defendants, nor anyone for them, having within 30 days from the date of the said decree, paid off and discharged the judgment sued on said Special Commissioners, pursuant to decrees of the said Cir-
page 79] cuit Court of Buchanan County, Virginia, after due advertisement thereof, as required by said decrees, offered for sale and sold all the lands belonging to the said A. C. Stacy; and

WHEREAS, all of the lands of A. C. Stacy were, in said Chancery Cause, sold at public auction to the highest bidders therefore, and said sales were duly approved, ratified and confirmed by the Circuit Court of Buchanan County, Virginia, in the aforesaid Chancery Cause; and

WHEREAS, by Decree entered in said Chancery Cause on April 27, 1937, W. H. *VanLandingham,* Jr., was appointed a Special Commissioner for the purpose and was directed to take and state an additional account in said cause and report to the court as follows:

(1) All of the present liens against the real estate of H. G. Charles, Green Charles, John H. Dotson, John H. Lester, J. H. Stinson and Alice Waldron, which are of record in

Buchanan County, Virginia, in the order of their priorities.

(2) The amounts and dates of all payments made on the Judgment sued on, made from the assets of the six sureties of A. C. Stacy.

(3) Any other matters deemed pertinent by the Special Commissioner or requested by any parties to this cause, and

WHEREAS, the said W. H. Van Landingham, Jr., fixed on May 20, 1937, between the hours of 9 o'clock a.m. and 6 o'clock p.m. at the law office of W. H. *Vanlandingham,* Jr., in the Bank of Grundy, Building in Grundy, Buchanan County, Virginia, as the time and place for said accounting, of which said time and place the aforesaid Green Charles, H. G. Charles, John H. Dotson, John H. Stinson, John H. Lester and Alice Waldron, were given due and legal notice by service thereof by Joe Hackney, Deputy for F. M. Ratliff, Sheriff of Buchanan County, Virginia duly served on them

page 80] by said Deputy Sheriff on May 6, 1937; and

WHEREAS, on May 24, 1937, between the hours of 9 o'clock a.m. and 6 o'clock p.m. at the law office of W. H. *Vanlandingham,* Jr., as aforesaid, the said Special Commissioner opened said accounting, and not being able to complete same on that day, continued and adjourned it from time to time at the same place as was provided for in the notice so served on said defendants until October 29, 1937, when he completed said accounting, and filed his report thereof in the Office of the Clerk of the Circuit Court for Buchanan County, Virginia; and

WHEREAS, by decree entered in said Chancery Cause by the aforesaid Circuit Court of Buchanan County, Virginia, on December 3, 1937, (Chancery Order Book No. 10—page 205) said Circuit Court again recommitted said chancery cause to the said W. H. *Vanlandingham,* Jr., Special Commissioner, but only upon the exceptions of H. G. Charles, and only on question concerning certain off sets claimed by the said H. G. Charles against certain of the liens reported by the said W. H. *VanLandingham,* Jr., Special Commissioner, against him; and

WHEREAS, by Decree entered in with chancery cause on April 20, 1938, by (Chancery Order Book No. 10—page 338) by the said Circuit Court of Buchanan County, Virginia, it was adjudged, ordered, and decreed that the said exceptions of H. G. Charles be and the same are sustained; and by the said decree of April 20, 1938, it was further ordered and ad-

judged and decreed that R. E. Williams, who was appointed a Special Commissioner for the purpose, proceed to sell all of the real estate of the said H. G. Charles, which is located in Buchanan County, Virginia, and which was reported by F. W. Smith, Commissioner in Chancery by report filed in said *casue* which said real estate was ordered, to be sold for one-fourth cash in hand on day of sale, and the residue in six, twelve, and eighteen, months, equal payments, for which deferred payments the purchaser was directed to execute interest bearing notes, which said sale was to be
page 81] made at public auction to the highest bidder, at the front door of the Court House of Buchanan County, Grundy, Virginia, after due advertisement of said sale by typewritten notices thereof for at least thirty days prior to said sale, one copy of which notice was to be posted at the front door of the Court House of Buchanan County, Virginia, and at least five other copies thereof to be posted in public places in Buchanan County, Virginia, and within five miles of some of the land of the said H. G. Charles to be sold, and at least five additional copies posted in public places in said County, which were not required to be posted within five miles of any lands to be sold, and by publishing in the Virginia Mountaineer, a weekly newspaper, published at Grundy, in said Buchanan County, Virginia, the main facts of said sale and in not to exceed five other newspapers published in adjoining counties, and by such other reasonable advertisement of said sale as said Special Commissioner might deem for the best interest of all concerned; and

WHEREAS, said H. G. Charles entered his appearance before the said Circuit Court and waived any time within which to redeem said land before the said sale and consented that the said sale be made by said Special Commissioner without giving him any time within which to pay off and discharge the liens reported against him in Chancery Suit; and

WHEREAS, said R. E. Williams, Special Commissioner, fixed on Friday, May 27, 1938, between the hours of 10 o'clock a.m. and 5 o'clock p.m. of said day as the time and the front door of the Court House of Buchanan County, Virginia, as the place for making said sale; and

WHEREAS, said Special Commissioner Williams, after having given bond for $8,000.00 as required by the aforesaid decree under which he acting, and after having advertised

the said sale for more than thirty days in the manner required by the said decree, proceeded on the said
page 82] 27th day of May, 1938, at the front door of the Court House of Buchanan County, Virginia, to sell at public auction to the highest bidder and on the terms required by said decree all of the real estate owned by the said H. G. Charles at which sale the said W. F. Genheimer became the purchaser of the following tracts or parcels of land situate on the waters of Knox Creek, in Buchanan County, Virginia, belonging to the H. G. Charles, viz, (Numbers given being the numbers set out in the notice of sale). Tract *NO.* 3 containing 685 acres, Tract *NO.* 4 containing 750 acres, and Tract No. 23 containing a boundary which 3 tracts were sold for the sum of two thousand two hundred fifty dollars, ($2,250.00) but subject to the lien of the mortgage of the Federal Bank of Baltimore affecting the said three parcels of land; Tract No. 12 containing 225 acres, sold for the sum of two hundred twenty five dollars ($225.00) Tract *NO.* 15 containing 48 acres was sold for the sum of eighty dollars ($80.00); Tract No. 17 being the surface of four tracts of land containing 158 acres, 98 acres, 50 acres, and 10 acres was sold for the sum of four hundred five dollars ($405.00) Tract *NO.* 18 containing 150 acres coal, minerals, etc. was sold for the sum of one hundred fifty dollars ($150.-00) Tract No. 19 containing 30 acres was sold for the sum of thirty dollars ($30.00); Tract No. 24 containing 203½ acres was sold for the sum of two hundred forty five dollars ($245.00) making a total for all of said tracts of three thousand three hundred eighty five dollars ($3,385.00) which amount was paid in cash by the said W. F. Genheimer on the day of the sale; and

WHEREAS, on the 7th day of June, 1938, the said R. E. Williams, Special Commissioner, as aforesaid, filed his report in the office of the Clerk of the Circuit Court for Buchanan County, Virginia, showing said sale; and

WHEREAS, as a part of said report said Special Commissioner as aforesaid filed copy of the advertisement of the said H. G. Charles's land to which advertisement
page 83] of the said was attached the certificates of the Clerk of said Court to the effect that before proceeding to act under said decree of April 20, 1938, and before proceeding to advertise and make sale of the said real estate, he the said R. E. Williams, Special Commissioner, had exe-

cuted bond before the Clerk of said Court in the penalty required by the decree under which he was acting, and conditioned according to law; and

WHEREAS, by decree entered in said Chancery Cause by said Court on June 8, 1938, (Chancery Order Book 10—page 381) the aforesaid report and sale were approved, ratified, and confirmed and the said R. E. Williams was by the last aforesaid decree appointed a Special Commissioner for the purpose, and was directed to prepare execute and acknowledge a good and sufficient deed conveying to said W. F. Genheimer, the said tracts or parcels of land so purchased by him at said sale; and

NOW, therefore, in consideration of the premises and the purchase money theretofore paid for said land, the said R. E. Williams, Special Commissioner, hereby grants and *conveyes* with *convenents* of special warranty, unto the said W. F. Genheimer all those certain tracts or parcels of land situate, lying and being in Buchanan County, Virginia, on the waters of Knox Creek, and more particularly described as follows, to-wit:

TRACT NO. 2 (No. 4 in Notice of Sale), All the right, title, and interest of H. G. Charles in and to 750 acres of land more or less, in fee simple, which tract of land was conveyed by Shadrick Dotson and wife to Harvey Charles, (who is the same said person as H. G. Charles) by deed dated July 6, 1889, and of record in said Clerk's Office in Deed Book "G," page 222. The following parcels of land are embraced within the bounds of the 750 acres, which parcels were acquired by the said H. G. Charles as follows:

A. 175 acres for which said H. G. Charles obtained a court right and which is of record in said Clerk's Office in Deed Book "M." page 440; and

page 84] B. 50 acres of land conveyed to the said H. G. Charles by John C. McCoy and others, by deed dated February 26, 1895, and recorded in said Clerk's Office in Deed Book "R," page 93.

TRACT NO. 9 (No. 24 in Notice of Sale) ALL the right, title and interest of H. G. Charles in and to 203½ acres of land on Paw Paw Creek conveyed to the said H. G. Charles by Malan Charles and wife by deed dated October 10, 1924,

and of record in said Clerk's Office in Deed Book No. 62, page 213, but subject to the exceptions contained in the said deed of about 20 acres and 35 acres of surface described in said deed.

THERE is excepted and reserved from this conveyance all these certain strips or parcels of land which are parts and portions of any of the above described and herein conveyed lands which strips or parcels of land were acquired by either the Big Sandy and Cumberland Railway Company or the Northern and Western Railway Company for right of way purposes, and which parcels are described in condemnation proceedings or deeds by which the said Railway Companies acquired same, all of which are of record in the Clerk's Office of Buchanan County, Virginia, and to which reference is here made for a more particular description of any of the parcels of land coming out of the lands herein conveyed.

WITNESS the following signature and seal.

R. E. WILLIAMS, SPECIAL COMMISSIONER (SEAL)

★ ★ ★ ★ ★

page 85] In spite of the fact that the foregoing deed was executed and recorded in the office of the Clerk of the Circuit Court of Buchanan County, Virginia, Buchanan Realty Corporation, by counsel, objects and excepts to the introduction of said deed for the following reasons, to-wit:

(a) Because the execution of said deed, even though it contains the 750 acres of land, which Mountain Mission School claims covers the land in controversy in this suit, or a part of it, does not and cannot by virtue of those facts pass to W. F. Genheimer the title to any part of said land which H. G. Charles did not own at the time of the institution of the suit of *E. E. Smith, Treasurer* v. *A. C. Stacy and others,* inasmuch as he had, prior to the institution of said suit, to-wit, in the year 1920, conveyed all of the coal, oil and gas in, on and under the 2,000 acre Jonathan Hurley survey and the 2,500 acre grant to Lohnert, May and Painter, to John W. Flannagan, who conveyed all of his interest therein to F. H. Combs, Receiver of the closed Bank of Grundy, Inc. and which interest was thereafter by order of the Circuit Court of Buchanan

County, Virginia, conveyed to the said Buchanan Realty Corporation.

(b) Because said deed only contains covenants of Special Warranty and as a legal proposition neither the court nor *special* Commissioner R. E. Williams nor anyone alse purported to guarantee a fee simple title in H. G. Charles even though in the purported conveyance of said 750 acres as Tract No. 2 in said deed, it is stated that the land is in fee simple.

(c) Because in conveying said tract No. 2 of 750 acres, the conveyance was only of "all the right, title and interest of H. G. Charles in and to 750 acres of land, more or less" etc., thereby placing the grantee therein on notice that the title to this land was in doubt.

★ ★ ★ ★ ★

page 86]

★ ★ ★ ★ ★

THIS DEED OF CONVEYANCE made and entered into this the 3rd day of June, 1940, by and between W. F. Genheimer and Sarah Shaw Genheimer, the wife of W. F. Genheimer of the city of Roanoke, state of Virginia, parties of the first part and grantors, and the First National Bank of Williamson at Williamson, West Virginia, party of the second part and grantees.

WITNESSETH:

THAT for the consideration hereinafter expressed, the grantors have bargained and sold and by these presents grant and convey unto the grantee all that certain tract or boundary of Real Estate situate on or adjacent to the Waters of Knox Creek, in Buchanan County, Virginia, and described as follows:

ALL the right, title and interest of W. F. GENHEIMER (being all the original interest owned by H. G. Charles) in and to a tract or parcel of land containing Seven hundred fifty acres (750) more or less in fee simple, which tract of land was conveyed by Shadrick Dotson and wife to Harvey Charles (the same person as H. G. Charles) by deed dated

July 6, 1889 and of record in the Clerk's Office of Buchanan County, Virginia, in Deed Book "G" at page 222.

AND being a part of the real estate conveyed to W. F. Genheimer by R. E. Williams, Special Commissioner of the Circuit Court of Buchanan County, Virginia, in the Chancery cause formerly pending therein of *E. E. Smith, treasurer* versus *A. C. Stacy, H. G. Charles, et als.*

THE consideration of and for this conveyance consists of the assumption and payment by the grantee of that certain indebtedness owing unto the Federal Land Bank of Baltimore, at Baltimore, Maryland, in the sum of four thou-
page 87] sand six hundred thirty-five dollars and fourteen cents. ($4635.14) with interest on said amount from and after June 2, 1940, and the payment of which indebtedness is secured by prior deed of Trust in favor of the Federal Land Bank of Baltimore at Baltimore, Maryland, and covering and embracing the foregoing described real estate.

IN TESTIMONY whereof, the grantors have caused their respective signatures and seals to be hereinto *dully* affixed as of this the day, month, and year first herein written.

W. F. GENHEIMER (SEAL)

SARAH SHAW GENHEIMER (SEAL)

★ ★ ★ ★ ★

page 88]

THIS DEED OF CONVEYANCE, made and entred into this the 19th day of February, 1943, by and between the First National Bank of Williamson, Williamson, West Virginia, a national banking association, party of the first part and Grantor, and Mountain Mission School, Incorporated, a corporation, party of the second part and Grantee.

WITNESSETH:

THAT for and in consideration of the sum of One dollar ($1.00) cash in hand paid, and other good and valuable considerations, receipt of all of which is hereby duly acknowledged, the said party of the first part and Grantor doth hereby bargain, grant, sell and convey unto the said party of the second part and Grantee, the following real estate locate and

situate on or adjacent to the waters of Knox Creek, in Buchanan County, Virginia, and described as follows:

A tract or parcel of land containing seven hundred and fifty (750) acres, more or less, in fee simple, and being the same tract of land conveyed by Shadrick Dotson and wife to Harvey Charles (the same person as H. G. Charles), by deed dated, July 6, 1889, and of record in the Clerk's Office of Buchanan County, Virginia, in Deed Book "G," at page 222; being a part of the real estate conveyed to W. F. Genheimer by R. E. Williams, Special Commissioner of the Circuit Court of Buchanan County, Virginia, in the chancery cause formerly pending therein of *E. E. Smith, Treasurer,* v. *A. C. Stacy, H. G. Charles, et als.*

Being the same real estate conveyed unto the Grantor herein by W. F. Genheimer and Sarah Shaw Genheimer, the wife of W. F. Genheimer, by deed bearing date June 3, 1940, and of record in the Clerk's Office of Buchanan County, Virginia, in Deed Book No. 83, at page 88.

THE said party of the first part and Grantor, doth hereby covenant that it will, and here does, warrant generally the title to the real estate hereby conveyed.

page 89] The consideration of and for this conveyance consists of the sum of Six Thousand Two Hundred Fifty Dollars ($6250.00) of which the sum of One Thousand Two Hundred Fifty Dollars ($1250.00) shall be paid in cash at the time of the execution and delivery of this deed, and the residue of said consideration which residue amounts to the sum of Five Thousand Dollars ($5000.00) shall be paid at the rate of One Thousand Dollars ($1000.00) a year; and, as evidence of the deferred purchase money; that is, Five Thousand Dollars ($5000.00), the party of the second part and Grantee has this day executed five (5) negotiable, four per cent, (4%) interest-bearing notes, each bearing the date February 20, 1943, each in the sum of One Thousand Dollars ($1000.00), payable to the order of First National Bank, Williamson, West Virginia, the first of said notes being due and payable one (1) year after date, and the four (4) remaining One Thousand Dollar ($1000.00) notes being due and payable in two (2), three (3), four (4), and five (5) years from their respective dates, and all of which said notes shall be due and payable at the offices of the First National Bank of Williamson, West Virginia.

It is further understood and agreed by and between the parties hereto that the party of the second part and Grantee shall have the right to anticipate and and pay off, at any time, any or all of the unpaid purchase money notes, with accrued interest thereon.

The Grantor doth hereby expressly retain and reserve a vendor's lien upon and against the real estate hereby conveyed in order to secure the payment of the deferred purchase money hereinbefore set forth, and to secure the payment of the notes representing the deferred purchase money, and to to secure the payment of any renewal or renewals, or extension at maturity, of said notes, or any of them, either in whole or in part, together with all interest thereon.

page 90] IN TESTIMONY Whereof, said party of the first part and Grantor has caused its corporate signature and seal to be hereunto duly affixed by its properly authorized officer and attested by its Secretary, all as of this the day, month, and year first written:

THE FIRST NATIONAL BANK OF WILLIAMSON,
A NATIONAL BANKING ASSOCIATION

By M. Z. WHITE, President.

★ ★ ★ ★ ★

page 125] This Deed, made the 14th day of March, in the year 1899, between Richard L. Brown, Jr., party of the first part and H. G. Charles, S. W. McInturff, Moses Charles, H. M. Francis, George Charles, John Charles, Eli Cook and Reece B. Davis, parties of the second part:

Whereas, the said R. L. Brown, Jr. is the owner or claimant of a certain tract or parcel of land situate in Buchanan County, Virginia, on the waters of Race Fork of Knox Creek of Tug River entered by Charles A. Lonhert for survey and grant on the 23rd day of June, 1873, and carried into grant by and in the name of C. A. Lonhert, A. J. May and C. T. Painter by patent *beareing* date on the 5th day of August, 1876, and of record in the office of the Register of the land office at Richmond, Virginia, in Book 119, page 178, and containing according to survey thereof made on the 24th day of December, 1874, 2500 acres, and in patent bounded and described as follows:

"Beginning at the deadening branch thence S 24 E 116 poles to a sugar on top of a knob S 10 E 28 poles to two small white oaks S 60 E 36 poles to a black pine on high knob S 60 E 154 poles to a large chestnut oak on top of a ridge S 30 W 34 poles to a chestnut S 74 W 56 poles to a chestnut oak and hickory S 44 W 58 poles to two hickories and black oak S 74 poles to a spanish oak S 15 W 30 poles to a white oak S 54 W 20 poles to two small lynns and sugar S 73 W 100 poles to two chestnut oaks S 45 W 18 poles to two hickories S 51 E 60 poles to two chestnut oaks S 13 E 26 poles to two chestnut oaks S 37 W 34 poles to two chestnuts S 10 E 76 poles to two dogwoods and black oaks S 73 W 116 poles to a spanish oak N 87 W 72 poles to — S 75 W 80 poles to two beeches and sugar N 40 E 200 poles down Race Fork on the Northeast side of 79 acres to a stake S 70 W 300 poles to a small hickory S 60 W 86 poles to a chestnut oak N 57 W 80 poles to a gum N 16 W 58 poles to a double chestnut N 3 W 28 poles to a gum N 27 E 48 poles to two small chestnuts N 25 E 240 poles to two chestnut oaks N 20 E 96 poles to a chestnut oak N 10 W 78 poles to a locust N 63 E 90 poles to a double chestnut N 36 E 300 poles to a white oak and beech; N 60 page 126] W 100 poles to a walnut, sweet and spruce pine; N 47 E 46 poles to beech N 50 E 110 poles to two beeches and poplar S 63 E 37 poles to a beech South 84 poles to three lynns and buckeyes S 8 E 94 poles to a chestnut and black oak S 79 E 22 poles to a beech and dogwood S 37 E 170 poles to the Beginning, with its appurtenances," and

Whereas, the said parties of the second part are the owners or claimants of a certain tracts of land situate in the said County of Buchanan on the said Race Fork of Knox Creek, under location or settlement claim of Jonathan Hurley, and containing 2,000 acres according to survey thereof made for and in the name of said Hurley on the 17th day of November, 1873, and recorded in the Clerk's Office of the said County Court of Buchanan County on December 24th, 1886, in Deed Book —, Page — the *meates* and bounds whereof according to said survey as follows:

Beginning at a *linn* and sugar on the Race Fork above the deadening branch S 74 E crossing 116 poles to a sugar on top of a knob S 10 E 28 poles to two small white oaks S 60 E 36 poles to a black pine on a high knob S 40 E 154 poles to a large chestnut oak on top of the ridge S 30 W 74 poles

to a chestnut S 74 W 56 poles to a chestnut oak and hickory S 44 W 58 poles to two hickories and black oak S 74 poles poles to a spanish oak S 15 W 30 poles to a white oak S 54 W 20 poles to two gums and sugar S 73 W 100 poles to two chestnut oaks S 45 W 14 poles to two hickories S 51 E 60 poles to a chestnut oak S 13 E 26 poles to two chestnut oaks S 37 W 34 poles to two oaks, S 10 E 76 poles to two dogwoods and black oak S 73 W 116 poles to a chestnut oak, N 87 W 72 poles to a white oak S 75 W 80 poles to two beeches and sugar to the back line of the 79 acre survey thence N 67 W 22 poles to a spruce pine and *linn* N 88 W 50 poles to a beech and black gum S 15 E 16 poles to a poplar S 63 W 32 poles to a beech and hazel on the bank of Race Fork N 43 W 48 poles to a small hickory S 60 W 86 poles to a chestnut oak N 57 W 80 poles to a black gum N 16 W 58 poles to a double chestnut N 3 W 28 poles to two *linns* N 27 E 48 poles to two small chestnuts N 75 E 110 poles to three small sassafrases N 30 page 127] E 130 poles to a chestnut oak N 46 W 95 poles to two chestnut oaks N 20 E 96 poles to a chestnut N 10 W 78 poles to a locust N 63 E 90 poles to a double chestnut S 87 E 46 poles to a white oak N 55 E 100 poles to a locust N 15 E 28 poles to four small hickories N 40 E 52 poles to two locust N 80 E 30 poles to a sugar N 26 E 52 poles to a chestnut sprout N 20 W 100 poles to a white oak and beech N 60 W 100 poles to a walnut sweet gum and spruce pine N 47 E 46 poles to a beech N 58 E 110 poles to two beeches and poplar S 63 — 37 poles to a beech, S 84 to three *linns* and buckeye S 8 E 94 poles to a chestnut and black oak S 79 E 22 poles to a beech and dogwood S 37 E 134 poles to the Beginning, and

Whereas, the greater part of the said tract of 2000 acres lies within the bounds of the said tract of 2500 acres, and

Whereas, in the year 1892, the said R. L. Brown, Jr. filed in the Circuit Court of the United States for the Western District of Virginia his declaration in ejectment against the said parties of the second part and others being case 198 on the Docket of said Court to recover the possession of the said tract of 2500 acres and on the day of 189— the said plaintiff filed his bill in equity against said parties of the second part and others in said Court and obtained an injunction from the Judge of said Court restraining the defendants therein from cutting and removing timber from said tract of 2500 acres, which two suits are still pending and *undesided,* and

Whereas the said parties hereto have mutually made com-

promise and settlement of the matter in controversy in said two suits on the following terms to-wit:

First, the plaintiff to have all the coal and minerals in all parcels of the tract of 2000 acres claimed by the defendant parties hereto which lie within the bounds of the tract of 2500 acres claimed by the plaintiff that is to say all the coal and mineral in their parcels within the interlocks of said tracts of 2000 acres claimed by the defendants and said 2500 acres and as appurtenant to the coal and minerals for mining purposes all the timber measuring (16) sixteen inches and under in diameter two feet above surface of page 128] ground that may be standing on said land at the time of the mining of the coal and minerals with the right to use so *mutch* water and stone as may be necessary to mine and remove the said coal and minerals with the right to erect on said land all necessary buildings and structures for mining of coal and *coaking* same with the right of ingress and egress by railroads or otherwise to carry transport mine and remove the coal and minerals mentioned and other things necessary in the *oporation* of coal mines and coke ovens, the provisions of this agreement not to prevent the owners of the surface at any time before mining operations are commenced from clearing the timber from said lands for agricultural purposes or fuel.

Second, all the defendants parties to this agreement to be released from all claims for damages for timber cut on the portion of said land claimed by them as shown by the report of survey and plat of J. C. Raines filed in said cause.

Third, all the defendants parties to this agreement to pay their respective *porportional* part of the cost of defense of said two suits, according to the acreage of land claimed by each.

Fourth, the plaintiff to release all the defendants who become parties to this agreement from the payment of their proportional part of the cost of prosecuting the said two suits such proportional to be *assertained* and determined by the ration that their acreage of their respective *claimes beares* to the *acrage* of the whole land in controversy; and in the event of plaintiff's recovery of the lands he will take judgment against the other defendant only for the residue of cost.

Fifth, no provision in this agreement or proposition to be

construed as *releaving* the defendants who do not join herein from the payment of any cost or damages.

Sixth, should all the defendants to said two suits the parties named above join in this agreement then in such event each party to pay its own cost, the plaintiff his own cost and the defendants their costs.

page 129] Seventh, mutual deeds of conveyance to be made by the parties defendants hereto and said Brown in conformity with the provisions of this proposition and judgment of the Court thereon each party defendant hereto disclaims as to residue of land.

Eight, the parties hereto agree that defendants retain the privileges of taking such coal from said land as they may need for their own domestic use or use their tenants, not to exceed *eigh.*

Now, therefore, in consideration of the premises, and of the grant herein after made by the parties of the second part to the said R. L. Brown, Jr., the said R. L. Brown, Jr. doth grant, with covenants of special warranty, to the parties of the second part respectively the parts and parcels of said tract of 2000 acres claimed by them respectively as shown by the report of survey of *saids* and plat thereof made by J. C. Raines, under the order of the Court in said action if Ejectment and filed therein, the said tract of 2500 acres embracing all of the tract of 2000 acres except a part and parcel of 79 acres patented in the name of Jonathan Hurley, now claimed by the said George Charles excepting and reserving from the foregoing grant all the coal and minerals in the lands heretofore granted and as appurtenant thereto for mining purposes with all the rights and privileges of the timber on said parcels of land measuring 16 inches and under in diameter 2 feet above surface of ground that may be standing on the said land at the time of the mining of the coal and minerals, with the right to use so *mutch* water and stone as may be necessary to mine and remove said coal and minerals with the right to erect on said lands all necessary buildings and structures for mining of coal and coking same, with the right of ingress and egress by railroad or otherwise, to carry, transport, mine and remove the coal and minerals mentioned and other things necessary in the operating the coal mines and *coake* ovens. These appurtenances not to prevent the owner of the surface at any time before mining operation are commenced from clearing the timber from said lands for agricultural purposes or for fuel.

And in consideration of the *foreg*—— grant the page 130] said parties of the second part do grant, with covenants of special warranty unto the said R. L. Brown, Jr. all the coal and minerals, on and underlying all and every part of the said tract of 2000 acres which lie within the bounds of said tract of 2500 acres and as *appurtinant* to the coal and minerals therein and thereto for mining purposes all the timber measuring 16 inches and under in diameter two feet above the surface of ground that may be standing on the said land at the time of the mining the coal and minerals, with the right to use so *mutch* water and stone as may be necessary to mine and remove said coal and minerals with the right to erect on said lands all necessary buildings and structures for mining of coal and *coaking* same, with the right of ingress and egress by railroads or otherwise to carry, transport, mine and remove the coal and minerals mentioned and other things necessary in operating the coal mines and coke ovens, these appurtenances not to prevent the owner of the surface at any time before *minigg* operating are commenced from clearing the timber from said lands for agricultural purposes or for fuel.

Witness the following signatures and seals this the 14th day of March, 1899.

RICHARD L. BROWN, JR. (SEAL)
by W. A. McCURDY, Atty in fact
S. W. McINTURFF (SEAL)

Stamp $1.00

H. M. Francis (SEAL)

his
George x Charles (SEAL)
mark

his
Reece x Davis (SEAL)
mark

H. G. Charles (SEAL)

his
Moses x Charles (SEAL)
mark

James M. Charles (SEAL)

his
John x Charles (SEAL)
mark

State of Virginia,
City of Richmond, to-wit:

I, Chas. W. Clemmitt, a Notary Public in and
page 131] for the City of Richmond in the State of Virginia
do certify that H. A. McCurdy whose name is signed as attorney in fact for Richard L. Brown, Jr. to the writing hereto annexed *beareing* date on the *fourteeth* day of March eighteen hundred and ninety nine has acknowledged the same as the act and deed of the said R. L. Brown, Jr. before me in my said City.

Given under my hand this fifteenth day of March in the year eighteen hundred and ninety nine.

CHAS. W. CLEMMITT
Notary Public

State of Virginia,
County of Buchanan, to-wit:

I, John C. McCoy, a justice of the Peace for the County of Buchanan aforesaid, in the state of Virginia, do certify that S. W. McInturff, H. M. Francis, George Charles, John Charles, Reece B. Davis, James M. Charles, H. G. Charles and Moses Charles whose names are signed to the writing hereto annexed *beareing* date on the 14th day of March in the year 1899 has acknowledged the same before me, in the County aforesaid.

Given under my hand this 29th day of April, 1899.

JOHN C. McCOY, J. P.

State of Virginia,
County of Buchanan, to-wit:

I, L. G. Stacy, a Justice of the Peace for the County of Buchanan aforesaid, in the State of Virginia, do hereby cert-

ify that Moses Charles whose name is signed to the writing hereto annexed *beareing* date on the 14 day of March in the year 1899 has acknowledged the same before me in my county aforesaid.

Given under my hand this the 16th day of April, 1900.

L. G. STACY, J. P.

page 132]

Virginia, County of Buchanan, to-wit:

In the Clerk's Office of the County Court of the County and State aforesaid, the 14th day of June, 1900 the foregoing writing was presented and admitted to record and together with the certificate of acknowledgment and the same being properly stamped, recorded in Deed Book "T," Page *184*.

Teste: W. L. DENNIS, Clerk
by John C. McCOY, D. C.

A COPY TESTE:
JENNINGS L. LOONEY, CLERK
CIRCUIT COURT OF BUCHANAN COUNTY, VA.
Fee $7.00 not pd.

page 133] NO. 198—FINAL ORDER FILED OCT. 17, 1899.

In the Circuit Court of the United States, Fourth Circuit, Western District of Virginia, Regular October Term, at Abingdon, continued and held on Tuesday, the 17th day of October, A. D. 1899, present and presiding Hon. John Paul, District Judge.

R. L. BROWN, JR. PLAINTIFF
VS.
H. G. CHARLES, GEO. ESTEP, JAMES R. HURLEY, ELI COOK, REECE B. DAVIS, W. M. FRANCIS, JOHN CHARLES, MANTERVELLE CHARLES, GEORGE CHARLES AND S. W. MCINTURFF
DEFENDANTS

This day *came* the plaintiff by his attorneys and the defendants by their attorneys and the plaintiff by his attorneys

presented to the Court, and by leave of Court, filed with the papers in this cause, an agreement of compromise of matters in controversy in this action, signed by plaintiff and the defendants H. G. Charles, S. W. McInturff, H. M. Francis, Reece Davis, and Moses Charles, also deed of the plaintiff and of said defendants and of said George Charles conforming said agreement of compromise, the terms of said settlement and compromise of this case as shown by said agreement and deed being as follows:

First, the plaintiff to have all the coal and mineral in all parcels of the tract of 2000 acres claimed by the defendant parties hereto, which lies within the bounds of the tract of 2500 acres claimed by the plaintiff; that is to say, all the coal mineral in their parcels within the interlock of 2000 acres claimed by the defendants, and said 2500 acres and as *apputinant* to the coal and minerals for mining purposes, all the timber *measureing* (16) sixteen inches and under in diameter two feet above the surface of the ground, that may be standing on said land at the time of the mining of the coal and minerals with the right to use so much water and stone as may be necessary to mine and remove the said coal and minerals with the rights to erect on said lands all necessary buildings and structures for mining of coal and page 134] *cokeing* of same, with the right of ingress and egress by railroad or otherwise to carry, transport, mine and remove the coal and mineral mentioned, and other things necessary in the operating of coal mines and coke ovens, the provisions of this agreement not to prevent the owners of the surface at any time before mining operations are commenced from clearing the timber from said lands for agricultural purposes or fuel.

Second, all the defendants parties to this agreement to be released from all claim for damages for timber cut on the portions of said land claimed by them as shown by the report of survey and plat of J. C. Raines filed in said cause.

Third, all the defendants parties to this agreement to pay their respective proportionals part of the cost of defence of said two suits according to the acreage of land claimed by each.

Fourth, the *plantiff*, to release all the defendants who become parties to this agreement from the payment *propotional* part of the costs of prosecuting the said two suits such *propotion* to be *assertained* and determined by the ratio that

their *acrage* of their respective claims *beares* to the acreages of the whole land in controversy and in event of plaintiffs recovery of the land he will take judgment other defendants only for the residue of the cost.

Fifth, no provisions in this agreement to be construed as *releving* the defendants who do not join herein from the payment of any cost or damages.

Sixth, should all the defendants to said two suits, the parties named above join in this agreement, then in such event, each party to pay his own costs, the *plantiff* his own costs and the defendants their cost.

Seventh, mutual deeds for conveyance to be made by the parties defendants hereto and said Brown in conformity with the provisions of this proposition and judgment of the Court thereon, each party defendant to disclaim as to residue of land.

Eight, the parties hereto agree that defendants page 135] retain the privilege of taking such coal from said land as they may need for their own domestic use or use of their tenants not to exceed eight.

It is, therefore, considered and ordered by the Court that the foregoing agreement of settlement and compromise be entered as the judgment of the Court, and that the plaintiffs hold in fee simple absolute all the coal and minerals in, on and underlying all and every part of the tract of 2000 acres claimed by the defendants which lies within the bounds of the said tract of 2500 acres and as *appurtinant* to the coal and mineral therein and thereto for mining purposes all the timber *measureing* 16 inches and under in diameter 2 feet, above surface of ground, that may be standing on the said land at the time of the mining of the coal and minerals with the right to use so much water and stone as may be necessary to mine and remove said coal and minerals with the right to erect on said land all necessary buildings and structures for mining of coal and *cokeing* of same, with right of ingress and egress with railroads or otherwise to carry, transport, mine and remove the coal and mineral mentioned and other things necessary in operating of coal mines and coke ovens, these appurtenances not to prevent the owners of the surface at any time before mining operations are commenced from clearing the timber from said lands for agricultural purposes or fuel; and that plaintiff recover the possession of the residue of said tract of 2500 acres in his declaration mentioned, which

was granted by the Commonwealth of Virginia to C. A. Lanhart, A. J. May, and C. T. Painter, on August 5th, 1876, in fee simple absolute, and that the said defendants have and hold respectively the parts and parcels of the tracts of 2000 acres surveyed for and in the name of Jonathan Hurley for settlement claim on the —— day of November, 1873, which is claimed by them respectively as shown by the report of survey of said land and plat thereof made by J. C. Raines under order of the Court in said action of Ejectment, and filed therein on the 29th day of April, 1897, to-wit: W. G. Charles, 120 Acres, S. W. McInturff 134 Acres, Moses Charles, 1450 acres, W. M. Francis, 503-¼ Acres, John Charles & Reece Davis 362-¾ excepting however, all the coal and

page 136] minerals in the said parcels mentioned hereinbefore adjudged to the plaintiff in this action with the rights and privileges hereinbefore mentioned as appurtenant to said coal and minerals, it appearing to the Court that the defendant W. G. Charles has paid all the cost of the defendants in this behalf expended except the sum of ($30.00) thirty dollars; It is, therefore, considered and ordered by the Court that W. G. Charles recover of his said co-defendants proportional parts of the said costs under third clause of this agreement of compromise to-wit: S. W. McInturff 134-/2570th parts, Moses Charles 1450/2570 parts, W. M. Francis 503/2570th parts subject to the payment of the said sum of $30. John Charles and Reece B. Davis 363/2570th parts, and for which amounts of costs execution are awarded in favor of H. G. Charles against said defendants for their proportional parts of said costs.

It is further adjudged and ordered that the defendants and the plaintiff deliver to the Clerk of this Court Deed in *accordiance* with the said written agreement of compromise within the next 40 days and the Clerk of this Court is directed whenever thereafter requested by the attorney for the plaintiff defendant to do so to transmit said Deed and Certified Copy of this Judgment to the Clerk of Buchanan County Court for record in his office.

It is further ordered that the rule awarded at the last term of the Court against Moses Charles be discharged and dismissed and this case is stricken from the docket.

The foregoing is a true copy from the Order Book of the Court.

Witness my hand & the seal of the Court, March the 30, 1900.

I. C. FOWLER, Clerk, U. S. Court, W. D. Va. at Abingdon

UNITED STATES CIRCUIT COURT WESTERN DISTRICT OF VIRGINIA
VIRGINIA, COUNTY OF BUCHANAN, to-wit:

In the Clerk's Office of the County Court of the County and State aforesaid the 15th day of June, 1900, the foregoing writing was presented and admitted to record and together with the certificate of the U. S. Clerk, recorded in Deed Book "T," page 193.

page 137] Teste: W. L. DENNIS, Clerk
By JOHN C. McCOY, D. C.

★ ★ ★ ★ ★

page 138] This Deed made this 25th day of April in the year one thousand nine hundred between Richard L. Brown, Jr. of the City of Hermando, in the County of Desota, State of Mississippi and late of the County of St. Louis Minnesota, party of the first part, and A. C. Flood, of the City of St. Paul County of Ramsey, State of Minnesota, party of the second part, Witnesseth: that for and in consideration of the sum of Five Dollars the said Richard L. Brown, Jr., doth grant unto the said A. C. Flood, with general warranty, all his interest of every kind and character in and to the following tracts of land, situated in the county of Buchanan in the State of Virginia, on the waters of Race Fork of Knox Creek viz. all the coal and mineral rights in on and under lying the several tracts of land whereof the following parties now own the surface viz. a tract of land of one hundred and twenty acres (120A) owned by H. G. Charles. A tract of land of one hundred and thirty two acres (132A) owned by S. W. McInturff; a tract of land of one thousand four hundred and fifty acres (1450A) owned by Moses Charles; a tract of land of Five Hundred and three and one quarter acres (503 ¼ A) owned by H. M. Francis and a tract containing two hundred and sixty three and three quarters acres (263.75A) be the same more or less and owned by John Charles, Reece B. Davis, Eli Cook and others. These several tracts of land adjoin each other and form a body of two thousand four hundred and sixty nine acres (2469A) be the

same more or less the said last mentioned tract lying on the Southern part thereof. Also the fee simple interest in a certain tract of one hundred acres (100A) be the same more or less, lying on the west of tract belonging to the said Francis and adjoining that owned by said Moses Charles. Also the fee simple interest in a certain tract of one hundred and seven acres (107A) be the same more or less lying West of that tract of said McInturff and adjoining those owned by said H. G. Charles and Moses Charles. The interest of the said party of the first part in the said several tracts of land above mentioned is fully set forth in the papers of the Ejectment Suit of *Richard L. Brown, Jr.* vs. *H. G.*
page 139] *Charles, et als,* in the Circuit Court of the United States for the fourth District Western District of Virginia at Abingdon, Virginia, and especially the final order entered therein on the *sevententh* day of October Eighteen hundred and ninety nine a copy of which is hereto attached and made a part of this deed reference is also made to the plat hereto attached showing the boundaries of said different tracts and their proximity to each other and which is a transcript of made by the order of the said Court and the original of which is filed in the papers of the said suit the same having been made by J. C. Raines surveyor of Buchanan Co. Special reference is hereby made to an agreement bearing date on the fourteenth day of March, eighteen hundred and Ninety nine between said Brown of the onepart and H. G. Charles S. W. McInturff, Moses Charles, H. M. Francis, George Charles, John Charles, Eli Cook and Reece B. Davis of the other part, which is recorded contemporaneously with this deed in the County *Countyof* Buchanan County, wherein the *Virdict* mentioned above in suit of *Brown* vs. *Charles* was carried into effect the said Richard L. Brown, Jr., covenants that he has *have* the right to convey the said land to grantee that he has done no act to encumber the land that the Grantee shall have quiet possession of said land free from all encumbrances and that he the party of the first will execute such further assurances of the said land as may be requisite.

Witness the following signature and seal.

RICHARD L. BROWN (SEAL)

State of Miss. Desota Co. City of Hernando, to-wit:

I, T. R. Maxwell, a Notary Public for the City aforesaid

in the State of Miss. do certify that R. L. Brown, Jr., whose name is signed to the within writing, bearing date on the 25th day of April, 1900 has acknowledged the same before me in my City aforesaid. Given under my hand and official Seal this 22 day of May 1900.

T. R. MAXWELL Notary Public

(CHANCERY COURT COUNTY OF DESOTA)
(MISSISSIPPI

$1 $1	$1 $1	50 50
RLB	RLB	RLB
April 25	April 25	April 25
1900	1900	1900

page 140] Virginia, In the Clerk's Office of the County Court of Buchanan County, this the 14th day of June, 1900, the foregoing deed together with the annexed certificate of acknowledgment and the same being properly stamped was presented in said office admitted to record and recorded.

* * * * *

page 141] This Deed, made and entered into this May 1, 1920, by and between H. G. Charles and Minnie Charles, his wife, parties of the first part, and Jno. W. Flannagan, Jr., party of the second part.

WITNESSETH:

That for and in consideration of the sum of $1.00 and other good and valuable consideration, paid, the parties of the first part do hereby grant, bargain, sell and convey unto the party of the second part all their right, title and interest, whether at law or in equity, in and to all the coal, oil, gas and other minerals, on and under all those two tracts or parcels of land, situate, lying and being in Buchanan County, Virginia, on the waters of the Race Fork Knox Creek and more particularly bounded and described as follows:

Tract Number one: BEGINNING at the Deadening Branch,

thence 1 24 E 116 poles to a sugar on top of a knob, S 10 E 28 poles to two small white oaks, S 60 E 36 poles to a black pine on a high knob, S 60 E 154 poles to a large chestnut oak on top of a ridge, S 30 W 34 poles to a chestnut, S 74 W 56 poles to a chestnut oak and hickory, S 44 W 58 poles to two hickories and a black oak, S 74 poles to a spanish oak, S 15 W 30 poles to a white oak, S 54 W 20 poles to two small lynns and a sugar, S 73 W 100 poles to two chestnut oaks, S 45 W 18 poles to two hickories, S 51 E 60 poles to two chestnuts oaks, S 13 E 26 poles to two chestnut oaks, S 37 W 34 poles to two chestnuts, S 10 E 76 poles to two dogwoods and black oak, S 73 W 116 poles to a spanish oak, N 87 W 72 poles to ——————, S 75 W 80 poles to two beeches and sugar, N 40 E 200 poles down Race Fork on the northeast side of 79 acres to a stake S 70 W 300 poles to a small hickory, S 60 W 86 poles to a chestnut oak, N 57 W 80 poles to a gum, N 16 W 58 poles to a double chestnut, N 3 W 28 poles to a gum, N 27 E 48 poles to two small chestnuts, N 25 E 240 poles to two chestnut oaks, N 20 E 96 poles to a chestnut oak, N 10 W 78 poles to a locust, N 63 E 90 poles to a double chestnut, N 36 E 300 poles to a white oak and beech, N 60 W 100 poles to a walnut, sweet and spruce pine, N 47 E 46 poles to a beech, N 58 E 110 poles to two beeches and poplar,
page 142] S 63 E 37 poles to a beech, S 84 poles to three lynns and buckeye, S 8 E 94 poles to a chestnut and black oak, S 79 E 22 poles to a beech and dogwood, S 37 E 170 poles to the BEGINNING, containing 2500 acres, more or less; and being the same land granted by the Commonwealth of Virginia, to C. A. Lonhart, A. J. May and C. T. Painter by patent bearing date the 5th day of August, 1876, and of record in the Land Office at Richmond, Virginia, in Book 119, page 178,

Tract Number Two: BEGINNING at a lynn and sugar on the Race Fork above the Deadening Branch, S 74 E 116 poles, crossing Race Fork to a sugar on top of a knob, S 10 E 28 poles to a small white oaks, S 60 E 36 poles to a black pine on a high knob, S 40 E 154 poles to a large chestnut oak on top of the ridge, S 30 W 74 poles to a chestnut, S 74 W 56 poles to a chestnut oak and hickory, S 44 W 58 poles to two hickories and black oak, S 74 poles to a spanish oak, S 15 W 30 poles to a white oak, S 54 W 20 poles to two small lynns and sugar, S 73 W 100 poles to two chestnut oaks, S 45 W 18 poles to two hickories, S 51 E 60 poles to a chestnut oak, S 13 E 26 poles to two chestnut oaks, S 37 W 34 poles to two

chestnut oaks, S 10 E 76 poles to two dogwoods and black oak, S 73 W 116 poles to a chestnut oak, N 87 W 72 poles to a white oak, S 75 W 80 poles to two beeches and sugar on the back line of a 79 acre survey, thence N 67 W 22 poles to a spruce pine and lynn, N 88 W 50 poles to a beech and black gum, S 15 E 16 poles to a poplar, S 63 W 32 poles to a beech and witch hazel on the bank of Race Fork, N 43 W 48 poles to a small hickory, S 60 W 86 poles to a chestnut oak, N 57 W 80 poles to a black gum, N 16 W 58 poles to a double chestnut, N 3 W 28 poles to two lynns, N 27 E 48 poles to two small chestnuts, N 75 E 110 poles to three sassafras, N 30 E 130 poles to a chestnut oak, N 46 W 95 poles to two chestnut oaks, N 20 E 96 poles to a chestnut, N 10 W 78 poles to a locust, N 63 W 90 poles to a double chestnut, S 87 E 46 poles to a white oak, N 55 E 100 poles to a locust, N 15 E 28 poles to 4 small hickories, N 40 E 52 poles to two locusts, N 80 E 30 poles to a sugar, N 26 E 52 poles to a chestnut sprout, N 20 W 100 poles to a white oak and beech, N 60 W 100 poles to a walnut, sweet gum and spruce pine, page 143] N 47 E 46 poles to a beech, N 58 E 110 poles to two beeches and *and* poplar, S 63 37 poles to a beech, S 84 poles to three lynns and buckeye, S 8 E 94 poles to a chestnut and black oak, S 79 E 22 poles to a beech and dogwood, S 37 E 134 poles to the BEGINNING containing 2000 acres, more or less, and known as the Jonathan Hurley 2,000 acre Court Right.

Together with the right of ingress, egress and passage over, through and under the surface of said lands for the purpose of mining and removing all the coal, oil, and gas and other minerals from said tracts of land or from other lands owned by the said party of the second part, or his assigns, and the right to remove all the coal and other minerals, oil and gas, without leaving any support for the overlying strata, and without any liability for damage which may result from the breaking of said strata, and the right to manufacture coke or other products from said coal, oil or gas, and the right to use so much of the surface lands as may be necessary for coal yards, dumping yards, or grounds on which may be dumped the waste from the mines, for the erection or location of tipples, buildings and machinery for mining purposes, and for the erection of coke ovens, washeries, coal crushing and other machinery necessary for such purposes, for the erection of houses for miners, *commisaries,* and such

other buildings as may be necessary; also the right to use the water and necessary stone thereon for any and all purposes herein contemplated, and to pump the water from said mines onto said surface, if necessary, and for that purpose to lay from time to time such pipes as may be necessary; also the right to cut and use such timber on said land as may be necessary for the purposes herein contemplated, as follows; all the timber 12 inches and under on said lands, if on said tracts of land at time of mining, so as not to interfere with agricultural purposes; and all other necessary mining rights over and under the said tracts of land.

Right of way, also, is here granted to the said party of the second part, or his assigns, for such roads, rail-
page 144] roads and tramroads over and under the surface of said tract of land as may be necessary for mining and removing the said coal or other minerals or removing the said oil from these or any other lands owned or leased by the party of the second part, or his assigns, and for the purpose incident to the operations herein contemplated.

It is expressly provided that, if the operations herein contemplated, shall at any time be abandoned by the party of the second part, or his assigns, then all machinery, houses, railroads, tramroads, and materials of whatever character placed on said lands may be removed therefrom.

The said right and privileges hereby granted, shall forever run with, and be appurtenant to any and all the coal and other minerals, oil, gas and timber, or other products in, on and underlying the lands herein described, and in, on and under any other lands now owned or hereafter acquired by the party of the second part, or his assigns, and also all coal and minerals, oil, gas and timber rights now owned or hereafter acquired by the said party of the second part or his assigns.

There is accepted from the operation of this deed all the land in fee simple acquired by the said H. G. Charles from Celia Frances, and H. M. Frances, her husband, by deed dated ——— day of ——, 19——, and recorded in Buchanan County Deed Book No. ——, page ——, to which deed special reference is here made for a more particular description.

Witness the following signatures and seals.

H. G. CHARLES (SEAL)
MINNIE CHARLES (SEAL)

Virginia, County of Buchanan, to-wit:

I, Hayes Coleman, a Justice of the Peace in and for the County of Buchanan and State aforesaid, do hereby certify that H. G. Charles and Minnie Charles, his wife, whose names are signed to the foregoing writing, bearing date the 1st day of May, 1920, have acknowledged the same before me, in my county aforesaid.

Given under my hand this the 5th day of May, 1920.

HAYES COLEMAN, J.P

page 145] Virginia, County of Buchanan, to-wit:

In the Clerk's Office of the County and State aforesaid, the 30th day of May, 1920, the foregoing writing was presented and admitted to record and together with the annexed certificate of acknowledgment, recorded in Deed Book No. 53, page 212.

Teste: S. R. HURLEY, Clerk
By: G. E. ADKINS, D. C.

STATE OF VIRGINIA,
COUNTY OF BUCHANAN, to-wit:

I, Jennings L. Looney, Clerk of the Circuit Court for the County of Buchanan, in the State of Virginia, do hereby certify that the foregoing writing is a true and correct copy of a Deed, bearing date May 1, 1920, from H. G. Charles and wife to Jno. W. Flannagan, Jr., as the same appears of record in my said office in Deed Book No. 53, page 212.

Given under my hand this the 10th day of January, 1963.

JENNINGS L. LOONEY, Clerk
Circuit Court of Buchanan County, Virginia.
By LOIS McCLANAHAN, Deputy Clerk.

page 146]

★ ★ ★ ★ ★

OPINION — F. W. SMITH, JUDGE

This is a proceeding for declaratory judgment as to the

rightful owner of the coal underlying 115.63 acres of land on Knox Creek, in Buchanan County, Virginia, covered by a 2500-acre grant from the Commonwealth of Virginia to Charles A. Lonhert, A. J. May and Charles T. Painter dated August 5, 1876. It is agreed by stipulation of the parties that by mesne conveyances as set out in the answer of Buchanan Realty Corporation filed in this cause on January 6, 1961, the title of the grantees of all the coal and minerals underlying the 2500-acre grant aforesaid passed to and is now vested in Buchanan Realty Corporation; but by this stipulation it is denied by Mountain Mission School, Inc. that by said deeds Buchanan Realty Corporation acquired the true title.

The Mountain Mission School, Inc. does not undertake to claim a good paper title going back to any grant from the Commonwealth of Virginia, but it claims under a deed from Shadrick Dotson to H. G. Charles dated July 6, 1889, and recorded in the Clerk's Office of Buchanan County, Virginia, purporting to convey a tract of 750 acres which covers the 115.63 acres of land in controversy, and that the 750 acres so conveyed to H. G. Charles was conveyed by R. E. Williams, Special Commissioner of the Circuit Court of Buchanan County, Virginia, in the chancery cause of *E. E. Smith, Treasurer, etc.* v. *A. C. Stacy, et al,* to W. F. Genheimer by
page 147] deed dated July 14, 1938, and that this deed from R. E. Williams, Special Commissioner, conveyed good title to the coal in question because there was no exception or reservation therein, and that Mountain Mission School by mesne conveyances has acquired the title which was conveyed to W. F. Genheimer by said deed from R. E. Williams, Special Commissioner.

The Mountain Mission School has not shown that H. G. Charles acquired good title by his deed of July 6, 1889, from Shadrick Dotson. The 750 acres was sold in the suit of *E. E. Smith, Treasurer of Buchanan County, Virginia, etc.* v. *A. C. Stacy, et al,* which was a general creditors suit. The Commissioner in Chancery to whom the matter was referred for the purpose of reporting the lands of H. G. Charles and the liens against same reported the 750 acres as being owned by H. G. Charles, and reported the judgments and liens against same, among which was a lien in favor of John W. Flannagan, who at that time owned the coal and mineral under the superior title of the said 2500-acre grant and also under a deed from H. G. Charles dated May 1, 1920, and recorded

May 30, 1920. The Court in said chancery cause confirmed the report of the Commissioner in Chancery and directed a sale of the 750 acres and appointed R. E. Williams, Special Commissioner, to make the sale as required under the decree of the Court, and W. F. Genheimer became the purchaser of the 750-acre tract at the sale made by said Commissioner Williams.

It is the contention of Mountain Mission School that, since this was a general creditors suit, the fact that John W. Flannagan, Jr., was a lien creditor was sufficient to make him a party to the suit so as to enable the Court to divest him of his title and convey good title to W. F. Genheimer by reason of Section 8-673 of the Code of Virginia, which provides as follows:

"If a sale of property be made under a decree or order of a court, and such sale be confirmed, the title of the purchaser at such sale shall not be disturbed unless within twelve months from such confirmation the sale be set aside page 148] by the trial court or an appeal be allowed by the Supreme Court of Appeals, and an order or decree be therein afterwards entered requiring such sale to be set aside; but there may be restitution of the proceeds of sale to those entitled."

John W. Flannagan, Jr., the predecessor in title of Buchanan Realty Corporation, who at that time held good paper title to the land in controversy, was not a party to the chancery suit in which the land was sold nor were any of the prior owners of the recorded paper title to the 2500 acres ever made parties in said chancery suit. Since it is admitted by the stipulation of counsel that the predecessors of the Buchanan Realty Corporation had good paper title at the time the land was sold in said suit and the deed made by said Special Commissioner, the Court in that proceeding had no jurisdiction to divest the true owner or owners of the land of their good paper title without due process of law. Only the debt as represented by the line could have been before the Court. In *Harris* v. *Deal,* 189 Va. 675, 54 S. E. (2d) 161, in the opinion by Justice Spratley the law with respect to due process is stated as follows:

"It is necessary to the validity of its judgment that a court must have jurisdiction over the subject matter and over the

necessary parties. It has no jurisdiction to act outside the limits of the law or mode of procedure, or beyond the issues in the pleadings. No judicial proceeding can deprive a man of his property without giving him an opportunity to be heard in accordance with the provisions of the law, and if a judgment is rendered against him without such opportunity to be heard, it is absolutely void. A void judgment is in legal effect no judgment. By it no rights are divested and from it no rights are obtained. All claims flowing out of it are void. It may be attacked in any proceeding by any person whose rights are affected. *Anthony* v. *Kasey*, 83 Va. 338, 5 S. E. 176; *Turner* v. *Barraud,* 102 Va. 324, 46 S. E. 318."

In the recent case of *Mission School* v. *White,* 204 Va. 256, the Court said:

"It is elementary that every man is entitled to a day in Court to defend his rights, and that a decree rendered against him when he has had no opportunity for defense, is a nullity and may be so pronounced by any court wherein it may be drawn into controversy. *Cronise* v. *Carper, et als.,* 80 Va. 678; *Ogden* v. *Davidson,* 81 Va. 757; *Lowry* v. *Noell,* 177 Va. 238; 13 S. E. 2d 312; *Harris* v. *Deal,* 189 Va. 675, 54 S. E. 2d 161; *Pennoyer* v. *Neff,* 95 U. S. 714, 24 L. Ed. 565; 12 Am. Jur., Constitutional Law, Sec. 569, page 262 and Sec. 573, pages 267 *et seq.*"

page 149] It was not the purpose of the Legislature, in the enactment of the Section of the Code relied upon by counsel for Mountain Mission School, to enable the Court at a judicial sale to divest one of the title to his property who was not a party to the suit. The Court in this instance, by its Special Commissioner, could convey no better title to the property than H. G. Charles owned unless the title of the true owner of the coal was attacked in the bill and the true owner made a party to the suit for that purpose and served with process. This was never done with respect to John W. Flannagan, Jr., the admittedly true owner of title, and the predecessor in title of Buchanan Realty Corporation. A contrary interpretation of this Section of the Code would render it unconstitutional in depriving the owner of title to his property without due process of law. The contention of Mountain Mission School that it acquired good title to the coal in question under the deed from R. E. Williams, Special Com-

missioner, is without merit.

It is further contended by Mountain Mission School that even though good title was not conveyed to H. G. Charles under his deed from Shadrick Dotson for the 750 acres covering the land in controversy, the deed from R. E. Williams, Special Commissioner, to W. F. Genheimer was sufficient for color of title to all that it purported to convey, including the coal and minerals, and that Mountain Mission School, claiming title thereunder, has held adverse possession of the 750 acres by acts of ownership such as cultivating a part of the land and claiming title to the extent of the boundaries of the 750 acres. However, there is no contention that Mountain Mission School acquired actual possession of any part of the coal or any other minerals by commercial mining thereof.

It is clear from the Stipulation of Facts and the title papers exhibited by Buchanan Realty Corporation that there was a severance of the title to the coal underlying the page 150] 2500 acres covered by the grant from the Commonwealth of Virginia to Lohnert, May and Painter. Paragraph 6 of the Stipulation states that "the deeds and other title papers alleged by Buchanan Realty Corporation in its answer filed in this cause on January 6, 1961, correctly and accurately set forth all the chains or links in the title of Buchanan Realty Corporation in support of its claim to the land in controversy." It appears that H. G. Charles, after acquiring his deed from Shadrick Dotson in 1889, became involved in a suit over the title to the 2500 acres in the Circuit Court of the United States Fourth Circuit, Western District of Virginia, in which Richard L. Brown, Jr., who was then the successor in title under said grant from the Commonwealth to Lohnert, May and Painter, was plaintiff and H. G. Charles was one of the defendants. There was a compromise of the controversy as shown by final order in that case entered on the 17th day of October, 1899, confirming the settlement and a deed which was executed on the 14th day of March, 1899, by which Richard L. Brown, Jr. conveyed the surface of said land to H. G. Charles, et al; and H. G. Charles, et al, conveyed the coal and minerals underlying 2000 acres, referred to in the Stipulation as the Jonathan Hurley Survey, included within the boundaries of said 2500-acre grant and covering the land in controversy. Thereafter Richard L. Brown, Jr. conveyed the coal and mineral underlying 2469 acres(it being the land embraced within said 2500-acre grant)

to A. C. Flood by deed bearing date the 9th day of July, 1890. As the chain of title shown in the answer of Buchanan Realty Corporation shows, Buchanan Realty Corporation claims title to the coal and minerals under A. C. Flood, this being one of the links in the chain of title which the stipulation refers to and which deed is exhibited. There was, therefore, clearly a severance of title to the surface from the title to the coal and mineral by the deed of 1899 by which Richard L. Brown, Jr. conveyed the surface to H. G. Charles, et al, and by the deed of 1900 by which Richard L. Brown, Jr. conveyed page 151] the coal and mineral to A. C. Flood. Not only did H. C. Charles join in the conveyance of the coal in settlement of the suit in the Federal Court in 1899 but again as late as May 1, 1920, he executed a deed to John W. Flannagan, Jr., conveying the coal and minerals on the 2,000-acre Jonathan Hurley Survey, which according to the stipulation covers the land in controversy (see Paragraph 2 of the Stipulation). While this latter conveyance of the coal and minerals by H. G. Charles would not constitute a severance, because it is clear that he did not own good title to the coal and minerals which he attempted to convey to Flannagan, Mountain Mission School, which claims that H. G. Charles had good title to both the surface and the coal and minerals, and claims title under H. G. Charles, cannot say there was no severance when the deed from Charles to Flannagan is proven and not denied.

Since there was a severance, there is no merit in the contention of Mountain Mission School that it has acquired title to the coal and minerals by adverse possession. The ownership of the surface of the land by Mountain Mission School, while undisputed, was the mere permanent possession of the surface only. It did not constitute possession of the mineral estate, which had been severed from the surface. Any such possession of the surface after the conveyance of the coal and minerals enured to the benefit of the owner of the coal and minerals. In order for the possession to be considered adverse there must have been actual commercial mining of the coal, which as already stated was not done in this case. *Clevinger* v. *Coal Company,* 199 Va. 216, 98 S. E. (2d) 670; *Mountain Mission School* v. *White,* 204 Va. 256.

It, therefore, follows that Buchanan Realty Corporation is the owner of the coal in controversy.

5-26-65

F. W. SMITH, Judge

page 152]

★ ★ ★ ★ ★

This cause came on this the 26th day of May, 1965, to be heard on the papers formerly read herein; upon decree entered by this Court on March 30, 1961, overruling the Demurrer of Mountain Mission School, Incorporated, theretofore filed in the Office of the Clerk of this Court, and giving Mountain Mission School, Incorporated, until April 10, 1961 in which to file its Answer; upon decree entered by this Court on April 10, 1961, on Motion of Mountain Mission School, Incorporated, giving said defendant until April 20, 1961, in which to file its Answer; upon Answer of Mountain Mission School, Incorporated, filed in the Office of the Clerk of this Court on April 19, 1961; upon Stipulation of Counsel filed in said Clerk's office on December 22, 1962, giving metes and bounds description of the land covering the coal, oil, gas and other minerals in controversy in this cause and filing a map of same as an exhibit therewith, and also stipulating the following: that the land in controversy is covered by a 2500 acre grant to Charles A. Lohnert, A. J. May and Charles T. Painter, dated August 5, 1876, and recorded in said Clerk's office in Grant Book No. 2, page 127; that said land is covered by a 2,000 acre survey to Jonathan Hurley, dated November 17, 1873, and recorded December 28, 1886, in said Clerk's office, in Deed Book "A," page 244, and is also covered by 750 acres of land formerly claimed by H. G. Charles under deed from Shadrick Dotson, dated July 6, 1889, and recorded December 30, 1889, in said Clerk's office, in Deed

page 153] Book "G," page 222; that the title papers alleged by Buchanan Realty Corporation in its Answer correctly and accurately set forth the links in its chain of title in support of its claim to the coal, oil, gas and other minerals in controversy in this cause; that the deeds set out in said Stipulation under which Mountain Mission School, Incorporated, claims also cover and include the land in controversy, but by said Stipulation counsel for each of said defendants denied that the other had obtained the true title to said land; by said Stipulation it was also agreed that any of the parties to the suit might thereafter introduce any evidence which it might desire and which was pertinent to any of the issues involved; upon another Stipulation of Counsel

filed in said Clerk's office on November 5, 1964, agreeing to the existence and contents of certain papers in the chancery suit of *E. E. Smith, Treasurer etc.* vs. *A. C. Stacy et als,* but Buchanan Realty Corporation denied that same affected the title to the coal, oil, gas and other minerals in controversy in this suit; upon depositions taken on behalf of Buchanan Realty Corporation on November 5, 1964, and filed in said Clerk's office on November 14, 1964, pursuant to notice dated November 2, 1964 given by said corporation, service of which was duly accepted by Mountain Mission School, Incorporated, and by Lester Coal Company, Incorporated, on said date; upon the depositions for the defendant, Mountain Mission School, Incorporated, taken and filed on the same dates, by agreement of counsel; upon brief of counsel for Buchanan Realty Corporation filed on December 16, 1964; upon brief of counsel for Mountain Mission School, Incorporated, both duly filed in said Clerk's office; upon oral argument of counsel for Buchanan Realty Corporation and counsel for Mountain Mission School, Incorporated, at which time counsel for Buchanan Realty Corporation by agreement, in-
page 154] troduced the following original deeds and other papers:

(1) Inter-partes deed of compromise and settlement between Richard L. Brown, Jr., of the one part, and H. G. Charles and others, of the other part, dated March 14, 1899, and recorded June 14, 1900, in said Clerk's office, in Deed Book "T," page 184.

(2) Final Order of the Circuit Court of the United States, Fourth Circuit, Western District of Virginia, dated October 17, 1899, and recorded in said Clerk's office in Deed Book "T," page 193, approving and confirming the last above mentioned deed.

(3) Deed from Richard L. Brown, Jr. to A. C. Flood, dated April 25, 1900, and recorded June 15, 1900, in said Clerk's office, in Deed Book "T," page 191.

(4) Copy Teste of deed from H. G. Charles and wife to John W. Flannagan, Jr., dated May 1, 1920, and recorded on the same date in said Clerk's office, in Deed Book No. 53, page 212, which attested copy had been formerly placed with the papers in this cause, but had not been marked filed.

Upon consideration of all of which the Court, proceeding to determine and decide this cause on its merits, is of the

opinion and doth adjudge, order and decree as follows:

(1) That Buchanan Realty Corporation is the true owner of all the coal, oil, gas and other minerals in, on and under the 115.63 acres of land in controversy in this cause, a metes and bounds description of which is set forth in Stipulation of Counsel for Buchanan Realty Corporation and Mountain Mission School, Incorporated, filed in said Clerk's office on December 22, 1962, and which 115.63 acres cover and include the 65-¼ acres leased by Mountain Mission
page 155] School, Incorporated, to Lester Coal Company, Incorporated, by deed of lease dated June 14, 1960, and recorded June 18, 1960, in said Clerk's office, in Deed Book No. 142, page 172, and on which mining has been done by said lessee.

(2) That Mountain Mission School, Incorporated, has been paid by said Lester Coal Company, Incorporated, the sum of $564.92, as royalty at 30¢ per ton on 18,683.10 tons of coal mined under the aforesaid lease prior to the institution of this suit.

(3) That Lester Coal Company, Incorporated, pursuant to decree of this Court, has deposited in Cumberland Bank & Trust Company, Grundy, Virginia, the sum of $32,753.03 as royalty at the rate of 30¢ per ton on 99,382.70 tons mined from said land since the institution of this suit, as provided by the lease to Lester Coal Company, Incorporated, from Mountain Mission School, Incorporated.

(4) That Lester Coal Company, Incorporated, has also mined from said 115.63 acres of land, since the institution of this suit, 7,315.45 tons of coal, the royalty on which at 30¢ per ton, heretofore directed to be deposited, has not been deposited by Lester Coal Company, Incorporated, in the escrow account, and which it shall and is hereby ordered to immediately deposit in said account.

(5) That Buchanan Realty Corporation is the owner of and entitled to all royalties produced by the mining of coal on said 115.63 acres of land at the rate of 25¢ per ton, as provided in its lease to Lester Coal Company, Incorporated.

(6) That Buchanan Realty Corporation do recover of and from said Mountain Mission School, Incorporated, the sum of $4,670.78, being royalty on 18,683.10 tons of coal at the rate of 25¢ per ton, with interest thereon at the rate of 6% per annum from the date of the institution of this suit, De-

cember 8, 1960.

page 156] (7) That Buchanan Realty Corporation be and it is hereby entitled to receive 25¢ per ton on 106,698.20 tons of coal mined by Lester Coal Company, Incorporated, to be paid by said Bank from said funds hereby directed to be deposited and said funds now on deposit in Cumberland Bank & Trust Company, plus the accumulated interest at the rate of 3-½% per annum paid or to be paid by said Cumberland Bank & Trust Company on said deposits, and that Lester Coal Company, Incorporated, be and it is hereby entitled to receive the remaining 5¢ per ton on said 106,698.20 tons mined since the instiution of this suit, together with the accumulated interest as aforesaid.

(8) That Cumberland Bank & Trust Company, of Grundy, Virginia, is hereby directed to pay said sums to Buchanan Realty Corporation and Lester Coal Company, Incorporated, in the proportions hereinabove set forth.

(9) That the deeds in the chain of title from Shadrick Dotson down to and including the deed to Mountain Mission School, Incorporated, as shown in the record and Stipulations in this proceeding, and the lease from Mountain Mission School, Incorporated, to Lester Coal Company, Incorporated, are clouds on the title of Buchanan Realty Corporation to said 115.63 acres of coal, oil, gas and other minerals, and same are hereby set aside, vacated and held for naught insofar as same cover and include the coal, oil, gas and other minerals in, on and under said 115.63 acres.

(10) That Buchanan Realty Corporation do recover of and from the defendant, Mountain Mission School, Incorporated, its costs by it in this behalf expended.

To all of the foregoing rulings of the Court the defendant, Mountain Mission School, Incorporated, by counsel, duly excepted.

Mountain Mission School, Incorporated, expressing, by counsel, its intention to apply to the Supreme Court of Appeals of Virginia for an appeal from this decree, moved the Court for a stay of execution hereof a period of

page 157] 120 days, which motion is duly granted by the Court upon the condition that said Mountain Mission School, Incorporated, or someone in its behalf, execute a bond in the penalty of $7,000.00, with surety approved by the Clerk of this Court, within 15 days from the date of entry of this decree and conditioned according to law. The written

opinion of this Court is hereby made a part of the record in this case.

★ ★ ★ ★ ★

page 158]

★ ★ ★ ★ ★

Received and filed 28th day of June 1965

J. L. LOONEY, Clerk

NOTICE OF APPEAL

The defendant, Mountain Mission School, Incorporated, hereby gives notice of appeal from the decree entered in the above styled cause on the 26th day of May, 1965, and sets forth the following assignments of error:

ASSIGNMENT OF ERRORS

(1) The Court erred in decreeing that Buchanan Realty Corporation is the true owner of all the coal, oil, gas and other minerals in, on and under the 115.63 acres of land in controversy in said cause.

(2) The Court erred in decreeing that Buchanan Realty Corporation is the owner of and entitled to all royalties produced by the mining of coal on said 115.63 acres of land in controversy in said cause.

(3) The Court erred in decreeing that Buchanan Realty Corporation is entitled to recover of and from Mountain Mission School, Incorporated, the sum of $4,670.78, being royalty on the 18,683.10 tons of coal at the rate of 25¢ per ton, with interest thereon from December 8, 1960.

(4) The Court erred in decreeing that Buchanan Realty Corporation is entitled to receive 25¢ per ton on 106,698.20 tons of coal mined by the petitioner, Lester Coal

page 159] Company, Incorporated, to be paid from funds directed by the Court in said cause to be deposited in Cumberland Bank & Trust Company, plus the accumulated interest paid by said Cumberland Bank & Trust Company on said funds so deposited, and in further decreeing

that Lester Coal Company, Incorporated, is entitled to receive the remaining 5¢ per ton on said 106,698.20 tons mined since the institution of this cause, together with accumulated interest thereon.

(5) The Court erred in decreeing and directing Cumberland Bank & Trust Company of Grundy, Virginia, to pay said sums to Buchanan Realty Corporation and Lester Coal Company, Incorporated, in the proportions hereinabove set forth.

(6) The Court erred in refusing to decree that Mountain Mission School, Incorporated, is the true and lawful owner of the fee simple title to the 65-¼ acres of land leased by it to Lester Coal Company, Incorporated, by deed of lease dated June 14, 1960, including the coal, oil, gas and other minerals in, on and under the same.

(7) The Court erred in refusing to decree that Mountain Mission School, Incorporated, is entitled to receive the royalty of 30¢ per ton for all of the coal which has or which may hereafter be mined from said 65-¼ acre tract of land leased by it to Lester Coal Company, Incorporated, by its said deed of lease dated June 14, 1960, in accordance with its terms.

This 28th day of June, 1965.

MOUNTAIN MISSION SCHOOL, INCORPORATED
By _____
Counsel

★ ★ ★ ★ ★

page 161] IN THE CIRCUIT COURT OF BUCHANAN COUNTY, VIRGINIA

LESTER COAL COMPANY, PETITIONER
VS.
MOUNTAIN MISSION SCHOOL, INC. ET AL, DEFENDANTS

Evidence heard *ore tenus* by the Honorable F. W. Smith, Judge of the Circuit Court of Buchanan County, Virginia, on Wednesday, May 26, 1965, in the above styled cause.

APPEARANCES: MARJORIE COLEMAN, Counsel for Buchanan Realty Corporation; GEORGE C. SUTHERLAND and CARL C. GILLESPIE, Counsel for Mountain Mission School, Inc.

Myra Compton

MYRA COMPTON,
being first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

Miss Coleman:

Q. Your name is Myra Compton?

A. Yes.

Q. By whom are you employed?

A. Lester Coal Company.

page 162] Q. Is that a Virginia corporation?

A. A Virginia Corporation, owned by Russell and Mack Lester.

Q. Were you working for them at the time a lease was executed by Mountain Mission School to Lester Coal Company?

A. Yes.

Q. And also at the time a lease was executed to Lester Coal Company by Buchanan Realty Corporation?

A. Yes.

Q. Will you give the court the amount of tonnage which was mined from the 115.63 acres of land in controversy, prior to the institution of this suit, and the royalty thereon paid to the Mountain Mission School?

A. 18,683.10 tons.

Q. What was the rate of royalty that you were required to pay under that lease?

A. Thirty cents a ton.

Q. What was the amount of royalty paid the Mountain Mission School on that tonnage?

A. $5,604.92.

Q. That was the amount of coal mined, at the rate of 30¢ a ton?

A. Yes.

Q. That then was the amount paid to Mountain Mission School?

A. Yes.

Q. Was any of that amount ever repaid to Buchanan Realty Corporation or anyone?

A. No.

Q. It was not repaid to Lester Coal Company, Incor-

porated?

page 163] A. No.

Q. After the institution of the suit, and Lester Coal Company was required to deposit the amount of money due for royalty in the Cumberland Bank and Trust Company, will you give the tons mined and the amount which is now on deposit in the Bank covering royalty since the institution of this suit?

A. The tonnage mined was 99,382.70, and the royalty rate that I have deposited in the bank at 30¢ per ton.

Q. And that amounts to —

A. This amount will not give you the total amount in the bank because the amount of money in the bank represents the royalty plus interest.

Q. What is the amount in the bank on deposit?

A. The amount of money on deposit as of April 20, 1965, was $32,753.03.

Q. The court has decided that the coal on the 115.63 acres of land is owned by Buchanan Realty Corporation, and the amount of money in Cumberland Bank that was deposited, the 30¢ per ton, in your opinion who is entitled to that $32,-753.03?

Mr. Sutherland: Not her opinion.

A. I deposited 30¢ because there was a dispute and the amount of royalty we were to pay Mountain Mission School was 30¢ per ton and the amount we were to pay *Ruchanan* Realty Corporation was 25¢. and I deposited 30¢ in the event Mountain Mission School should win, so we wouldn't have to back up and pay it.

page 164] Miss Coleman:

Q. Do you contend then that if Buchanan Realty Corporation wins out that one-sixth of that would have to be paid to Lester Coal Corporation? and 5/6 to Buchanan Realty Corporation?

A. Yes.

Q. Because they agreed that they would accept 25¢ per ton?

A. Yes, sir.

Q. You stated that the 99,382.10 tons mined at 30¢ per ton

did not make the amount in the bank, how is that in the bank?

A. On time deposit.

Q. And does the Bank add interest to that?

A. I get a certificate of deposit, which is renewable every six months, and that is deposited in the bank, I endorse it Lester Coal Corporation by me and they give me a certificate.

Q. Was there any other coal mined from this land, you gave the tonnage mined prior to the institution of this suit as 18,683.10 and you said that Mountain Mission School would owe Buchanan Realty Corporation royalty on that amount at 25¢ per ton, was there any other coal mined?

A. Yes, if you can read the map, I will show you, in other words, in all this acreage of land, there was a little round hole, which nobody claims, but Buchanan Realty Corporation, there was one little acreage Mountain Mission School did not claim and Buchanan Realty Corporation did, I have already paid royalty on 7,315.5 tons to Mountain Mission School from this tract.

page 165] Q. Which Mountain Mission School never did claim?

A. And Mountain Mission School never did claim this tract, I have a map here.

Q. That would be in addition to the $5,604.92 then?

A. Yes, $5,604.92 was on the disputed territory and the 7,315.5 tons was not disputed.

Mr. Gillespie: You mean it never has been claimed by the Mountain Mission School?

A. No, I have this map, the engineer gave me a map, after he gave it to me, it was such a small tract of land they were on it before the engineer caught it, and I paid it to Mountain Mission School.

Mr. Sutherland: We want to object to his and her opinion as to where this coal was mined from, that would be clearly hearsay, the engineer is only one that would know that.

The Court: I suppose there wouldn't be any dispute about it.

Miss Coleman: I am not sure myself how it goes.

Mr. Gillespie:

Q. Are you still mining up there?

Myra Compton

A. No, sir, I would have to check my records, but I think '63 was the last mining. These figures remain the same, but there is a good deal of interest on that money each month.

The Court:

page 166] Q. What I want to know is how many tons Lester Coal Company has mined off this land in dispute?

A. The tonnage would be 99,382.70 plus 7,315.50 plus 18,-683.10.

Miss Coleman:

Q. Then it is my understanding on the total of those three figures Buchanan Realty Corporation would be entitled to 25¢ per ton?

A. Yes, sir.

Q. And any over that would be due Lester Coal Company?

A. Yes, sir.

The Court:

Q. I want to know how much of that amount has been put in the bank?

A. Judge Smith, I don't want to confuse anybody.

Q. I am not confused at all, if you haven't deposited all the royalty, you are going to have to do it. That should be done right away and then whoever wins will get it.

Q How much was mined on the 115.63 acres before this suit was instituted?

A. Prior to the suit 18,683.10.

Q. How much has been mined since the institution of this suit from the land in controversy?

A. 106,698.20 tons.

Mr. Gillespie: I thought it was 99,382.70?

A. It was 99,382.70 plus 7,315.5.

Q. Then there was another tonnage?

A. The triangle that wasn't in dispute was 7,315.5.

page 167] The Court: What does that have to do with it? Then as I understand you, 18,683.10 tons were mined on the land in controversy prior to the institution of this suit?

A. Yes.

Q. And there has been mined since the institution of this suit 106,698.20 tons on the land in controversy since the institution of this suit?

A. Judge Smith, I did it the way I was told to do.

Q. I am not asking you that, I am asking you how many tons were mined after the institution of the suit?

A. The 106,698.20 is the correct figure. Judge Smith, you will have to forget about the 7,315.5. It all ties in together. It is very, very complicated.

Q. You are making it complicated.

A. The engineer complicated it at the beginning.

Q. Are you sure that is correct, 106, 698.20 on this land that is in controversy since the institution of this suit?

A. That is correct but the amount deposited in the bank was only on 99,382.70, and I will have to deposit the amount on 7,315.5 tons.

Q. I just wanted to get it clear in the record.

The Court: According to the court's holding in this case, in the opinion, the Buchanan Realty Corporation would be entitled to 25¢ per ton under its lease for the amount over 18,683.1 mined prior to the institution of this suit, and for the 106,698.20 which has been mined after the in-
page 158] stitution of this suit. Of course they will recover from Mountain Mission School that amount paid to them prior to the suit, and the money will be in the bank for the remainder, and if not there it will have to be accounted for. The bookkeeper says it will be correctly deposited.

Mr. Gillespie: Your Honor, we want the decree to show a stay of execution for 120 days, what bond will you require?

The Court: The amount involved is all the royalty on 18,683.10 tons.

VIRGINIA, BUCHANAN COUNTY, to-wit:

I, Elsie L. Sayers, court reporter and Notary Public for Buchanan County, Virginia, do certify that the foregoing evidence of Myra Compton was heard *ore tenus* before the Honorable F. W. Smith, Judge of the Circuit Court of Buchanan County, Virginia, in the case of *Lester Coal Company*

v. *Mountain Mission School Etal,* on the 26th day of May, 1965, in the Judge's chambers in the Court House of said County.

Given under my hand, this 26th day of May, 1965.

ELSIE L. SAYERS, Notary Public

Received and filed 26th day of May 1965

J. L. LOONEY, Clerk

★ ★ ★ ★ ★

Dep.
Mt.M.S., etc.
page 2]

DEPOSITIONS FOR MOUNTAIN MISSION SCHOOL, INC.

The depositions of C. M. Sublett and others, taken on this the 5th day of November, 1964, before Elsie L. Sayers, a Notary Public for Buchanan County, Virginia, at the Grundy Hospital, Inc. at Grundy, Virginia, pursuant to agreement of counsel for all parties, to be read as evidence in behalf of Mountain Mission School, Inc., in the above styled case.

APPEARANCES: POBST & COLEMAN, Attorneys for Buchanan Realty Corporation;
and
CARL GILLESPIE, SR. and
GEORGE C. SUTHERLAND,
Attorneys for Mountain Mission School.

Received and filed 14th day of Nov. 1964

ELSIE L. SAYERS, D. Clerk

★ ★ ★ ★ ★

Dep.
Mt.M.S., etc.
page 2] CHARLIE M. SUBLETT,

the first witness, called for and on behalf of the Mountain Mission School, Inc., being first duly sworn, deposes and says:

Charlie M. Sublett

DIRECT EXAMINATION

Mr. Gillespie:

Q. Please state your name, residence and occupation.

A. Charlie M. Sublett, residence, Grundy, Virginia, and I am a preacher and school teacher.

Q. Do you occupy any official position with the Mountain Mission School, Incorporated?

A. Yes.

Q. What is that position?

A. I am president of the school.

Q. How long have you been connected with the school?

A. Since 1935 — 29 years.

Q. Are you familiar with a tract of land, supposed to contain about 65-¼ acres, situate on Horse Branch of Paw Paw Fork of Knox Creek, in Buchanan County, Virginia?

A. Yes, sir.

Q. Is that the same 65-¼ acre tract that Mountain Mission School purportedly leased to the Lester Coal Company?

A. Yes, sir.

Q. Do you know whether or not that 65-¼ acre tract is a part of a larger tract, recited as containing 750 acres, by which deed your school acquired title to this property?

A. Yes, it is a part of it.

Q. From whom did Mountain Mission School acquire this property?

A. From the Bank at Williamson.

Q. Do you recall when it was that this property was acquired by Mountain Mission Schoool, Mr. Sublett?

Dep, Mt.M.S., etc. page 3]

A. In the year 1943.

Q. Now, at the time Mountain Mission School acquired this land, did it assume possession of it?

A. Yes, sir.

Q. Please state just what Mountain Mission School has done in the way of exercising actual ownership of this entire tract of land, the 750 acres.

A. Well, the entire tract included the home place of Harve Charles. When we bought the property, we tore down barns, cribs and built fences, and tore out fences, re-channeled some

Charlie M. Sublett

places in the creek, deepened the creek, bull-dozed out the old Ritter's mill site; we farmed it extensively, hillsides as well as the bottom lands, pastured cattle; we used domestic coal from the already opened coal opening. We have sold timber from it, made leases.

Q. What sort of leases?

A. Well, coal dock leases, renting property to others.

Q. Did you rent to others for farming purposes?

A. Yes.

Q. Mr. Sublett, in the deed by which Mountain Mission School, Inc. acquired title, the title of which is made a part of the stipulation in this case, the deed recites that Mountain Mission School, Inc. acquired this tract of 750 acres, more or less, in fee simple. Please state what the term fee simple set forth in this deed noted to you and the other officers of your school.

A. That fee simple includes not only the surface by minerals, coal, gas.

Q. The entire interest?

A. Yes, that is right.

Q. And please state whether or not (interrupted)

Dep.
Mt.M.S., etc.
page 4]

Mr. Pobst: Counsel for Buchanan Realty Corporation objects to the foregoing question because a mere statement that the Mountain Mission School acquired title to the 750 acres in fee simple is no proof that they actually acquired it in fee simple.

Mr. Gillespie:

Q. Mr. Sublett, has Mountain Mission School claimed and asserted title to the entire interest, including surface, coal and minerals, continuously ever since it acquired its deed of February 19, 1943?

A. Yes, it has.

Q. And has it exercised actual ownership over the entire interest in this land continuously since that time?

A. Yes.

Mr. Pobst: This question and any answer thereto are objected to because witness has shown himself to be a layman and not qualified to speak as to the legal effect claimed by Mountain Mission School.

Charlie M. Sublett

Mr. Gillespie:

Q. Did you or any other officer of the Mountain Mission School, so far as you know, ever have any idea that anyone was claiming any interest whatsoever in the coal and minerals underlying this land until this proceeding was instituted?

Mr. Pobst: Objected to as immaterial.

A. No, sir.

Mr. Gillespie:

Q. And has your possession and ownership exercised over the entire interest in this land, been actual, open, exclusive, notorious and hostile *every* since February 19, 1943, when you acquired your deed thereto?

Dep.
Mt.M.S., etc.
page 5]

Mr. Pobst: Objected to because witness has not shown himself qualified to speak on these questions, and further because it is leading and furthermore because witness is asked to state a legal conclusion when he has not shown himself qualified to speak.

Mr. Gillespie:

Q. Has Mountain Mission School, ever since it acquired legal title, exercised complete dominion over the entire tract of land?

Mr. Pobst: Same objection as last above.

Mr. Gillespie:

Q. Has it openly claimed to be the owner of the entire interest in it?

Mr. Pobst: Same objection.

A. Yes, sir.

Mr. Gillespie:

Q. Has its possession been to the exclusion of any and all other persons whatsoever?

Charlie M. Sublett

Mr. Pobst: Same objection and because immaterial.

A. Yes.

Mr. Gillespie:

Q. And has it been exercised in such manner as would be readily observable to all persons whatsoever?

A. That is right, it has.

Q. Has any other person, firm or corporation ever exercised, or attempted to exercise, any dominion over or property rights in or possession of this property during the time Mountain Mission School has had its deed?

Dep.
Mt.M.S., etc.
page 6]

Mr. Pobst: Same objection as heretofore interposed.

A. No, sir.

Mr. Gillespie:

Q. Mr. Sublett, how long have you lived in Buchanan County?

A. I have lived here ever since in 1955.

Q. Have you, not only as an officer of Mountain Mission School, but as an individual, had opportunity to engage in real estate transactions?

A. Yes, sir.

Mr. Pobst: Objected to, immaterial.

Mr. Gillespie:

Q. When the term fee or fee simple is used with reference to real estate, what is the universal meaning by the parties using that term?

A. The complete property, surface and minerals, gas and so on.

Q. If anything less than the entire property is meant, what term is used, Mr. Sublett? For instance, if the surface is being conveyed, or leased or dealt in, how is that referred to?

A. Well, it shows, at least makes some mention of any ex-

ception made, one way or another.

Q. Is it referred to as surface only?

A. Yes.

Q. And if a transaction involves coal or coal and minerals, how is that referred to?

A. Well, referred to as such.

CROSS EXAMINATION

Mr. Pobst:

Dep. Mt.M.S., etc. page 7]

Q. Mr. Sublett, since 1935, where have you lived?

A. I have lived at Mountain Mission School.

Q. At Grundy, Virginia?

A. At Grundy, Virginia.

Q. And the 750 acres of land about which you have spoken, you say is located on Paw Paw section of Knox Creek, in Buchanan County?

A. Yes.

Q. And how far is that from Grundy?

A. Twenty-two miles from Grundy.

Q. Have you ever seen the 750 acres surveyed?

A. Have I seen their survey of it?

Q. Did you see it surveyed?

A. Yes, I have been with the surveyor when it was being surveyed.

Q. To every corner?

A. I wouldn't say to every corner, but I would say a majority of them.

Q. Do you know where this 64-¼ acres is situate?

A. Yes, it is in Horse Hollow, so I understand.

Q. You haven't seen that run out?

A. No, I wasn't with the surveyor when we had him run it.

Q. Now, you were talking about what improvements you had made and exercised over the 750 acres, that is, that you had torn down the old house, used bull-dozers in changing the creek channels in some places, and obliterating the evidence of Ritter's sawmill site, etc., that was all on practically level ground, wasn't it?

A. Most of that, at least part of it.

Q. That is on main Paw Paw Creek, that bottom land?

Charlie M. Sublett

A. Well, the big bottom is down there and is a sawmill on the other side where you start up Horse Hollow

Dep. Mt.M.S., etc. page 8]

Q. The 65-¼ acres of coal is up near the top of the mountain and just covers the Blair seam of coal, isn't that right?

A. I am not certain it covers the Blair seam, it lies in Horse Hollow.

Q. Do you know how high above the mouth of Horse Hollow, vertically, the Blair seam lies?

A. No, sir, I couldn't tell you that.

Q. It is several hundred feet, isn't it?

A. I am not sure of that.

Q. Do you know the location of any seam over there?

A. Yes.

Q. Which seam is that?

A. I can't name you what seam it is, what they call it, whether it is the Clintwood seam or what.

Q. The Clintwood seam is the top seam, isn't it?

A. I couldn't tell you that. They change so much from different seams, I couldn't be sure which seam is which.

Q. When was the first mining on the 65-¼ acres, when did that take place?

A. Well, roughly it has been two years or three.

Q. And that was the first mining on the 65-¼ acres?

A. No, the first mining would have been down at the mouth of Horse Hollow, that Harve Charles mined.

Q. That wouldn't be on the 65-¼ acre tract.

A. That is part of the 65 acres, I understand.

Q. That mining Harve Charles did was all down at the mouth of Horse Hollow?

A. All down close to the mouth of it.

Q. How do you know that he mined it?

A. I don't know, I have heard it.

Q. That is hearsay. Now then, assuming that the Blair seam does lay several hundred feet above Horse Creek or the level of Horse Creek of Paw Paw Fork of Knox Creek, and only covered the Blair seam on that land, you didn't mine any in the Blair Seam, is that right?

Dep. Mt.M.S., etc. page 9]

A. Not if it is up next to the top of the mountain, we didn't mine any of it.

Charlie M. Sublett

Q. And you didn't farm any of it?

A. Yes, we farmed all the way up, as far as it had been cleared, we re-cleared it and farmed up right to the back side.

Q. Up Horse Hollow?

A. Yes, and we cut timber all the way to the top of the hill.

Q. You didn't do that all the time successively for 15 years, did you?

A. No, but we went up and got locust post from time to time. We got out a number of logs on two different occasions, to build a barn.

Q. How far apart were those occasions?

A. Roughly speaking we went in there and cut timber, roughly about three years apart, roughly.

Q. And you don't know whether those logs came off the 65-¼ acre tract?

A. Yes, it lays back against the back, that is the only land any logs on.

Q. All this other cultivating of the land that you talked about around Horse Hollow, that didn't go far up the hollow?

A. Yes, it went away up the Horse Hollow, but not to the timber line.

Q. You don't know that the timber you got was on the 65 acre tract?

A. It would have to be.

Dep. Mt.M.S., etc. page 10]

Q. How do you know that?

A. I know how big a 27 acre tract in that big bottom land is, and I know you couldn't have twice that much land up there and not come down over it.

Mr. Pobst:

The evidence of this witness is objected to as to the location, the timber that was cut and as to the location of the 65 acres itself, as to whether the timber was cut within the 65-¼ acres, and as to whether any actual possession was had in said 65 acres.

Q. Well, the original home of H. G. Charles, that you said was torn down, that was right at the mouth of Paw Paw Fork of Knox Creek, is that right?

Charlie M. Sublett

A. Yes, that was over on the big bottom.

Q. Then, how far down — as I understand it, Horse Fork runs into Paw Paw Creek, above the mouth of Paw Paw.

A. And Paw Paw runs into Knox.

Q. How far is it from the mouth of Horse Branch to the mouth of Paw Paw Creek?

A. Oh, I expect it is three to 500 feet.

Q. How far is it from the mouth of Horse Creek up to the top of the ridge?

A. Well, it is quite a distance, it is three-quarters of a mile.

Q. And then as you go on up to the head of Horse Hollow and cross the ridge, what waters would you be on?

A. You would be on the waters of Race Fork, I believe, I haven't been over that way, but I am confident that is what it would have to be.

Q. But you don't know where the land that is covered by the 65-¼ acres on the ground?

A. I couldn't point out the corners to it, but I know the general area, where it has to be.

Dep. Mt.M.S., etc. page 11]

Q. Now, the coal dock that you mentioned leasing, that is on Main Knox Creek, below the mouth of Paw Paw and below the big bottom that you were talking about.

A. And below Mill Creek.

Q. That is a considerable distance from the 65 acres, isn't it?

A. Yes, but it is on the 750 acres.

Q. And the Ritter mill site was above the dock?

A. That is right.

Q. And that was on the level — on level ground?

A. Yes.

Q. And none of the 65-¼ was on level ground?

A. No, the barn that we tore down was in the mouth of Horse Hollow, it goes back up to the 65 acres.

Q. You say you used domestic coal off this 750 acres tract?

A. Yes.

Q. Where did you get it?

A. On right hand side, ascending, of Horse Hollow.

Q. How far up?

A. From the highway, I guess four or 500 feet.

Q. And you don't know whether that was up in the 65-¼ acres?

Charlie M. Sublett

A. I assume it was, I wouldn't be certain.
Q. How far down Horse Creek did that 65-¼ acres come?
A. I can't tell you.

RE DIRECT EXAMINATION

Mr. Gillespie:

Q. Mr. Sublett, was this 65-¼ acre tract referred to in the petition and in your testimony, ever separated in any way whatsoever from the main 750 acre tract, until June of 1960 when this lease was made to Lester Coal Company by the Mountain Mission School and you had the engineer to run it off?

Dep. Mt.M.S., etc. page 12]

Mr. Pobst:
Objected to as immaterial.
A. It was not.

Mr. Gillespie:

Q. Then, as I understand it, when the Mountain Mission School, Incorporated, negotiated the lease with Lester Coal Company for the Blair seam of coal, you had an engineer to go up and run off this 65-¼ acres so you could lease just that much of the 750 acres tract to Lester Coal Company, is that right?

A. That is right.

RE CROSS EXAMINATION

Mr. Pobst:

Q. Was that 65-¼ acres in any way fenced off?

A. It was part of the big tract, and had a fence around the back side of it.

Q. Was there any fence around the back of it, around the back of that Horse Hollow?

A. Oh, yes, we took our cattle from here and took them over there and kept them there in that hollow when we weren't tending it in corn.

Q. You had a fence where you turned them in so they couldn't come back out to the road?

Charlie M. Sublett

A. Yes, and so they couldn't go over at the back, over on Race Fork.

And further this deponent sayeth not.

SIGNATURE WAIVED.

★ ★ ★ ★ ★

Dep.
B.R. Co., etc. lived?
page 1]

★ ★ ★ ★ ★

DEPOSITIONS FOR BUCHANAN REALTY CORPORATION

★ ★ ★ ★ ★

The depositions of Malen Charles and others, taken on this the 5th day of November, 1964, before Elsie L. Sayers, a Notary Public for Buchanan County, Virginia, at the Grundy Hospital, Inc., at Grundy, Virginia, pursuant to agreement of counsel for all parties, to be read as evidence in behalf of Buchanan Realty Corporation, in the above styled cause.

APPEARANCES: POBST & COLEMAN, Attorneys for Buchanan Realty Corporation;
and
CARL GILLESPIE, SR., and
GEORGE C. SUTHERLAND,
Attorneys for Mountain Mission School, Inc.

Received and filed 14th day of Nov. 1964

ELSIE L. SAYERS, D. Clerk

★ ★ ★ ★ ★

Dep.
B.R. Co., etc.
page 2]

MALEN CHARLES,

the first witness called for and on behalf of the Buchanan Realty Corporation, being first duly sworn, deposes and says:

DIRECT EXAMINATION

Mr. Pobst:

Q. Mr. Charles, your name is Malen Charles?

A. Yes, sir.

Q. How old are you?

A. Seventy-four.

Q. Who was your father?

A. H. G. Charles.

Q. How far do you live from the Horse Hollow?

A. About *thrr*-quarters of a mile.

Q. Do you know of any coal ever being mined on Horse Hollow?

A. I couldn't say if they mined from Race Fork side, but on Horse Hollow, I couldn't say for years, not since when Ben Slone got killed in there.

Q. About how long has that been?

A. Well, I would say 25 years.

Q. Who mined that coal then?

A. My daddy mined and loaded two cars from there, he got house coal from there ever since I can remember and neighbors and renters.

Q. There were only two cars shipped away?

A. That is all I ever knowed.

Q. When was that?

A. That was around 25 years ago, it was around '28.

Q. Who was Harve Charles' mother?

A. Sallie Hurley.

Q. They called her Sarah sometimes, did they?

Dep.
Mt.M.S., etc.
page 3]

A. Yes.

Q. Was she Jonathan Hurley's daughter?

A. I reckon.

Q. Well, that is your information?

A. Yes.

Malen Charles

Q. Do you know all the heirs of Jonathan Hurley?
A. No.
Q. Whom did Sarah Hurley marry?
A. Moses Charles.
Q. How many children did they have?
A. Eight or nine.
Q. Will you name them, the heirs, the children of Sarah and Moses Charles?
A. My daddy, H. G. Charles, and Malen Francis, wife —
Q. Do you remember her first name?
A. I am trying to think.
Q. Was it Celia?
A. Celia, that is right.
Q. Well, that is two.
A. Yes.
Q. Who is the next one?
A. Clara, married Rent Hurley.
Q. Did she marry twice?
A. Yes, married Ben Slone.
Q. Who was the next one?
A. Victoria.
Q. And she married —
A. Larkin Justus.
Q. Who was next?
A. Mary, married Bill Walker.
Q. Go on.
A. Uncle Jonathan and John Charles.
Q. Who next?
Dep. A. Tommy.
B.R. Co., etc.
page 4] Miss Coleman:
You mentioned one awhile ago, Babe.
A. Babe Preece.
Q. Was that her real name, was her real name Causby?
A. I don't know.

Mr. Pobst:
Q. Babe married who?
A. Joe Preece.

Mr. Sutherland: We don't object to any evidence we see

that is relative, but there is no pleading in this suit so far as we know to —

Mr. Pobst: We have asked that we be allowed to amend the bill.

Mr. Sutherland: Yes, and that was withdrawn at the last conference.

Miss Coleman: Yes, and we asked you to stipulate the names of Sarah H. Charles' heirs and you wouldn't.

Mr. Sutherland: This evidence to us appears to be irrelevant because there is not any allegation as to any outstanding title in any person by either party, and counsel for Mountain Mission School fails to see the relevancy of this and it is objected to for that reason.

Mr. Pobst: Counsel for Buchanan Realty Corporation is inclined to agree with the correctness of this objection. However, it is fair to state that we are only introducing this evidence to show that during all the years, at every stage of the title under which Buchanan Realty Corporation claims, the Buchanan Realty Corporation and those claiming under it have been endeavoring in every say to boost its title, and even in cases where it is not believed to be necessary to have obtained all possible outstanding claims of any sort, whether merit or not, to add to the true title of H. G. Charles at the time he conveyed the land under consideration to John W. Flannagan in 1920. Some of the deeds inserted in the chain of title to the 2000 acres of land would seem to be of little value unless this explanation is made and the explanation being made that the heirs of Jonathan Hurley, and perhaps the heirs of Sarah M. Charles, at one time, did or might have made some claim to some of the land in controversy.

Dep.
B.R. Co., etc.
page 5]

Q. Who was Sarah H. Charles?

A. Jonathan Hurley's daughter, I reckon, I wouldn't be positive.

Miss Coleman:

Q. It is your information that Jonathan Hurley was your great grand-father?

A. They always told that, but I don't know.

Mr. Pobst:

Q. Did he die before you were born?

A. Yes, I reckon he did.

Q. I do not recall whether we have asked you about whether there has been any farming done on the 65-¼ acres, and if so, when was the last farmed?

A. I couldn't state whether it was on the 65-¼ acre tract or not but the Mountain Mission School tended one year back up to the top of the hill, they had it in corn, they kept cattle in there a year or so at different times, but so far as the farming, I couldn't state as to more than one year.

Q. And that was on —

Dep. A. Horse Branch, right hand side.

B.R. Co., etc. Q. And you say Mountain Mission School

page 6] did, according to your recollection, tend it only one year?

A. All I can remember, I cut the timber right to the top, Sam Hurley let me have the timber and I cut it. One thing, I went around the field, the fence goes up the spur, and if the 65 acres is in there, it is bound to be under fence, because the fence goes back to the top of the hill.

Q. How long has it been since Mountain Mission School raised any corn in that hollow?

A. It must have been in '43, when I logged in there, I haven't been in there since then.

CROSS EXAMINATION

Mr. Gillespie:

Q. Mr. Charles, you do say that Mountain Mission School had a fence back in the head of this hollow?

A. Yes, my daddy fenced it back, I think some time along in the '20's, when the mill burnt out, and we farmed all this land in there.

Q. Do you know where this 65-¼ acres is?

A. No, not exactly.

Q. Have you lived there in that general area since Mountain Mission School has owned that up there?

A. Yes, sir, been there all my life.

Q. You say they tended it one year in corn?

A. Yes, and how come me to go in there, I went to look at the timber I bought.

Q. And you say they raised cattle in there?

A. Yes.

A. And have they had livestock in there practically every year since they have owned it?

Dep. B.R. Co., etc. page 7]

A. I wouldn't say every year, generally they would bring livestock over there in the summer and out in the fall.

Q. Do you know or have you known of anyone exercising any rights of ownership over any of this land in Horse Hollow since Mountain Mission School got their deed for it?

A. No.

Q. And you say you bought timber from the Mountain Mission School up there in that hollow?

A. Yes, I have bought timber off them.

Q. Do you know about when it was H. G. Charles mined these two cars of coal from that coal mine up there on Horse Hollow?

A. I wouldn't be positive but it was around 1929 or 1930.

RE - DIRECT EXAMINATION

Mr. Pobst:

Q. As I understand you, Malen, there has been a little coal mined by H. G. Charles for domestic use from that mine on Horse Branch, four or 500 feet from the mouth of Horse Branch, you don't know whether that was a part of the 65-¼ acre tract or not, do you, you don't know?

A. No, I don't.

Q. And H. G. Charles mined two cars, two railroad cars, from that mine and sold for commercial use?

A. Two cars was all I know of.

And further this deponent sayth not.

SIGNATURE WAIVED.

E. E. SMITH,

the next witness, called for and on behalf of Buchanan Realty Corporation, being first duly sworn, deposes and says:

E. E. Smith

Dep.
B.R. Co., etc.
page 8] DIRECT EXAMINATION

Mr. Pobst:

Q. Mr. Smith, what is your age?
A. Seventy-seven.
Q. What office do you hold in Buchanan County, Virginia?
A. County Treasurer.
Q. How long have you held that office?
A. Since January 1, 1928.
Q. How many millions of dollars have you handled?
A. I don't know.
Q. What was your former occupation?
A. Cashier of the Bank of Grundy.
Q. When did you become cashier of this Bank?
A. It was somewhere in 1909, I don't remember how long.
Q. Then how long were you cashier of that Bank?
A. Up until the time it closed. When was that?
Q. That was May 18, 1931.
A. That is right.
Q. Did you *any* any of your associates, along prior to 1920 have any interest in obtaining some land known two parcels of land, one containing 2500 and the other containing 2000, the most of the smaller tract lying within the boundary lines of the larger tract, known as the land situate on Race Fork of Knox Creek, of Buchanan County, Virginia, all smaller tracts covered by the larger tracts?
A. I always heard it covered about 2,000 acres, is that about right?
Q. That is right. Mr. Smith, do you remember about 1920 of there being formed any association of Buchanan County men for the purpose of acquiring this Race Fork land?
A. Yes, I remember it.

Dep.
B.R. Co., etc.
page 9]

Q. Who was in that?
A. The only ones that I can recall as being in it were E. R. Boyd and myself and —
Q. Was the third one John W. Flannagan, Jr.?
A. Yes, that is right, that is the three that I recall.
Q. If there was anybody else in it you don't recall?
A. No.

E. E. Smith

Q. Why were you all interested in that, were you trying to acquire the title to it?

A. Yes, trying to acquire the title to it.

Q. Was any corporation formed?

A. There was a corporation formed, I don't know whether it went through or not.

Q. What was the name of that corporation?

A. Race Fork Company.

Q. Was any deed executed by John W. Flannagan to Race Fork Coal Company or Race Fork Coal Corporation that you know of?

A. No, not that I know of.

Q. Was there any deed from H. G. Charles to Race Fork Coal Corporation?

A. Not that I recall.

Q. Well, what was John W. Flannagan's profession at that time?

A. He was an attorney.

Q. And he practiced law and lived at Grundy, Virginia?

A. Yes.

Q. Who was he trying to secure good title for?

A. For the ones I mentioned, I reckon.

Q. The three that formed the Company?

A. Yes.

Dep.
B.R. Co., etc. Mr. Pobst: Cross examine.
page 10] Mr. Gillespie: Counsel for Mountain Mision School, Incorporated hereby respectfully moves the court to strike out all the foregoing testimony of this witness for it is immaterial, irrevelant to any issue in the case.

Mr. Pobst: Replying to this objection —

Q. Mr. Smith, do you recall about the year 1929 when at the order of the Board of Supervisors of Buchanan County a judgment had been procured in favor of *E. E. Smith,* Treasurer of Buchanan County, Virginia against *A. C. Stacy,* former Treasurer, and the six sureties on his bond, for something around $136,000.00, do you remember that?

A. Yes.

E. E. Smith

Q. At that time, you were Treasurer of the County, were you?

A. That is right.

Q. And after judgment was procured for that amount, do you remember there being a chancery suit instituted for the purpose of selling all the real estate belonging to A. C. Stacy, as principal in that judgment, and if that didn't pay it, pay off the judgment, to sell all the lands, or so much thereof as was necessary, of each of the sureties, to pay off that judgment, do you remember that?

Mr. Sutherland: Counsel for Mountain Mission School objects to this question, because the record of such proceeding is the best evidence.

A. I don't recall those things, Mr. Pobst.

Mr. Pobst:

Q. You do remember that a suit was brought in your name at the order of the Board of Supervisors to recover the amount of that judgment against A. C. Stacy and his sureties?

Dep.
B.R. Co., etc.
page 11]

A. Yes.

Q. The Bank closed, I believe, on the 18th day of May, 1931, is that right?

A. I think that is right, I don't remember the date.

Q. When that suit was instituted, or at any time during the pendency of the suit, or before the H. G. Charles land was sold or conveyed to purchasers thereof, did you or the Bank, insofar as you know or any official member of the Bank, have any notice or knowledge that H. G. Charles was claiming any part of this 2,000 or 2,500 acres?

A. I don't remember anything about that.

Q. You don't recall of ever having any notice of it so far as you know?

A. Not so far as I know.

Q. During the years, several years prior to the time the Bank closed, were you also a member of the Board of Directors of the Bank?

A. Yes, I think so.

Charles Ratliff

Q. And attended probably *ever* meeting of the Bank?

A. Practically.

Q. And you never heard of any claim being asserted against the Bank?

A. Not that I know of.

Mr. Gillespie: Counsel for Mountain Mission School again moves the Court to strike out all the testimony of this witness for the reasons that it is immaterial and irrelevant to any issue in this case.

Dep. B.R. Co., etc. page 12]

Mr. Pobst: Replying to the above motion, counsel for Buchanan Realty Corporation states that this is applying to the allegation made by counsel for Mountain Mission School, Incorporated, to the effect that the Bank of Grundy, Incorporated, had notice or knowledge through its Cashier, Directors, or otherwise, of the 750 acres of land being sold, as having been claimed by H. G. Charles, and bought at public auction sale in the chancery suit instituted by *E.E. Smith,* Treasurer of Buchanan County, Virginia against *A. C. Stacy* and others, and were estopped by such knowledge. This question is addressed to that allegation made by attorneys for Mountain Mission School, Incorporated.

Mr. Gillespie: In reply to that statement of counsel for Buchanan Realty Corporation, counsel for Mountain Mission School, Incorporated will state that the evidence offered by this witness is also inadmissible for the reasons that it is not the best evidence, but the record of the proceeding, which he is attempting to testify about, is the best evidence and that proceeding definitely demonstrates that it was the fee simple title to the land in controversy purported to have been sold by the Circuit Court's Commissioners in this chancery cause.

Witness stood aside.

SIGNATURE WAIVED.

CHARLES RATLIFF,

the next witness, called by and on behalf of the Buchanan Realty Corporation, being first duly sworn, deposes and says:

Charles Ratliff

DIRECT EXAMINATION

Mr. Pobst:

Dep. Q. How old are you?

B.R. Co., etc. A. Twenty-nine.

page 13] Q. Was your father a former Commonwealth's Attorney for Buchanan County?

A. He was.

Q. State what legal education you have had.

A. I graduated in June from the University of Virginia Law School.

Q. Have you continued to practice since?

A. I have not, I have yet to pass the bar examination.

Q. Are you a member of the Pobst & Coleman law firm?

A. No, sir.

Q. Do you receive a regular salary from them?

A. No.

Q. Are you interested in this case in any way?

A. No.

Q. Have you had any experience in the records of the Clerk's Office, where the record of deeds is kept?

A. I have.

Q. Have you today looked to ascertain whether any will is recorded therein from Jonathan Hurley or from Sarah M. Charles?

A. I have, and I cannot find a record of any will from Jonathan Hurley or from Sarah M. Charles.

Q. Have you also examined the records further in said Clerk's Office to see whether or not John W. Flannagan, Jr. conveyed to Race Fork Coal Company 2,500 or 2,000 acres of land on Knox Creek?

A. I have made that examination and I find no conveyance by John W. Flannagan to anyone other than F. H. Combs as Receiver of the Bank of Grundy to said land.

Witness stood aside.

SIGNATURE WAIVED.

★ ★ ★ ★ ★

A Copy—Teste:

H. G. TURNER, Clerk.

INDEX

page

Appeal Awarded 1
Record 2
Stipulation of Counsel 2
Stipulation 6
Record in case of E. E. Smith, Treasurer of Buchanan County, Virginia v. A. C. Stacy, et al. 6
Bill in Chancery 6
Decree — November 22, 1929 8
Deed — Shadrick Dotson, et al. to Harvey Charles 9
Receipts and Disbursements — Special Commissioner's Report 10
Disbursements 11
Decree — April 27, 1937 13
Taxes against H. G. Charles 14
Lien No. 7 14
Lien No. 10 14
Deed of Trust 15
Lien No. 11 18
Lien No. 16 18
Lien No. 17 18
Lien No. 18 18
Lien No. 20 18
Deed of Trust (Lien No. 10) 19
Decree — June 8, 1938 21
Report of Special Commissioner 21
Decree — January 15, 1947 22
Objection 22
Deed From F. H. Combs, Receiver, to Buchanan Realty Corporation 23
Deed between Shadrick Dotson, et al. and Harvey Charles 25
Objection 26
Deed between R. E. Williams, Special Commissioner, etc. and W. F. Genheimer 26
Objection 34
Deed between W. F. Genheimer, et al., and First National Bank of Williamson, etc. 35
Deed between First National Bank of Williamson, etc., and Mountain Mission School, Incorporated 36
Deed between Richard L. Brown, Jr., and H. G. Charles, et al. 38

Final Order filed October 17, 1899 45
Deed between Richard L. Brown, Jr., etc., and H. G. Charles, et al. 49
Deed between H. G. Charles, et al., and Jno. W. Flannagan, Jr. 51
Opinion by F. W. Smith, Judge 55
Decree — May 26, 1965 61
Notice of Appeal and Assignments of Error 65
Proceedings 66, 71, 82, 89, 91
Witnesses:
- Myra Compton 67
- Charlie M. Sublett (Deposition) 72
- Malen Charles (Deposition) 83
- E. E. Smith (Deposition) 87
- Charles Ratliff (Deposition) 91