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IN THE

SUPREME COURT OF VIRGINIA

AT RICHMOND

RECORD NO. 750359

RAYMOND J. WALTON and
RUBY J. WALTON

v.

ELLEN ROSSON, et al

APPENDIX TO BRIEF OF APPELLANTS

George B. Barrett
414 Park Street
Charlottesville, Virginia 22901
Counsel for Appellants

Michael and Dent, Ltd.
414 Park Street
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Of Counsel for Appellants

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Date Filed:7-5-73

VIRGINIA: IN THE CIRCUIT COURT OF THE COUNTY OF ALBEMARLE

RAYMOND L. WALTON and RUBY J. WALTON
R.D. 5, Box 225-A
Westminster, Maryland 21157

Plaintiffs

v. MOTION FOR JUDGMENT

ELLEN ROSSON
Boonesville, Virginia

MAMIE ROSSON SHIFLETT
Boonesville, Virginia

LESTER ROSSON
Boonesville, Virginia

JOSEPHINE ROSSON FRAZIER
Stony Point Road
Charlottesville, Virginia

HATTIE COLEMAN,
St. George Avenue
Crozet, Virginia.

GEORGE ROSSON, JR.,
St. George Avenue,
Crozet, Virginia

JIMMY ROSSON (an infant)
St George Avenue,
Crozet, Virginia

Defendants

TO THE HONORABLE DAVID F. BERRY, JUDGE OF THE AFORESAID COURT:

The Plaintiffs move the court for judgment against the defendants on the following grounds hereinafter set forth:

1. This is an action pursuant to section 8-836, Code of Virginia 1950, as amended, to have ascertained and designated by the court, the true boundary line between coterminous land-owners.

2. The plaintiffs, Raymond L. Walton and Ruby J. Walton, are the owners as tenants by the entirety and are possessed in fee simple absolute of a parcel of land, containing approximately 49 acres, near Boonesville, in Albemarle County, Virginia, known as tax parcel 6-32, the said parcel having been conveyed to them by deed dated 18 May 1953 from Joseph Edward Wood et al, recorded in the Office of the Clerk of the Circuit Court of Albemarle County, Virginia, in Deed Book 306 at page 211.

3. Southwest of the plaintiffs' said parcel and adjoining it, is a parcel of land, known as tax parcel 6-33 and containing approximately 95 acres, occupied by two of the defendants, Ellen Rosson and Mamie Rosson Shiflett. The defendant, Ellen Rosson, is the widow of Willie Rosson who died in 1962; the defendants Mamie Rosson Shiflett, Lester Rosson, and Josephine Rosson Frazier are children of Willie Rosson; the defendant Hattie Coleman is the widow of George Rosson, who died intestate on 18 September 1964, son of Willie Rosson; and the defendants George Rosson, Jr. and Jimmy Rosson (infant) are the living children of George Rosson. The aforementioned persons include all the known living heirs of Willie Rosson, and all other known persons who have an interest in said parcel 6-33. Parcel 6-33 was conveyed to Willie Rosson by two deeds, each dated 2 February 1942, one of Mamie Belle Sours, recorded in said Clerk's Office

in Deed Book 253 at page 112, and the other of Alice May and David Sours, recorded in said Clerk's Office in Deed Book 253 at page 113.

4. The two parcels, 6-32 and 6-33, were once part of a larger tract of approximately 235 acres conveyed by deed dated 1 January 1881 from Benjamin R. Blackwell to Pleasant M. Via, recorded in said Clerk's Office in Deed Book 78 at page 149. By deed dated 2 September 1896, Pleasant M. Via and his wife conveyed from this tract, a parcel of approximately 40 acres to George Wood (recorded in the said Clerk's Office in Deed Book 106, page 299, now known as tax parcel 6-31 and also owned by the plaintiffs). There were no other off-conveyances known to the plaintiffs.

5. Pleasant M. Via died in 1920 and his will, dated 14 December 1916, was admitted to probate in the said Clerk's Office on 26 July 1920 and is recorded in Will Book 33 at page 80 (a certified copy is attached to this motion as Annex 1). By the terms of this will the remaining part of the tract was devised to his two daughters, Mary F. Cummings and Lucy V. Wood, and to his granddaughter, Lula C. Wood, daughter of Lucy (subject to a life estate to his widow, which is not pertinent to this proceeding). To Mary he gave the westernmost parcel, now known as tax parcels 15-24 and 15-24A; to Lucy he gave the easternmost parcel, now known as tax parcel 6-32 and owned by the plaintiffs; and to Lula he gave the remaining center parcel, now known as tax parcel 6-33

and occupied by the defendants, Ellen Rosson and Mamie Rosson Shiflett.

6. Lucy V. Wood was seized and possessed of parcel 6-32 until her death in 1949, after which it was conveyed by her heirs to the plaintiffs herein as set forth in paragraph 2 hereof.

7. Lula C. Wood (unmarried) conveyed a lot of approximately five acres from her parcel (6-33) to L. P. Hall (by deed dated 8 June 1926, recorded in the said Clerk's Office in Deed Book 193 at page 497). There are no other known off-conveyances by her. By deed dated 28 November 1928, recorded in the said Clerk's Office in Deed Book 202 at page 500, Lula C. Wood conveyed the remaining portion of parcel 6-33, approximately 95 acres, to R. H. Haden, Trustee, in trust to secure a debt. After default, the parcel was sold and conveyed by deed dated 9 August 1930, recorded in said Clerk's Office in Deed Book 209 at page 502, from R. H. Haden, Trustee, to W. R. Richards. By deed dated 12 October 1934, recorded in said Clerk's Office in Deed Book 226 at page 333, W. R. Richards conveyed the same parcel to J. W. Elam, who conveyed the same tract in two parcels, one of 45 acres on the east side of the road to Alice May Sours by deed dated 15 January 1935, recorded in said Clerk's Office in Deed Book 226 at page 335, and the other of 50 acres on the west side of the road to Mamie Belle Sours by deed dated 15 January 1935, recorded in said Clerk's Office in Deed Book

to the present wire fence (erected in 1947 by the plaintiffs) between tax parcels 6-31 and 6-32, to the point where it intersected the Miller line. A plat showing the line is attached as Annex 2.

b. With respect to that portion of the land lying southeast of Route 810, the correct boundary between the plaintiffs' parcel 6-32 and the defendants' parcel 6-33 is the centerline of the Martin Mountain road (an old logging trail which runs from what is now Route 810 up the mountain to the tract formerly owned by Jerry Martin, now tax parcel 15-25) in so far as it runs from the northwesternmost point of tax parcel 6-36 down the mountain to a point in the center of State Route 810, thence northeastward following the centerline of State Route 810 to a point in the center of said road where it intersects a southeastward extension of the line described in paragraph 8 a hereof.

WHEREFORE, the plaintiffs demand judgment establishing the true and correct boundary between their parcel 6-32 and the defendants' parcel 6-33 as set forth herein, and for their costs in this behalf expended.

RAYMOND L. WALTON
RUBY J. WALTON
by s/ George B. Barrett

George B. Barrett
414 Park Street
Charlottesville, Virginia.

Counsel for Plaintiffs

Date Filed: 12-13-73

VIRGINIA: IN THE CIRCUIT COURT OF THE COUNTY OF ALBEMARLE

RAYMOND L. WALTON AND
RUBY J. WALTON,

Plaintiffs

v. ANSWER AND GROUNDS OF DEFENSE

ELLEN ROSSON
MAMIE ROSSON SHIFLETT
LESTER ROSSON
JOSEPHINE ROSSON FRAZIER

TO THE HONORABLE DAVID F. BERRY, JUDGE OF SAID COURT:

Comes now your defendants, by counsel, and for their Answer and Grounds of Defense to the plaintiffs Motion for Judgment, respectfully represent unto your Honor as follows:

1. Defendants admit the information set forth in paragraph 1.

2. Defendants neither admit nor deny the allegations set forth in paragraphs 2, 3, 4, 5, 6 and 7.

3. Defendants deny the allegations set forth in paragraph 8.

4. That the defendants are heirs of Willie Rosson who for many years prior to his death had taken possession in fact of the parcel described in plaintiffs' motion for judgment as "tax parcel 6-32" and which possession has been continuously maintained by the defendants herein since Willie Rosson's death.

5. That the aforesaid possession by Willie Rosson and defendants of said parcel was and has continuously been actual, exclusive, hostile, open, notorious and accompanied

by a bona fide claim of title against all other persons so as to give Lucy V. Wood, the heirs of Lucy V. Wood and plaintiffs a cause of action.

6. That the possession described in paragraph 4 and 5 herein has continued in excess of 15 years and ownership of said property is vested in your defendants.

7. That the correct boundary line between the properties of plaintiffs and defendants is indicated on the plat attached to plaintiffs' Motion for Judgment as "Annex 2", which boundary line is shown on said plat as commencing at a corner indicated as "B", thence running in an easterly direction a distance of approximately 1346.67 feet to a poplar, thence in a southeasterly direction to State Route 810 a distance of approximately 1380.46 feet to a point indicated as "C" on said plat.

WHEREFORE, your defendants respectfully request judgment of this Court establishing the true boundary line between plaintiffs and defendants as set forth herein.

ELLEN ROSSON
MAMIE ROSSON SHIFLETT
LESTER ROSSON
JOSEPHINE ROSSON FRAZIER

by Counsel

s/ W. G. Pickford of
Belt and Pickford, Attorneys
230 Court Square,
Charlottesville, Virginia, 22901

CERTIFICATE

I herby certify that on Thursday, December 13, 1973,

I mailed a true copy of this pleading to George B. Barrett, 414 Park Street, Charlottesville, Virginia, counsel for plaintiffs.

s/ W. G. Pickford

Date Entered: 12-2-74

VIRGINIA: IN THE CIRCUIT COURT OF ALBEMARLE COUNTY

RAYMOND L. WALTON
RUBY J. WALTON,

Plaintiffs

v. ORDER

ELLEN ROSSON
MAMIE ROSSON SHIFLETT
LESTER ROSSON
JOSEPHINE ROSSON FRAZIER
HATTIE COLEMAN
GEORGE ROSSON, JR.,
JIMMY ROSSON,

Defendants

On this day came plaintiffs in person and by counsel and defendants Ellen Rosson, Mamie Rosson Shiflett, Lester Rosson and Jospehine Rosson Frazier, in person and by counsel, Hattie Coleman, George Rosson, Jr., and Jimmy Rosson having failed to answer or appear, upon plaintiffs' Motion for Judgment seeking to have the Court ascertain and designate the true boundary between the parties hereto pursuant to Virginia Code Section 8-836 and upon defendants Answer and Grounds of Defense setting forth their claim to the disputed property by adverse possession. The Court notes that the defendant Jimmy Rosson is described in the caption on the plaintiffs' Motion for Judgment as an infant and that the said Jimmy Rosson achieved his eighteenth birthday on 7 October 1973, after filing of the plaintiffs' motion, but before any hearing in these proceedings; the Court further notes that proper service upon the said Jimmy Rosson

was obtained on 11 October 1973, to which service he failed to answer or to appear, and that accordingly, he is before the Court and bound by this decree.

By stipulation of counsel for the parties hereto the boundary line between the parties insofar as their properties adjoin, on the east side of State Route 810, was determined to be as follows: Commencing at a point in the center of present State Route 810, thence up the center of the new road or "new cut," which lies immediately south of the present board fence on the Walton property and which road is agreed to be twelve feet wide, to its juncture with the Martin Mountain road and thence up the center of the Martin Mountain road, also agreed to be twelve feet wide, for the balance of the distance in which the properties of the parties adjoin. Plaintiffs evidence being heard, defendants' motion to strike was overruled and defendants proceeded to present their evidence, at the conclusion of which plaintiffs' motion to strike and defendants' renewed motion to strike were overruled.

Upon evidence of the parties presented herein and stipulations by counsel the Court finds that plaintiffs have established by a preponderance of the evidence that on 24 July 1953, the date on which was recorded in the Office of the Clerk of the Circuit Court of Albemarle

County, Virginia, in Deed Book 306 at page 211, a deed from the surviving children of Lucy Via Wood, the plaintiffs received good paper title to the tract of land shown on the plat of William Morris Foster, CLS, dated July 3, 1973, (attached to the plaintiffs' Motion for Judgment as Annex 2) which plat is incorporated into and shall be recorded with this order, and that the then boundary line between the plaintiffs' said parcel and the defendants' parcel was the line shown on the said plat from point "A" along course designated as N 80° 01' 00" W, 1451.33 feet and N 69° 16' 00" W, 540.17 feet to a point in the center of State Route 810 designated as 20.17 feet from an Iron, the boundary line for which they contend. The Court further finds that the evidence of defendants establishes by a preponderance of the evidence, the following: (1) Actual possession of the disputed property which, commencing in 1953 with Willie Rosson, deceased husband of the defendant, Ellen Rosson, has been actual, exclusive, hostile, open, notorious and accompanied by a bona fide claim of title against all persons; (2) Willie Rosson died in 1962 and there exists privity of estate between him and defendants appearing herein so as to allow tacking of the period of adverse possession by Willie Rosson to that of those of his heirs who continued said adverse possession. (3) That said adverse possession was and has been continued by Ellen

Rosson, widow of Willie Rosson, Mamie Rosson Shiflett and Dewey Shiflett, her husband, Lester Rosson and Lucille Rosson, his wife and Josephine Rosson Frazier and Tommy Walker Frazier, her husband, for a period in excess of that required by Virginia Code Section 8-5 so that fee simple title to the disputed property is now vested in the aforesaid heirs of Willie Rosson.

THEREFORE, the Court doth ADJUDGE, ORDER and DECREE that the true boundary line between the lands of the plaintiffs and defendants lying on the east side of State Route 810 is as heretofore stipulated and as to their land on the west side of said road the true boundary line is evidenced on the ground by a fence line having the following courses and distances as indicated on the Foster plat attached hereto:

Commencing at a point indicated thereon as "B" thence S 79° 25' 40" E a distance of 195.75' to a 12 inch hickory; thence N 85° 07' 10" E a distance of 731.40 feet to an iron; thence S 85° 51' 10" E a distance of 327.88 feet to an iron; thence S 65° 20' 30" E a distance of 91.64 feet to a poplar; thence S 40° 42' 00" E a distance of 512.77 feet to an iron; thence S 56° 49' 50" E a distance of 112.34 feet to a poplar; thence S 39° 09' 10" E a distance of 48.47 feet to a 25 foot poplar; thence N 73° 46' 05" E a distance of 208.87 feet to a 7 inch oak; thence S 76° 42' 40" E a distance of 161.26 feet to a 10 inch poplar thence S 51° 23' 10" E a distance of 336.75 feet to an iron: then 17.49 feet from

an iron to a point in the center of State Route 810.

It is further ORDERED pursuant to Virginia Code Section 8-840 that the Clerk of this Court shall upon the completion of all proceedings herein record a true copy of such final Order as may be entered herein, in the Common Law Order Book, and in the current Deed Book, which such Order shall be indexed in the names of the parties hereto.

It is further ORDERED pursuant to Rule 5:9 that the transcript of these proceedings shall be a part of the record.

Costs incurred in this proceeding are assessed to plaintiff.

And to the foregoing portion of this Order finding the defendants to have been in adverse possession of the said lands, the plaintiffs do except and object, on the ground that the same is contrary to the law and evidence applicable and stated herein, all as more fully set out in argument stated to the Court.

ENTER:

s/ David F. Berry

Judge

Date: 12/2/74

We ask for this

s/ W. G. Pickford p.q.
Belt and Pickford
230 Court Square
Charlottesville, Virginia

s/ George B. Barrett p.d.

George B. Barrett
414 Park Street
Charlottesville, Virginia

Counsel for Plaintiffs

Date Filed: 12-30-74

VIRGINIA:

IN THE CIRCUIT COURT OF THE COUNTY OF ALBEMARLE:

RAYMOND L. WALTON
RUBY J. WALTON,

Plaintiffs

v. NOTICE OF APPEAL AND ASSIGNMENTS OF ERROR

ELLEN ROSSON, et al,
Defendants

The Plaintiffs, Raymond L. Walton and Ruby J. Walton, give Notice of Appeal from the decree of the Court rendered on 2 December 1974 and Assign the following errors as required by Rule of Court 5:6:

1) The Court erred in holding that actual possession of the disputed property had been actual, exclusive, hostile, open, notorious and accompanied by a bona fide claim of title against all persons; so as to constitute adverse possession;

2) The Court erred in holding that adverse possession commenced in 1953 and continued for a period in excess of that required by Virginia Code Section 8-5 so that fee simple title to the disputed property is now vested in the Defendants;

3) The Court erred in failing to find that Defendants' claim of adverse possession was barred by permission given by Plaintiff to Defendant allowing Defendant to use the disputed property.

A transcript of the testimony is a part of the record as so directed by the aforesaid judgment order, and will be hereafter filed in your office.

RAYMOND J. WALTON
RUBY J. WALTON

BY Counsel

MICHAEL AND DENT, LTD.,
Of Counsel

by s/ John W. Zunka
414 Park Street

Charlottesville, Virginia 22901

I hereby certify that a true copy of the foregoing Notice of Appeal and Assignment of Error was mailed this 30th day of December 1974 to Gayle Pickford, Esquire, Attorney for Defendants, at 230 Court Square, Charlottesville, Virginia. 22901.

s/ John W. Zunka

Date Filed: 1-10-75

VIRGINIA: IN THE CIRCUIT COURT FOR THE COUNTY OF ALBEMARLE

RAYMOND L. WALTON, RUBY J. WALTON,

Plaintiffs

v. ASSIGNMENT OF CROSS-ERROR

ELLEN ROSSON, et als,

Defendants

Defendants, Ellen Rosson, et als, pursuant to Rule 5:6 of the rules of the Supreme Court of Virginia do hereby assign the following as cross-error to the above styled case:

(1) The Court erred in allowing into evidence testimony regarding momuments and other delineations on the ground of the extent of the boundary in dispute which are not designated in any evidence of title.

(2) The Court erred in finding that plaintiffs had established by preponderance of the evidence the boundary line for which they contended which finding is based solely on parol evidence.

(3) The Court erred in overruling defendants motion to strike plaintiffs evidence.

ELLEN ROSSON
MAMIE ROSSON SHIFFLETT
LESTER ROSSON
JOSEPHINE ROSSON FRAZIER

by Counsel

s/W. G. Pickford
Belt and Pickford,
230 Court Square,
Charlottesville, Virginia. 22901

CERTIFICATE

I hereby certify that a true copy of the foregoing assignment of cross-error was mailed to John W. Zunka, Esq., counsel for plaintiffs, 414 Park Street, Charlottesville, Virginia. 22901, this 10th day of January, 1975.

s/ W. G.Pickford

Q. Then I would like to ask you this. The records show that in 1953 you bought tract 6-32 the Lucy Wood tract would you describe how that happened?

A. Well I wanted to buy this tract of land and Mr. Rosson said it belonged to him so I told him I would buy it. We came to Charlottesville to write up the deed and Mr. Wingfield was employed by Mr. Rosson and he told Mr. Rosson and Mrs. Rosson that this land didn't belong to them that it belonged to the Woods. So I bought it from the Woods. He showed them on the tax map that the Woods owed a tract of land between me and him that he couldn't sell this land to me. I would have to buy it from the Woods.

Q. Did you buy it from the Woods?

A. I bought it from the Woods then.

Q. Was it George and Joe Wood?

A. Yes it was.

Q. Now I would like to ask you about this line the line between us the tract you bought from the Woods and the Rosson tract? Did you ever talk to Willie Rosson about this line?

A. That fence line?

Q. About this line.

A. Yes. I talked to Mr. Rosson several times about the line.

Q. That is the line between your tract 632 and 633 the one that the Rossons live on.

A. That is right.

Q. Did you all ever agree on where this line was?

A. No, we never agreed on it.

Q. Did you ever go out on that line and talk to him about it?

A. Yes, I had the Woods to come up there show it to him. Pin point the line out to him. But he did not agree to it.

Q. When was that?

A. That was in 1965.

Q. No it couldn't have been then he died in 1962. How long after you bought that tract did you go up there do you remember when that was?

A. I don't the year that we...

Q. Was it while you were still living there of after?

A. No, it was after I had moved out.

Q. When did you move out?

A. 1956. It must have been out 1960 that I showed him where the line was when I had the Woods there.

Q. Well let us go back to when you moved out then. You moved out in 1956 where did you move out of?

A. I moved out of the house I built.

Q. Where did you go then?

A. I went to Maryland.

Q. Did you continue to come back here?

A. All yes.

Q. Who came back with you?

A. My wife.

Q. How often did you all come back?

A. Most of the time we came back every week. But we were working I had a sawmill in Maryland and we worked down there and then we would come back and forth home every weekend.

Q. You came back to the house you all built?

A. Yes, to the house we built.

Q. When did you all stop coming back so regularly?

A. That was about 1965.

Q. So in the last few years you haven't been coming back as much you did previously. Did you ever farm any of these tracts that you owned?

A. No just the garden.

Q. Did you run cattle on any of the tract?

A. Yes I run cattle on them.

Q. When did you stop running cattle on them?

A. About 1966 when I moved to Maryland.

Q. You moved to Maryland to Maryland in 1956?

A. Yes. I had cattle after I moved to Maryland.

Q. For how long?

A. I guess 4 or 5 years.

Q. Maybe until 1960 or '61?

A. Some where along there.

Q. Do you remember when Ray Rosson Died?

A. Yes.

Q. You say you and Willie never agreed on this line why did you put off doing anything about it.

A. I really well Willie always said that he had someone that knew the line and he was going to bring them down and we would get together on the line and establish the line and we wouldn't have to and I was willing to agree with him on it.

Q. Did he ever bring this person down?

A. He never did come.

Q. He said he would?

A. Yes.

Q. Did you ever talk to him about it?

A. I talked to him several times.

Q. What did he say?

A. He was always going to get a hold of this guy but he never did do it.

Q. He never did. Then he died and you had never reached an agreement on it?

A. No was never reached an agreement on it.

Q. You say Willie Rosson didn't ask you permission to use that spring did anybody else ask you?

A. No.

Q. Did anybody else ask your permission to graze cattle on it?

A. No.

Q. Anybody ask you permission to cut wood from it?

A. No.

Q. And the reason you waited this long to try to establish a boundary is you testified earlier that you have waited this long why is that?

A. Well to save a lot of money for one thing if we could establish our own line it would save all this time in court and all this money if both sides could establish a line up through there ourself and had the surveyor to run it look how civil it would have been. That is what I have been after all my life.

Q. Have you asked the Rossons or any of these other people involved to agree to a line?

A. I have never ask Mrs. Rosson but I asked Mr. Rosson and he never would agree.

Q. Well he died in 1960 or '62 didn't he?

A. Then I talked with Mrs. Rosson when I started to work up this but she still thought it was her land so I said well we will just have to take it to court.

Q. That was after he died?

A. That was after he died that is when I first started to having the land surveyed.

Q. And you say she still claimed it just like Willie did?

A. That is right.

14 tween those tracts. Now, with the permission of Mr. Pickford
15 Your Honor we have two stipulations. One with respect to depositions
16 and one with respect to the Martin Mountain Road, the scope on
17 which the case is based. This will be the first stipulation which
18 was entered into to narrow the issues. . . which will be argued
19 before the court to day and I'll read it in order to get in what
20 I think we should have. It is stipulated and agreed between the
21 parties with respect of those portions of the plaintiff's parcel
22 6-32 and the defendant's parcel 6-33 which lie east of the road
23 state route 810, the boundary line is the center line of the
24 Martin Mountain Road beginning at a point where the now said road
25 begins, as indicated on that sketch it's a new cut Your Honor.

COURT: That mean road?

BARRETT: Martin Mountain Road, yes.

COURT: The new cut is the road too?

PICKFORD: No sir, the straight line coming down from the Mountain is the old Martin Mountain Road as indicated on this plat Your Honor.

COURT: What is the new cut?

PICKFORD: It is the line indicated new cut, the center of that which is stipulated the boundary.

COURT: How is the evidence on the ground?

BARRETT: It's a road Your Honor.

COURT: The new cut itself is a road.

BARRETT: It's a road which is very apparent whereas the lower end of the Martin Mountain Road near 810 is now over pretty much overgrown. You can see that it was there but not very well.

COURT: So, the new cut from 810 to the Martin Mountain Road is also a road.

BARRETT: Yes sir.

COURT: So, you are following a line beginning at the intersection of the new cut and route 810 and eastward up the mountain?

BARRETT: Up the mountain as far as the parties land adjoin.

COURT: So that's apparent from the sketch, exhibit A.

1 BARRETT: There is no dispute between the parties
2 concerning their lands east of 810. The cause in hearing relates
3 solely to the boundary of their land which lies west of State Route
4 810. You want to give a stipulation on this.
5 PICKFORD: I think we can stipulate some width and
6 a similar line of that new cut would be the new boundary line. If
7 we could agree on the width of that road at this time it might
8 help the title search.
9 BARRETT: I imagine it would be ten or twelve feet.
10 PICKFORD: Twelve feet.
11 COURT: All right, it is stipulated then that the
12 new cut is a twelve foot road the center line of which is the
13 boundary. Now, what about the Martin Mountain Road? Is that an
14 established road or an old abandoned road?
15 BARRETT: It's a logging trail Your Honor. It varies
16 in width.
17 COURT: What's the position on it by counsel at
18 this time?
19 PICKFORD: It's identifiable Your Honor but is not
20 used at this time. I stipulate that the center line of the new
21 cut be the boundary line to the point where it intersects with the
22 Martin Mountain Road.
23 COURT: Then the center line of the Martin Mountain
24 Road?
25 BARRETT: Yes, Your Honor.

COURT: The Mary Martin Tract?

BARRETT: Just as far up as the tracts are joining, the center line of the road would be the boundary.

COURT: That's understood.

PICKFORD: Do you agree that the Martin Mountain Road is twelve feet wide?

BARRETT: We can say that. I think that's a good average width.

COURT: All right. It is understood then that if there is no other width established on the Martin Mountain Road it will be stipulated then that twelve feet will be the agreed width of the road to be subject to joint use I take it by the adjoining property owners.

BARRETT: Right Your Honor.

PICKFORD: Your Honor, these depositions taken pursuant to notice and our parties were sworn and are in rough form. I haven't had time to put them in final form and the notary before whom these people were sworn, is on vacation and not able to notorize them in time for presentation to the court. Mr. Barrett and I stipulate that these are the depositions that were taken and they are in no form, as I said, subject to some misinterpretation or points that couldn't be made out on the tape and Mr. Barrett would like to stipulate that they are subject to whatever the tapes reveal. I still have the tapes of these depositions.

COURT: There may be some ambiguities then in the

1 transcript I take it?

2 PICKFORD: Yes sir.

3 BARRETT: Yes Your Honor.

4 COURT: Subject to that, both of you stipulate that

5 they are the depositions and can be admitted into evidence today?

6 BARRETT:: Yes Your Honor.

7 COURT: All right, they will be allowed into

8 evidence by stipulation.

14 DIRECT EXAMINATION

15 By: Mr. Barrett

16 Q Mr. Walton, would you give your name and address

17 please?

18 A My name is Raymond Walton.

19 Q Where do you live?

20 A 3802 Ridge Road, Westminister, Maryland.

21 Q Where were you born Mr. Walton?

22 A I was born in Blackwell Hollow on the Rubush Farm.

23 Q How far is that from the place you now own?

24 A About one mile.

25 Q Where were you raised?

A I was raised about a half mile on down from the Rubush place, on the home place now. The Newman Shifflett place.

Q Who is your wife?

A Ruby Shifflett Walton.

Q When were you married?

A 1940.

Q Are you the Plaintiff in this case?

A Yes.

Q Would you describe to the court your boyhood?

A I was born and raised right in the country there where this farm is located. I have hunted and picked blackberries and worked in the fields on all of the land that is located up in and around this parcel of land. I am very well familiar with where the fences were and the old line that separated the farm.

COURT: You say you are familiar with the fences on the old Pleasant Via Farm?

A Yes Your Honor.

Q When were you born?

A I was born in 1918.

Q When, if ever, did you move away either temporary or permanent from this area?

A In the late 30's, 38. I went to Maryland, done some work in Maryland and I come back for awhile to Virginia and then after I got married I was in Maryland all of the time, until World War II. Then after World War II I served about three years

in the army, then I came back to Blackwell Hollow.

Q After the war you came back to Blackwell Hollow?

A Yes sir.

Q Was Ruby with you then?

A Yes.

Q Where did you all live then?

A We lived with my mother-in-law for awhile and then we built a house, bought the Joe Wood place and built a house on the Joe Wood place.

Q When did you buy the George Wood place?

A 1947.

Q You built a house on this tract?

A Yes sir.

Q Is it on the east or west side of the road?

A On the east side.

Q A portion of the tract is on the east side?

A Yes.

Q How far is this from the road?

A I guess it's fifty feet.

Q Is this road route 810?

A Yes.

Q Now with respect to the George Wood Tract. Did you build a fence on this tract between the George Wood Tract and the Lucy Wood Tract?

A I did.

1 Q Would you describe to the court how that fence
2 was built?
3 A Well, I had some workers and one day we put the
4 fence between the George Wood Tract and the Lucy Wood Tract.
5 Q What was the fence made of?
6 A Made of barbed-wire.
7 Q How did you know where to put that fence up?
8 A There was an old rail fence up there and I knew
9 the line between the two farms. I had worked corn on the farms.
10 Q You knew the line from the old fence and the
11 fact that you had grown up there?
12 A I had worked corn in both of those fields.
13 Q Any way, you were familiar from a boy?
14 A Yes.
15 Q Did you discuss this fence with Willie Rosson?
16 A No, I never did discuss it with him. When I got
17 ready to put a fence he sent two boys down to help me but....
18 Q Who were they?
19 A They was George and Lester.
20 COURT: What's their last names?
21 A George Rosson and Lester Rosson.
22 Q Lester is here in the court today?
23 A Yes sir.
24 Q Where is George Rosson?
25 A He is dead.

Q You say that Willie sent them to help you?

A Yes.

Q How old were they then?

A I guess maybe they was 15 or 16.

Q Boys in otherwords?

A Yes.

Q Did they in fact help you build this fence?

A Yes.

Q Did you pay them?

A No.

Q Did you ask them to help?

A No, I didn't ask them.

Q They volunteered?

A They'd come around and do alot. They'd come around where I was working lots of times and fool around and come to the house. They was pretty close with us.

Q You knew them quite well?

A Quite well.

Q Why did you put this fence up?

A Well, I had some cattle that I wanted to put on this farm that I had bought from the George Wood Tract and I put the fence up in late 47 and in early spring I brought cattle in and put on the George Wood Tract.

Q How many cattle did you bring in?

A I guess 6 or 7.

Q Six or seven cows.

A Cows, right.

Q You raised them on the George Wood Tract?

A Yes.

Q You say you put the fence up so they wouldn't get off and wouldn't go over the line?

A Wouldn't go over the line and get on the Wood Property.

Q Was Willie Rosson at that time using the Lucy Wood Tract to graze cattle?

A Well, he didn't have any fence up the road. He didn't have any fence on it, I don't think he could have used it much.

Q Did you see any cattle on the otherside?

A No, it wasn't any cattle. It wasn't any fence. The fence that I put up was the only fence that could hold his cattle anyway. He didn't have any fence on his place.

Q All right.

A He could have had a cow or so and tied it to a tree or something, I don't know.

Q Anyway, his cows did not come through that fence?

A No.

Q How long did you keep cows on this George Wood Tract?

A I kept cattle there until about '55.

Q Now, with respect to the George Wood Tract. Have you paid the taxes on this parcel?

A I have.

Q Have you always paid them?

A Always paid them.

Q Since the day you bought it?

A Since the day I bought it.

Q That was in 1947. Are you still the owner of this parcel?

A Still own it.

Q With respect to the house you built, say in the spring of '48 on the George Wood Tract which is near the road, route 810. Did you move into that house right after it was built?

A Yes, practically before it was built.

Q You and Ruby moved in there?

A We did.

Q How long did you and Ruby live in that house?

A We lived there until '54, I went to Maryland but she still lived there. I worked in Maryland but my wife still lived there until '56.

Q You went to Maryland in '54 to work?

A Right.

Q What did you do in Maryland?

A I was in the lumber business.

Q But Ruby continued to live in the house until '56. Did you visit her in the interim?

A Every weekend.

Q Now, when did you buy Lucy Wood out?

A I bought the Lucy Wood Tract in 1953.

Q From whom did you buy that tract?

A I bought the tract from Lula Wood, Ora Shifflett, Joe Wood, Robert Wood, Virginia Wood....

Q Collectively, who were these people.

A They was Mrs. Lucy Wood's children.

Q Did you know Lucy Wood?

A Very well, yes.

Q Did you know Lula Wood?

A Yes.

Q Now, at the time you bought this Lucy Wood Tract was there any question in your mind concerning that you were buying it from the owners?

A I knew the tract of land, I knew who owned the land.

Q Who did own it?

A The Wood's owned the tract of land. I knew where it was all of my life. I'd been on it and I carried wood to old Mrs. Wood when she lived on the place. I have picked berries over every inch of it. Strawberries, it use to be a lot of strawberries on the place and all of us children would go up and pick

1 strawberries on it. Blackberries, apples.

2 Q Now, have you paid the taxes on this parcel?

3 A Yes sir.

4 Q Since 1953 you have paid them every year?

5 A Every year.

6 Q To your knowledge, what is the acreage of that

7 parcel on your tax receipt?

8 A It's 49 acres.

9 Q You know this from the tax receipts?

10 A Yes.

11 Q Did the Wood Heirs ever tell you how many acres

12 were there? Do you remember?

13 A No, I don't remember whether they ever said how

14 many acres or not, they knew where the lines and I knew where the

15 lines were so they sold it to me as the boundary. They said their

16 tax tickets called for 49 acres.

17 Q Now, would you describe what happened before you

18 bought this land from the Wood Heirs? When did you first decide

19 that you might want to buy this?

20 A Well, I got to talking to Mr. Rosson, Willie. He

21 thought he owned it and he was going to sell it to me so he was

22 going to get Mr. Wingfield to look it all up and write a deed and

23 all so when we came down to see Mr. Wingfield to sign the deed Mr.

24 Wingfield said he could sign the deed because this land...that

25 Willie didn't own this land that was between Willie's land and

mine, that it was the George Wood Tract.

Q What was Willie's reaction to this?

A He didn't say anything. He just got up and walked out.

Q So then you didn't buy the land from Willie?

A No, I didn't buy the land then and I went awhile and then the Wood's approached me to buy it and I bought it from them.

Q How much did you pay for it?

A I paid $500.00.

Q Now, was there at the time you bought the Lucy Wood tract, was there then a fence between Lucy's tract and Lula's tract?

A The one that I bought.....

PICKFORD: If this is being offered as evidence trying to pinpoint a boundary or monument then I think it has to be based on boundaries or monuments mentioned in the title and there has been no fence line mentioned. At least he hasn't established a fence line.

BARRETT: I'll rephrase the question Mr. Pickford. Was....you know where your fence was, the one you built in 1947, was there another fence between that fence you built in '47 and Willie's House?

A No. Willie had a little bitty fence that run up the hill from the road up to the spring, maybe a little fence but

it didn't come down to the George Wood Tract, it just came down the road a little ways and them come back up into the hills.

Q In the vicinity of the spring?

A Yes, in the vicinity of the spring.

COURT: Are you talking about the P. M. Via home as the home that Willie lived in?

A Yes Your Honor.

Q He lived in the place old P. M. Via lived in?

A Old P. M. Via.

Q Lula also lived in that house?

A Yes sir. Lula lived there.

Q There was no fence between your 1947 fence and Willie's House except this little fence you described down by the spring?

A I think it was about two strings of barbed wire running up into the hill there.

PICKFORD: I am not sure at this point but if this is going to be used as evidence to determine where the boundary line is Your Honor I think it is inadmissible because there is no fence mentioned in the plaintiff's chain of title.

COURT: Now, which chain of title are you referring to, the 49 acre tract?

PICKFORD: Yes sir.

COURT: Let's look at the deed we are talking about. I think we can pinpoint that.

PICKFORD: It will be 306-211 I believe.

COURT: This is the Wood Heirs to Raymond and Ruby Walton. Would that be in the defendant's or the plaintiff's...

BARRETT: That would be plaintiff's.

COURT: Plaintiff's Exhibits.

BARRETT: Number 5.

COURT: Number 5, here we are. I'll look at that deed and take a moment to examine the record of title. That's a deed dated May 18, 1953. It refers back to the will, Lucy Via Wood. All right.....

BARRETT: The same description is in the will.

COURT: Taking it from the will.

BARRETT: That's defendant's exhibit number 3.

COURT: Let's look at this again. I gather that the description taken alone sounds confusing but it's apparently a reprint or a copy from the will itself. Lucy B. Wood, I will the lower part of my land commencing at a rock on the Main Blackwell Hollow road, running towards Scott's Mountain, northwest and... with his line , I take it Scott's line, Scott's line has previously been referred to under the previous line.

PICKFORD: Yes sir, but several other lines had been too.

COURT: Have they?

PICKFORD: Yes sir.

COURT: We'll leave that matter to be clarified later

1 but running with his line thence on the other side of the Black-
2 well Hollow Road and thence with the Martin Mountain Road to the
3 top of P. M. Via's line. Scott is the only one mentioned in
4 connection with a line at the top of the mountain. It would
5 appear or at least as a reasonable inference that it refers to
6 Scott's line. Now, where would Scott's line have been? Is that
7 generally the area we are talking about, the disputed?
8 BARRETT: Generally, but it's not the area that Mr.
9 Walton is discussing Your Honor. I don't quite understand.....
10 COURT: What relevance is it, the fence at this
11 point at all then?
12 BARRETT: It is of no relevance I can see right now
13 Your Honor.
14 COURT: It is not intended that become involved as
15 a boundary line then? The purpose of the testimony with regard
16 to that fence near the spring is not for the establishment of any
17 boundary line?
18 BARRETT: No Your Honor.
19 COURT: All right, go ahead then Mr. Barrett.
20 Q Now, Mr. Walton I would like to ask you this.
21 With respect to the boundary line between Lucy's Tract and Lula's
22 Tract you say there as a boy you grew up within this area and
23 were familiar with these lines?
24 A Yes.
25 Q Can you tell the court how you became familiar

with these lines?

A Well, between the George Wood place and the Lucy Wood place before the road was changed the old rail fence ran up beside the road, right up on the back. Then it came on up the road and then it went straight to this Mulberry Tree by the spring.

Q We were talking about the George Wood Tract. Are you describing the fence.....

A I am describing the Lucy Wood Tract.

Q Between Lucy and Lula.

A Lucy and Lula. The road....the fence came right up 810 before the road was changed. The road is just about 15 feet moved over to the east.

Q The new road is to the east of where the old road was?

A Yes.

Q Can you stand on the new road now and see where the old road was?

A Yes. Someplaces it runs back into the new road. It came right up side the new road.

Q You say the move was about 15 feet?

A Some places and some places it wasn't that far. Then the old rail fence came up to the corner.

PICKFORD: Excuse me, is this a boundary fence you are talking about?

A This is a boundary.

1 PICKFORD: Then I would have the same objection at
2 this point Your Honor.
3 BARRETT: I think Your Honor I'll be able.....
4 COURT: We are talking about a line.
5 BARRETT: ....to connect this up Your Honor. I have
6 got to start somewhere and the evidence that Mr. Walton will give
7 will be with respect to his knowledge, such as he has of this
8 line...
9 COURT: Between the Lucy and Lula properties.
10 BARRETT: Yes sir, the line between Lucy and Lula.
11 Subsequently, we will pick up and show the connection between Mr.
12 Walton's testimony and their knowledge, because they are older
13 than he is and have knowledge which predates his knowledge.
14 COURT: I don't know that it's evidence of a boundary
15 with a description like we have got in the will it seems to me
16 that whatever physical monuments were placed on the property,
17 either before the will was drawn or after it would have some
18 bearing on it. Theobjection is noted and overruled but....
19 PICKFORD: Of course I am relying in part on
20 Plaintiff's memorandum of law here and the cases he cites therein
21 on page 2 sub-paragraph B. He cites these cases, Bradshaw v Booth.
22 If a description is general, Mr. Barrett has proceeded to give
23 a description general, if anything, extrinsic evidence is
24 admissible to locate on the ground the boundaries thus designated
25 in the general description thereof so as to identify the land

1 conveyed. So, these boundaries have to be designated somewhere
2 and the plaintiff's general description of the property being in
3 the deed, where he acquired the property or his chain of title.
4 He goes on to page 3 here, I believe paragraph 2 there. These
5 admissions: declarations of land owners made during the time
6 of their ownership, in this case Mr. Walton wasn't, which are
7 adverse, etc., etc. and it goes on down to the third sentence
8 from the bottom but must have reference to pre-existing monuments
9 or other delineation on the ground of the extent of the boundaries
10 and these designation of monuments as designated in some evidence.
11 COURT: Where are you reading from?
12 PICKFORD: Page 3 , third line from the bottom. He
13 is citing Bradshaw v Booth, Brauer v Adams. This is followed in
14 other cases as cited in the immediate field of law. Other cases
15 I'd cite are Douglas Land Company v Thayer, 107 Virginia. A
16 witness offered testimony as to the location of a corner based on
17 the general reputation and description but not on his individual
18 opinion as to it's location. That's what this is.
19 COURT: The question is whether that fence was
20 recognized as a boundary line. If this witness by general know-
21 ledge of the area can testify, what's the objection to his
22 testifying as to where the fence was, if it was recognized as a
23 boundary?
24 PICKFORD: If it's not mentioned in his chain of
25 title Your Honor then who's to say it is recognized as a boundary

other than the witness and I have no way of cross examining him to find out whether it is so or not or whether anybody else recognized it. I think that's the purpose of this rule, to prevent that sort of thing. They could have gone out there and marked a tree, any fence line or rock and said, we remember that as being a boundary line. I have no way to cross examine that unless it is in the plaintiff's chain of title and I think that is the purpose of this rule.

COURT: Now, what do you say the rule is, that the deed has got to pick up a physical monument by reference in order for it to have any merit?

PICKFORD: I believe they can testify as to location of monuments or any other variation on the ground as long as there is some reference to it in that chain of title.

COURT: Obviously, the description contained in Mr. Walton's deed was abstracted from the will. Now, I am not sure the date of the will has been put into evidence but the will itself, let's see what the date is. 1916 he dates it. It is his position Mr. Pickford that paragraph second of the P. M. Via Will, of itself, establishes by reference to existing monuments a line that could be determined.

PICKFORD: No sir. I take position that the plaintiffs burden is that he has got to establish a boundary and he can use extrinsic evidence to show it if he has a general description, if monuments and boundaries that he has evidence of and testimony

at some point to show the chain of title. I think that is pertinent in this case because if we allow the fence to be established as the boundary line then they are going to move on to a tree and then a rock and then something else. It is no way to show a chain of title.

COURT: How would you ever determine what property was referred to in the will if they have done no more surveying since the will was drawn? You are saying that it couldn't be a valid deed rising out of that will then.

PICKFORD: I think he got out of that deed whatever Lucy Wood's Heirs got. He has testified that he knew what the boundary lines were at that time. He had attorney's search the title to prepare the deed. He didn't ask for a clear description nor did his attorney define one. I think that puts him in the position of having to meet this burden rather than....

COURT: Don't all of the parties claim under the P. M. Via will as a matter of construing the division of the land in its entirety under the P. M. Via Will or do we have a chain of title completely independent of that?

PICKFORD: The Walton's claim under their deed from the Sours which came down the line from the heirs of P. M. Via but their claim is under title they have occupied land, the Lucy Wood Tract, all the way to this fence line which was built in 1947 regardless of what was conveyed in that deed.

COURT: How are you going to get to a fence line to

1 apply the same principal.

2 PICKFORD: I am going to show the boundary line
3 agreement between these parties. I am not showing a chain of
4 title other than what was held in the adverse possession of the
5 buyer under that title.

6 COURT: I'll note your objections but I am going to
7 rule at the time being that any evidence which can show what the
8 parties, who took under this will, actually did pursuant to their
9 understanding of the boundaries of the former P. M. Via tract
10 which was divided to his daughters and granddaughter. Now, that
11 may be something that will be taken up again with regards to the
12 final determination of the line. We are going to have to start
13 somewhere and the parties themselves, by their actions, may have
14 set their boundaries. Whether it was by fence or otherwise, it's
15 a question of the weight and your objection is noted and over-
16 ruled but we will keep that point in mind as the evidence unfolds
17 and that might not be enough of an indication of the boundary but
18 whatever it's worth the court will receive Mr. Walton's testimony
19 about this boundary.

20 PICKFORD: I make note that I submitted authority
21 to you on that.

22 COURT: Yes sir. Mr. Barrett, he was getting ready
23 to describe a rail fence as I recall. Go ahead Mr. Walton.

24 A This rail fence came up 810 to a corner about
25 I guess, 80 yard from the old Martin Mountain Road, come down the

road about 80 yards and it was a corner of the old rail fence.

COURT: You say come down the road, which way do you mean north or south.

A North. From the corner of the fence it went straight to a Mulberry Tree that was 30 yards west of this spring. Then it turned slightly to the west and went to the top of the mountain.

COURT: To the top of which mountain?

A The Lizzie Miller Mountain, the Lizzie Miller Place.

COURT: Went to the Lizzie Miller Line then?

A Yes sir.

Q Mr. Walton, what side of this fence was the spring?

A It was on the Lucy Wood Tract.

Q How far from this fence was this spring?

A It was 25 or 30 feet.

Q How far from this road, the Blackwell Hollow Road, was the spring? Is the spring still there by the way?

A Yes, the spring is still there.

Q How far is it from the Blackwell Hollow Road?

A I guess maybe a 100 or 125 feet.

COURT: When is it that you are referring that this fence being in existance, what year?

A Back about 1935, '34.

COURT: This is the time you are testifying to now?

A Yes Your Honor.

Q It is my understanding Mr. Walton that you personally are not familiar with the location of this rock that has been referred to in Pleasant Via's will?

A No, I don't know anything about the rock but I do know where the fence cornered at.

COURT: What was the condition of that fence in 1935?

A It was in poor condition.

COURT: What would you estimate to be the age of it at that time?

A It could have been 75 to a 100 years old. There are still a lot of old rails up in the mountains yet. They have been there for years and years.

COURT: It was an extremely old fence then in 1935?

A It was.

COURT: Was it sufficient to turn livestock or...?

A No.

COURT: Just the remains of the old fence?

A The old post sticking up and the old rails lying along.

COURT: All right. Go ahead then Mr. Barrett.

A I do remember when the post and fence was in better shape. When Dry Wood lived there.

COURT: How far back do you remember the fence to be?

A I guess back in '27 or '28.

COURT: What was its condition back in '27 or '28?

A It was in fair condition. It would have turned livestock then.

COURT: Who owned the property on each side of it then? Who operated or occupied it?

A Lula Wood.

BARRETT: This was in 1927 Your Honor.

COURT: Yes sir. The earliest date that he remembers who was on each side of the fence and who was using it.

A Lucy Wood owned the property on the east side.

COURT: Actually the fence ran generally east and west and according to your description it would have been on the north and south side of it. Who was on the side in the P. M. Via house at the time?

A That was the Lucy Wood Tract but there wasn't any house on that side, the barn was there.

BARRETT: Mr. Walton, the Judge asked you this. Who owned the land where the P. M. Via House was, the one the Rossons live in now.

A Lula Wood.

COURT: Who owned the land on the upper side or the north side of that old rail fence? Who claimed it or occupied the land?

A Lucy Wood owned that tract.

1 Q Were they both living there then?

2 A Yes.

3 Q You remember both of them living there?

4 A Yes.

5 Q Lucy Wood was living on her tract and Lula Wood

6 was living on her tract?

7 A Yes.

8 Q Lula was living in the P. M. Via House?

9 A Yes.

10 Q Where was Lucy living?

11 A She was living in the new house that they built

12 on the Lucy Wood Tract. After they moved off of the George Wood

13 Tract.

14 Q Now, was Lucy's house, was that on the east side

15 or the west side of the road?

16 A That was on the east side.

17 Q Was that near where you house is now?

18 A Yes.

19 Q Can you still see the foundation to that house?

20 A Yes.

21 Q How far is that house from the road?

22 A I guess 200 feet.

23 Q 200 feet?

24 A 150 to 200 feet.

25 Q The P. M. Via House that you said Lula lived in, who

lives in that house now?

A Willie Rosson.

Q Willie lived in that house?

A Willie lives in that house.

Q You do remember when Lula and Lucy.....

COURT: Now Mr. Barrett, let's not repeat. We are going to be here a long time, I can see so let's move it along.

Q Did you ever discuss with Willie Rosson now, the line between the property you bought from Lucy's heirs and the place he lived on?

COURT: What relation did Willie have as an owner Mr. Barrett? That hasn't been established. It appears to me that Willie rejected any claim of ownership here somewhere. In the reference that was previously made he refused to join in the conveyance. Was he in a position to act as owner at the time you are referring to?

BARRETT: He was the actual owner Your Honor of the Lula Wood Tract which he bought in 1942. Mr. Pickford has a deed in evidence.

COURT: Are you referring to the time then that Willie was the oner?

BARRETT: Yes sir.

COURT: All right, go ahead.

BARRETT: Willie was the owner. After you bought your tract, after you bought the Lucy Wood Tract in '53, Willie

was living on his tract, in his house?

A Right.

Q What was your relationship with Willie concerning this line?

A I talked to Willie several times about the line and I explained to him where it was and he knew where it was too but he always said he had someone to bring down to show me exactly where the line was. That he had a guy that lived up the road somewhere that really knew where the lines were and he was going to bring him down and we was going to establish the line.

COURT: What year was this?

A That was about '54 or '55.

Q Did you ever go out on this line to establish a line?

A Yes. I had all the Woods come out that owned both tracts of land. The Lucy Wood Tract and the Lula Wood Tract, I had all of the Wood's come out and show us the line.

Q When was this approximately?

A This was approximately 1956.

COURT: What year?

A 1956.

Q Now, the time the depositions were taken you thought it might be 1962 but you weren't sure, which is the correct date?

A It was '56.

Q Who went out on this line with you this day? You

say some of the Wood's from both sides. Do you remember who they were?

A Yes, I remember most of them. It was ten or fifteen people up there that day.

Q Name some of them?

A George Wood, Lula Wood,.....

Q Lula or Lucy?

A Lula and Chap Wood, Robert Wood, George Walton, Roy Frazier....

Q Now who else, did you have a surveyor with you that day?

A I had a surveyor.

Q Do you remember who that was, to your own knowledge?

A Mr. Huffman, Aubrey Huffman.

Q What happened?

A The Wood's showed us exactly where the lines were and I had a bush axe and I marked off some of the line. We chopped down some bushes so we could get through and then we stayed up there for awhile, I guess to maybe twelve or twelve thirty and Mr. Rosson came over to where the surveyor was and he said, you are just working for nothing because that line won't stand.

Q This was Willie Rosson?

A That was Willie Rosson and so we worked a little

while longer and then we went back to the house and ate lunch and the surveyor told me it wouldn't.....

Q What did he tell you?

A He told me I would have to take it to court to establish a line because Mr. Rosson didn't agree to it.

COURT: Willie at that time owned the Lula Wood Tract?

A Yes sir.

COURT: You owned the Lucy Wood Tract?

A I owned the Lucy Wood Tract.

COURT: What was the condition of the old rail fence then or could you tell.....

A There is no sign of the old rail fence anywhere now. The fire got....

COURT: Back in 1956, was it still visible?

A No.

COURT: Knowing what you knew about where the old rail fence actually stood and what you saw out there in 1956, could you tell how close you were to the old rail fence with what George and Roy and all of the other pointed out to you as being the line?

A I could go out and walk just right on the line most all of the way. I wouldn't get off that line from there to the top of the mountain I bet more than 3 or 4 feet.

COURT: As indicated by what, the old rail fence.

A No, the old rail fence is gone but I have hunted

all over the mountain and picked berries all over it, picked apples.

COURT: Could you now walk where the old rail fence was?

A Yes sir.

COURT: How close to that was the line shown you by Lula, Chap, Robert, Roy Frazier and the others?

A It was right on the line.

COURT: Right on the old rail fence?

A Right on the old rail fence.

COURT: How do you know it was? Was it from your own recollection?

A My own recollection.

COURT: All right, go ahead Mr. Barrett.

Q You say that Willie mentioned a witness that he was going to bring, did he ever bring that witness to you?

A No, he never did bring the witness around.

Q Did you ask him to?

A I asked him several times. Mr. Rosson, I was hauling up 810 in the truck....

COURT: Mr. Barrett, excuse me. I didn't realize the time had gotten along quite that far. We are going to take our recess until Judge Purcell completes his motion. You all may remain the courtroom of course.

Court recessed

COURT: All right Mr. Barrett. You may continue with the direct examination of Mr. Walton.

Q I believe Mr. Walton you were talking about your.. .. the last question I asked you was, did Mr. Rosson ever produce this witness that he said would show you the line?

A No he didn't.

Q Did you ask him to produce him?

A Yes, I asked him several times.

Q I show you this plat....this plat Your Honor was attached to the Motion for Judgment which was filed in the case. The plat dated July 3, 1973.

PICKFORD: Just for the purpose of the record I have to state an objection to any plats.

BARRETT: I haven't introduced it Your Honor.

COURT: We'll take up the objection before it is received into evidence Mr. Pickford.

Q Mr. Walton, do you recognize this plat?

A Yes I do.

Q What does it represent to you?

A It represents the Lucy Wood Tract.

Q On the west side of the road?

A On the west side of 810.

Q I call your attention to a couple of features on this plat, one the spring, one a feature called a dead Mulberry tree and another one up here called a gap in the mountain. I also call

your attention to the line that starts here at point C and runs over to a point that says Iron at 20.17. Does this line from point C to 20.17 and from there past the spring to the dead Mulberry Tree represent the reasonable accuracy as you recall it, where that old rail fence was that you described?

A Yes. It's as close as I can describe it.

Q Does the line from the dead Mulberry up past the point where the gap in the mountain to the point A represent the line as you recall the old fence?

A Yes, this opened in here. It was the way the old fence was. There was the rail fence and a brush fence so they cut the trees down on each side of the fence and throw them right on the fence so the cattle couldn't get back in there.

Q Does this plat accurately reflect or represent that line as you recall it?

A Yes.

Q For that purpose Your Honor I would offer this into evidence.

PICKFORD: I object Your Honor. It refers again to monuments and delineations on the ground in order to place a chain of title.

COURT: Mr. Walton, how was the surveyor made aware of where the line was? Did you show him?

A Yes sir, we showed him.

COURT: That is you and who else?

A Well, I had the Wood's show him, we was all up there together to show where the old fence was and everything.

COURT: Now, Mr. Pickford you may wish to address yourself to the objections quoted. The court is going to take this as an indication of what the plaintiff claims and not what the legal boundary may be. That is what has to be established in this case.

PICKFORD: Yes sir.

COURT: This is representation as I understand it of what he claims. To that extent do you have objection to the plat being received in record?

PICKFORD: Yes sir. I object to it showing that it designates a dead Mulberry Tree, a gap in the mountain top and any other designations on here which aren't in plaintiff's chain of title. I object to it on the basis that it clearly says on its face it was established by parole evidence and nothing else. That is what Mr. Walton has testified to.

COURT: Your objections are noted and are overruled for the time being with this condition. The plat is not admitted as a survey of the boundary but as a surveyors indication of what the plaintiff claims to be the boundary. That's the purpose for which it is admitted. If he can establish his case there would be the need for some indication of what he claims to. Now, this does not necessarily indicate that he has established his line or could establish it but this is a physical representation which

is merely a drawing, not a survey.

PICKFORD: I think I can clarify that. This is not a drawing which shows a line where the surveyor thinks it is, this is a drawing that shows what was told the surveyor.

COURT: That's the purpose for which it's being received. Mr. Walton has indicated that the surveyor marked it where he told him as a representation of where he claims the line to be. It is admitted into record and I believe it it plaintiff's exhibit 9.

PLAINTIFF'S EXHIBIT 9 so marked at this time by the Court Reporter.

COURT: All right, go ahead Mr. Barrett.

Q Now, Mr. Walton, since you have moved to Maryland have you had an occasion to return here since 1956?

A Since 1956 we came back about once a year. Every summer we come back and spend a week at home.

Q Do you consider this your home?

A This is my home.

Q Did your wife accompany you down here?

A Yes.

Q When you came back on these visits, you say once a year, how long did you say?

A We would stay about seven days.

Q What did you do in those seven days with respect to looking at the property?

A Well, I walked over all the property that I owned during those seven days. I'd just get up and walk all over.

Q Did you find any evidence that anyone had been cutting timber on your property?

A Not since I owned it. The only time I ever did find it was just before I had the Wood's up to show Mr. Rosson the line, he had cut three loads of logs. Then I had the Wood's up to show him where the line was and after that I have never seen him cut any more logs but when I bought the property I told him he could use the water from my spring and he could graze all the cattle on it that he wants and that he could cut all the fire wood he wanted.

Q Who did you tell this to?

A I told Mr. Willie Rosson.

Q What did you tell him, if anything, with respect to the timber?

A I told him not to cut any large timber.

Q What do you mean by large timber?

A Fourteen, fifteen, sixteen inches or bigger.

Q Have you found since 1953, since you bought the place, have you found any evidence of timber being cut off of it?

A I have found evidence that fire wood has been cut. Everything maybe 10 or 12 inches has been cut but no timber.

Q You mentioned that someone had cut a load of logs.

A That was three loads of logs.

Q Three loads of logs. Who cut those, do you know yourself?

A I don't know exactly who cut them but I traced them....I was in Maryland and I came home one Friday afternoon and I seen the truck leaving my property with a load of logs so I followed them up to Yancey's Lumber Mill up at Yancey's Mill and I asked him to hold the check on the logs but he said he couldn't do it unless I got the Sheriff to come in and stop the logs.

Q Do you know who cut those logs? Do you know of your personal knowledge who cut those logs?

A No, I don't know.

Q Do you know that they came from your tract?

A I know that they came from my tract.

Q Did you see the stumps from which they were cut?

A Yes.

Q Were they timber?

A That was timber.

COURT: What year was that?

A That's about 1956.

Q Was that before or after you had the discussion up on the line with Willie?

A That was before. That was why I went and got the

1 Wood's to come up and show him the line so I wouldn't have a
2 dispute.
3 Q You told Willie that he could use the water from
4 the spring?
5 A That's right.
6 Q Cut firewood or whatelse?
7 A Run cattle, as many as he wanted. I would be
8 glad if he would.
9 Q Did he ever ask you if he could do this?
10 A No, he didn't ask. When I bought the land I
11 explained that I had bought the Wood Tract of land and I said,
12 you can go ahead and just run your cattle and use the water and
13 get firewood but just don't cut the big timber.
14 Q All right. At the time you bought the Lucy Wood
15 Tract did you look at the tax plat?
16 A Yes sir.
17 Q Did that tax plat have influence on you purchasing
18 this property?
19 A Yes, it should.
20 Q What was it?
21 A The description of the property and it showed
22 that Lucy Wood owned the land that I was buying.
23 Q Your Honor, I would now like to turn Mr. Walton
24 over to Mr. Pickford for cross examination but I would reserve
25 the right to have Mr. Walton to stand for a recalling.

COURT: Oh yes. All right Mr. Pickford, you may cross examine.

CROSS EXAMINATION

By: Mr. Pickford

Q Mr. Walton, this fence that you built in 1947, you recall that, you discussed it earlier?

A Yes.

Q Did Jerry Lewis help you build that fence?

A I remember Jerry Lewis but I wouldn't say that he did help. I had some of the men that worked for me help build the fence.

Q I think you testified that there was no other fence anywhere along there, is that correct?

A That's correct.

Q Was there a fence along 810, what is now 810?

A No.

Q Is there a fence along there now?

A There is now.

Q Who built that?

A When I put this fence up between me and the Wood Tract land, Willie all he had to do is run his fence down the road a little bit and he had all that land fenced in.

Q I am talking about a fence from where you claim your line begins, if I may refer to the plaintiff's drawing here, this new cut along 810 north to where the solid green line is. At

the time you built this fence in 1947 there was no fence along there?

A No.

Q There is a fence along there now?

A Yes.

Q Who built that fence?

A I guess some of Willie's people built it or Willie himself. I am sure he didn't do it but the boy probably did.

Q You didn't do it?

A No, I didn't own the land then. I didn't own the Lucy Wood Tract, that belonged to the Wood's then. I wouldn't have any right to come up and build a fence on their property.

Q Did you and Willie discuss building this fence?

A No.

Q Did you discuss it with any of the boys?

A No.

Q Did you discuss it with Jerry Lewis?

A No, I would have discussed it without...Jerry might have helped but I don't remember whether he helped. I know there was a couple of my employees that was working for me that came up and helped build the fence.

Q Why do you think the Walton Boys helped out?

A The what.

Q I mean the Rosson Boys.

A For one reason all they'd have to do is just put that little fence down the road on the Wood Tract of land then they'd have that whole mountain to graze.

Q The place we were just talking about?

A That's right.

Q That was built you think so they could fence off that strip?

A I guess they did.

Q To run cattle on what is designated here as the Lucy Wood Tract?

A The Lucy Wood tract.

Q How about the fence up here at the other end, the west end. Do you know who built that?

A John Rubush built that fence.

Q You didn't have anything to do with that?

A No.

Q Was any use being made of that spring at the time you bought it? The Northern most spring?

A Yes.

Q Who was using it?

A Willie Rosson.

Q How long had he been using it?

A I guess he has used it every since he bought the property. I don't know.

Q I think you testified that he never asked your

1 permission to use it, is that right?

2 A I told him he could use the water after I bought

3 it.

4 Q Did he ever ask your permission to use it?

5 A No he didn't.

6 Q How much acreage do you own in this area, entirely?

7 A I guess about a hundred and thirty some acres.

8 Q You said that Willie asked your permission to cut

9 firewood?

10 A He didn't ask me, I told him. When I bought the

11 property I told Willie, I said I bought the Wood Property and you

12 can go ahead and use it just like you were using it, run his

13 cattle in, get the water and I knew he was cutting firewood.

14 Q How about the rest of your property, did you give

15 him permission to use that?

16 A That was all fenced in and there wouldn't have

17 been any need for him to use that.

18 Q Did you ever post this against hunting, trespassing

19 and that sort of thing?

20 A No, I didn't care. I have other people on the

21 other property and sometime when I go up on my property there

22 may be 50 head of cattle there. I don't know who they belong to

23 and then I go up there and see them working on my fence, I don't

24 know what they are doing working on it but I don't care. It helps

25 me because it don't grow up when you have got cattle and things

1 running on your property. You know, if you leave that old mountain
2 land to grow it gets so many briars you can't get through.
3 Q Did you ever post any of your land?
4 A No, I never posted.
5 Q You never put no hunting or trespassing signs on
6 any of your land?
7 A I have got it on the tree right at my house so
8 they won't go on the lawn, that's the only thing.
9 Q That's the only posted sign you ever put up?
10 A The only one.
11 Q Did you ever tell Mr. Rosson to tell you who this
12 man was that was going to designate this line?
13 A Yes, I have asked him to tell me but he never
14 would mention it.
15 Q He wouldn't tell you what his name was?
16 A No sir, not his name.
17 Q Did that concern you? Did you want to find the
18 man?
19 A Yes. If he had told me who it was I would have
20 went and got him and brought him down and let him show me.
21 Q How long did that go on?
22 A Well, I just spoke to him several times. About
23 every couple of days he would come over when I was hauling up
24 through the country and ride in the truck with me up to Crozet
25 and back.

Q Did you ever offer to buy or did he ever offer to sell to you this Lucy Wood Tract?

A Yes he did.

Q When was that?

A That was in 1951 or 1952.

Q That was when Willie offered to sell you the Lucy Wood Tract?

A Yes sir.

Q 6-32 on your drawing?

A Then we came back to Mr. Wingfield's office and Mr. Rosson had Mr. Wingfield to fix up the deed and we came back to Mr. Wingfield's office and Mr. Wingfield told him he didn't own the land that he wanted to sell me that it belonged to the Wood Tract.

Q Did you think up until that time that he owned it?

A Well, he told me he had bought it. I thought he did. I hadn't checked the records or anything.

Q Was this fence in 1947 suppose to be a boundary line between you and Mr. Rosson?

A No, that was between me and the Wood Tract.

Q You just testified that you thought until 1952 that Willie owned that tract.

A I didn't think it, he told me he did in 1951. When he tried to sell it to me he told me that the county owned a tract of land and that he wanted to sell me that too in with all of

his land. He said he owned the county land and this Wood Tract to.

Q He claimed a lot of land?

A A lot of land.

Q In 1947, you believed that this tract belonged to Willie Rosson?

A No, I didn't believe it then. I knew the Wood's owned it but he told me he bought it.

Q You were about to accept a deed from him for it?

A If Mr. Wingfield had wrote it up.

Q Knowing that the Wood's had some interest in it?

A Well, I thought he had bought it. If you get an attorney to write a deed he is not going to write it up if it's not right. That's the first thing he told us when we came in the office he said, Mr. Rosson, you just don't own this land between the Walton Tract and your tract, it belongs to the Wood's.

Q I believe you testified this old fence that you identified, having objected to that Your Honor I am not sure I can ask him that questin.

COURT: What is that now?

Q About this old fence that he says he can identify, the location.

COURT: The court having admitted it you are not waiving your objections by pursuing the matter Mr. Pickford. You may go ahead and the court won't consider that you have waived your objections by cross examining on that point.

Q Thank you Your Honor. Could you locate again for me where you think this fence was in relation to where the Martin Mountain Road, the old Martin Mountain Road, not the new cut in relation to where it come into 810, how far north was that fence?

A I guess it would be around 80 yards.

Q All right, about 240 feet?

A Something like that, yes.

Q When you noticed this truck, '56 or '57 truck hauling timber off of your property you followed this truck to the Yancey Lumber Co.?

A Yancey Lumber Company.

Q Do you know who was driving the truck?

A No I don't. I don't know whose truck it was. I didn't pay that much attention to the truck.

Q I assume you talked to Mr. Yancey about this, is that right?

A I spoke to Mr. Yancey about it, yes.

Q Did he ask you who you were speaking for?

A Yes, I told him that this truck had brought in, I saw Lester, Mr. Lester Rosson over there unloading logs.....

Q From that truck?

A From that truck.

Q So, you knew it was Lester Rosson who had those logs?

A Yes.

Q That was in 1956?

A 1956.

Q I think you testified that you noticed no other large timber being cut off?

A Right.

Q Have you ever noticed a small outhouse across the road from your property?

A You know, I had never noticed it until I went back up and looked after you told me about it. You know there are so many briars there you can stand as close as from here over to that tree there and you can't see it from the road until the power company comes through and opens up the road through there like. Coming down the road you can take a glance and see it.

COURT: What is this you can't see?

A It's a little out house there, I didn't even know it was there.

Q Let me ask you Mr. Walton, what side of the road is that power line on?

A It runs across the road on both sides.

Q On the west side of the road?

A It's on west and east. It came down the road to just about I guess 30 or 40 feet from the little out house and then it come back to each side of the road.

Q When was that installed, do you recall?

A That was installed in '72 or '73.

Q Was there a line there, this was a cable underground I believe?

A Underground, yes.

Q Did it replace pole lines?

A I guess it did.

Q Did you ever give any permission for any right of ways on this property across the road from you, this Lucy Wood Tract? Did you ever give any company permission for right-of-ways over it?

A I gave the right-of-way for electric.

Q On which side of the road?

A On that side of the road.

Q Do you remember when that was?

A I don't know what year the electric came down through there.

Q Did you ever refuse to give any right-of-way?

A No.

Q Any time you were asked you gave one?

A Up in that part of the country if they want to come through they don't ask you anyhow. The state came up through there and made a road and about a year after they sent me a form to fill out because they come through my land with the road.

Q Were you ever asked by a utility company to grant a right-of-way?

A Yes.

Q Had they accepted, saying you could?

A Yes.

Q As a matter of record did you sign a right-of-way?

A They have a record of it I guess but since I have been in Maryland I gave the right-of-way for the telephone company.

Q You say you went to Maryland in 1956?

A I went permanent in '56 but in '54 I started working up there.

Q Your wife stayed here?

A Until '56.

Q How often did you come back to see her?

A Every weekend.

Q And you come back occasionally now, every year?

A Every year.

Q I have no further questions Your Honor.

COURT: Any further Mr. Barrett?

BARRETT: No Your Honor.

COURT: All right Mr. Walton, you may stand aside.

Witness stood aside.

JOSEPH WOOD, Having been previously sworn testified as follows:

DIRECT EXAMINATION

By: Mr. Barrett

Q Mr. Wood, would you state your name and address please?

A Joseph Wood, Palmyra, Pennsylvania.

Q How old are you Mr. Wood?

A Seventy.

Q The first thing I would like to do is identify certain members of your family. Who was P. M. Via?

A My granddaddy.

Q Who was your grandmother?

A Martha Via.

Q Who was Lucy Wood?

A That was my Mother.

Q And George Wood?

A Daddy.

Q Lula Wood?

A Sister.

Q Who was Lula Wood's first husband?

A Chap Wood.

Q Who was Mary Via Cummings?

A My Mother's sister.

Q Where were you born and raised?

A At the old home place, George Wood place.

Q In Blackwell Hollow?

A Yes.

1 Q Did your mother own that place?

2 A After my daddy died, yes.

3 Q Are you familiar with the P. M. Via Farm?

4 A I am.

5 Q Was your old home place next to that?

6 A Joined it.

7 Q What did P. M. Via raise on his farm, if anything?

8 A Tobacco, corn and hay crops.

9 Q Did he have any animals?

10 A Yes, he had horses, cows.

11 Q Where did he live?

12 A He lived at the home place there.

13 Q Is that the house the Rosson's live in now?

14 A Yes.

15 Q Whoelse lived in that house?

16 A Sister Lula.

17 Q Did she have any children?

18 A She had three.

19 Q Did they live there with her?

20 A Yes.

21 Q Were they living with her and they all living

22 with P. M. Via at the time he died?

23 A Yes.

24 Q Do you remember when P. M. Via died?

25 A He got killed in the year 1920.

Q How did he get killed?

A Horse and buckboard.

Q Did he run over him?

A No, it run away and hit a tree.

Q To your knowledge, did he leave a will?

A Yes.

Q To your knowledge, who got property from that will?

A It was willed to my Mother, my sister Lula and Mary Cummings.

Q Do you know what your mother got out of that will?

A She got the middle section, next to the home place.

Q The one next to your home place?

A Yes.

Q What did Lula get?

A She got the place she is living at.

Q The P. M. Via house is on that place?

A Yes.

Q What did Mary Cummings get?

A She got the place further on up the road.

Q I'd like to ask you again, not ask again but direct your attention to before P. M. Via died, before he died was this farm divided in any way?

A Well, we didn't know how the will were until he

1 died.

2 Q You didn't know about the will but were there any

3 fences on the farm?

4 A Fences between all sections.

5 Q Now by sections, what do you mean?

6 A In between each plot. Inbetween the home plot

7 was a fence and in between the place given my mother, Lucy Wood

8 there was a fence and a fence between the Lula Wood and the

9 Cummings place.

10 Q I see. What kind of fences were those?

11 A Rail fence part the way and old brush fence

12 combined.

13 Q Do you remember these fences?

14 A I do.

15 Q Did you ever build or work on them?

16 A I didn't build them but I helped repair them.

17 Q You helped repair them?

18 A Yes.

19 Q Now, I would like to ask you this. With respect

20 to the fence between the tract your mother got in the will and

21 the one that Lula got, was there a fence?

22 A There was a fence.

23 Q Would you describe that fence?

24 A Fence running by the old Mulberry Tree to top of

25 mountain and come out opposite to the spring to the road.

1 COURT: What do you mean opposite from the spring?

2 A The spring is opposite down from the fence and

3 the fence come in straight from....

4 COURT: What is down? Is down north or south at

5 that location?

6 BARRETT: Your Honor, may I show the witness.....

7 COURT: No, he is testifying from memory now. Mr...

8 BARRETT: May I ask a few more questions Your Honor,

9 I think I can clarify that?

10 COURT: All right. Now, the question is what he

11 means by his terminology, that's what I am getting at. Down,

12 across and opposite doesn't mean anything on the record.

13 Q Are you familiar with the location of the Black-

14 well Hollow Road?

15 A I am.

16 Q There has been in the will, a portion of which

17 I read earlier, there is reference made to a rock. Do you

18 remember a rock?

19 A There was a rock at the corner where this line

20 joined going straight to the Mulberry Tree.

21 Q Was this rock near the road?

22 A Along side the dirt road.

23 Q The old road?

24 A Yes.

25 Q Where is that old road with respect to the road

now in that area?

A The new road, what they got now, 810 is moved over.

Q Which way did they move it, east?

A They moved it on the east side.

Q How far is it moved from where the old road used to be?

A I'd say maybe 15 or 18 feet.

Q Where.....where was this rock then with respect to the old road?

A The old road come up and the rock right beside the old road.

Q Was it on the west side or the east side?

A That was on the west side.

Q Was there any fence near that rock?

A The fence came long side the road at that time at the rock.

Q You say there was fence along side the old road?

A Yes.

Q Along the Blackwell Hollow Road?

A That's right.

Q From that rock?

A Yea.

Q Where did that fence go that you say ran along the road to the rock, where did it go when it got to the rock?

A At the point to the Mulberry Tree to the top of the mountain on the Miller Side.

PICKFORD: The same objection here. There is no evidence of a Mulberry Tree being in the chain of title. Same objection to the fence. I have no objection to the rock because it is designated in the chain of title. Neither the Mulberry Tree or the fence are.

COURT: The objection is noted and overruled because he is testifying as to what was physically there on the property at the time of Mr. Via's death, are you testifying Mr. Wood?

A Sir.

COURT: Are you testifying as to the condition of the fence on the date of Mr. Via's death, 1920?

A Yes.

COURT: Your objection is noted and your reasons have already been stated Mr. Pickford. Go ahead Mr. Barrett.

Q Was there a spring.....we are talking about 1920 now as Your Honor properly observed. You say the fence ran from the rock at the road up to the Mulberry Tree?

A To the Mulberry Tree, right.

Q Then where did it go?

A To the top of the mountain joining the Lizzie Miller side.

Q What was this fence made of?

A Rails and brush fence.

Q Was it brush down below or above the Mulberry Tree?

A Up in the mountain it was partly brush fence.

Q Up above in the mountain?

A Joining the mountain was the brush fence up to the Miller side.

Q When this fence got to Lizzie Miller tract what was there?

A An old brush fence between this tract and the Lizzie Miller place at the top of the mountain.

Q By this tract, do you mean Lucy's?

A Yes.

Q There was a brush fence there?

A Yes.

Q This was in 1920?

A 1920, yes.

Q Where did that brush fence then go?

A Went over and joined our old home place.

Q The old home place, what do you mean by that?

A The George Wood Place.

Q Was there any other fence there?

A No, just an old brush fence.

Q Was there any fence between the George Wood, your old home place, and Lucy's place?

A That run from the road to the top of this mountain

to the brush fence. It joined the brush fence on top of the mountain to.

Q The brush fence, was that the Lizzie Miller brush fence?

A Yes.

PICKFORD: Just so I don't have to keep rephrasing the same objection.

COURT: The objection is noted as a continuing objection to any of the physical land marks that he is testifying to that were not mentioned in the will as I understand it Mr. Pickford.

Q So, your testimony is that there was from the rock on the road, where the road used to be, where the Mulberry Tree use to be was a rail fence?

A That's right.

Q That was between Lula and Lucy's tract?

A That's right.

Q From that Mulberry Tree up to the top where Lizzie Miller tract land was there was a rail and brush fence?

A That's right.

Q There was a brush fence between the Lizzie Miller Tract and Lucy's tract along the mountain top?

A Right.

Q That went over to where it joined, you say, the home tract, the George Wood Tract?

A That's right.

Q Then there was a fence between the George Wood Tract and Lucy's Tract which ran from Lizzie Miller's Land down the road.

A That's right.

Q What was that fence made of?

A Part rails and up in the mountain brush fence to.

Q All right.

COURT: Mr. Wood, for clarification let me ask a question here. What does this mean to you? Commencing at a rock on the main Blackwell Hollow Road and running towards Scotts Mountain. Now, which way would you go?

A That would be on the west side.

COURT: Which way is Scotts Mountain from the Blackwell Hollow Road as far as that rock....which direction would you be going? If you started at the rock, you just testified about, and ran towards Scotts Mountain, is this the same fence that goes towards the Mulberry Tree?

A That's the same fence that goes by the Mulberry Tree.

COURT: In a Northwest direction? Now, whose line would that have been in 1916?

A In 1916 my granddaddy was living yet and that would have been his ground.

1 COURT: Was there a man named Scott that owned land
2 in there at that time?
3 A Scott lived....that was Scotts place on down
4 further from our home place.
5 COURT: Let me ask you if you are that familiar
6 with it, what this reference means to you: Commencing at a rock
7 on the main Blackwell Hollow Road running towards Scotts Mountain,
8 northwest and with his line fence on the other side of the Black-
9 well Hollow Road.
10 A The rock was on the corner of the old dirt road
11 and the rail fence run from this rock to the Lizzie Miller Place.
12 COURT: Whose line was that when.....
13 A That was between my sisters place, Lula's place
14 and my mothers place, Lucy's place.
15 COURT: Which is that now?
16 A My sister Lula's place and my mother, Lucy's
17 place.
18 COURT: You are talking about after your father died,
19 I am talking about whose line he was referring to, if you can get
20 any meaning knowing what you did about the property. Who was his
21 line, was that Scott or somebody else?
22 A Talking about the Scott's line they had a wire
23 fence to between our home place and their place.
24 COURT: What was the mountain road, that's on the
25 east side of Blackwell Hollow Road isn't it?

A Now, the mountain road and the old.....the road coming down from the Martin Mountain Road to 810.

COURT: Now, where is the top of P. M. Via's line? Is that on the Martin Mountain side?

A It was on the Martin Mountain side and the other side to, on both sides.

COURT: In otherwords, we have got two mountains here then?

A Yes.

COURT: What mountains are they?

A Martin Mountain and Scott Mountain.

COURT: Who joined your, was it your father or grandfather, P. M. Via.

A P. M. Via was my granddaddy.

COURT: Who joined him in 1916?

A My daddy.

COURT: Give us the property owners all the way around your grandfathers property if you can recall. Who were they?

A How was that?

COURT: Give us the adjoining landowners all the way around your grandfather P. M. Via's property? In 1916.

A The Scott place joined it on one side. Up above there the Scott place come down to the road on the otherside to.

COURT: All right, Scott on two sides.

A I mean the Miller place, Mrs. Miller's place.

COURT: Who else?

A My granddaddy owned that plot up to the Lizzie Miller place.

COURT: What granddaddy are you talking about, P. M. Via?

A P. M. Via.

COURT: We are talking about his place. Who else besides Scott and Miller joined your grandfather?

A My daddy's place and my granddaddy owned it?

COURT: Your father was George Wood?

A Yes.

COURT: All right, where did George Wood join your grandfather?

A Well, he joined between the Scott place and my granddaddy's place.

COURT: That's the George Wood tract then?

A Yes.

COURT: Who else joined your grandfather?

A That was the Miller place on the other side, other side.

COURT: I have got Scott, Miller and George Wood. Was there anyone else?

A Scott and Miller joined my granddaddy's side. The Scott Mountain place joined on my daddy's side.

COURT: Then your grandfather, P. M. Via, only had three adjoining landowners, Scott, Miller and George Wood?

A Yes.

COURT: All right, go ahead then Mr. Barrett.

Q Mr. Wood, after P. M. Via died, where did Lula live?

A When my grandfather died my sister Lula lived in the home place until she moved to town.

Q By homeplace you mean P. M. Via's house?

A Yes.

Q Where did your mother live after P. M. Via died?

A You see, when we sold the home place to Walton...

Q When was that?

A That was in '21.

Q By home place you mean the George Wood place?

A That's right.

Q You sold that to Mace Walton in '21. What happened then?

A Then we built up in the field, a bungalow and when we got possession of the home place we built a bungalow and moved up there in the bungalow.

Q Where was that bungalow located, on the east or west side of the road?

A That was on the east side of the road.

Q Was that on Lucy's tract?

A That was on Lucy's tract.

Q Lucy's from P. M. Via, not the home place?

A Not the home place.

Q How far was that house you built from Blackwell Hollow Road?

A I'd say 150 to 200 feet.

Q Is the foundation still visible there?

A Some of the foundation is there yet.

Q And you and your mother lived in that house?

A I lived there until I went to Pennsylvania.

Q When was that?

A 1927.

Q When that house was built and until you went to Pennsylvania you lived there?

A Yes.

Q Was the fence that you described previously that existed in 1920 between the Lucy tract and the Lula tract, was that fence still between Lucy and Lula's tract when they lived on this tract?

A It was still there when I left, yes.

Q Was it in good shape or not?

A In good shape when I left, yes.

Q When you left it was still in good shape?

A Yes, I left in 1927.

Q Where did your mother get water?

A Across the road....from the spring that the Rosson's are getting water from now.

Q That's the one Lucy got water from?

A Yea.

Q You know anything about that spring?

A I opened it up.

Q You opened it?

A Yes, when I moved in the bungalow I opened that spring up.

Q Was that spring on Lucy or Lula's tract?

A That's on Lucy's tract.

Q Where did Lula get her water?

A She had a spring of her own up opposite from the house out towards the road.

Q That was on her tract?

A On her own tract, yes.

Q Can you still see where that spring was?

A I can see where its at today.

Q Lula got her water from that spring?

A She got her water from that spring.

Q Was that spring on her tract or Lucy's tract?

A That spring was on her tract.

Q After you moved to Pennsylvania in 1928, did you ever come back?

A In '27.

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Q '27, did you ever come back to your mothers?

A Oh, once or twice a year.

Q Where was she living?

A It was a year later after I went to Pennsylvania she went to Charlottesville.

Q You continued to visit her?

A Yes.

Q Did you ever go back out to Blackwell Hollow after your mother moved to Charlottesville?

A No, I didn't go back much.

Q Now, I direct your attention to last summer. Mr. Wood, I show you plaintiff's exhibit number 9, this is a plat. Last summer do you recall going out in Blackwell Hollow and meeting Mr. Foster?

A Yes.

Q What did you show or tell Mr. Foster?

A I showed him where the stone line were on the old dirt road, what was that time.

Q Did you show him where the old stone was?

A Yes.

Q What else did you show him?

COURT: You mean the old stone wasn't there?

A It had been moved when they remodeled the road. The stone wasn't there at that time.

COURT: How could you locate it?

A Well, from the distance of the spring and the Mulberry Tree straight up into the road.

COURT: In reference to the other points that you recognized you located where the old stone had been?

A Yes.

COURT: Go ahead Mr. Barrett.

Q You show him where that stone was?

A Yes.

Q What else did you show Mr. Foster?

A I showed him where the Mulberry Tree was.

Q Is it still there?

A The Mulberry Tree, yes.

Q Then, what else did you show him?

A Got up in the mountain to where the line went to the top of the mountain.

Q This gap, how did you show him that gap?

A You can stand in the road yet and see from where the stone was at by the Mulberry Tree you can pretty near tell where....the gap in the mountain....the line is at.

Q Not exactly?

A Not exactly, no.

Q But close?

A Close.

Q Is this line on this plat between this point, 2017 and up to the Mulberry Tree and up to the gap, does that represent

as your recollection of what you showed Mr. Fox?

A Yes I do.

Q Does that accurately represent what Mr. Fox has shown on these plats, as what you showed him?

A Yes.

COURT: Mr. Barrett, we will take our lunch break. Have you just about completed....

BARRETT: Almost.

COURT: Go ahead, I will allow a couple of more minutes if you can finish.

Q Now, I would like to ask this question Mr. Wood. When you were living your mother Lucy on her tract and Lula was living on hers, was there any disagreement amongst them what-so-ever as to where this line was?

A None.

Q Was there ever any question raised about it?

A I never heard of any.

Q I have finished Your Honor.

COURT: What was considered the line between Lucy and Lula?

A There was a fence between them.

COURT: The same fence you have described?

A Yes.

COURT: All right. Gentlemen, we are going to take a lunch break. The court has an appointment with the Superintendent

of Miller School which is going to have to be taken up at the lunch break. I am going to recess in order to have this meeting and also lunch. The lunch break will be longer than usual but you all may be able to take advantage of it in someway in organizing the evidence but we will recess until 2:00.

Court recessed until 2:00 P.M.

COURT: Because of the delay which has been occasioned by the courts own schedule we have run a late in getting started. Mr. Pickford has just mentioned to the court on the way in that he has a witness who has a very serious conflict later this afternoon and it could be resolved by putting him on out of order. Do you have any objection to witness for the defendant being put on out of order?

BARRETT: No sir. We might as well finish with Mr. Joe Wood.

COURT: We will interrupt Mr. Wood and let the cross examination of him proceed after this other witness.

BARRETT: I have one more question of the witness.

COURT: All right. You go ahead with that then.

Q Mr. Wood, you recall when we took the depositions in Mr. Pickford's Office, two or three weeks ago?

A Yes.

Q You remember there was a discussion about the location of this rock?

A Yes.

Q Now, at that time I believe you stated that you thought the rock was still there?

A Yes.

Q Since that time you changed your mind?

A There is a rock there yet but it ain't the one I thought it were.

Q It's not the one?

A No.

Q The rock that you were talking about is there?

A At that time, yes.

Q And that rock that you thought was there now is not the rock you are talking about today?

A That rock ain't there now.

Q In otherwords, do you know where it is?

A No I don't.

COURT: Is that the one on the edge of the road that you have been referring to?

A Right on the edge of the road.

Q That's all. Mr. Wood, would you take your seat right over here. Mr. Pickford wishes to put on another witness.

5 Q Would you state your name please sir?

6 A Herbert Rosson.

7 Q Mr. Rosson, do you recall....you heard the

8 testimony this morning about the time Mr. Walton attempted to

9 have this land surveyed?

10 A Yea.

11 Q Were you there when that happened?

12 A Yea. I was up there in the road.

13 Q All right. How did you happen to be there?

14 A I knew he was going to have it surveyed so I

15 went on up there and they was up there.

16 Q How did you know it was going to be surveyed?

17 A Raymond told me they was going to survey the land

18 that day and I went on up there. They was already in the road

19 when I got up there.

20 Q Mr. Walton asked you to be there?

21 A No, Mr. Walton didn't ask me to be there I just

22 went up on my own.

23 Q Nobody asked you to be there?

24 A Nobody asked me.

25 Q Do you remember when this was?

A No I don't.

Q Could you tell the court what happened?

A I was up there in the road and Willie run them off the land and said it was his. That's all I know about it.

COURT: Willie who?

A Willie Rosson. Raymond and them come on back out in the road. Chap was up there and Roy Frazier was there.

Q What were they trying to do Mr. Rosson?

A They was going to survey the land.

Q Were they out on the land at that time?

A Out on the land.

Q Mr. Rosson came and ran them off, is that right?

A Yea.

Q How long have you lived in that neighborhood?

A I've lived there all my life.

Q You have lived in this particular neighborhood all of your life?

A Yea.

Q How old are you now?

A Forty-seven.

Q Do you remember ever seeing rail fences on this property?

A No, I don't remember.

Q Any rail fences at all?

A Not in my time. I never seen no rail fence.

1 Q Do you ever remember seeing a rock, this rock that
2 has been discussed today?
3 A No, I don't remember no rock.

20 Q Mr. Wood, at the time your brothers and sisters
21 sold this property to Mr. Walton, did he ask you to describe the
22 boundaries to him?
23 A No, I was in Pennsylvania. I wasn't in the gang
24 that described it. I wasn't along at the time.
25 Q You just signed the deed?

A I just signed the deed.

Q You are familiar with P. M. Via's will and I think you said you know where that line was. The fences that you described, do you know how old they were?

A They were there as long as I remember anything. I just had to repair them, that's all.

Q All your life?

A That's right.

Q They were there as far as you know during P. M. Via's life?

A As far as I know.

Q He made this will in 1916, do you think these fences were there then?

A Well, I couldn't tell you that, 1916.

Q How old were you then?

A I am 70.

Q 70 now.

A Yea.

Q So in 1916 you would have been 12, 8 I am sorry.

A Eight.

Q What makes you think that this fence line you described is the one that P. M. Via meant in his will?

A I know what my parents told me and what the will give to each individual. When granddaddy got killed the will give to each individual.

1 Q Right. Was there more than one rail fence on the
2 P. M. Via property?
3 A There was rail fence all over the properties.
4 Q All over the property?
5 A Between my home place, George Wood's line and
6 mother's line, the Lucy Wood Place and the Lula Wood's place.
7 Q Did they run from the road towards the mountain
8 just like this....
9 A Yes they did.
10 Q Why do you think the one you described is the
11 one P. M. Via meant in his will?
12 A The only thing I know is what the heirs told me.
13 Q Your parents?
14 A Yes.
15 Q When Mr. Foster made this plat were you out there
16 with them at that time?
17 A When was that?
18 Q This plat was made in 1973, July. It is indicated
19 on here that you showed him where the line was.
20 A Yes.
21 Q Did you locate this rock for him?
22 A The rock was gone. I located the spot about
23 where it was at.
24 Q How did you locate the spot?
25 A I could tell from the Mulberry Tree into the

road directly from the spring and the south of the line.

Q How did you locate the Mulberry Tree?

A Like I said, from the road.

Q And you think....you have been gone from this area since 1927 I think you said?

A Yea.

Q Almost 50 years ago. How big was the Mulberry Tree then?

A Well, it was small but now its dead. In a few years I guess it growed some before it got killed. Fire went through it and killed it.

Q Did the fire burn it?

A It must have, it burned the mountain out.

Q How did you locate it in 1973, 50 years after that?

A I remember when the fire went through.

Q It burnt this whole mountain off?

A I don't know how much it burnt off, it burnt quite a bit of it.

Q How did you locate the Mulberry Tree?

A The fence...at the time I was there the fence was running against the Mulberry Tree.

Q Yes sir but last June...July, how did you locate it then?

A From the Mulberry Tree into the road.

Q How did you find the Mulberry Tree?

A It's standing there today.

Q It didn't burn down?

A No, it didn't burn down.

Q What's left of it?

A What's left of it is still standing there.

Q What is left of it?

A The barley part of it. Some burned but didn't all burn.

Q When you were coming along were there other Mulberry Trees on the property?

A Well, there was some but not in that spot. There was some scattered around.

Q You found a stump that you think was a Mulberry Tree, is that right?

A I found the Mulberry Tree.

Q How did you locate the point where this rock was?

A Straight in from the Mulberry Tree at the road.

Q Mr. Barrett has reminded you of these depositions we took and if you will recall from these depositions we took in the office on July 16th and I asked you where the stone is and you said the stone is still there.

A There is one stone there but that's the wrong stone. The right stone what was there is gone.

Q What did the right stone look like?

A Well, it weighed maybe two or three hundred pounds. The stone there now weighs a thousand pounds, that's a big stone.

Q The way you located where it used to be was the distance from the Mulberry Tree, is that right?

A Yea, out to the road.

Q How far would that have been?

A That might have been two or three hundred feet.

Q Two or three hundred feet, from the Mulberry Tree?

A To the road.

Q One or the other, two hundred or three hundred?

A It could be 300, yes.

Q In 1926 when you left for Pennsylvania....

A '27.

Q ....this rock was two or three hundred feet from the Mulberry Tree?

A Yes, I guess that distance from the Mulberry Tree up to the old dirt road.

Q Was that the distance to the road or the rock?

A The rock was on the side of the road at the time.

Q The old road?

A Yes.

Q Has that road been changed since then?

A That road has been changed.

Q How did you determine where it was now?

A The new road that they have built now is over 15 or 18 feet further to the east.

Q From the same spot where this rock was?

A Yea.

Q Is there any evidence where that rock used to be? Is there any signs?

A I can't tell you right in the spot but I can pretty near pick out the spot where it was at.

Q Do you know what happened to that stone?

A No, I don't. They changed the road and it might have been used in the road, I don't know.

Q I asked you in those depositions, how did you find out where it use to lay and you said, the mark is still there. What mark was that?

A You mean the mark on the stone or the mark where the stone was moved from.

Q Was there a mark on the stone?

A The only mark was on the stone.

Q What kind of mark?

A It was a cross mark.

Q Chisled in the stone?

A Yes.

Q Was it easy to see?

A It was easy to see then, yes. That stone is gone.

Q You could find that rock easily if it was still there, is that right?

A If I could see the rock I could see the mark, yes.

Q Because of the marking on it?

A Yes.

Q Do you know who put the mark on it?

A My grandaddy, yes. He made the will out and divided the line up and I guess he put the mark on the stone.

Q You don't know who put the mark on it?

A No, I don't know.

Q I asked you what kind of mark is that and you said a big round place where the stone had moved from.

A That stone that I reference to is still there.

Q Page 13 in the depositions your honor, at the bottom of the page. I asked you what kind of mark, a big round place and I asked you where the stone was laying, where it had been moved from and you said you could see where the stone had pulled down pushed down as laying. Was there a hole in the ground there at that time?

A Where the big stone is there is a hole there. Now where the real stone was, the marked stone, the line stone, that mark ain't there.

Q Last summer, that hole in the ground that you described in these depositions, was that out there?

A I know that stone is still there, the big stone is.

Q The hole in the ground.

A The hole is in the ground now from that one.

Q The original stone?

A From the stone where is laying there now.

Q Okay. There was no hole there from the stone....

A No, they changed that road, they done away with it....filled the marker and that stone up.

Q Do you know where the old road use to run?

A Yes I do.

Q Did you have anything with you to show the surveyor other than your own memory to establish this line?

A I could show him near bout the place from the Mulberry Tree into the road where the stone was at.

Q Did you have anything, a written description? Did you have anything?

A I didn't have no description of it.

Q This all came from your memory and this is what your mother and father told you?

A Right.

Q How old were you when P. M. Via died?

A When he died, I was born in 1904 and he got killed in the year 1920.

Q You left in '27, right?

A Right.

Q Went to Pennsylvania?

A Right.

Q Did you ever come back?

A I come back. My mother lived down there a year or so after I left and then she come to town and I come to see her.

Q When you came back you came to see your mother?

A When she was down there, yea but when she came to town I didn't go back down there no more.

Q When did she move to town?

A She moved to town in '28 or '29.

Q Your visits here were to visit your mother after that?

A That's right.

Q She lived in Charlottesville?

A Right.

Q Have you been back out in this area since?

A Not often.

Q Other than 1973, when this plat was made, how long ago had it been since you were out there?

A My mother left a year or so after I left and I did come back when she was living there, I went to see her but after that...she moved to town and I didn't come back down to that part of the country no more.

Q This was the first time you had been back in close to 40 years?

A I come back every year.

Q To see your mother?

A Yea.

Q To Charlottesville?

A Yea.

Q But not to go out on route 810?

A No, after she moved I didn't go back much.

Q You haven't been back out there in quite a spell?

A It's been awhile, yes.

Q Did you know Willie Rosson?

A I knowed Willie but I didn't know him very much. I knowed him when I saw him. I talked to him at times, yes.

Q Did you ever talk to him after he bought some property out there?

A No, I never seen him after he bought the property.

Q Did you ever talk to him about the property?

A I didn't talk to him about the property. He didn't buy that property, he got it from my sister, Lula.

Q Do you know what kind of reputation Willie had in the community?

A I don't know about a reputation.

Q After you left in '26 or '27 you had no more connection with the area?

A I had no connection down there, no.

Q Where is your Brother, Joe...you are Joe, where is

your brother George?

A He's laid up today, he couldn't come out.

Q Was he on this line in 1973?

A Yes.

Q What did he do?

A He pointed out the same directions I did.

Q Did you tell him where it was?

A No I didn't.

Q Did you tell him anything about the line?

A No, he made his own decisions. I only told him what I knowed and the rest of them told him what they knowed.

Q Where is he today?

A He is at home.

Q Where is the surveyor, do you know?

A He couldn't come out today, he has back trouble.

Q If I understand you then, in 1926 it was two or three hundred feet from this dead Mulberry to where the Blackwell or old road was located, is this right?

A That's right.

Q The rock was somewhere on the side of that?

A Yes.

Q And you pointed out the place where this rock was by...

A I pointed where the rock was.

Q From where you thought the rock was to the stump

of a tree you think is a Mulberry?

A Yea.

Q Then from there how did you tell the surveyor where to go?

A From the road you can see the top of the mountain.

Q What mountain is that?

A The Lizzie Miller Mountain.

Q Is there a mountain out there named Lizzie Miller Mountain?

A That's what they called it then, I don't know what they call it now. This tract of land joined the Lizzie Miller Mountain.

Q When you say that's what they called it then, is that when P. M. Via was alive?

A Yea. That was the Lizzie Miller Mountain then. You can stand in the road today and see a gap in the mountain up there, a small gap, and the line...the way the fence run at that time, the line fence was near the gap. I couldn't tell you if it was perfect on the gap in the mountain or which way it would be but close to it.

Q Have you ever been up in the gap?

A No, I haven't been up in the gap.

Q In your whole life you have never been up in that gap?

A Oh, I have been up in there but not since I have

been in Pennsylvania.

Q Did you walk up there with the surveyor?

A I wasn't here when it was surveyed.

Q You weren't out there in 1973?

A I was there when I showed him where the line was but I wasn't out there when he resurveyed it.

Q The rest of this line from the dead Mulberry to... how did you tell him where the line was?

A I just told him near the gap in the mountain, that's all I could tell him.

Q Just towards the gap in the mountain?

A Yea.

Q You were in that gap before?

A I use to stay up in the mountain at different times.

Q How wide is that gap?

A Just an ordinary gap from the road.

Q Just an ordinary gap in the mountain. It looks small from down on the road?

A Yes. It could be large after you got there but it looks small from the road.

Q You know where in the gap the line ran to?

A It looked like on top of the mountain.

Q Right on top of that mountain?

A Yes.

Q Do you know where Scott's Mountain is?

A Yes.

Q Where is that?

A Scott's Mountain is on the other side, the south side. You are talking about the old. . Scott's Mountain comes down to where the road comes into 810.

Q You talking about the Martin Mountain Road?

A The Martin Mountain was the Scott's Mountain. Now the Rubush Mountain is on the other side.

Q The Rubush Mountain would be near where you say the Lizzie Miller Mountain is?

A Yeah, that joins the Lizzie Miller Mountain.

Q Scott's Mountain would have been the mountain that the Martin Mountain Road runs up?

A That's right, that was called Scott's Mountain.

Q So, Scott's Mountain is on the east side of that road?

A That's right. The Rubush Mountain was on the west side joining the home place and the Lizzie Miller Place.

Q The Rubush side?

A Yeah, the Rubush side.

Q That was also the Lizzie Miller Mountain?

A Yeah.

Q All right sir. Do you know. . .these springs that have been described, you left in 1926, do you know if anybody has

1 made any use of them since then?

2 A I guess the Rossons are getting water out of the

3 one I opened up when we moved up in the bungalow.

4 Q The Rosson's have?

5 A I think they get water from that.

10 Q Mr. Wood, let's talk about two things. First,

11 about this Mulberry Tree. Is that Mulberry Tree still there?

12 A It's still there.

13 Q It's not a stump is it?

14 A It's not a stump. Some of the branches are still

15 there. Some of the branches burnt off but some branches are

16 there, yea.

17 Q Now, with respect to the stone that used to be

18 there. The stone, the one that is gone. I think Mr. Pickford

19 has had you tie this stone into the Mulberry Tree. Do you know

20 where that stone is based on other features that you suggested

21 earlier today?

22 A At that time the old road came up and there was

23 a old rail fence that come up beside the road and ended at this

24 rock and it went straight over to the Mulberry Tree, that was the

25 line fence.

Q Where was your mothers house in relation to that stone?

A She was down the road a little bit over on the east side of the road, the 810 road.

Q Do you know where the Martin Mountain Road was with relation to this stone?

A No, the old Martin Mountain Road didn't join this stone.

Q No but did it come out on the highway?

A Yes.

Q Do you know where the spring was that you opened?

A Sure.

Q Could you tell where the rock was by.....

A I could tell where the rock was from that spring and the corner of the Mulberry Tree into the road.

Q How about your mothers house, did that help?

A Well, that was down the road further, out in the field?

Q You know where Lula's house was, don't you?

A Yes.

Q Now, is it fair to say that from all of these features you could tell where the stone used to be?

A Yes, I can.

Q You stated and I am not sure you understand what Mr. Pickford was saying. Scott's Mountain, you remember the

Scotts?

A Yea.

Q Now, was Scott's Mountain on the same side of the road that Lula's House was on?

A Scott's Mountain is over and comes down the old Martin Mountain Road. Now, the Rubush line joined the home place on the west side and that joined the Lizzie Miller Place to the top of the mountain and the Lizzie Miller Place comes around and covers all of them and comes around on the other side where the Cummings Place, where my granddaddy give the Cummings place.

Q Scott's Mountain, where is Scott Mountain? Isn't Scott Mountain on the same side of the road as the Miller Mountain?

PICKFORD: He's answered that Your Honor and he is also leading him.

COURT: You are leading him there Mr. Barrett and it's either a point that is confusing to the witness or he doesn't know but he is definitely different than what the map shows. You are undertaking to lead him into a different position. Now, the question is, does he know or doesn't he know where Scott's Mountain is?

A Scott's Mountain is on one side of the road and the Lizzie Miller Mountain is on the other side of the road.

Q Which road are you talking about Mr. Wood?

A 810. State Road.

COURT: That's consistent with what he told Mr.

1 Pickford.

2 Q I have no further questions.

6 Q Mr. Wood, did anybody else walk this line with
7 the surveyor?
8 A I don't know. I didn't no.
9 Q You were there weren't you?
10 A When the surveyor surveyed it?
11 Q When Mr. Foster was out there last year?
12 A I showed him where the line was, yes. I didn't
13 walk up in the mountain with him.
14 Q How far did you walk with him?
15 A Out to the Mulberry Tree.
16 Q Did anybody else walk the rest of the distance
17 with him?
18 A Well, my brother was there, he walked.
19 Q Did he walk the rest of the distance with him?
20 A Nobody walked up in the mountain that time.
21 Q Nobody walked up there? Did the surveyor walk
22 up there?
23 A He walked up there.
24 Q Did anybody go with him?
25 A My brother might have did, I didn't.

1 Q Are you telling me you left and went somewhere
2 else and you don't know whether your brother or were you there
3 the whole time?
4 A You see, when....we were down there one day and
5 the surveyor came the next week. I went back to Pennsylvania.
6 Q When did you talk to the surveyor?
7 A When we was down there to show him where the line
8 was at.
9 Q Did you walk the line with him?
10 A No.
11 Q Did your brother walk the line with him?
12 A I didn't walk the line with him.
13 Q Did anybody walk the line with him?
14 A I don't know, when he come to survey it they might.
15 BARRETT: Your Honor, I object. Mr. Pickford has
16 gone over this and the witness has said he doesn't know whether
17 his brother.
18 COURT: I think the point has been made. The object-
19 ion is sustained. He doesn't know who went with the surveyor
20 and he went with him to the Mulberry Tree. That's as far as his
21 knowledge goes.
22 Q Was Mr. Walton there?
23 A When they surveyed it?
24 Q The time you were there?
25 A The time I was there, yes.

Q Did he point out anything to the surveyor?

A He only went with what we showed him.

Q Who did?

A He went with what we showed him on the line.

Q Mr. Walton went by what you and your brother said?

A Yes.

Q He didn't know where the line was?

A He didn't know exactly where the line was at.

Q Thank you Mr. Wood, I have no further questions.

BARRETT: Your Honor, I didn't hear the last question.

PICKFORD: I think I asked Mr. Wood, did Mr. Walton know where the line was and Mr. Wood said, no he didn't he only went by what he and his brother showed him.

COURT: Which Mr. Walton are you talking about Mr. Wood?

A Mr. Walton here was down there with us too. He knowed where the lines at too. He was there at the same time.

COURT: You walked with the surveyor to the Mulberry Tree?

A Yea.

COURT: Was Mr. Walton with you?

A Mr. Walton, yes.

COURT: Who else went with you to the Mulberry Tree

1 besides Mr. Walton and the surveyor?

2 A We was the one that went with it.

3 Q Just the three of you?

4 A Yes.

5 COURT: Could you see the gap in the mountain from

6 the Mulberry Tree?

7 A You could see it from the Mulberry Tree or you

8 could see it from the road.

9 COURT: What did you do then, point that gap out to

10 the surveyor?

11 A Yes.

12 COURT: And you left then?

13 A I had to go back to Pennsylvania.

14 COURT: Did you leave and go right back to the road?

15 Where did you go from the Mulberry Tree?

16 A The Mulberry Tree is where we went up.

17 COURT: What did you do after you left the Mulberry

18 Tree? Where did you go?

19 A We come back to the road.

8 Q Mr. Frazier, would you state your name and
9 address?
10 A Roy Frazier.
11 Q Where do you live Mr. Frazier?
12 A Browns Cove. My address is Crozet, Route 2.
13 Q How old are you?
14 A Sixty-one.
15 Q Where were you born?
16 A I was born in Albemarle County.
17 Q Where in Albemarle County?
18 A Down near Boonesville.
19 Q Were you raised there?
20 A Yes.
21 Q How long have you lived out there near Boonesville?
22 A Well, I lived this side of Boonesville, north of
23 Boonesville, I was born down next to Boonesville but I was....
24 lived most of my days north of Boonesville. I lived on this old
25 Scott place thirty-five years.

Q Did you serve in World War II?

A No.

Q What were you doing during World War II?

A I worked at the sawmill part of the time until I had to do a fence job and I went to West Virginia and worked there seven months around the coal mines. I left from there and I went to Maryland and worked in the shipyard until the war was over and then I come back.

Q Except for those times have you spent all of your life out there?

A Where?

Q Boonesville and that area?

A Yea, except the time I was working during the war.

Q How about when your mother was in West Virginia, did you go see her?

A Yea, I went to see her.

Q Other than that you lived there all of your life?

A Yea.

Q Were you raised in that area?

A Oh yea.

Q Can you describe what you did as a boy in that area?

A All we had to do was farm a little bit and try to grow a little garden to live off of.

1 Q Did you hunt and hike in the area?

2 A Yea, when I got big enough to hunt.

3 PICKFORD: I would like to address the Court if I

4 could. I think this is irrelevant. It has nothing to do with

5 establishing this boundary line.

6 COURT: Well, it may be he is getting to the area

7 we are talking about. I assume that is what he is going to

8 develop.

9 PICKFORD: All right.

10 COURT: Go ahead Mr. Barrett.

11 Q Did you know P. M. Via?

12 A Yes, I knowed just a little bit about him. I was

13 young and I could remember him. Not no whole lot.

14 Q Do you remember Mary Cummings?

15 A Yes. No, not Mary Cummings.

16 Q How about Lucy Wood?

17 A Yea.

18 Q You know Lucy Wood?

19 A Yes sir.

20 Q Was she P. M. Via's daughter?

21 A Yea.

22 Q How about Lula Wood, did you know Lula?

23 A Yea.

24 Q Now, where did Lula live when you knew her?

25 A She lived where Mr. Rosson is living at now.

Q In the house that is called the P. M. Via House?

A That's right.

Q Where did Lucy live at that time?

A At that time she lived down at the George Wood Place until she sold it. Garrison built her a house on the east side of the road.

Q Morgan Garrison built her a house?

A Built her a house.

Q How far was this house from the road?

A Oh, I would say somewhere round bout I reckon 200 feet or something like that.

Q Who lived in that house with Lucy?

A Well, Joe lived there part the time, she had a girl named Ora, she lived there with her and she had a girl named Virginia, she lived there with her.

Q Do you remember when P. M. Via died?

A Yes, just a little bit about it though.

Q I would like to ask you this. In this time when Lucy and Lula lived on those tracts was there a fence between the property?

A Yes it was.

Q Would you describe that fence?

A Well, at one time Lula left there and come to Charlottesville. My daddy and Chap Wood farmed the Pleasant Via place.

Q Your daddy and Chap Wood farmed the.....

A Pleasant Via place.

Q Which part did they farm?

A All the cleared land along the road side.

Q Now, was that on Lula's tract or....

A That was on Lula's tract.

Q Lula's Tract. How do you know it was on her tract?

A Well, Chap and her was married and I reckon he knowed where he was farming at. They was divorced at that time.

PICKFORD: I object to that Your Honor. Chap Wood isn't available as I understand it and that's hearsay.

COURT: Now, let's see where Chap Wood stands with regards, was he a owner or the husband of a owner?

BARRETT: He was the husband of Lula, Your Honor.

COURT: But later divorced. The question is, was he divorced then?

BARRETT: Yes, he was divorced.

COURT: I think the objection is well taken. He has no connection as far as ownership if he is divorced from her. That is Chap Wood. Anything that would be related to Chap Wood there would be an objection on and the objection is sustained.

Q Was there a fence to your knowledge between Lula and Lucy's tract?

A Yes it was at that time.

1 Q Now, what time was that?

2 A When we was farming.

3 Q When you were farming there?

4 A Yea. I guess that was somewhere around in the

5 late twenties or early thirties. There was a fence there.

6 Q Would you describe the fence?

7 A The fence led from the road and went west along

8 by the spring, Lucy's spring, up by the Mulberry Tree.

9 Q Where does that fence start?

10 A It started from the road. There was a fence that

11 went down the road, north and south and this fence cornered from

12 the fence that went north and south and went west up through the

13 field.

14 Q We have been talking about a rock.

15 A Yes, there was a rock up there.

16 Q Where was the rock?

17 A Right at the corner of the fence, where the

18 fence cornered.

19 Q It was there then?

20 A Yea.

21 Q When you were farming?

22 A That's right.

23 Q Is that rock still there?

24 A No, I don't think so. I have never seen it.

25 Q Never seen it when?

A When...I ain't seen it lately.

Q Did you see it when you were farming?

A Yea, sure.

Q Was it on the old road or the new road?

A It was on the new road.

Q Now, how do you know now where that rock was? Can you go out and find....

A Yes, I can't show you the very spot but I can show you pretty close where that rock was.

Q How would you find....

A I'd walk down the road there and according to where the spring is and the Mulberry Tree I can almost line it up for you.

Q Almost line it up?

A Yea. I can't be right exact.

Q Are there any other features for example, how about Lucy's house? You know where Lucy's house was?

A Yes.

Q How far was the rock from Lucy's house?

A I'd say maybe 200 feet, more or less.

Q How far was the spring from where this rock was?

A I'd say that would be about 100 feet I guess, more or less.

Q Are you familiar where the old Martin Mountain Road came into 810?

A Yes.

Q How far was the rock from where that was?

A I'd say somewhere around 80 yards, more or less. It could be a little more.

Q You could locate where the rock was by these features?

A Yea. I could stand in the road, you couldn't of course, I know more about it....I could stand in the road and point out pretty close to where it was.

Q Is the old Mulberry Tree still there?

A That's there, where the fence went up by it.

Q Where did it go from there?

A What, the fence?

Q The fence?

A It just went on through the mountain, to the top of the mountain.

Q What mountain?

A The Lizzie Miller place.

Q The Lizzie Miller place?

A Yea.

Q What was the fence made of up there?

A Partly rail and brush.

Q How do you know now where that fence used to be?

A Well, you'd have to get on the road now and point out now by the spring and the Mulberry Tree. It went straight up

1 the mountain to something like a gap.

2 Q Do you know anything about this gap yourself?

3 A Well, yes, I have seen the gap up there.

4 Q Where can you see the gap from?

5 A From the road. According to the way the fence

6 was, it goes pretty close to it.

7 Q You recall the fence, where the stone was, the

8 Mulberry Tree and the gap?

9 A That's right.

10 Q Is this fence there now?

11 A No.

12 Q Was it there....when was the last time you remember

13 the fence being there?

14 A Well, during that time that my daddy and Chap

15 Wood farmed it there was a fence there and then I rented the land

16 later on from Mamie and Alice Sours and I farmed it again. There

17 was a line, you could tell that a fence had been there but there

18 was no fence there at that time.

19 Q You could tell where the fence was but it wasn't

20 there. Were there any old rails lying around?

21 A You might see a piece of rail. What you had to

22 go by mostly was the briars and bushes from where the cleared

23 land was that we had farmed.

24 Q How long....you say you recall when Lucy lived on

25 her place and Lula lived on hers?

A Yea.

Q How long did Lula live on her tract?

A I don't know.

Q Do you know when she moved off?

A Yea.

Q About when was that?

A I remember when she moved off but what year it was I couldn't tell you.

Q Did she live there several years?

A Oh yes, she lived there a long time.

Q Where did she get water? Do you know yourself?

A She got water from the spring north of her house.

Q Was the spring on the south side?

A She...the spring that she got water from was on her own land.

Q Her own land?

A Yea.

Q Where did Lucy live?

A She lived across the road on the east side.

Q In her house?

A Yea.

Q Where did she get her water?

A She got water from this spring at the fence on the west side of the road.

Q Was that on her tract or Lula's?

A It was on her land. Across the fence anyway.

Q It was on her side of the fence?

A That's right.

Q To your knowledge was there ever any dispute between Lula and Lucy about this fence being the line?

A If there was I never did hear it.

Q Who is your father?

A Lacy Frazier.

Q You stated that you rented this land for farming yourself from the Sours?

A That's right.

Q You tell us something about that?

A These Sours come over here, they had bought the Wood land and the way they talked to me they must not knowed how the land laid so they come to my place one evening and we got to talking about Pleasant's tract, Wood's tract of land and wanted to know if I knowed where it was at and I told them I did. They spent the night with us and the next morning I went up there with them and showed them the place. At that time you could tell where there had been a fence and I asked him about renting the land so I did. I rented it for three years.

Q What land did you rent?

A All the cleared land along the roadside where Willie Rosson's house is. At one time that was all apple orchard at one time. Of course, the apple trees are all gone.

Q Was this the same land that your father had rented?

A Same land.

Q Whose tract was this on?

A That was on Lula's tract.

Q What did you raise on that land?

A Corn.

Q Did you farm any on Lucy's land?

A No. I had a 'tater patch on her land one time.

Q When was that? Before you rented this or after?

A Between the time we was farming Lula's land.... between the time my daddy and Chap farmed and the time I rented it.

Q Did Lucy know you had that potato patch up there?

A Oh yea. Me and her grandson had it planted together.

Q Lucy knew?

A I asked her, yes.

Q Your potato patch was on Lucy's land?

A On Lucy's land, yes sir. That was south of Willie's house. It was on the south side where I planted my 'tater patch.

Q Potato patch?

A Yea, that's what I am talking about. The road, you stand here at the road and the house up there and the 'tater

patch was on the south side. The road runs north and south.

Q Was the potato patch on the side of route 810?

A Yea.

Q Was it on the side that the Via House was on or on the west side?

A It was on Lucy's land, on the west side of the road but the south side of Lucy's house.

Q It was on Lucy's tract?

A Lucy Wood's tract.

Q On the west side of the road?

A On the west side of the road but on the south side of where Willie lives.

Q Have you ever worked for Raymond Walton?

A Yes.

Q When did you work for Raymond Walton?

A I went to work for Raymond when I come back from Baltimore, the first part of '47.

Q Do you remember his buying the George Wood Tract?

A Yes.

Q Did you help him fence it?

A No, I didn't....Yes, I did on the east side of the road I helped him put up some plank fence.

Q Not on the west?

A The line fence on the west side of the road, I didn't help on that.

Q Did you remember when Raymond bought the Lula Wood Tract?

A You mean Lucy Wood.

Q Lucy Wood Tract, excuse me?

A Yes. I remember when he bought that.

Q After Raymond bought the George Wood place.... have you ever heard Raymond speak to the Rosson's about using his land?

A No, I....

PICKFORD: That's hearsay Your Honor. Mr. Walton is here to testify to that himself.

COURT: Mr. Barrett, that is a matter that Mr. Raymond Walton would have to testify to. That is just surplus as far as what somebody overheard.

Q Do you remember this instance with the surveyor out on the line?

A Yes.

Q Were you there?

A Yes, I was down there one time when they had it surveyed.

Q Were you out there the day Raymond has talked about and I think Mr. Shifflett was talking about?

A Yea. I was there.

Q Did you go up on the line with them?

A A little ways. Nobody went very far.

Q I see. What happened, do you remember?

A Wille said, he was sitting out in the road when we first got there. He said something about they didn't have nothing to get started to. You know, nothing to start on. Someway or another he didn't like the idea, I don't think. Anyway, they put it off for another day.

Q Did Willie speak to Raymond or anyone? Did he talk to them?

A Yes, he was talking but I don't know for sure who he was talking to but....

Q Did he seem disturbed?

A Well, he didn't seem like he was in a very good mood.

Q Did he tell them to get off?

A No, but he did say if he couldn't stop them one way he could the other.

Q Your witness.

CROSS EXAMINATION

By: Mr. Pickford

Q Mr. Frazier, this fence you described, are you familiar with P. M. Via's will at all?

A Yes, I knowed Mrs. Wood, Lula Wood, Lucy Wood. I knowed all of them.

Q Do you know anything about P. M. Via's will and

1 how those girls got that land?

2 A No.

3 Q This line that you described, how do you know

4 that that was aboundary line?

5 A I don't know. I can't prove that that was a

6 boundary line but that was what we had to go by before we started

7 farming there.

8 Q Did anybody ever tell you it was the boundary

9 line?

10 A Yes, Chap Wood said it was the boundary line.

11 Q Did anybody else tell you other than Chap Wood?

12 A No.

13 Q Nobody told you?

14 A I didn't talk to nobody else about it.

15 Q To your knowledge, you don't know whether that

16 was a boundary line or not, is that right?

17 A No, what I had to go by it was a rock. I heard

18 talk about the rock was the line...starting at the rock and there

19 was a rock there at the corner of the fence.

20 Q Are there other rocks there?

21 A It was a rock there but there is no rock there

22 now.

23 Q Were there other rocks around to?

24 A I didn't pay no attention to other rocks but that

25 was where the corner of the fence was at the rock.

Q Do you know whether that was the rock P. M. Via mentioned in his will?

A No, I don't know.

Q When you rented this property, I believe you said you had a potato patch on Lucy's land?

A On Lucy's land, that's right.

Q On the west side of the road?

A West side of the road.

Q Which side of this fence you are talking about?

A It was on the south side of the fence from here.

Q Do you know where the old P. M. Via home is?

A Yes.

Q Is that the home where the Rosson's live now?

A That's right.

Q Where was the potato patch in relation to that?

A It was on the south side from here, from Willie's house.

Q On Lucy's land?

A On Lucy's tract of land.

Q Did you know Willie Rosson very well?

A Sure, I been knowing Willie long before he moved down there.

Q What kind of reputation as far as you know...

A Well, he always treated me all right.

Q Did Mr. Walton ever discuss his boundary lines

with you?

A Sir.

Q Did Mr. Walton ever discuss his property boundary lines with you?

A No.

Q Do you know how much land he owns?

A No, I don't know how many acres but I know what places he owns, the land in that neighborhood.

Q Have you ever noticed whether his property is posted or not against hunting or trespassing?

A Part of it I do.

Q What part is that?

A On the west side of the road I know about that but the east side of the road, I don't know too much about that.

Q Was it ever posted on the west side of the road?

A I don't know whether it's posted or not, I never seen any.

Q You never saw any on it?

A No.

Q Do you know....this line we are talking about.... do you know where it went to on that mountain?

A Yes, at one time I knowed where it went because there was fences there at one time. I use to fox hunt all on that mountain and at one time there was squirrel in there but the fire got in there and when it did grow back up it was to thick to get

1 up in there. You couldn't see.

2 Q I have no further questions.

3

4 REDIRECT EXAMINATION

5 By: Mr. Barrett

6 Q Your Honor, I think there is some problem with

7 direction here. The answers I got with respect to the relation-

8 ship of the fence and the road add up as north and south. I

9 would like to point out that north is here and south is here.

10 COURT: Let's find out what you are trying to

11 establish now.

12 BARRETT: Mr. Pickford has confused the potato patch

13 Your Honor.

14 COURT: What's confusing about that? Doesn't he

15 know the difference between north and south. I don't see any

16 sense in going over it. Now, the question is, does he know what

17 north and south is out there on the property. Find out whether

18 he is sure about it.

19 BARRETT: That's what I am trying to do.

20 COURT: Don't draw it out for him though, that's

21 what I am getting at. If he doesn't know, let him say so. People

22 who don't know what they are talking about shouldn't be testify-

23 ing.

24 BARRETT: May I have him illustrate on a piece of

25 paper what he is trying to say.

1 COURT: Let me....can you hear me Mr. Frazier?

2 A Yes sir.

3 COURT: Which direction does the Blackwell Hollow

4 Road or the route 810 run?

5 A The Blackwell Hollow Road runs north and south.

6 COURT: Which direction did the line between the two

7 Wood properties run?

8 A It run west and east.

9 COURT: We have been talking about this potato

10 patch.

11 A All right. My potato patch was on the west side

12 but from Willie Rosson's house it was on the south side of Willie

13 Rosson's house.

14 COURT: You are throwing an ingredient in there that

15 is confusing everybody. The question is, which side of the fence

16 was the potato patch on?

17 A I see what you mean. It was on the south side of

18 the fence.

19 COURT: All right. It is a simple matter then. The

20 Willie Rosson house really doesn't have anything to do with the

21 potato patch does it?

22 A No, I was just trying to locate it from the house

23 to let you know which way the 'tater patch was from the house.

24 COURT: I see. All right.

25 PICKFORD: It does of course, because his testimony

if accurate, would mean that Lucy owned the house that P. M. Via owned rather than Lula.

COURT: You might want to pursue that further I didn't catch that part of it. Whose potato patch was it?

A It was mine and James Wood's.

COURT: What property were you renting?

A It was on the Lucy Wood Tract.

COURT: You say you were renting Lucy Wood's land?

A I was renting Lula's land when I was in the corn business but the potato patch was on Lucy Wood. That's mother and daughter. The 'tater patch was on Lucy Wood and I planted corn on Lula Wood.

COURT: The potato patch was south of the fence.

A South of the fence.

COURT: All right. Go ahead.

BARRETT: Your Honor, I must ask that the witness be allowed to draw it. I think it will clear it up.

COURT: If he doesn't know his directions, maybe he is just confused but I don't see any sense in going around and around with that Mr. Barrett. It's a simple matter. We have got drafts and we have got plats and I don't see what use it is for somebody else to draw something else. If he knows which side of the fence it was on, he certainly knew the direction of the road and the direction of the line. Go ahead, any other questions?

BARRETT: I have no further questions.

8 Q Mr. Walton, with respect to the fence that you
9 testified about earlier, the fence which began at the road and
10 ran past the spring and the Mulberry into the mountain. Do you
11 know where this fence was to your own knowledge?
12 A Yes.
13 Q I have no further questions.
14
15 CROSS EXAMINATION
16 By: Mr. Pickford
17 Q Where did that knowledge come from Mr. Walton?
18 A It goes back when I was a little boy. I picked
19 strawberries and blackberries over every inch of that land. Hunted
20 the mountains over and I was born and raised right there.
21 Q Do you know that's the line or the fence that Mr.
22 Via was referring to in his will?
23 A Yes I do.
24 Q How do you know that?
25 A I have heard every old person...I have talked to

Mrs. Wood, Mrs. Lucy Wood. When she lived there that was her line. When Lula Wood lived on her place that was her line and then all of the Wood's that ever lived there they showd me the line.

Q Did you show the surveyor the line?

A Yes I did.

Q Mr. Wood said you didn't.

A I showed it to him though. Mr. Wood was along with me.

Q Did you walk the line with the surveyor?

A Not all the way.

Q How far did you go?

A I went to the Mulberry Tree.

Q Where did you tell him to go after that?

A Well, you could tell where the old fence went up the mountain, where all the trees had been cut out and there was a big gap all the way up the mountain where the old fence used to go and I just stood at the road. I know every inch of that mountain.

Q What inch of that mountain is that corner located at?

A This corner....

Q On top of the mountain?

A It runs between seven and eight hundred feet from the George Wood Tract, the old fence use to run.....

Q Seven or eight hundred feet. Is there a point there?

A Well, there is a big flat rock on the otherside where the fence use to come in.

Q I have no further questions.

COURT: Mr. Walton, your statement is that if you measured some seven to eight hundred feet down the mountain or north from the George Wood Corner you would come to this area that has been described as the gap in the mountain?

A Yes.

COURT: Is that down the mountain?

A Yes, that would be coming back towards 810.

COURT: Yes but is the mountain sloping down toward 810 along that line?

A Yes it is.

COURT: That would be in a south direction or south east direction, wouldn't it?

A Yes. It slopes down each way. It slpes down going up this way and when you go up to the top it comes all the way down to 810.

COURT: If you went to the corner or the alleged corner where the gap in the mountain is and you went from there to the George Wood Corner would you be going up hill?

A Going up hill, yes sir.

COURT: About seven or eight hundred feet?

A Yes.

COURT: All right, any other questions?

PICKFORD: How did you happen to pick that corner? Did somebody tell you about it?

A No, I remembered the old fence up there. I have dug ground hogs up from that old fence from one end to the other when I was a boy.

PICKFORD: This fence that intersected there?

A The old brush fence on the Lizzie Miller Tract that came down and joined this old fence that went up to it from the Mulberry Tree.

PICKFORD: Do you remember any other fences on the P. M. Via land?

A Yes.

Q Do you know how big P. M. Via's farm was?

A Well, I know just about. I knowed all the outside boundaries from which he sold to George Wood and to the Lucy Wood tract and....

Q How do you know those?

A Well, I have been around the whole works.

Q With who?

A With myself.

Q How did you find out those were the lines?

A There is a fence all the way around....between the George Wood Tract and the Scott Place, there is a fence all

1 the way up there and that runs back to the Lizzie Miller Mountain
2 and then it comes all the way....
3 Q Where is the Lizzie Miller Mountain?
4 A You see, the Scott Mountain....like this is the
5 Lizzie Miller Mountain over here and then the Scott Mountain goes
6 up all the way around the George Wood Tract and then comes back
7 to the Lizzie Miller Mountain.
8 Q But joined the Lizzie Miller Mountain?
9 A Yes. All that big tract of land in there is the
10 Scott Mountain. The Lizzie Miller Mountain just comes up to the
11 top but the Scott Mountain comes all the way around the George
12 Wood Tract and back to the Lizzie Miller Tract so when you are
13 talking about that mountain you are talking really about the Scott
14 Mountain.
15 Q This fence you walked, do you know who built it?
16 A This what?
17 Q The outside boundaries of the P. M. Via Farm, who
18 built the fence?
19 A That had probably been there for years and years
20 and years.
21 Q You don't know who built it?
22 A No.
23 Q How do you know they are boundary lines?
24 A Well, that's where the fence has always been
25 every since I was a boy.

Q Did you just assume they were a boundary line fence?

A No, that's the boundary line.

Q How do you know it's a boundary line?

A Well, on the otherside of the line those people owns the land.

Q How do you know?

A I know they do. I knowed it all my life.

Q How do you know this fence wasn't built by somebody on the otherside?

A I know they wasn't.

Q But you don't know who built them?

A I don't know who built them. It's just like you going around this Court House, you know this court house is on the line. That's the way that land is up there. I know it just as good as that.

Q But this is a fence you picked out the wall?

A I have walked every fence in that mountain. I know ever tract of land in that whole country.

Q I don't doubt it. I don't doubt that you know the boundaries.

A I know the boundaries. I can go up and point every boundary out to every tract of land in that country.

Q I have no further questions.

5 PICKFORD: At this time Your Honor I would like
6 to move to strike the Plaintiff's evidence in this case be-
7 cause he has failed, in the first place, to show that P. M.
8 Via's land included this boundary or this land that he was
9 trying to establish. He has established everything in it
10 by parole evidence. It is not allowed in Ferris v. Snellings
11 and all of the cases cited therein. That's 213 Virginia, 377.
12 That case, one of the most recent boundary line cases, which
13 has been followed by one other case since then requires that
14 the plaintiff claim title by deed, as the court has already
15 been told by Mr. Barrett, there are several ways a plaintiff
16 can seize the title. One by possession of the title. There
17 has been no showing of possession here by Mr. Walton or the
18 court may find sufficient evidence to decide that it is going to
19 grant. . .this Bull Run Development case test presuming a grant
20 is the same as adverse possession or he can show by good title.
21 In that case, Ferris v. Snelling requires that if plaintiff claims
22 title by deed that deed must specifically define the boundary to
23 that claim, page 453 of that case. It goes on to say the ex-
24 tent of boundaries of lines unless the title of the land cannot
25 be established wholly by parole evidence and I point out this

point, that the plaintiff's witnesses are contradictory among themselves of where this line may be, if it ever existed at all. Which side of the road it's on, whether it's the Lizzie Miller Mountain, whether it is the Scott Mountain or what the name of the mountain is. How big P. M. Via's farm was, what his will referred to. There is no consistent evidence at all to determine that. A title by adverse possession is not involved, a case where the plaintiff would claim by adverse possession and where the case is one in which the title claimed by deed itmust have been derived by deed, if derived at all and it can't be established in whole by parole evidence. To allow parole evidence it would become an independent source of title according to authorities is not permissible and certainly not in Virginia. I think the plaintiff's entire case, other than this one rock, which was mentioned in the will, is the only line in the plaintiffs chain of title. Its location is not clear. Any other lines the plaintiff has tried to establish were objections. They hadn't been fixed. Even the location of Lucy Wood to Lula Wood, the potato patch, the location of the roads, the location of Scotts Mountain is unclear and certainly doesn't, by perponderance of the evidence, establish plaintiff's line in this case. For that reason parole evidence and failure by perponderance of evidence to establish the line, I move the court to strike the plaintiff's evidence at this point.

COURT: All right, Mr. Barrett.

BARRETT: My comment on the Ferris case to which Mr.

1 Pickford has just invited your attention sir is that case was a
2 presumption at case. The court found that there was not
3 sufficient evidence to show adverse possession by the claimant
4 or to presume grant. That case also states this: that, plaintiff's
5 Snellings deed did not specifically or generally define the
6 boundaries. Now, the authorities to which I have invited the
7 courts attention in the memorandum which I submitted on this point
8 I believe made it quite clear that where a deed is ambiguous
9 extrinsic evidence can be introduced in order to define the
10 boundary on the ground and the quotation in Ferris v Snelling I
11 have in my own memorandum and I think it is a good law. You can't
12 establish title wholly by evidence which indicates that a good
13 deal of parole evidence can be admitted in order to do it. We
14 have established that there was a rock at the corner and that
15 rock presumably is the same one that's in P. M. Via's will. Taking
16 the entire picture, we have a man who owned a piece of property
17 who made a will and when he died it divided the property up sub-
18 stantially among three girls who were known to him, two his
19 daughters and one his granddaughter. His granddaughter lived in
20 the same house with him and had for some time. There were well
21 defined fences between the three parcels that went to the girls
22 and those fences were in existance at the time the old man died
23 and for a considerable time after and the girls were the most
24 closely affected by the fence at the time were Lula and Lucy.
25 They had no dispute as to where this line was. The line ran from

the rock and the direction is north west Your Honor, as the will states. I agree that the description in the will is certainly not complete by any stretch of the imagination but I think it is sufficiently complete to allow evidence which relates to the line as tied into this rock and the direction of this line can be used to establish where this boundary line was. I think we have done that.

COURT: Do you claim in any other way other than by your Motion for Judgment by adverse possession Mr. Barrett?

BARRETT: No sir, no way else. I based the case entirely on the paper title which I don't think there is any presumption here because we have a deed. I don't think there is any adverse possession because I don't think Mr. Walton has....he hasn't built on the property, he hasn't put a fence up there, he hasn't grown crops on it, I don't think he can show adverse possession of that land.

COURT: The question is then, how are you going to fix by reference to your paper title, the northwestern end of your line? Now, assuming that the rock does establish the south-eastern term of that line, forgetting the Mulberry Tree for a moment and saying that there is a straight line running from the rock to someplace on Scott's Mountain or what might be called Scott's Mountain to establish a line under that will. Where would the other termness of that line be?

BARRETT: If you went northwest it would have to

1 cross his boundary someplace.

2 COURT: Assuming that it ends at the Lizzie Miller

3 Line the question is where on the Lizzie Miller Line would that

4 end occur? Without reference to a fence which is not mentioned

5 in the deed? This is the problem.

6 BARRETT: I don't think you can pick it out

7 specifically on the words of the deed Your Honor. I think you

8 can take the rock and I think you can take the direction...I

9 think you can take the situation as it existed in the mind of the

10 man who drew this will and the people who took it over. I think

11 all of this has to be considered together. There are very few

12 wills that are drawn with a well known deed.

13 COURT: I'll give you an opportunity to respond Mr.

14 Pickford. You have a right to open and close on the motion but

15 the question I have now is with regard to your relying entirely

16 on record titles. You are standing on the description in the

17 will, it is what it amounts to, you have to?

18 BARRETT: Yes Your Honor plus the evidence, extrinsic

19 evidence which I think is admissible under...

20 COURT: The problem is the will doesn't say a word

21 about a fence. It mentions a line. Let's look at it again. I

22 don't make any sense out of it.

23 PICKFORD: Your Honor, we aren't relying on the will

24 we are relying on the deed and Mr. Walton which paraphrased the

25 will.

COURT: Yes sir. It uses the will description.

PICKFORD: Yes sir but he has to trace this paper title to the deed and to him. The deed is his source and the description he chose at that time to take title then that's his burden.

BARRETT: The deed is in his chain.

PICKFORD: That's where he got title.

COURT: The court recognizes that the deed merely extracts the description out of the will. It relies on the description in the will. Somebody did a lazy mans job of drawing up the deed. That's exactly what happened. To lazy to go out there and look at it and to tight to get a surveyor. That's exactly what the problem is and you have got to go back to the will now to find out what was intended because whoever drew the deed sat on a chair in his office and didn't go any further but to look at the will, that is exactly what happened. Now, the question is, what sense can we make out of the will? Unless there is a variation in the language of the deed, which differs from the will, now I haven't seen it, maybe there is. If the will is the original description used by the man that owned the land....let's see if we can make any sense of it. You have got to read the whole will together because you realize there is a three way division of the farm. I am willing to look at all paragraphs but I am looking at this description. I will the lower part of my land commencing at a rock....now, I am not sure

yet, it seems to me that when you say lower it's in a southerly direction and the mountain is uphill in a northerly direction yet the Cummings Property is still more to the south from the land that we are now discussing.

BARRETT: I think he was referring sir to the elevation.

COURT: Allright, then the Lucy Wood land would be at a lower elevation than the Cummings Land, is that correct?

BARRETT: That's right.

PICKFORD: I can't stipulate that.

COURT: Isn't that opposite from what the evidence shows. My understanding is you are going up hill towards Scotts Mountain.

PICKFORD: Mr. Barrett, you and I have walked that line and that line runs up a mountain.

BARRETT: Oh it does, I agree there.

COURT: What would be the lower part of the P. M. Via Property?

BARRETT: The part he gave to Lucy.

COURT: What's the Mary Cummings, an upper part?

BARRETT: Yes sir.

COURT: It's up hill?

BARRETT: It's next to Lucy's.

COURT: Where is Lula's?

BARRETT: It's in the middle. Her tract comes in the

middle.

COURT: Assuming that he is right then on the lower part, commencing at a rock on the main Blackwell Hollow Road. Now, that has been testified to and for the purpose of this motion to strike, the court takes the evidence as being sufficient to fix that location. Now, the next question is, running towards Scotts Mountain. Now, there has been some conflict with the testimony generally that Scott's Mountain merges into the Lizzie Miller Mountain so that somewhere in a northwesterly direction we hit Scott's Mountain.

PICKFORD: That is if you overlook Mr. Wood's testimony Your Honor.

COURT: Yes sir.

PICKFORD: Scott's Mountain is on the opposite side of the road.

COURT: Assuming that Scott's Mountain is back there in that direction running towards Scott's Mountain and northwest and with his line. Now, what's he talking about.

BARRETT: I can offer a suggestion.

COURT: Let me have it from the evidence now, from the evidence.

BARRETT: The evidence is that in 1881 he bought a tract of land from Benjamin Blackwell and in 1896 he sold part of it, 40 acres which was against the Scott Tract, to George Wood. He and Lucy lived on that tract. Lucy's husband was dead, that

has been testified to. Maybe he thought that his land still went to Scott's, that's all I can offer as a suggestion.

COURT: Everything else as I read it refers to land on the opposite side of the Blackwell Hollow Road. Thence with his line on the otherside of the Blackwell Hollow Road, thence with the Martin Mountain Road so that's out of the area.

BARRETT: I think that's reasonable.

COURT: What do you construe the description to mean as far as the two sides of the road, where are you breaking the two sides of the road in this description?

BARRETT: I thought about this many hours Your Honor.

COURT: Does and with his line refer to the east side of the road or does that refer to the west side?

BARRETT: I think he means northwest and with his line, I think the testimony was that Scott owned all of that land there at one time, on both sides of the road actually.

COURT: Then, when we get to the word line we put a semicolon, then jump across the road?

BARRETT: I think so Your Honor. I think that's what you were looking....

COURT: That's what I am looking for. That's the part we are considering and the rest of it is stipulated to be out of the contrary. All we have is a northwest direction with his line to fix....

BARRETT: I think, and with his line Your Honor.

1 COURT: Yes. Now, the question is what that means.
2 It means somebody elses boundary, which was apparently in the
3 mind of the testator and can it be determined from extrinsic
4 evidence. You have all the deeds in record. Now, what do you
5 say abot a previous conveyance that may have given him rise to
6 that word, his line?
7 BARRETT: I am sorry, sir.
8 COURT: What previous off conveyance would be
9 consistent of that terminology, his line?
10 BARRETT: In 1896, he conveyed 40 acres by
11 estimation of this land to George Wood, who was Lucy's daughters
12 husband and of course Lucy lived on that tract which is a
13 northern most point and Lucy's husband had died before he wrote
14 this will. The problem is, he may have thought he still owned
15 this land, I don't know.
16 COURT: Could it be possible his line refers to
17 somebody that he has mentioned in the first paragraph?
18 BARRETT: You mean in part one?
19 COURT: Yes.
20 BARRETT: With respect to Mary.
21 PICKFORD: Ray Shifflett or Jerry Martin or Scotts.
22 BARRETT: Hers is the other way sir because Mrs.
23 Miller and Ray Shifflett lived on the other side.
24 COURT: His first divide is to his oldest daughter,
25 Mary Cummings. Now, that persimmon tree is also mentioned with

reference to the rock. If you will read all three paragraphs the persimmon tree is on the opposite side of the road from the rock. The persimmon tree occurs on all three divides. It's a reference point. In the first divide he says to a persimmon tree on the road thence to the fence straight through to the top of the mountain, Scott's line. Now, which direction is he talking about?

BARRETT: The Scott line sir is on the west side. Although, Scott lived on both sides.

COURT: All right, that's what I am getting at. By reference to the deed it could have been either side of the road.

BARRETT: I don't think so Your Honor because you notice in clause one he says, on the other side of the mountain and on the other side I think he means the road, the mountain formerly owned by Jerry Martin. This is not in evidence but Jerry Martin owned land on the east side of the road.

COURT: That appears on the sketch which is in evidence.

BARRETT: Yes sir.

COURT: We take that first sentence then to also be a west side of the road division line with Cummings.

BARRETT: I think so Your Honor.

COURT: All right, he is referring to the Persimmon Tree again.

BARRETT: I believe there are two persimmon trees,

Your Honor.

COURT: Then he is talking about, thence to a Persimmon Tree on the road to the fence, straight through to the top of a mountain. Now, what line is that? That's a westerly line it seems or a northwesterly line to the top of the same mountain we are working toward, possibly Scott's Mountain.

BARRETT: The first sentence says, I will to Mary Cummings the land adjoining Mrs. Miller and Ras Shifflett. Then he pursues to go on the road, that's the route 810.

COURT: That's the same point as the rock.

BARRETT: No sir.

COURT: Yes it is, if you read the whole will. Look down in paragraph three. In order to make it better understood this land starts from a rock on the Blackwell Hollow Road with a persimmon tree on the opposite side.

BARRETT: Yes sir.

COURT: Is that the same Persimmon Tree or a different one.

BARRETT: It's a different one.

COURT: Why do you say that?

BARRETT: Sir, I'd have to testify to say that.

COURT: Well, is it something that appears in the deed abstracts?

BARRETT: No. In the deed abstracts?

COURT: In these deeds that are in evidence. I

haven't read all of them but if you say that you recall what it says I will consider that.

BARRETT: That's not important Your Honor.

COURT: You don't agree then that the Persimmon Tree in paragraph 3 is the same one mentioned in paragraph 1.

BARRETT: Yes, I don't agree.

COURT: You don't agree.

BARRETT: I may be wrong but...

COURT: All right, I won't interrupt you. Go ahead with any other comments now about the motion to strike.

BARRETT: Your Honor, I agree with your analysis so far. The only thing that I can say is I think I had enough features in the will description in order to bring in parallel evidence to show where this line went and that's what I tried to do.

COURT: The question is though, his line means what according to your evidence?

BARRETT: I think with his line, my feeling is....

COURT: From your evidence, not what your hunch might be but point to the evidence that you think bears on this point.

BARRETT: I think his line, as referred to, is the line that runs on the north side of the George Wood Tract and separates the George Wood Tract from Scott's, that's what I believe.

COURT: His line really is completely out of keeping

with the....

BARRETT: Deed, yes sir.

COURT: Unless that's jumping all the way around to a different side.

BARRETT: If you jumped over George Wood's Tract to the Scott's Line then I think the will will make better sense.

COURT: I see. He says he is talking about an entirely different boundary line then.

BARRETT: I think he is. I think he has forgotten that he has deeded this property to George Wood. That's what I think.

COURT: Why would he have said then that there was a fence if one was in existance?

BARRETT: I don't know.

COURT: You have proven that a fence was there and the next question I have is, why in the world didn't he say so?

BARRETT: I don't know. It is a very fragmentary will.

COURT: All right. He saved the lawyers fee in that case to, didn't he.

BARRETT: Yes sir. We can't say he was in bad shape because the will was written four years before he died.

COURT: Right.

BARRETT: If it was the day before we might understand.

COURT: All right. I will allow any more comments you have then Mr. Barrett on the present state of the evidence on the motion to strike.

BARRETT: To summarize my position sir, I believe that the law clearly shows, as I have shown in my memorandum, that where a description is a general description in the chain of title that extrinsic evidence can be offered to show it. Where the boundaries are. I think there are enough features described in the will and alluded to and discussed and talked about and located by witnesses to fix that line along that old fence.

COURT: All right sir. Mr. Pickford.

PICKFORD: Your Honor, I am sympathetic with the plaintiff's burden. It is a tough burden. He brought this action and in every case, the preponderance of the evidence to establish the boundary line on a deed and that is the whole evidence is just not sufficient. First, he has got to have the color title, he has got a deed which paraphrases that will. Then he has got to pick these monuments to designate this chain of title. The only one he has designated is the rock and if he found the rock we still don't know as yet where the line runs. His evidence just doesn't preponderate this point even taking the point most favorable to him because we still haven't located from his own witnesses even where Scott's Mountain is. A major landmark. We have got some witnesses that say it is on one side of the road, some on the other. We have got a potato patch that

1 wasn't located where the witness testified, it belonged to the
2 Lucy Wood Tract rather than the Lula Wood Tract. South of the
3 Willie Rosson Tract, so Willie would have gotten nothing from the
4 south practically in the deed. At this point based on the burden
5 he has to show.....it is my understanding of the burden he has
6 to show even taking into light this evidence, which is available
7 to him, he hasn't established his boundary line and for this
8 reason I ask the court to strike it.
9 COURT: Let me ask this now. Doesn't the evidence
10 as it presently stands indicate that the land is unoccupied on
11 both sides as to your client and his client.
12 PICKFORD: No sir, I don't think so because he
13 testified, Mr. Walton testified that after he built his fence
14 somebody, presumably the Rosson's built the fence down around 810
15 to graze cattle and it is being used. It was being occupied
16 although I think he testified he never had anything to do with the
17 land on the southside of the George Wood Tract, he was aware of
18 the Rosson's use of it on the southside of the line. Mr. Wood or
19 Mr. Frazier testified that he was aware that the Rosson's used the
20 spring. There is evidence in his case that use has been made of
21 it by the defendants.
22 COURT: Now, you have certain evidence already in
23 by way of exhibits. Let's see what record description is....this
24 is a rather peculiar situation if you have a motion to strike,
25 where does it leave you, if I sustain. You still haven't settled

the boundary.

PICKFORD: I agree there. I think if the Court doesn't have a part to establish a line that has never been designated in a chain of title or by a preponderance of the evidence. If the court can't find where the plaintiff says it is then the court has to find where the defendant says it is.

COURT: They are adjoining properties aren't they?

PICKFORD: Yes sir.

COURT: There is no question about that.

PICKFORD: Our evidence, based on what the plaintiffs witnesses testified to, will claim that this line fence was constructed in 1942 which is represented on the plaintiff's plat by a line from B to C.

COURT: A rambling line along what....

PICKFORD: The notation on that says the line from A to B or B to C or along existing fence lines.

COURT: But, you rely on adverse possession in that case rather than record title, do you not?

PICKFORD: I rely on their color of title and whatever that deed gave them that's what they move in on this land under. If they gave them title to this land they claim, if they went ahead and took possession of this property under this title regardless of where the boundary was, that's the one they believe and have treated for years as theirs.

COURT: Well, the court makes this ruling with regard

to the motion to strike. Probably, it is well taken but the evidence is on the motion to strike is clear enough to establish that the rock has been located. The evidence must be taken in the light most favorable to the party offering it when it's subject to a motion to strike. The will specifically says, a line from a point on the northwest direction. There is no mention of a Mulberry Tree and if that line were changed from the present proposed line to a straight one it would be even more adverse to the defendant, as I understand it.

PICKFORD: Of course it goes on to say it runs towards Scott's Mountain. They haven't determined where that is.

COURT: Yes sir. The question of where Scott's Mountain is, it would be a matter of swinging the line but it would still be fixed at this point by the testimony. The court therefore overrules the motion to strike and notes the objections of the defendant and will reconsider that at the conclusion of the evidence. It is firmly established at this point, in the courts judgment, that the point alleged by the plaintiff to be the location of the old rock referred to in the will has been established. That point was pointed out to the surveyor and the maps introduced as plaintiff's exhibit 9 and is designated as a line beginning on the west side of route 810 running north 69 degrees, 16 minutes west, 540.17 feet to the Mulberry Tree and while not necessarily running to the Mulberry Tree under the will

it at least fixes the location of that rock. The Mulberry Tree, the court finds, has no basis what-so-ever in the description but the northwest line running to the intersection with the Lizzie Miller Tract certainly does by any reasonable construction of the will. That may not be enough to establish it and we will review the case on the conclusion of the defendant's evidence, again on the motion to strike.

PICKFORD: This line from the Mulberry Tree to the Lizzie Miller Tract, the Lizzie Miller Tract is not mentioned in this chain of title either.

COURT: No, but he is talking about in a northwesterly direction and it is apparent that the Lizzie Miller Line, from the evidence, would have been the terminus of the property owned by Pleasant Via at the time he made his will.

PICKFORD: It should have been the Miller Mountain instead of Scott's Mountain.

COURT: It could have been, yes. It could easily be. That is still somewhat ambiguous. The testimony from Mr. Raymond Walton is that there could be a terminology which would refer to the same general area as being Scott's Mountain and the Lizzie Miller Mountain. It may or may not be but that was his testimony. All right, you may present evidence then on behalf of the defendant.

ELLEN ROSSEN, HAVING Been previously sworn testified as follows:

DIRECT EXAMINATION

By: Mr. Pickford

Q Mrs. Rossen, are you the widow of Willie Rossen?

A Yes.

Q You remember when you bought this property?

COURT: Could we have her full name Mr. Pickford?

Q Would you state your full name please?

A Ellen Rosson.

COURT: Her age to, if you don't mind?

Q How old are you Mrs. Rosson?

A Sixty-eight.

Q Sixty-eight?

A Yes.

Q I think you testified that you are the widow of Willie Rosson, is that right?

A Yes sir.

Q Do you recall this property in controversy, do you recall the year you all bought it from Mrs. Sours?

A We bought this property in....we have had it 32 years.

Q All right, somewhere around 1942? From that time what have you all treated as your own? What property have you used as your own?

A I have used everything on it.

Q How far is that?

A We used it clear down to that line fence and we put the fence in and that's the line. Raymond come up there and asked us, asked Willie....

Q Could you speak to the court please?

A He come up there and asked Willie, how about putting the line fence in.

Q Who was that?

A Raymond.

Q Raymond Walton?

A Yes sir.

Q All right.

A So, Willie told him yea and to go ahead and put it where he thought the line would be and so my two boys helped Raymond.

Q Where was that line built? Where was that fence built?

A It was built as a line fence you know, down the bottom of that, next to Raymond.

COURT: Down at the bottom next to what?

A Down next to Raymond, the line fence.

Q Do you remember the year that was built?

A That's been about 26 years.

Q Somewhere around 1947. Now, that fence follows a

creek, is that right, up along side the mountain?

A Well, it runs along side from the spring.

Q From that time on did you all claim that as your property to that fence?

A Certainly did.

Q This spring on the property, is there a spring located on....how many springs are there on your property?

A One.

Q Just one?

A One that we use for to drink.

Q Where is that located?

A Down there next to where Raymond claims.

Q That's on the land that Mr. Walton claims?

A Uh huh.

Q How long have you been using that water?

A I have been using that water ever since,...32 years.

Q Did you ever ask anybody's permission to use it?

A No sir, I ain't never asked nobody permission to use nothing down there.

Q How long....is this a every day use? What do you use that water for?

A Cook with, drink, anything we want to.

Q Is there another spring on your property?

A Where the horse drinks water out of now.

Q On your property where the house is?

A Yes.

Q Is that down in front of the house?

A Yea.

Q That's not the one you are talking about?

A No, I am talking about the one down where Raymond claims.

Q Do you recall Mr. Rosson ever trying to sell any property to Mr. Rosson?

A No sir.

Q Do you recall Mr. Walton ever trying to have this property surveyed?

A Yea.

Q What happened then?

A Willie run them out.

Q Living on the mountain and what happened?

A Well, they got out. When I heared him tell Raymond to get out I went in the house. I can't stand no disturbance.

Q Who told them that?

A Willie.

Q Told them to get out.

A Uh huh.

Q Did he say why?

A He said that was his land.

Q Do you remember what year that was?

A I tell you Mr. Pickford, I have so much on my mind I can't keep up with the years.

Q Okay. You have lived in this area since when, 1942?

A I've been down there 32 years.

Q When you moved there was there any fence or fences that you remember? Any rail fences?

A No.

Q Do you remember this rock? You have heard testimony about a rock, do you remember that?

A I ain't never seen no big rock. Only just what the telephone people told me about the lines.

Q What other ways have you used this property? Have you ever had a garden on it?

A No sir.

Q Have you ever grazed cattle on it?

A Grazed cattle, we cut wood, me, George and my sister cut pine wood, Dewey cut wood on it, firewood and there hadn't been a word said.

Q Have you ever dumped trash on it?

A Yea, I got a pile of junk piled up on it.

Q Have you ever burned it over?

A Well, see I had that field down to that little building bush hoged.

1 Q What's that little building for?

2 A It was a bathroom.

3 Q Where is that located, is it near the spring?

4 A It ain't too far from the spring.

5 Q Is it above the spring going away from your

6 house?

7 A It's on to the left going from the spring to the

8 house.

9 COURT: Mr. Pickford, where is her house? Could you

10 get this located better?

11 Q Mr. Barrett's tracing here, is the P. M. Via.

12 COURT: All right, I wasn't sure. That wasn't

13 clear. So, we are talking about the P. M. Via sketch as marked

14 exhibit as far as what was introduced in the pleadings.

15 Q This spring is above your house towards Mr.

16 Walton's house, is that right?

17 A It's on up above Raymond's house.

18 Q Has....when did Willie die, do you recall?

19 A Willie has been dead 13 years.

20 Q How many children did you have?

21 A I had four and one died.

22 Q How many children still live on the place there

23 with you?

24 A Just one.

25 Q Who is that?

A Mamie.

Q Is Mamie married?

A Yea.

Q What's her husbands name?

A Dewey.

Q They live on the place there with you?

A Yes.

Q Have you all continued to use that land?

A Yes sir. We have used that land.

Q I have no further questions.

Q Would you state your name for the court please sir?

A Jerry Lewis.

Q How old are you Mr. Lewis?

A Sixty-four.

Q Are you familiar with the neighborhood we have been discussing this morning?

A I was born and raised in that neighborhood.

Q Born and raised in the neighborhood. Are you familiar with the property itself?

A Born and raised within less than ten miles of it.

Q You have lived in that area all of your life?

A Yes sir.

Q Are you familiar with the Rosson Property, Walton Property and all in that area there?

A No.

Q You are not familiar with that property?

A All I know is I helped Raymond put that fence up beside the Joe Wood place and he said he was putting up a line fence between them places.

Q When was that?

A I don't know what year that was.

Q Can I show you this drawing that Mr. Barrett has prepared here. This is where Mrs. Rosson presently lives?

A Yea.

Q Can you show me there, this is the George Wood Tract?

A That's right.

Q This follows the creek, this solid green line. Where along there was the fence built?

A I don't see no sign of none.

Q Where is the one you helped build?

A That's up the creek there, the Via Fence.

Q Along this solid green line?

A Yea.

Q How did you come to help out? Did Mr. Walton ask you?

A I was working for him then.

Q He hired you?

A Yea, I was working for him regular.

Q Did he tell you why he was building that fence?

A He said he was putting up a line fence between him and Willie.

Q A line fence between him and Willie Rosson?

A Right.

Q Do you recall....being in that neighborhood all of your life....do you recall any rail fences?

A I never saw none.

Q Do you ever recall a rock, a particular rock?

A I don't know nothing about no rock.

Q Did anybody ever discuss boundary lines with you?

A Huh.

Q Did Mr. Walton ever tell you about his property? About what he owned and didn't own?

A All he said then that that fence was the line fence.

Q The line fence?

A That's all he said.

Q Can you pinpoint that at all? Was that after the second world war and before the Korean War, when was it?

A I don't know what year it was.

Q In relation to the end of the Second World War, was it then?

A It wasn't too long afterwards cause I went to work for him right after he come out of the army.

Q After who came out of the army?

A Raymond.

Q You went to work for him after he came out of the army?

A Yea.

Q How long after that was this fence built?

A Well, I don't know exactly how long it was but I worked for him for two years straight.

Q You worked for him for two years?

A Yea.

Q Did you work for him any longer than that?

A Off and on after that but I worked for him for two years straight.

Q During those two years, was the fence built then?

A Yea.

Q All right. It would have been somewhere around

1947?

A Yea.

Q Did you know Willie Rosson?

A Yes sir.

Q Do you know what land he treated as his own?

A All the way back to that fence.

Q To the line fence you helped build?

A Yea.

Q What did he do with the land?

A He grazed it and cut some pine wood.

Q Did he fence it?

A Willie?

Q Uh huh?

A No.

Q Did his son fence it?

A Me and his two sons and Raymond put that fence up.

Q Did you ever build any other fences?

A I didn't, no.

Q Who else helped build that fence?

A Nobody but me, Willie's two sons and Raymond.

Q Okay. Do you know whether he and Willie discussed the fence?

A No.

Q Did Willie come on the line, up at the fence there?

A Willie was sick.

Q He was sick?

A Yea.

Q Did you ever know any of the Wood's. Lucy or Lula Wood?

A I wouldn't know nothing about them.

Q I have no further questions.

BARRETT: I have no questions.

COURT: Before this gentleman leaves the stand let me ask counsel this question for clarification. As I understand it, Willie Rosson was using the land on the otherside of the fence that was used in approximately 1947 by Mr. Raymond Walton but later, after the fence was bought, Mr. Raymond Walton purchased land from the Wood Heirs?

PICKFORD: There was no fence Your Honor. I don't believe there was any fence there until Mr. Walton bought this property and this fence was erected in 1947, the same year he....

COURT: That's what I am getting at. Is it clear at this point whether Walton bought land after he built this fence. Has that been brought out?

BARRETT: Your Honor, this deed is in 1953. Six years after they built the fence.

COURT: What land did he purchase six years after 1947?

BARRETT: The Lucy Wood Tract.

COURT: The Lucy Wood land. Now, the question is, is the Lucy Wood Land the same land that Willie Rosson was occupying then?

PICKFORD: It is, yes indeed.

BARRETT: I can't answer that.

COURT: The question is, can this witness answer it?

PICKFORD: He can testify to this fence here Your Honor.

COURT: The question is where was the Lucy Wood Land. Did you know where Lucy Wood's land was?

A I don't know.

COURT: You don't know?

A Not on that side of the road.

COURT: Did anybody ever discuss where Lucy Wood's land was?

A All I knowed it was across the road from that.

COURT: It was across on the other side of the Blackwell Mountain Road or Blackwell Hollow Road?

A That's right. I never did know there was none on that side.

COURT: All right.

PICKFORD: This land, the land south of the line you helped build, do you know who was using that?

A The land on Willie's side?

Q Yes sir.

A Willie was using it.

Q Right up to that fence?

A Yea.

COURT: Where was Willie living at the time Mr. Lewis?

A At the Via place.

COURT: In the old P. M. Via Home?

A Yes sir.

COURT: What kind of farming or what other living did Willie carry on? How did he make his living?

A He buyed some cattles along.

COURT: Farming?

A Yea, farming.

COURT: Did he graze the cattle?

A Yea. Grazed some of his own, buy some and sell them.

COURT: Was he considered the owner of the property he was using or was he renting it from somebody?

A He said he owned it.

COURT: He owned it. Is that your understanding that when you were there that Willie lived in the P. M. Via House and he owned that property up to the fence that Mr. Walton built?

A That's what he said, he said he owned it.

10 Q Would you state your name please for the court?

11 A Leland Frazier.

12 Q How old are you Mr. Frazier?

13 A Seventy-five.

14 Q Where were you born?

15 A Greene County.

16 Q Do you live out in this Blackwell Hollow neighbor-

17 hood where the Rosson's live?

18 A Yes sir.

19 Q How long have you lived there?

20 A Fifty-five years.

21 Q Full time, fifty-five years?

22 A Yes sir.

23 Q Do you recall any rail fences?

24 A I have seen them.

25 Q Do you know Lucy Wood?

A Yes sir.

Q How well did you know her?

A I knowed her well.

Q Did you use to date her?

A Huh.

Q Did you use to go with her?

A Yes sir. Lula Wood, yes sir.

Q How long did you go with her?

A Thirteen years.

Q Did you visit her very often?

A Yes sir.

Q Where was she living then?

A She was living over there where Mrs. Rosson lives. That was her home.

Q You use to visit her there frequently, often?

A Yes.

Q Did you ever see any wooden fences along there?

A No, I never seen none along there.

Q Did anybody ever show you a rock? Did you ever notice a rock?

A No sir.

Q Did you know Willie Rosson very well?

A Knowed him all my life.

Q Do you know what use he made of his land?

A Well, he run cattle on it, cut wood and logs and

stuff out of there.

Q Did he cut logs himself?

A I guess so.

Q Do you know how much land he claimed as his own?

A He always claimed he had 50 acres on that side and 45 on this side.

Q Fifty acres, do you know how far that ran up the road to the Walton House?

A Not exactly, no.

Q Do you know where his line was along there?

A Yea.

Q Where was that?

A To Raymond's.

Q Raymond and Willie's?

A Oh yea.

Q Where was that?

A That run into Martin Mountain Road, some of it.

Q All right. We are back on the other side of the road now.

A That run over to the creek coming down Miller Mountain.

Q A creek?

A Yea, it was suppose to be a creek, a branch like. It's a pretty good size stream.

4 years?

5 A No, I didn't say that.

6 Q How long have you lived?

7 A Fifty-five.

8 Q Fifty-five. You say you don't remember seeing

9 any rail fences?

10 A No, I don't remember seeing any rail fences.

11 Q You don't remember seeing this rock?

12 A No sir.

13 Q Did you know Pleasant Via?

14 A Yea.

15 Q What kind of man was Pleasant Via?

16 A He was an old fellow when I first saw him. He

17 was an all right man of what I heared of him.

18 Q I have no further questions.

5 DIRECT EXAMINATION

6 By: Mr. Pickford

7 Q Would you state your name please sir?

8 A Lester Rosson.

9 Q Mr. Rosson, are you the son of Willie Rosson?

10 A Yes sir.

11 Q Where were you born?

12 A I was born in Rockingham County.

13 Q Do you remember when your parents bought.....how

14 old are you now?

15 A Forty.

16 Q Do you remember when your parents bought this

17 property that is in question?

18 A Yea, they bought it in 1942.

19 Q Do you remember what your father and mother

20 treated as their own after they got their deed?

21 A Yea, we treated clear down to the fence that

22 Raymond put in for a line fence.

23 Q Did you help build that fence?

24 A I certainly did.

25 Q Do you remember what year that was?

A It was in '47.

Q Did Mr. Walton talk to you about the fence?

A He come up and asked daddy would he let the boys go down and help him put the line fence in and daddy told him, he said you go and put the fence where you think it ought to be Raymond.

Q Did Mr. Walton show you where he wanted the fence?

A Yea, he showed us where to go with the fence and all.

Q That fence that you all built was located where?

A It was located at that branch that goes up, cause we walked that day up to the top of the mountain.

Q From the house that your mother lives in now, where was this fence? This is Mr. Barrett's drawing and this place where he has P. M. Via is where your mother lives now?

A It goes up this George Wood Tract right here, up the creek here.

Q This is the George Wood Tract here, is there a creek that comes down that mountain?

A Yea, it comes down through here.

Q You are pointing to the solid green line which shows the George Wood Tract?

A Yea.

Q How far did that fence run?

A It runs to the top of the mountain up to the Lizzie Miller Tract.

Q When you built that fence was there any fence along 810 here?

A No it won't.

Q Is there a fence there now?

A Yea, we put one down the road when we put that one to the mountain.

Q Why did you do that?

A On account he said it was the line fence so we fenced that on around to be our land.

Q So, as a result of that was your whole land fenced in?

A Yes.

Q What did you....what use did you make of this land?

A Well, we cut firewood on it, we cut logs on it, pulpwood.

Q Did you ever burn it over?

A We burned them old fuzzy pines right there where we bush hogged at. It was about to get away one time on us there before we did that.

Q Did Mr. Walton ever complain to you about cutting logs off of his property?

A Only one time.

Q When was that?

A That was back in '56.

Q Could you tell the court what happened then?

A Yea, me and my brother cut some down there and we drug them out and loaded them and he come in on the weekend from Maryland and we was up there at Mr. Yancey's unloading them and he come up there and stopped the check on them and daddy went up there the next day and got the check.

Q Did he talk to you while you were there?

A He said something, I can't recollect what he said now.

Q Has he ever complained to you since then?

A No sir.

Q Were you on the property when he tried to have it surveyed?

A Yea.

Q Were you there with the surveyors and the party?

A I was there where they was all at.

Q What happened?

A Well, they was having a dispute there and daddy told them for to get out that that land belonged to him and they finally went on out.

COURT: When was this?

A I said they had a dispute....

COURT: When, when did this occur?

A That was in '57.

COURT: 1957.

Q Did Mr. Walton ever come back then to try to have it surveyed again?

A Not until here this last year.

Q Did he ever complain again about the use you were making of that property?

A No, he never did say nothing about it.

Q Did you all cut much wood off of there to sell?

A I haven't cut much since. I cut about five big poplars down after that, me and my brother.

Q Does anybody else cut wood off of there?

A Dewey has been cutting.

Q Every since?

A Yea. I cut a couple of loads of firewood there in '71. Right down below the iron peg they got.

Q Were there ever any buildings on this property that Mr. Walton is claiming, were there ever any buildings built on it?

A Yea, Dewey built a outside toilet.

Q Is that still there?

A Yea.

Q When was that built?

A That was built in '64.

Q Could you see it from the road?

A You could but bushes are growed up pretty bad there now and it's pretty hard to see now.

Q How far would you say that out house is from Mr. Walton's house?

A Oh, I'd say it's at least 300 feet from there. Maybe more than that.

Q Is that pretty level ground across there?

A Yea. Right down through there it is.

Q Could Mr. Walton see it from his house?

A I doubt it.

Q Could he have seen it from the road?

A Yea, he could have seen it from the road.

Q Do you think Mr. Walton knew of the use you were making of this property?

A Sure he knew. He goes around and looks the mountains over every time he comes in.

Q When this line fence was built did you talk with Mr. Walton or did you hear him talking to your father?

A I heard him talking to my father. Daddy was down in the bed sick when he come up there and asked could the boys go down there and help put the line fence in.

Q Who furnished the material for that fence?

A Raymond furnished it.

Q All of it?

A Yea.

1 Q How about the fence along 810, who furnished that
2 material?
3 A Daddy furnished that.
4 Q Who built that fence?
5 A Me and George, my brother.
6 Q I have no further questions.
7 COURT: Let me ask Mr. Rosson a question here for
8 clarification. Did you ever know of Lucy Wood?
9 A No, I never knowed her.
10 COURT: You knew of Lula Wood or did you know that
11 your father lived on the property that was formerly owned by
12 Lula Wood?
13 A Yes.
14 COURT: You did know that. You knew that he claimed
15 his title from Lula Wood, did you not?
16 A Yes.
17 COURT: Did you ever hear anybody discuss where
18 Lula Wood's property was?
19 A No, never heard.
20 COURT: Do you know when Lucy Wood died?
21 A No, I didn't know any of the Woods except Chap
22 and Bob, that was the only two I knew.
23 COURT: Chap and who?
24 A Bob. I reckon his name was Robert.
25 COURT: All right. Go ahead Mr. Barrett.

CROSS EXAMINATION

By: Mr. Barrett

Q The fence that you helped build was the fence between the George Wood Tract and the tract that you claim as yours?

A That's right.

Q That was in 1947? Let's take the time from 1953, do you remember when Raymond bought this land?

A No I don't.

Q You don't know anything about it? Have you ever heard that he bought any land after he put up that fence in 1947?

A No.

Q You said in 1956 he complained about you cutting this load of logs?

A Yes.

Q You cut those off of the land between Willie's House and the fence?

A Yes. Right down the road in front.

Q By the spring?

A Right down below the spring.

Q Below the spring?

A Yea.

Q You know if the power company or the electric company ever cut any logs?

A No, they didn't cut no logs.

Q They never did.

A No.

Q Did you cut any logs, other than this time you mentioned, you yourself?

A Yes, I cut a few down in '63, me and my brother.

Q In 1963?

A Uh huh.

Q I thought you said you didn't cut any after...

A Yea, I said in '63 we cut a few down, me and my brother.

Q Where were they cut from?

A Right down below the spring there.

Q In '56 logs were cut, how big were they?

A They was about that big I would say.

Q Maybe a foot?

A Yea.

Q You have cut firewood?

A Yes.

Q Did your father raise cattle on this land?

A Yea.

Q How many?

A I think about the highest he ever had was 13. At one time.

Q Did he graze them on the east side of the road?

A Yea, he grazed them on both sides.

Q He grazed them over on Leland's tract?

A No.

Q Did he graze them up on Lizzie Miller's place?

A No.

Q You say you are aware that Mr. Walton checks this every time he comes back? He has never said anything to you?

A No, he ain't said nothing.

Q You haven't cut any wood since then?

A No.

Q I have no further questions.

Q Mr. Rosson, you recall when you all first moved there in 1942, where have you gotten your water from every since?

A We have been getting it out of that spring down there every since.

Q What spring is that?

A The spring down there where Raymond claims.

Q On this drawing that he has got here, where is that spring?

A The spring is right here.

Q You are pointing to the one on the Lucy Wood Tract?

A Yea.

Q Spring written under it?

A Yea.

Q There are two springs on there. There is another one designated here.

A This is the Lula Wood, ain't it?

Q Right. This is the spring down the road on the Lula Wood place.

A This is the spring down the road on the Lula Wood place.

Q Is there a spring right out in front of your house?

A Yes sir, there is a spring there but the water ain't fitting to use for drinking or nothing.

Q Have you all ever used it for anything?

A Just for washing and stuff like that.

Q The spring on the Lucy Wood Tract, the one you have used for water, how often did you go there and get water from it?

A We have been using water out of it ever since'42.

Q Ever asked anybody's permission to do that?

A No sir. I didn't ask nobody's permission.

Q Do you know who they believe that spring belongs to?

A I guess it belongs to us.

Q Who told you that?

A Didn't nobody tell me.

1 Q Did your daddy ever tell you who it belonged to?

2 A No. He always said it was his when we put the

3 line fence in there.

4 Q Then he did tell you who it belonged to?

5 A Yea.

6 Q Who did he say it belonged to?

7 A He said it belonged to him.

12 Q Mr. Rosson, if Mr. Walton had come on that
13 property after '47 and told you to get off it was his land, would
14 you have gotten off?
15 A No.
16 Q Why not?
17 A On account, he said he'd put the fence up and that
18 would be the line fence and Daddy told us it was his and I wouldn't
19 have got off.
20 Q Do you rely on their agreement of 1947?
21 A Yes sir.
22 Q Regardless of what that deed says you would have
23 claimed that as your own?
24 A Yes sir.

16 Q Would you state your name Mrs. Shifflett?

17 A Mamie Shifflett.

18 Q How old are you Mrs. Shifflett?

19 A Forty-five.

20 Q Are you the daughter of Mr. and Mrs. Willie

21 Rosson?

22 A Yes sir.

23 Q Where have you resided most of your life, all of

24 your life?

25 A We have been living where we are at now for

1 thirty-two years.

2 Q Is that what has been identified in these pro-

3 ceedings as the old P. M. Via Home?

4 A Yes sir.

5 Q How old were you in 1942? You are thirty-five

6 now?

7 A I am forty-five.

8 Q Forty-five. Do you recall this instance when

9 this fence was built that we have discussed?

10 A Yes sir.

11 Q Did your father ever tell you what land he owned?

12 Did he ever explain to you where his property lines were?

13 A I know him and Raymond said they was going to

14 put the line in, a fence in down there for the line fence. That's

15 what they did. Raymond came up and asked Daddy to let the boys

16 help to put the fence in for a line and Daddy told him to go

17 ahead and put the line wherever he thought the line was and

18 that's what they did. The two boys went down there and helped,

19 one of the boys is dead now. Lester, he helped and George and

20 Jerry Lewis.

21 Q Have you all used this property since this time?

22 A Yes sir.

23 Q What have you used it for?

24 A We have used it, we have used the spring, we use

25 it three or four times a day.

Q Which spring is that? Now, let me refer you to Mr. Barrett's map here. This is the place called P. M. Via home place. This is where you are living?

A Yea.

Q There are two springs here. One is right in front of the house and the other one is on 6-32 Lucy Wood's place.

A Yea, the one on Lucy Wood.

Q The spring on Lucy Wood's?

A Yea.

Q Is that where you all get your water?

A That's where we have been getting our water every since we have been there.

Q What other use have you made of this land?

A Well, we have been cutting timber, we have been using it for firewood.

Q You are talking about this piece of property here that is marked Lucy Wood?

A Yes sir.

Q You cut timber and firewood?

A Cut timber, cut firewood, we have a junk pile over there that we have been using for sixteen or seventeen years I guess, maybe more and we built a little outside building when my sister moved up in the trailer, right near 810, about 50 feet, it may be more or less, a little outside building for a bathroom.

Nobody ain't said nothing about it and we have just used it for anything we wanted to use it for, grazing cattle.

Q Did you ever ask anybody's permission?

A No sir, nobody has ever said anything about it.

Q Have you ever cleared any of this lot?

A Well, yes we did. You know this mountain land grows up so fast. Back in '72 I believe it was we got J. B. Davis to bush hog it for us as far as he could. On down below that little building and up on the hillside up there as far back as he could bush hog.

Q Prior to that had you burned it over?

A Yes, we did. We burnt up on the hill in back of the house. We cut the bushes and things and then we burnt all we could. We almost let the fire get out over there one time.

Q Do you recall this occasion when Mr. Walton tried to have this property surveyed?

A Yes sir.

Q Could you tell the court what happened then?

A Well, he was trying to have it surveyed. They said he didn't have nothing to go on so daddy told them to get out, so they got out. We ain't never had no more trouble since until this.

Q Did he say why he wanted them to get out?

A He said the land was his.

Q It belonged to him?

A It belonged to him.

Q Now, this land that you all have used and claimed, how far north does it run? Refer to Mr. Barrett's drawing. Where does it run to?

A What do you mean.

Q Where does the line run?

A The line fence.

Q Yea.

A That's right here.

Q The solid green line just south of George Wood's tract?

A The line fence, they said they was putting it there for to be the line fence. Cause Daddy was sick and Mr. Walton come up and asked him and he told him to go put it where he thought the line was at and they did. Mr. Walton put it where he thought it should be.

Q Did you ever know Lucy Wood or Lula Wood?

A No, I did not.

Q Did you ever know of them?

A No.

Q Did your father ever say anything to you about them?

A No, I never heard them mentioned.

Q Did any of the Wood's ever come to see you during all these years?

A No, the only one I knew was Mr. Chap Wood.

Q Did he ever say anything to you about this property?

A No, he has never talked to me about it.

Q Does he live out there?

A Chap Wood, no he lives in town.

Q Do you know what relation he is to Lucy or Lula Wood?

A No, I really don't.

Q When your mother and father bought this property, do you remember that?

A February 7, 1942.

Q Were you too young to remember anything about that?

A No, I remember it. I remember when we moved down there and everything.

Q Do you remember when you moved there?

A We moved there on valentine's day.

Q How much of that land, going north, how much of that land did your father and mother use as their own?

A We use it all, all down to the line fence.

Q Was there anything up there then, a fence or anything?

A You mean when they bought it?

Q Uh huh.

A Not that I know of.

Q Subsequently this fence was built?

A Yes.

Q Okay. Do you know whether any power companies, utility companies ask to put right-of-way over....

A Well, the electric line people came in....came through there first, that was about '57 I think it was but I don't know for sure but they came through there and asked our permission to go through on all of our land and we give them permission. The telephone people in '64, I believe it was, they had a hold up on the other side of the road, Mr. Walton wouldn't let them go down on him on account of his Poplar Trees and all and right where the plank fence they have got a pole there, so they said the only way they could go down was to come over and ask Mrs. Rosson if they could go down through her.

Q What property did that cross in reference to this picture?

A All down here.

Q You are pointing across Lucy's Tract?

A Yes sir.

Q Your mother gave them permission to go across there?

A Yes sir.

Q Do you remember....have you ever seen posted signs out in this neighborhood?

A Well, Mr. Walton had some posted signs up. I think he had one right down there near the road.

Q Any more than one?

A He had some over on the other side of the road too but he took them down or somebody, I don't know who put them there Mr. Walton or who.

Q Have you ever seen Mr. Walton on this property?

A No I haven't.

Q Never seen him come on it at all?

A No sir, just for the surveyor.

Q As far as cutting lumber on it, how often does that happen that you know of?

A Well Dewey has cut on it. He has been cutting on there off and on. He doesn't cut every day. Daddy has been dead thirteen years and he has been cutting off and on every since and he cut before daddy died.

Q Was there ever any buildings built on this tract which would be the Lucy Wood Tract?

A Yea, like I told you, the little bathroom.

Q Who built that?

A Dewey built it, in 1964. April of '64.

Q Who was that for?

A It was for my sister when she moved up in the trailer and she stayed I think from '64 until '65 and the building has been there every since and it was open at that time, you could

see it better than what you can see it right now. It has growed up right much there now.

Q When this attempted survey was made was Mrs. Walton on the scene? Was she in the area anywhere?

A I don't think so.

COURT: Which Walton are you talking about?

PICKFORD: Mrs. Walton.

COURT: All right.

A I don't recall if she was there.

Q Who maintains this fence along route 810, right along here? At the bottom of the Lucy Wood Tract?

A You mean going down the road?

Q Yes, who keeps that fence up?

A We have been keeping it up our self. If it gets down or anything we fix it to keep the cows in. We are the ones that fixes the fence down the road there at the Lucy Wood Tract because we keep the cattle and things in, we don't want to let them out or anything so we have been fixing it and everything since it has been up there.

Q Do you recall when that fence was built?

A I guess that was built, it might have been built before '47, I don't know. In the neighborhood of that anyway.

Q Almost as old as this line fence?

A Right.

COURT: Mrs. Shifflett, did you ever know Lucy Wood?

A No sir.

COURT: Know of her?

A No sir.

COURT: When she died?

A No sir.

COURT: Did you ever hear of her?

A No, I might have heard of her but I really don't know her.

COURT: Whenever you heard of her did you ever know or hear of where she lived?

A No, I did not.

COURT: You all moved onto the property in what year?

A February 2, 1942.

COURT: At that time you never heard of Lucy Wood and thereafter you never heard of her?

A No, I haven't heard anything about her owning no land or anything.

COURT: All right Mr. Barrett .

CROSS EXAMINATION

By: Mr. Barrett

Q Let's talk about the fence. The fence along 810. Do you know yourself who built that fence?

A Well, I am pretty sure that my two brothers built

it.

Q Did you see them do it?

A Well, I don't just say I was right over there with them when they did cause I don't know every move they made or anything.

Q Did you see the fence built?

A Yes, since I got there the fence was built.

Q Was there a fence there before you moved?

A No.

Q Describe the fence they built?

A It's just an old wire fence.

Q How many strands of wire?

A About four strands.

Q Were trees used for posts?

A No, maybe they went to a few trees but they used a lot of posts to.

Q The purpose of that fence was to keep the cattle off the road?

A Yes sir.

Q Do you know whether that fence ever fell into disrepair and got bad and the cattle got through it?

A We don't usually let them get through it. We keep it fixed so...

Q Do you know whether your cattle ever strayed over on the Walton's front lawn?

A Not that I know of. If they did we would have got them off.

Q Did Mr. Walton tell you all about it, to keep them off?

A No.

Q He did not?

A You mean keep them off of this land.

Q Keep them off of his front yard?

A Oh no, no sir.

Q When was the last time that fence was fixed?

A We fixed it some during the summer.

Q Which summer?

A This summer, yes sir.

Q You fixed that fence this summer?

A Yes sir.

Q How about last winter, did you fix it last winter?

A Just like I tell you, we have been fixing it and keeping it up ever since it has been built there cause sometimes old fences get down and then you got to go and patch them up and do something to them to keep the cows out the road. We have got a horse and a cow.

Q You say your mother gave permission to the power company to go across the tract?

A My daddy was living at that time.

Q So, your daddy gave them permission to do this?

A Yea.

Q Do you know exactly what permission he gave, was it in writing?

A Yea, it was wrote up cause the power line they come and ask you all that stuff when they fix it up.

Q Do you know yourself what tract that writing related to?

A The power line came right up near the spring.

Q I am not talking about where the power line came, I think that can be shown, but what you know of what your father gave in writing to let the power line cross the land. Do you know exactly yourself what land was in that document?

A No, I thought it was daddy's because he gave them permission to do it.

Q Now, you remember that you moved in that house on the second day of February, 1947?

A That's when we bought it.

COURT: What was that again?

A We bought the place the second of February, 1942 but we moved in on the fourteenth, St. Valentine's Day, cause I can remember just as plain as anything.

Q You never heard of Lula Wood?

A No sir, I never heared of her. I never saw her.

COURT: You say Lula or Lucy now Mr. Barrett? Which is it?

BARRETT: Both?

A I don't know neither one of them, no in deedy. I don't know neither one of them.

Q Now, back to this time you say Raymond came to see your father, Willie, about putting in this line fence where did Raymond see Willie?

A He came up to the house cause daddy was in the bed sick. He stayed sick a lot.

Q Your daddy was in bed?

A Yes sir.

Q Were you there?

A Yes and Mr. Walton asked daddy about putting the line fence in.

Q Did he use the term line fence or did he say.....

A He said the line fence, that is what he said. Daddy said yes, the boys can help and you can put the line wherever you think it should go.

Q Now, you say you have never seen Mr. Walton on the Lucy Wood Tract?

A I haven't seen him, no sir, I haven't.

Q You have lived there for twenty years and you have never seen him?

A Somebody could come on the land and you not know it but I have never seen him.

PICKFORD: She has answered the question Mr. Barrett.

A I can't say I saw him if I didn't see him.

Q You know who built this little outhouse we are talking about?

A Yes sir, my husband. It was built in April of 1964.

Q That's Dewey?

A Yea, Dewey. At that time you could see it real good from the road cause it was a open place in there.

21 Q Would you state your name please?

22 A Dewey Shifflett.

23 Q Are you the husband of Mamie Shifflett?

24 A Yes sir.

25 Q And the son-in-law of Mrs. Rosson?

A That's right.

Q How long have you.....where do you live now?

A I live up there.

Q Live up there at this place designated P. M. Via home place?

A Yes sir.

Q I'll show you this drawing that Mr. Barrett has prepared here. How long have you lived there?

A I been there 26 years.

Q Was Willie Rosson alive when you were there?

A Yes sir.

Q Did he ever discuss his property with you?

A Yes sir.

Q Where did he show you they were?

A You want me to show it on this now.

Q If you can make that out.

A Uh huh.

Q This is the house you live in now?

A This would be the line along there.

Q This is the road, route 810, the red line here and we are concerned with the property on the west side of the road. This is the George Wood Tract, this green line.....

A It goes about this mountain.

Q Do you know anything about a fence being north, up the road from where you presently live?

A North.

Q Up towards Mr. Walton's house?

A Around 810.

Q Up around 810 then?

A Yes sir.

Q When you leave your house, where you live now, where is the first fence you run into when you go into Mr. Walton's, when you go towards his property?

A Over in here.

Q All right, that's the east side of the road. You go on down past that road, what is the first fence you see?

A That would be next to the line.

COURT: Speak a little louder Mr. Shifflett.

A Down on the George Wood Tract.

Q What fence is that?

A That's the fence for the line that we put in.

Q Did anybody ever tell you that was a line fence?

A Nobody but Willie, Willie Rosson always told me that was the line, he was the one who showed me.

Q Do you know what use Willie made of all of this property?

A He had cattle.

Q How often did he use it?

A We kept cattle in there and used it all the time.

Q Did you cut wood from it?

A Wood.

Q Did he garden it?

A No sir, won't no garden on it.

Q Did he fence it?

A Yes.

Q What fences did he built or did you build any for him?

A No, I didn't help build that fence.

Q Do you know who built this fence down on route 810?

A Yea.

Q Who built that?

A George and Lester built that.

Q I am sorry, who built it?

A George and Lester.

Q George Rosson?

A Yea.

Q And Lester Rosson?

A They built it. I ain't never built no fence.

Q Do you know when they built that fence?

A No, but it was a long time ago.

Q For the period of time you have been living on the property, what use have you made of it?

A I have used it for cutting logs, pulpwood....

Q How often?

A Well, I used it in '65, back in '63 before and after that to.

Q Before and after that?

A Yes sir.

Q How often would that be?

A I cut off of there in '65 and cut pulpwood off there in '63 and back in '73.

Q Did you ever have any people haul wood for you?

A Yes sir.

Q Who was that?

A Agnew Morris hauled these logs for me, Robert Lewis Howard hauled this wood for me, J. B. Davis.

Q Did you ever help clear any of this property, what is called the Lucy Wood Tract?

A Yes sir, we cleared a lot of it up. Took a fire and burned it off.

Q Burnt it off?

A Yes sir.

Q Did you ever have it bush hogged?

A Yes sir, my mother-in-law did.

Q Where do you all get your water from?

A We get it down at the spring.

Q Which spring is that?

A You are going to have to show me on this thing, I can't read this thing.

Q Is there a spring out in front of the house you live in?

A Yes sir.

Q Do you use that one for water?

A No sir.

Q Is there another spring north up towards this line fence? Is there another spring there?

A That's the one we use down there.

Q How long have you used that?

A Using it ever since I been there and I been up there twenty-six years.

Q Ever asked anybody's permission to do that?

A No sir.

Q Ever asked anybody's permission to do anything on that land?

A No sir.

Q Do you recall, I think the 26 or 27 years that you have lived there....

A Twenty-six years.

Q Is there any sign of any other fence?

A I don't know 'bout no fence.

Q Is there any sign of this rock? This rock that you heard discussed?

A No sir.

Q Do you have any idea where it might be?

A No, not me.

Q Is there any indication of a fence out here?

A No.

Q Did you know any of the Wood's, Lucy, Lula?

A No, the only one I knowed was Chap and Bob, they was the only ones I knowed.

Q Chap and Bob?

A That's right.

Q Did they ever talk to you about the land?

A No sir.

Q Did they ever come on the land?

A Yes sir, they been on it.

Q They've been on it?

A Chap.

Q When was that?

A Back in '57 when the surveyors were there.

Q He was there. Were you there when the surveyor was there?

A Yea.

Q What happened?

A He had surveyors in there and they was going up through there and Willie told them that was his land and to get out.

Q Where were you when that happened?

A I was over there.

Q Do you remember exactly what he said?

A Yes sir, he told Raymond, he said that land belongs to me and you get out.

Q What did Mr. Walton say?

A He didn't say much and they went on out.

Q Did he ever come back?

A Back in '73.

Q Do you know anything about this instance that Dewey testified about....Lester testified about they hauled logs to Mr. Yancey's mill?

A I weren't there that day.

Q Did Chap Wood or Bob Wood ever come on the property before '53?

A Just '53, I remember that.

Q Did they ever tell you they sold anything to Mr. Walton?

A No sir.

Q They never discussed the property with you at all?

A No sir.

Q Your witness.

CROSS EXAMINATION

By: Mr. Barrett:

Q Mr. Shifflett, you say you have lived there twenty-

1 six years?

2 A Yea, I will be there twenty-six years the twentieth

3 of this month.

4 Q The first time you came to live on that land was

5 in 1948, is that right?

6 A I got married in '48.

7 Q This is 1974?

8 A Yes sir.

9 Q Twenty-six years ago would be 1948, wouldn't it?

10 A I got married in '48, yea.

11 Q So, you don't know anything about what happened

12 before 1948, do you?

13 A Yes sir.

14 Q What do you know about it?

15 A He asked me how long I been living there and I

16 been living there twenty-six years.

17 Q Twenty-six years ago was 1948?

18 A Okay.

19 Q Where were you living before that?

20 A I stayed with my mother until I got married. I

21 been living there ever since I got married, staying with her

22 mother.

23 Q Where were you living before you married?

24 A With my mother down there at Boonesville.

25 Q Boonesville?

A Yea.

Q How old are you now Mr. Shifflett?

A I am fifty years old.

Q Are you real familiar with this land?

A Well....

Q You never heard of this rock that was mentioned?

A No.

Q You were talking about cutting logs, you say you cut logs in 1963?

A 1965.

Q One thing at a time. Did you cut logs in 1963?

A Pulpwood I cut in 1963.

PICKFORD: It may help Mr. Barrett. There are two different type of woods, one is logs and one is pulpwood.

Q In 1963 did you cut any trees?

A Pulpwood, yes sir.

Q In 1965 did you cut some trees?

A Logs.

Q Logs come out of trees.

A I cut the tree down and cut the log out of them.

Q In 1973 you cut some....

A Pulpwood, yes sir. Pine wood, pulpwood they call it.

Q You have lived there twenty-six years and you cut wood in 1963, 1965 and 1973?

A Cut before and afterwards to. I cut wood before that.

Q When did you cut before that?

A I never keep count of all this.

Q I am asking you, when did you do it?

A I cut on back....

Q You don't know?

A No, I cut so many times I couldn't keep count of all that.

Q Did you cut twice a year.....

A Oh yea.

Q You have been cutting a whole lot of timber?

A Right much of it.

Q Twenty-six years?

A I cut wood for Willie down on there.

Q On this Lucy Wood tract?

A Yes sir, on that tract over there.

Q When was this land cleared, you said the land was cleared, what year was that?

A We bush hogged it in '72.

Q In 1972 that was the bush hog?

A Yea.

Q Was there any other time you cleared it?

A I burned it off.

Q When did you burn it off?

A Oh, dozens of times. Just started the fire an burned it off.

Q Would you state your name please?

A Robert Lewis Howard.

Q How old are you Mr. Howard?

A Sixty-two.

Q Were you born in this Boonesville neighborhood?

A I was born on the other side of the mountain in Nelson on the other side of the mountain near Huntington, West Virginia and I came here with my grandmother when I was thirteen years old and I have been here ever since.

Q How long ago would that have been? When you came from West Virginia?

A I was thirteen years old and I am sixty-two now.

Q Who do you live with now?

A I live in my own home.

Q Where is your home?

A On 810, joining 810. I been living there 42 years.

Q How close is it to this property we have been talking about?

A I reckon approximately two and a half to three miles.

Q Do you get back and forth by this property very often?

A Yea.

Q You have for all those years?.

A For the last forty-five years I guess.

Q Did you ever notice any rail fences on the property?

A No, not that I knowed of.

Q You never seen any rail fences?

A No sir.

Q Do you remember the rock....do you remember the old Blackwell Hollow Road before they changed it?

A Yep.

Q Do you remember where the Martin Mountain Road comes down and joins it?

A That's the mountain since I been knewing anything, we called it the Frazier Mountain and you all talking about the Miller Mountain and I don't recall Miller Mountain, right where I

1 parked my truck at last night, is the Babe Frazier Mountain.

2 Q Babe Frazier Mountain?

3 A Babe Frazier Mountain. That was who was living

4 up there when I remember it.

5 Q If you were heading north on 810, do you know

6 where Mr. Walton lives?

7 A Yea.

8 Q If you were heading towards his house which side

9 is this mountain you are talking about on?

10 A It's on the right.

11 Q Do you know where Scott's Mountain is?

12 A Not by that name.

13 Q Do you know where Miller Mountain is?

14 A No.

15 Q Do you know where the property called Lizzie

16 Miller Tract is?

17 A No.

18 Q Did you know any of the Wood's, Lucy Wood?

19 A No, I never did know no Wood's except Mr. Chap

20 Wood and George Washington Wood.

21 Q Did you ever talk with them about the property?

22 A No sir.

23 Q Did you know Willie Rosson?

24 A Yes sir.

25 Q How well did you know him?

A I knew him well.

Q Did you ever go in his property?

A Yea.

Q Did you ever work on his property?

A I hauled wood off there.

Q Are you familiar with the fences on this property?

A I know where one fence is at, that's all I know 'bout.

Q Where is that fence?

A On the left going in there.

Q Can you make this out all right. This is where the Rosson's live now?

A Yea.

Q From where that house is, this is route 810 here, where did you cut wood?

A I didn't cut wood, I hauled the wood in this area right here.

Q You are pointing along this dotted line?

A Yea. Here is the gate right here and route 810 going down here. I went through this gate here and went on up above the house and come back to a wire fence back here.

BARRETT: I can't understand what he said about the wire fence.

COURT: You may go over and take a look at it Mr.

Barrett.

Q Would you repeat that? You said you came up here....

A here is 810 you say.

Q Right.

A I come on down 810 and turned in, there is drawbars, I turned in right here.

Q In the driveway going to Willie Rosson's house?

A To Willie Rosson's house.

Q From there where did you go?

A Went on up above the house and went back here to a wire fence.

Q Went up on this solid green line?

A Yea, right up here and came back up in here, there is a fence up there and I hauled wood from there.

Q Do you know who built that wire fence?

A No, I don't know nothing about that wire fence.

Q Did Willie ever go up in there with you?

A No.

Q Who told you you could go up in this land and haul that wood?

A Dewey Shifflett got me to haul the wood.

Q How often did you see Willie Rosson?

A I seen him very often.

Q Was he in good health when you saw him?

A No, he been sickly ever since we moved off the mountain. We use to live up on Brown's Gap and he was right healthy then but I was just a young boy then.

Q What period of time did you haul this wood?

A I hauled wood down there in '62 and '63, when I first started hauling wood.

Q You started in '62 and '63, how long did it last?

A I ain't hauled no wood from there for about six years.

Q So, you hauled wood ~~at~~ of there for five or six years, is that right?

A Yea.

Q How often did you do that?

A Sometimes I would haul two or three loads this week and maybe it would be a couple of weeks and I would go back and haul two loads, sometimes one load, whatever they cut.

Q That would be about twice a month, is that right?

A Two or three times a month.

Q For six years?

A Yea.

Q Who were you hauling for?

A Dewey Shifflett.

Q I have no further questions.

COURT: All right Mr. Barrett.

CROSS EXAMINATION

By: Mr. Barrett

Q When you were driving your truck on this road Mr. Howard, from your house back past where Willie Rosson lived, were you looking for fences?

A No, I won't looking for no fences.

Q Were you looking for a rock along side the road?

A No sir. I didn't look for no fences or rock.

Q Mr. Pickford summarized it, you hauled wood twice a month for six years for Dewey Shifflett?

A Maybe more than that. When he got it cut that is when I would haul it.

Q How many logs can you put on a truck?

A I didn't haul no logs.

Q What were you hauling?

A I was hauling pulpwood.

Q What is the difference between pulpwood and logs?

A You cut a log from fifteen to eighteen feet and pulpwood you cut it all the same length, five foot. You roll logs on a truck and you lift pinewood on the truck.

Q How many would go on a truck?

A I haul anywhere from two cord to two cord and a quarter.

Q On each truck?

A On one truck.

Q On one truck?

A Yea. I didn't have but the one truck. I put two racks on there. Sometime we had two cord and sometimes we had two cord and a quarter. I don't care how you load it you never get the same amount.

Q I have no further questions.

Q Would you state your name please?

A Agnew Morris.

Q How old are you Mr. Morris?

A Fifty-eight.

Q Where do you live Mr. Morris?

A I live at White Hall.

Q Are you familiar with the property that is the problem here, the Rosson Property and the Walton Property?

A The only think I know is I hauled four loads of logs back out there.

Q When did you do that?

A About 1965.

Q Who did you do that for?

A I hauled the logs for Mr. Shifflett. I hauled the logs to my mill and sawed them and took him half the lumber back.

Q Did you all have an agreement on the lumber off of this tract?

A Yes, we hauled on shares. He wanted some lumber back so I hauled for lumber.

Q Can you look at that drawing there and tell me about where you got that wood from? This is where Mr. Shifflett lives, the P. M. Via house here.

A Where is the gate that comes in off of route 810

Q Somewhere along in here.

A Well, we come down, come through there next to his house and circled back to the line fence. I don't know whether it was a line fence but there was fence back in the back.

Q What was that fence made of?

A It was barbed wire.

Q What direction were you going before you hit that fence?

A We was going, I guess you would call it north, we was going this way.

Q Were you back on the mountain a ways?

A We was just right above the house. I kinda goes up the hill and it goes over a little hollow on a level. We

loaded two places up there.

Q Okay but it was over near a wire fence?

A Near a wire fence.

Q When did you do that?

A We did it in one day, just one time.

Q Have you been on the property since?

A Oh yea. I have hauled logs from up on the other end since but never have back in there.

Q Where would be the other end?

A He had some logs drug out near his house. Right up above the house kinda on this side. We loaded them there where a hog pen was.

Q This occasion you are speaking of was north of his house?

A That's right.

Q As far as you can tell was it on this tract here called Lucy?

A Yea, as far as you go back.

Q Had you ever been on the property before this?

A Not as I know of.

Q Do you know Raymond Walton?

A Yes sir I know Mr. Walton.

Q Does he do business with you, lumber?

A No, we never did do any business but I know him.

Q He has never discussed his property with you?

A No sir.

Q Did you know Willie Rosson?

A No sir.

Q Did you know any of the Wood's, Lucy Wood, Lula?

A No sir.

Q I have no further questions.

CROSS EXAMINATION

By: Mr. Barrett

Q You are Mr. Agnew?

A That's right.

Q Mr. Agnew, as you pointed on this sketch I believe when you were talking with Mr. Pickford you said you drove in the driveway, is that correct?

A We went 810, went by the house, come in on this side of the house and circled past...

Q What do you mean by this side, north or south?

A This side.

Q South side?

A That's right. You have to back this a way, there is a road up there.

Q How far up that road past the house did you go?

A Well, I don't know. I would say three or four blocks back there maybe. I don't know, it was a right good while since I was back in there.

Q You are not sure what tract you were on?

A I am sure it was right here next to that fence.

Q Was that fence a long fence?

A Yea.

Q I have no further questions.

A J. P. Davis.

Q Mr. Davis, are you familiar with the Rosson Property where Dewey Shifflett lives and Mrs. Ellen Rosson lives?

A Yes sir.

Q Have you ever been hired to do any work there?

A Only to haul pulpwood for Dewey and to bush hog.

Q When was that?

A I bush hogged in '72. I drove a school bus and worked on the week-end. It took me about a month to bush hog all the land around there. I didn't do it in one day.

Q Where was the land that you bush hogged in relation to the house they live in?

A Mostly all around there. The whole place that was opened was to be bush hogged.

Q Does that place on that map mean anything to you? There is the P. M. Via place where Mrs. Rosson lives.

A That's the house, yes sir.

Q This is route 810, the road?

A Right sir. I came off route 810 up all around the woods back down as far as I could, this is suppose to be the line fence, right.

Q Is there a line fence there?

A There is an old barbed wire fence down below the spring.

Q Below the spring?

A Yes sir.

Q Which spring are you speaking of, this one in front of the house and there is another one up here?

A Right. This one right here.

Q The one north to the house?

A Right sir.

Q You bush hogged all down in there?

A Well, as far as I could get my equipment. There was trees and pines grown up and I did bush hog the stuff that was approximately three inches in diameter.

8 Q Can you show on here some relation to the house
9 of where you got the pulpwood?
10 A The most of the pulpwood I hauled was from the
11 Martin Mountain side.
12 Q On the otherside of the road?
13 A Yes sir. All except a parcel load of pine wood
14 that I got at the first spring at the house.
15 Q What you did on this property in question was
16 bush hog it?
17 A Yes, the main part.
18 Q That was in 1973?
19 A Yes sir.
20 Q It took you about a month?
21 A Approximately. I drove a school bus and you can't
22 do but so much work then and most of the work was done on week-
23 ends.
24 Q What did that property look like when you got
25 through with it?

A It looked pretty good.

Q Clean?

A What was done with the machinery was clean, yes sir.

Q Could you see it from the road, this route 810?

A Sure, anybody could see that coming along the road with no problem at all.

Q Do you know where Mr. Walton's house is?

A Yes sir.

Q Could he have seen it from his house?

A He might could have seen some of it when the leaves was off in the fall.

Q You could see it from the road?

A Oh yea, yes sir.

Q That's all.

PICKFORD: All right sir.

COURT: Mr. Barrett, you may offer any rebuttal testimony at this time sir.

BARRETT: I would like to recall Mr. Walton, Your Honor.

COURT: All right sir.

RAYMOND WALTON, Having been sworn was recalled and testified as follows:

DIRECT EXAMINATION

By: Mr. Barrett

Q Mr. Walton, the first thing I would like to ask you is concerning the time this fence was built in 1947 between the George Wood Tract and the Lucy Wood Tract. As I recall your direct testimony was that you built that fence and you did not have George and Lester Rosson to help you but they came up there.

A That is right, I did not ask them to help me.

Q Did you go down to see Willie Rosson about this?

A No, I was at Willie Rosson's house twice in my life and I helped him butcher twice, that's the only time I was there in my life.

Q Several of the Rosson's have testified that you were there and he was in bed and you asked him if you could put up a line fence. Is that true or false?

A That's false.

Q We have had testimony by many of the witnesses for the Rossons, that apparently a great deal of wood, of one kind or the other, has been cut off of this tract. Did you inspect or check this tract since you have owned it?

A I inspected it every year since I have been away and more than that when I was in the country.

Q When you were in the country before you left, in 1954?

A Yes.

Q What evidence, if any, did you find on the Lucy Wood Tract that there had been wood cut off of that tract?

A It has been more cut off the last winter than has been cut since I owned it.

Q This last winter?

A This last winter.

Q Let's take it back in 1954, was there any evidence of wood being cut at that time?

A Nothing but firewood.

Q What do you consider firewood?

A Anything up to 10 or 12 inches you know, that would make firewood. No Poplar, the Poplar is still standing.

Q Since you went to Maryland, as I understand your testimony was between '54 and '56 you moved up there but came back weekly.

A Weekly, yea.

Q Now, would you....did you continue to check that property at that time?

A Yes sir.

Q Was there any evidence of wood being cut then?

A No.

Q None?

A No sir.

Q Was there evidence of firewood being cut?

A Yes, there was some firewood and stuff like that and the stumps is up there to prove it. If anybody wants to go up and look at the stumps, there they are.

Q From 1956 until last winter have you been checking this land?

A Yes, ever year.

Q How often did you come back from 1956 until say 1970?

A Once a year.

Q When did you come?

A In July, the week of the fourth of July.

Q Mr. Davis just testified that he bush hogged this area in 1972 for one month probably around October. Were you down here in October of 1972?

A No.

Q Were you down here the winter of 1972?

A No.

1 Q When did you get back in 1972?

2 A I got back around the fourth of July.

3 Q Did you find any evidence of this bush hogging

4 when you saw it?

5 A No, I didn't see where they bush hogged the old

6 Lucy Wood Tract. It's bushes all over the whole tract and nobody

7 ever burnt on it either.

8 Q To your knowledge no one has ever burned on the

9 Lucy Wood Tract?

10 A Not to my knowledge. You can go up there now

11 and there are bushes that big. If a bush hog had cut them down

12 in '72 they certainly wouldn't have growed back from '72 to now.

13 Q Did you see....have you ever seen any cattle

14 being run on your land, on the Lucy Wood Tract?

15 A Well, they have one cow and one horse which I

16 have seen on there. I told Mr. Rosson he could run all the

17 cattle he wanted. I would be glad if he would.

18 Q That was Willie Rosson?

19 A That was Willie Rosson.

20 Q Did he ask you if he could do this?

21 A No, he didn't ask me. I first told him when I

22 bought the place from the Wood's. I was discussing about buying

23 the place and I said you can use all the water you want, I knew

24 he was using the water. You can get firewood or you can run your

25 cattle on it.

Q This he has done to your knowledge. He has done all of this?

A He has done all of this.

Q You told him he could?

A I told him he could, yes sir. I showed him where the line were to. He knew where the line were to.

Q That was in 1956, the time you had the Wood's up there. Did you have Lula Wood up there at that time?

A I had Lula Wood, Robert Wood, George Wood and...

Q Was Chap Wood up there too?

A Chap Wood.

Q This out house, have you seen this out house that has been built on the Lucy Wood Tract?

A I never had seen....

COURT: No, I think you mentioned that this morning didn't you?

A Yes, I think so.

COURT: I think that's been covered.

Q I want to ask him something about that house, Your Honor.

COURT: If he didn't know anything about it, how would he know anything about it?

A I have inspected it since they told me it was on there.

COURT: Well, I think that's what you have indicated

go ahead, maybe there is something new but don't repeat.

Q Is this house affixed to the land?

A No, it's just sitting on the land.

Q Is there a hole?

A No.

Q Now, with respect to the fence along route 810. There has been testimony by the Rosson's that Lester and George Rosson built that fence. Did you ever see any evidence of a fence on the west side of 810 along the Lucy Wood Tract?

A It's a fence there now but before I put the line fence up there wasn't a fence there.

Q Not before you put the line fence? We are talking about the 1947 fence.

A The 1947 fence was along the George Wood property.

Q Was the fence put along route 810 after you put up the line fence?

A They put a few strands of barbed wire down the road.

Q By they, you mean the Rosson's?

A I guess they put it up, I don't know.

Q You don't know who put it up but there was a few strands there?

A Yea.

Q Has there been any change in that fence recently?

A It was a real good fence put up last winter.

Q Last Winter?

A Yea.

Q Did you put that fence up?

A No, I didn't put it up.

Q Do you know who put it up?

A I don't know who put it up. They repaired the fence up between me around the George Wood Tract and the Lucy Wood Tract last winter.

Q That's been repaired?

A That was repaired last winter.

Q Did you repair that fence?

A No.

Q Now, getting back to the time you bought the Lucy Wood Tract from the Wood Heirs, why did you go to see Willie Rosson to buy this land?

A He told me he owned it. He come to me to sell the land to me.

Q He came to you?

A He came to me, I didn't go to him to buy it.

COURT: When was this we are talking about Mr. Walton?

A Your Honor, this was 1952.

Q Where did Willie talk to you about this?

A When he was riding in the truck with me. I was

hauling up through the country.

Q You and Willie were in the truck?

A He used to ride up to Crozet and back with me two or three times a week.

Q He then offered to sell you this land? Did he give you a price?

A Yes, I was to give him a thousand dollars for it.

Q You agreed to buy it from him?

A I agreed to buy it.

Q You have already told the court what happened when you went down to survey it. Now, did you know Lucy Wood?

A Yes I did.

Q Did you know Lucy Wood when she lived in the P.M. Via house?

A I didn't know Lucy when she lived in the P. M. Via house but I knowed her when she lived in her house and the George Wood house. Lucy Wood now.

Q Lucy Wood. She lived in her house on the George Wood tract.

A On the George Wood land.

Q You remember that?

A Yes...no, I don't remember when she lived there I remember when she owned it but I remember when she lived on her tract of land, the Lucy Wood Tract.

Q She lived in the house near where your house is?

A No, that's not where my house is. That's where the new house was built.

Q There were two houses built, right?

A Yea.

COURT: Did Lucy marry George Wood?

A Yes Your Honor.

COURT: She and her husband lived there on the George Wood place?

A On the George Wood place, yes sir.

Q You didn't know George Wood?

A No, I didn't know George Wood.

Q You knew Lucy Wood and you knew Lucy Wood when she lived on the Lucy Wood Tract?

A Yes.

Q Is this little house....

COURT: Now, wait a minute. Has there been any testimony that Lucy Wood lived on the Lucy Wood Tract. I haven't heard it.

A Yes, I testified that this morning and Mr. Joe Wood, he lived there with her on the Lucy Wood Tract.

COURT: Where?

A That's in the new....do you have the diagram of the house.

COURT: That's on the other side of the road.

A That's on the other side.

COURT: That's out of the case. I am talking about that's a part of the Lucy Wood Tract then on the east side of route 810.

A But they had their barn and cattle, they kept them on the west side of 810. The barn was on the west side.

Q There was a barn on the west side of the road on the Lucy Wood Tract?

A Yes.

Q Lucy Wood kept cattle in that barn?

A Kept her horse and cows in that barn.

Q Do you remember when Lucy moved out of that house?

A Yes.

Q Did Lucy use that spring on the Lucy Wood Tract on the west side of the road?

A Yes.

Q How do you know?

A I've carried water for her. I picked berries on her property and I would go up and ask her if we could pick berries and she would ask me to go get a bucket of water and I would do it.

Q She was then living in her house on the east side of the road?

A East side of the road.

Q Was anyone living with her at that time?

A No, she was living by herself but I remember when

Joe Wood did live with her.

Q You remember when Joe Wood lived with her?

A I was a little boy. They used to visit us at home.

COURT: Now, Mr. Walton what made you believe that Willie Rosson owned that land when he told you he did?

A He told me he had bought it so I just took it for granted he had.

COURT: What was he in possession of?

A That wasn't any fence or nothing around it just open country.

COURT: Why did you think that Lucy didn't own it?

A Why?

COURT: Why didn't you think Lucy Wood's Heirs didn't own it?

A I thought they had sold it to him. I thought Mr. Rosson had bought it from the bank.

COURT: The fact was, there wasn't any indication that Lucy Wood's Heirs were using it, is that right?

A They would check on it, they would come up and Lula....

COURT: Why didn't you ask Lucy Wood's Heirs if they in fact had sold it?

A I had just gotten back from the Army, it hadn't been too long and I didn't know whether Mr. Rosson had bought it

1 from them or how it worked.

2 COURT: If you went up there today how would you

3 know who was in possession of it?

4 A Well, I have taken all the people up there that

5 knows the line and shoed Mr. Rosson the line and told him....

6 COURT: Who uses this forty some acres today, thirty

7 four point four acres that is in dispute? Who is using that land

8 right today?

9 A They are using it today.

10 COURT: When did they start using it? Can you

11 trace it back? I am talking about the Willie Rosson Heirs or

12 the Willie Rosson Family, how long have they been using this

13 piece of land?

14 A I don't know how long they have been using it,

15 they didn't put the fence up there, I put up the line fence

16 between us so they could use it.

17 COURT: I want to try to get it to a point though.

18 You said you discovered they didn't own it but they are using it.

19 When did you discover they were using it, when did you first

20 discover it?

21 A Well, they never started using it, they never had

22 a fence up until after I put the fence up to the George Wood

23 place which that would have been in '47.

24 COURT: Yes but you got your deed from the Lucy

25 Wood Heirs in '53. Who was in possession of it then?

A Wasn't anyone, it was just laying open. The Wood's said they owned it, they was paying taxes on it and they would come up and look about it.

COURT: What was done with it between that date and now? Why did you start the action in 1973? When did the Rosson's start using it to a point that you felt that you had to take them to court to get them off?

A Well, I knew I had to take them to court after I had taken all of the Wood's up and he wouldn't agree to the line.

COURT: When was that?

A That was in 1957, 1956. I had a surveyor there that day, he was going to show the line, establish the line, exactly where the line was but Mr. Rosson....

COURT: From 1956 to 1973 what was being done with the land. You filed the action in 1973.

A The only thing I was doing was paying taxes on it.

COURT: What was Willie Rosson doing?

A He had a horse and a cow and I told him he could use the land for to graze his animals on or cut firewood on it.

COURT: Yet, he told you it was his land didn't he.

A He never did say it was all his land. He said that wasn't the line. He said he knew a fellow that could show me exactly where the line was.

COURT: So, you thought it was a line dispute and he didn't claim the whole tract?

A He didn't claim the whole land, Mr. Rosson didn't claim the whole land. He never did tell me he owned all that land. He told me that wasn't the line and he had someone that he was going to bring down and we would establish the line together and we wouldn't have had to went through all of this.

COURT: You understood though when you built that first fence in 1947, that you were fencing the George Wood line, didn't you?

A Yes, I knew it was the George Wood line.

COURT: When did you begin to claim the rest of the property. When you got the deed from the heirs?

A In 1953 when Mr. Rosson wanted to sell me the land.

COURT: How did you let the rest of the world know that you had bought the land, other than recording the deed? What did you do with it?

A I told Mr. Rosson the line, I showed him the line. He didn't agree to the line. Then I went and got all the Woods, all the people I bought it from and took them up there and showed Mr. Rosson and all the people the line.

COURT: He didn't accept your ownership either did he?

A No, he didn't accept that that was the line. He

didn't say that I didn't own the land. He said that wasn't the line and he wasn't satisfied with what the Wood's were showing him.

COURT: From 1956 until 1973, you all didn't have any further discussion about it?

A No. I haven't been around, I have been in Maryland working and just come back on vacation once a year.

COURT: What use did you make of it from 1956? Then just what you allowed Mr. Willie Rosson's family to use.

A Just for timber to grow on is what I wanted.

COURT: What did you take off of the property or what use did you make of it yourself or anybody holding under you? Other than Mr. Rosson?

A I didn't take anything.

COURT: Didn't cut any trees?

A No.

COURT: Didn't graze any cattle?

A No.

COURT: Didn't put any crops?

A No sir. I bought it in 1953 and I left from up there in 1954 and I was so busy fencing land in on the otherside of the road and I didn't get around. I worked six days a week and I work in the evenings a little while, fence or something.

COURT: After 1956 when you knew that Willie Rosson didn't agree to your ownership or your line, what did you do

thereafter to show him that you owned it?

A All I did was take the Wood's up to show him the line.

COURT: Just went up and showed them where you thought you owned to and they disagreed.

A The Wood's knew where the line were and I knew where the line were when I bought the property.

COURT: But Willie didn't agree?

A No. Willie wasn't from that part of the country and he didn't know where the lines in the country were.

COURT: You knew he was a fellow claiming against you didn't you?

A I knew he was claiming against the line, he just wouldn't agree to the line. The county owned property up in there to and Mr. Rosson thought he owned it and he cut all the timber and all off of that and then the county sold it/not to long a go at public auction. He didn't know what he owned up there. He didn't know where the line was. He just wasn't familiar with that country. They owned five acres on the other side of the road, the county did and he thought he owned that too and he cut the timber off of it for years and years and then finally the county up and sold it, they had the deed to it.

COURT: Why do you need court action now. To get Willie's heirs off?

A No, I don't want them off. I just want to get

the line established. They can keep on using the land until I get ready to come back home. I am getting ready to retire now and I want to move back home.

COURT: In what way are they interferring with your possession right now?

A They are not interferring with me. I want to get my line straightened out.

COURT: They are using that land up to the George Wood line aren't they?

A They have got a cow and horse with eighty some acres to run on. One cow and one horse wouldn't make much difference. I just want to get this thing settled. I want to get my line.

COURT: Who is in possession of the property, you tell me that?

A Well, they have a fence around it.

COURT: You say that noone is in possession of it?

A The only thing they have is cows, a cow and a horse on it.

COURT: They are more in possession than you are then.

A I am paying the taxes on it and I have paid the taxes on it for twenty years.

COURT: Unfortunately, paying taxes on land is not the way you establish ownership. The question is whether you did

anything else but apparently nobody else either claiming under you or acting for you has built anymore fence on this 34.4 and you haven't grazed any cattle, you haven't cut any trees, you have done any cropping.

A No sir.

COURT: All right, any other questions? I interrupted Mr. Barrett. Go ahead sir.

Q Then your position is then Mr. Walton that you don't mind the Rosson's being on your land. All you are trying to get straightened out is your line?

A That's it. I don't care what they do on it, it's left up to them. I told them to just act like it was theirs and use anything they wanted.

Q Except for....

A The big timber.

Q You are in the lumber business and that is your primary income?

A That's my primary income, right. They can cut anything but a poplar tree, I don't care.

Q I believe the Court has explored the area quite adequately, in the remaining thing I wished to talk about. Mr. Pickford.

CROSS EXAMINATION

By: Mr. Pickford

Q Mr. Walton, did I understand you to say that Willie Rosson didn't claim all of this land?

A Not the land on my side. I said the land on the otherside he claimed five acres that the county owned up there.

Q I am talking about the west side, the side he lives on?

A He didn't claim it all.

Q What part did he offer to sell to you?

A It was on the east side he offered to sell to me.

Q I think the Court has asked you, I am not sure, but why you waited this long to bring a action?

A Well, as I told you I bought it in 1953 and I have been working in Maryland ever since and just come home on a vacation or a weekend and I haven't had time to do anything but....

BARRETT: Your Honor, I think you explored this area quite thoroughly.

COURT: It has been answered Mr. Pickford. That is repetitious.

Q Do you recall taking depositions in our office a couple of weeks ago?

A Yes.

Q You recall when I asked you the same question, why you waited so long?

A I don't recall, you asked so many questions.

Q I asked you and this is on page 49 of the depositions Your Honor....I asked you, and the reason you waited this long to try to establish a boundary is you testified earlier that you have waited this long why is that? And your answer was, to save a lot of money for one thing.

A I thought maybe I could get it established without going to Court and a lot of time that you would have to spend working on the case and a lot of time working....

Q Is that your answer now as to why you waited so long....to save money?

A Well, no, I don't care about the money.

Q Just changed since last week?

A No, if you understood me right, I said for them to save a lot of money.

Q It's off the tape, to save a lot of money for one thing and if we could establish our own line it would save all this time in court, all this money..

A That's exactly what I meant. All of this time and all this money.

Q Thank you.

COURT: That's all the questions. Thank you.

Witness stood aside.

Q Your Honor, in view of the matter which you indicated to Mr. Pickford and me sometime shortly ago I would like to requestion Mr. Wood in that particular area.

COURT: He is the son now of Lucy?

BARRETT: He is Lucy's son, yes sir. Lula's brother.

COURT: But it is Lucy's ownership we are inquiring about. More to establish what happened, why Lucy's family let this land get away from them and maybe he can throw some light on it.

Q Mr. Wood, let's go back to P. M. Via's death. At that time, your testimony was that Lula received the land that she was living on and the P. M. Via House. Lula, your sister.

A Yes sir.

Q And your mother received the Lucy Wood Tract?

A Yes sir.

Q There is a diagram that has been put up there in front of you by Mr. Pickford.

PICKFORD: I am sorry to interrupt but I am still not certain what we are after. May I approach the bench?

COURT: All right. Counsel may approach the bench.

PICKFORD: I don't understand what you meant by

Lucy Wood lost this land because they conveyed their interest to Mr. Walton in 1953.

COURT: I am talking about the period though between her death or sometime between the time that Willie Rosson occupied the....I am talking about the use of it rather than ownership. That's what we are getting at. What was being done with it and who was using it. The testimony has been that Willie Rosson was occupying it at the time the fence was built in 1947. The question is where were the Lucy Heirs, what were they doing with the property.

Q Mr. Wood, you say you left the area in 1927 and went to Pennsylvania and thereafter you came back periodically and visited your mother.

A She lived there a year or two after I went to Pennsylvania and I come back to see her and the next year I think she come to Charlottesville.

COURT: What year did she come to Charlottesville?

A She must have come around '29.

COURT: 1929?

A Yes.

Q When did your mother die?

A 1948.

Q 1948?

A Yes sir.

Q So, that would be six years after Willie Rosson

1 received...bought the land from Lula. Did you know Willie Rosson?

2 A When I saw him, yes.

3 Q Did you know where he lived?

4 A No.

5 Q You didn't know then that he lived in the P. M.

6 Via house?

7 A No, I didn't.

8 Q Have you ever been back out on Lucy's Tract in

9 the '40's?

10 A Not after she come to town, no.

11 Q Never went back again?

12 A No.

13 Q You know where the rest of your brothers and

14 sisters were?

15 A Some was living here in town and some in the

16 country.

17 Q Who lived in town?

18 A My sister Deadie and sister Lula. She moved to

19 town too.

20 Q Where did the others live?

21 A Robert, he lived out in the country.

22 Q Where is that?

23 A The Warren Davis Place. Near the Mission Home.

24 Q Is that in Albemarle County?

25 A Albemarle County, no I believe that's in Greene

County.

Q Which brother was that?

A That was Robert.

Q Where did George Maupin live?

A He lived at Boonesville.

COURT: Mr. Wood, when your mother moved to town in 1929 and she died in 1948, between those years what did they do with the property, did she run it?

A No, won't nobody running it.

COURT: Did she abandon it?

A Well, nobody seen into it, I didn't.

COURT: Do you know whether she ever rented it to anyone?

A Well, people lived in it. I don't know whether she got rent out of it. Some family lived in it.

COURT: What use was made of the land west of route 810, if you know between 1929 and....

A That wasn't no crops raised on it.

COURT: To your knowledge, did your mother know what was going on out there?

A She rented to some peoples to live in the house.

COURT: The house is not on the piece we are talking about in this case. We are talking about west of route 810, what was done with that land west of route 810?

A It won't farmed.

COURT: Now, you say she rented the house, what kind of tenants did she have. Did they farm the place or just use the house?

A Just used the house.

COURT: As far as you know, if Willie Rosson was using the property your mother and family wouldn't have known it then?

A Well, when he bought it I guess he was using it. When he bought my sister Lula's place.

COURT: If he used the property all the way up to George Wood's line you wouldn't have known it?

A I was in Pennsylvania, I didn't tend to it.

COURT: How about your mother, do you know if she looked after it in any way?

A I don't think so.

COURT: Was she feeble?

A Yes sir.

COURT: I mean in 1929?

A No, she got feeble after she moved to town.

COURT: What was she doing with it when she last occupied it?

A She just left it set and rented it to somebody else. That's the house now.

COURT: When she was living out there what did she do with the property?

1 A She just lived in the house after I went to

2 Pennsylvania and then she moved out. She come to town here then.

1 COURT: Now, Mr. Barrett you are at the point of
5 final argument, you and Mr. Pickford and being the plaintiff you
6 have opening and closing. I think you are aware of the points
7 that particularly came to light at the close of the evidence. Of
8 course, I don't intend to restrict you to that but I did have
9 those points in mind at the time and I might make this observation.
10 While it is not conclusive it might develop further upon final
11 argument. I don't consider that it's necessary in this case to
12 decide this issue that the court take a view. I don't find a
13 problem with the fact but with the law. I think it is pretty
14 well established that this fence was built where the plat shows
15 it to be at a time that's not particularly in dispute but what
16 is significant is the type of possession that was exercised, the
17 control and possession that was exercised over the Lucy Wood Tract
18 by Mr. Willie Rosson and his successors. Of course, you all are
19 aware that the facts showed that at a time when Mr. Walton owned
20 the George Wood Tract and was under the impression that Willie
21 Rosson owned the Lucy Wood Tract because Willie Rosson said he
22 did he undertook to buy it. They went to the point of coming to
23 Mr. Wingfield's office to transact the sale and maybe Mr. Willie
24 Rosson learned for the first time and maybe he didn't that he
25 didn't own this property. Now, that I believe was in 1956 or

thereabouts.

BARRETT: 1953 Your Honor.

COURT: 1953 and thereafter of course they were both aware of the situation with regard to the ownership of the property, that is the legal ownership then and the significance of that evidence it seems to me is at that time both Mr. Willie Rosson and Mr. Walton were officially informed that the Lucy Wood Tract was not owned by Mr. Rosson and he could not convey title to it and from that point on of course there has been a certain type of use that has been discussed by the witnesses and certainly amply covered in the evidence. The only real dispute, as I recall from the evidence, is that Mr. Walton says he didn't ask anybody about where to build that fence and Willie Rosson said he did. Their testimony indicated that he came down there and asked about it and their response was, build it anywhere you want to, that you think the line is. Although you may see it differently and I may see it differently after hearing the argument, on first flush it doesn't seem to me that that adds to the tracts on either side. If Willie Rosson, in fact, asserted a claim to it at that time that was a rather strange response that his neighboring landowner would be invited to build a fence anywhere he thought the line was so that having occurred prior to their trip to Mr. Wingfield's Office. What ever misapprehension they were under is certainly clarified by that trip and that certainly is undisputed by both sides. So,

whatever difference in the evidence there may have been prior to 1953, if that was the date of their trip to Mr. Wingfield's Office they were advised of what the ownership was. I know this is one that involves adverse possession and I pointed out that one of the problems with it is that as a complete lack of any evidence as to what might have happened to the claim that Lucy Wood asserted. Apparently she moved to Charlottesville and forgot the property as such and some of her children. It is close to abandonment although not necessarily so, it is awfully hard to abandon real estate. Just being out of possession is not an invitation for somebody else to take it. I think Mr. Gilmer has asserted that principal but it is a rare one to me that you can divest yourself a title to real estate by abandonment. It may be a possibility but certainly not a likelihood. With that comment on my mind I invite you all to address yourselves particularly to the law and evidence and that point where both parties, that is the plaintiff and defendant in this case, were advised by Mr. Wingfield that Willie Rosson did not have title to convey to Mr. Walton at the time he was seeking to buy the adjoining land which was in fact by record title the Lucy Wood Tract. All right, Mr. Barrett.

12 COURT: Gentlemen, for the record the court over-
13 rules the motion to strike by the defendant and the plaintiff
14 with regard to each others claims. We will deal with this case
15 on the merits and the full evidence and I must say it is about
16 as close as you could get a case and still find a way to decide
17 it. In fact, no matter which way I decide it I am going to be
18 dissatisfied with it. I have already reached that conclusion. I
19 am sure that it hinges on some very close points. As I have
20 already commented on the evidence I will do very little more of
21 that but again it seems to me that the significant single act of
22 that case is that trip to Mr. Wingfield's Office which is un-
23 disputed by both sides and from that moment on each had a clear
24 knowledge of the position of the other and this now seems to be
25 more significant than when it first came to light in the evidence.

Whatever possession Mr. Rosson had of the Lucy Wood Tract coupled with what Mr. Rosson asserted to Mr. Walton was apparently enough to convince Mr. Walton to start dealing with Rosson for the purchase of it. Now, whether that was a mere reliance on the statements or not is not that clear but the court takes into account that both parties are familiar with this neighborhood. Willie Rosson was living there when Mr. Walton was very familiar with the whole area. Now, in 1947 then Mr. Raymond Walton fenced the George Wood line with Lucy Wood, the land to Lucy Wood. In otherwords, that was apparently a fence that was intended to be a boundary. Between 1947 and 1953, if not before, but certainly between that time the Rosson's used the Lucy Wood property up to that fence. Whether under a claim of right is not clear. At least the court feels that the evidence indicates that Mr. Rosson assert the full claim of ownership. In this statement that he gave Mr. Walton, he says you put the fence where you think it ought to be, that is not consistent with a man asserting ownership. Somewhere between there and 1953 Rosson began to assert more. Enough to convince Mr. Walton to deal with him to purchase it and to go to a lawyers office to have a deed drawn and there being informed that he couldn't pass good title. Thereafter, apparently the Rosson's continued to use the land up to that fence and in the same manner and to the same extent, if not more intensely after 1953 than before. Now, this seems to me to be the critical point in the court deciding this case. Mr. Walton

would have to be considered to be on notice that Rosson was in possession of that land on the otherside of that 1947 fence and his having bought it would indicate that the claim would be adverse to him. He having bought it from the Wood Heirs and having valid paper title to it he is on notice that somebody else is in possession of it. The court therefore finds that it would have been incumbent upon Mr. Walton to dispossess Rosson and his.....even accepted at face value, which the court does, his statement that he told Rosson he could use it would not change the character of Rosson's possession. In fact, that was something Rosson could take or leave. He didn't ask for the permission and his use wasn't necessarily based on permission. He was there before permission was granted and he continued in possession. It seems to me that the law would require Mr. Walton after having required legal title to dispossess Mr. Rosson and the possession thereafter became hostile even though Mr. Rosson in affect undertook to make it less than hostile by giving permission, I don't think it could change it. Now, that brings us to the question of whether or not that hostile possession is sufficient to establish ownership by adverse possession. Mr. Pickford stipulates that color of title is lacking in this case and the defendant must rely on claim of title or claim of right, which makes it necessary for him to show actual possession of everything he gets title to by adverse possession. He cannot claim constructive possession. That's what makes it so difficult

in most cases in dealing with mere claim of right. In open land it leaves the problem just as bad as before. However, it is this point in this case, the evidence is that the use that Rosson made of the property was consistent with the use generally being made of property in that area and that it was exercised up to that 1947 fence so that the fence became the evidence on the ground to the extent of that adverse possession. The survey which has been introduced into evidence shows that that 1947 fence line extended from the road all the way north to the property of Rubush which was formerly the property of Lizzie Miller and while the court is by no means satisfied with the decision in this case it does seem to me that it's required by this failure of Mr. Walton to dispossess his adverse claimant on the other side of that fence. The court therefore finds that the true boundary between the properties of the plaintiff and the defendant is that line which is shown on the plat as the 1947 fence line and extending from point B on the northwest province on the tract to point C on the west boundary of state route 810. Of course, that is a metes and bounds line. I must say gentlemen that I don't by any means indicate that that is the final word on the law of the facts in this case and Mr. Barrett, your objections to the courts ruling and exceptions are noted and the court wishes you the best of luck if you can get that decision changed. You certainly have every right to do it. It is as close a case as I have ever seen on this point, mostly of law. I don't find

enough of a dispute in the facts to have been troubled by it. I think this 1953 point is so well established when both parties knew what the other position was or should have known it and acted upon it. There is not a lot of factual dispute in this case and I commend you both for the preparation on the law that you have rendered and I must say I had difficulty dealing with it right up to the last minute. All right.

B R Blackwell
to
P M Via

Deed
Book 3 page 25
July 1885

Delivered to me July 4th 1897
P M Via

Know all men by these presents: That I Benjamin R Blackwell of McLennan County, Texas, of the first part for the consideration of the sum of eight hundred dollars to me in hand paid, have granted, bargained, sold and by these presents do grant, bargain, sell and convey unto Thomas M Via of the second part county of Albemarle, State of Virginia, all that certain parcel of land situated in the said County of Albemarle described as follows: Bounding the lands of Robert Blackwell, Jerry Martin, Leiton Walker, Miles Espin containing two hundred and thirty five acres either more or less. To have and to hold the same together with all and singular the rights, privileges & appurtenances thereunto belonging or appertaining unto the said party of the second part his heirs and assigns to his and their only proper use benefit and behoof forever, the said party of the first part hereby covenanting that he, his heirs executors & administrators will warrant & forever defend the title to the above granted premises and every part thereof, to the said party of the second part his heirs & assigns against the claim or claims of all persons whatever claiming or to claim the same or any part thereof.

In testimony whereof I have set my hand and seal this the first day of January in the year of our Lord 1881 eighteen hundred & eighty one

Benjamin R. Blackwell (Seal)

The State of Texas }
County of McLennan }

Before me, L A Bruce, a Notary Public of McLennan County Texas, on this day personally appeared Benjamin R Blackwell, known to me to be the person whose name is subscribed to the foregoing instrument and acknowledged to me that he had executed the same for the purposes and consideration therein expressed.

Given under my hand and seal of office, this 9th day of June A D 1881

L A Bruce
Notary Public Tex Texas

Deed
Benj R. Blackwell
to P.M. Via
235 acres.

Tr Ex. A

In the Clerks Office of Albemarle County Court May 2 1887
This deed was presented & with the subjoined certificate admitted to record.
Teste

Appellants' Exhibit 1

duced before me W. L. Wampin, Clerk, and proven by Jacinta Perrin and Mrs. S. H. Perrin in a like manner as the will.

The said paper-writing with codicil thereto is considered fully proven and is admitted to probate as and for the last true will and testament of the said Susan N. Staples, deceased.

Teste:

W. L. Wampin
Clerk.

In the Name of God, Amen, I. P. M. Via of the County of Albemarle, State of Virginia, being of sound mind and memory, and in the enjoyment of perfect health, do make this ~~this~~ my last will and testament, hereby revoking all wills heretofore made, and desire it to be received as such in manner and form as follows: First: I wish all just debts paid including all burial expenses incident thereto. First: I will and bequeath to my oldest daughter, Mary J. Cummings adjoining Mrs. Miller and Ras Shifflett. Thence to a persimmon tree on the road, to the fence straight through to the top of the mountain, Scotts' line, and on the other side to mountain line formerly owned by Jury Martin; this land is willed to her during life and to descend to her children.

2nd: Lucy V. Wood, I will the lower part of my land commencing at a rock on the Main Blackwell Hollow road, running towards Scotts mountain, northwest and with his line thence on the other side of the Blackwell Hollow road and thence with the Martin Mountain road to top of P. M. Via line, to have and to hold during her life and thence to her children.

To Lulu C. Wood I will and bequeath the my real estate including houses and lands except what has heretofore been specified and given to the others. In order to make it better understood this land starts at a rock on the Blackwell Hollow Road with a persimmon on the opposite side, and this is intended

over all the land not willed to the other children
have and to hold in her own right free from all claims
any and all persons. I give to her one sewing mac
It is agreed and understood that my wife shall hold all
he property during life and then to be divided among the
ildren and after her death, the property to be divided
cording to the specifications mentioned in the
regoing will.

In witness whereof I hereunto set my hand and
seal this the 14th day of Dec. 1916

tnesses P. M. Via (Seal)

as. M. Early
. J. Wyant

the Clerk's Office of the Circuit Court of Albemarle County Virginia Jo
paper-writing bearing date the 14th day of December 1916 and
porting to be the last will and testament of P. M. Via, de
s produced before me, W. L. Maupin, Clerk, and offered fo
of and probate and proven by the oaths of James W.
ly. one of the subscribing witnesses thereto the other
bscribing witness C. J. Wyant not being present. The s
mes W Early testified that he and the said C. J. Wyan
re personally present when the said P. M. Via, signed a
clared said paper writing to be his will and at his reque
d in his present and in the presence of each other, they
said James W. Early and the said C. J. Wyant bu
ibed their names as witnesses.

And the said James W. Early further testified that o
e day the said P. M. Via, declared the said paper
ting to be his will and testament he was of a sound
disposing mind & memory.

Thereupon said paper-writing is considered fully
oven and is admitted to probate as and for the last
e will ~~and testament~~ of the said P. M. Via, decease

Teste

Appellants' Exhibit 2

WHEREAS, by deed dated January 4, 1934, recorded in the Louis Clerk's Office of the Circuit Court of Albemarle County in Deed Book 135, page 520, Mace Walton, Melvin Walton and Mittie Walton, his wife, conveyed to Woodford Shiflett the tract of land hereinafter described, and,

WHEREAS, Woodford Shiflett died intestate over twenty years ago seized and possessed of said land, leaving as his sole heirs at law his widow Louise Shiflett and the following children, (1) a daughter, Goldie May Morris, (2) a daughter Lillie B. Gibson, (3) a son Hiram L. Shiflett and (4) a son James I. Shiflett, and,

WHEREAS, the said Louise Shiflett subsequently married J. H. Crawford who died three or four years ago and the said Louise Shiflett's legal name is now Louise L. Crawford , and,

WHEREAS, the aforesaid heirs of Woodford Shiflett desire to convey their respective interest in said property to Raymond L. Walton as hereinafter set forth.

NOW, THEREFORE, this deed made and entered into this the 15th day of August, 1947, by and between Louise L. Crawford, a widow, Goldie May Morris and James Andrew Morris, her husband, Lillie B. Gibson and Earl T. Gibson, her husband, Hiram L. Shiflett and Virginia C. Shiflett, his wife, and James I. Shiflett and Mary Elizabeth Shiflett, his wife, parties of the first part and Raymond L. Walton, party of the second part:

W I T N E S S E T H:

That for and in consideration of the sum of $400.00 cash in hand paid by the party of the second part to the parties of the first part, the receipt whereof is hereby acknowledged, the parties of the first part hereby BARGAIN, SELL and CONVEY, with GENERAL WARRANTY OF TITLE, unto the party of the second part, all their respective right and title in and to that certain tract or parcel of land situated on the Boonesville and Brown's Cove Road in Albemarle County, Virginia containing, by estimation, 40 acres of land, more or less, being the same property in all respects as that conveyed to the said Woodford Shiflett by Mace Walton, et al, as hereinabove set forth, and reference is here made to said deed for a more accurate description of the property hereby conveyed as well as its source of title.

As to their respective interests, the parties of the first part covenants that they have the right to convey the aforesaid land to the party of the second part; that the party of the second part shall have quiet possession of same free from all encumbrances; that they have done no act to encumber said land and that they will execute such further assurances of title to same as may be requisite.

Witness the following signatures and seals.

Lillie B. Gibson	(SEAL)
Earl T. Gibson	(SEAL)
Louise L. Crawford	(SEAL)
Goldie Mae Morris	(SEAL)
James Andrew Morris	(SEAL)
Hiram L. Shiflett	(SEAL)
Virginia C. Shiflett	(SEAL)

π Ex 4
Decd Shiflett to
R. Walton 40 ac.

Recorded
275/399

Appellants' Exhibit

James I. Shiflett (SEAL)

Mary E. Shiflett (SEAL)

STATE OF VIRGINIA,

COUNTY OF ALBEMARLE, TO-WIT:

I, Louise Dickerson, a Notary Public, in and for the County of Albemarle, in the State of Virginia, do hereby certify that Louise L. Crawford, Goldie May Morris, James Andrew Morris, Hiram L. Shiflett and Virginia C. Shiflett, James I. Shiflett and Mary Elizabeth Shiflett, whose names are signed to the foregoing deed, bearing date on the 15th day of August, 1947, have and each has acknowledged the same before me in my County and State aforesaid.

Given under my hand this 28th day of August, 1947.

My commission expires March 2nd, 1949.

Louise Dickerson, Notary Public.

STATE OF MARYLAND,

CITY OF BALTIMORE, TO-WIT:

I, J. William Brookhart, a Notary Public, in and for the City of Baltimore, in the State of Maryland, do hereby certify that Lillie B. Gibson and Earl T. Gibson, whose names are signed to the foregoing deed, bearing date on the 15th day of August, 1947, have and each has acknowledged the same before me in my Presents and State aforesaid.

Given under my hand this 18th day of August, 1947.

My commission expires May 2, 1949.

(SEAL) J. William Brookhart, Notary Public.

VIRGINIA,

IN THE CLERK'S OFFICE OF ALBEMARLE CIRCUIT COURT, SEPTEMBER 6, 1947.

This deed was presented to me in said office and with certificate annexed admitted to record at 12:30 P. M. & .55 Stamp Affixed.

Teste:

Eva W. Maupin, Clerk.

Appellants' Exhibit

0275

THIS DEED, made this 8th day of September, 1947, by and between Charlie Bryant, party of the first part, and Lydia Bryant, his wife, party of the second part,

THIS DEED, made this 18th day of May by and between JOSEPH EDWARD WOOD and MAMIE F. WOOD, his wife, ROBERT C. WOOD and ANNIE L. WOOD, his wife, GEORGE MAUPIN WOOD and HILDA WOOD, his wife, LULA W. WOOD, divorced, VIRGINIA E. WOOD and LACY H. WOOD, her husband, ORA W. SHIFLETT and EDWARD L. SHIFLETT, her husband, BEADIE W. CAMPBELL and HERBERT L. CAMPBELL, parties of the first part, and RAYMOND L. WALTON and RUBY J. SHIFLETT WALTON, husband and wife, parties of the second part,

W I T N E S S E T H :

That for and in consideration of the sum of FIVE HUNDRED AND NO/100 DOLLARS ($500.00) cash in hand paid by the parties of the second part to the parties of the first part, the receipt of which is hereby acknowledged, the said parties of the first part do hereby GRANT, BARGAIN, SELL AND CONVEY with GENERAL WARRANTY OF TITLE unto the said Raymond L. Walton and Ruby J. Shiflett Walton, as tenants by the entireties with the right of survivorship as at common law, all that certain tract of land in Albemarle County, Virginia, approximately four miles southwest of Boonesville, Virginia, on State Route No. 810 (formerly State Route No. 230), commencing at a rock on the main Blackwell Hollow Road (now State Route No. 810) running towards Scott's Mountain, northwest and with his line thence on the other side of the Blackwell Hollow Road and thence with the Martin Mountain Road to the top of the P. M. Via line, being all of the property devised to the grantors by the Will of their maternal grandfather, Pleasants M. Via, dated December 14, 1916 and recorded in the Clerk's Office of the Circuit Court of said County in W. B. 33, p. 80, which was a portion of the property conveyed to said Pleasants M. Via by a deed of Benjamin R. Blackwell dated January 1, 1881 and recorded in said Clerk's Office in D. B. 78, p. 149.

Wood Plat to
Wootton 306/511 45 acres. III Ex 5

Appellants' Exhibit
4

The property herein conveyed was devised to the grantors as the children of Lucy Via Wood by said Will of Pleasants M. Via and was subject to the life estate of the maternal grandmother, Martha Lucretia Via, who died August 6, 1926, and upon her death subject to a second life estate for the benefit of their mother, Lucy Via Wood, who died July 9, 1949.

Upon the termination of the two life estates, the grantors become absolute owners in fee simple of the property hereby conveyed since they represent all of the children of Lucy Via Wood except one daughter, Essie Wood, who died intestate March 2, 1925 leaving no issue.

The said parties of the first part covenant that they are seized in fee simple of the property hereby conveyed; that they have a perfect right to convey the same; that said property is free from encumbrances of any kind; and that they will execute such further assurances as may be requisite to secure to the said parties of the second part quiet possession and complete enjoyment thereof.

WITNESS the following Signatures and Seals:

Witness: E. H. Date, Jr.

Witness: E. H. Date, Jr.

Joseph Edward Wood (SEAL)
Mamie F. Wood (SEAL)
His Mark + Robert C. Wood (SEAL)
Annie L. Wood. (SEAL)
His Mark + George Vaughn Wood (SEAL)
Helen Wood (SEAL)
Reg. H. Wood (SEAL)
Virginia E. Wood (SEAL)
Lula W. Wood (SEAL)
Ora W. Shiflett (SEAL)
Edward L. Shiflett (SEAL)
Beadie W. Campbell (SEAL)
Herbert L. Campbell (SEAL)

Rec 21 Jul. 1953

Appellants' Exhibit

PLAT SHOWING BOUNDARIES OF

THAT PORTION OF LAND PARCEL 32 - SHEET 6
LYING ON THE NORTHWEST SIDE OF STATE ROUTE 810
ACCORDING TO EXISTING FENCE LINES AND POINTS
SHOWN BY JOE E. WOOD AND GEORGE MAUPIN WOOD

ALBEMARLE COUNTY, VIRGINIA

SCALE 1" = 200'

JULY 3, 1973

Wm Morris Foster
Surveyor

0278

Appellants' Exhibit
5

Acknowledged by Reuben Wood [illegible]
to be recorded.

Teste, Ira Garrett C.C.

37/484

—"—"—

all men by these presents that I Leland Blackwell of
of Albemarle and state of Virginia for the natural
and affection which I have for my two sons Benjamin
and James Monroe Blackwell and for the further sum
dollar to me in hand paid the receipt whereof is he
knowledged have given and by these presents doth give a
to my aforesaid sons a certain tract or parcel of lan
in the County of Albemarle and bounded as follows: Begi
at a gum on the head waters of Doyl's river on the ba
branch of sd River and running N 30 W 12 poles crossi
anch to a Locust thence N 87 W 156 poles to a hickory
oak. Thence S 53 W 130 poles crossing the turnpike roa
Dogwood and Gum at the head of a branch. Thence W. 80
to a Chestnut and a hickory grub. Thence S 63 W. 30
Chesnut corner to Jacob Kisling and with his line S.
les to a Chesnut his corner. Thence S 80½ E 21½ pole
plar & Sassafras in a hollow his corner S 88 E. 104 po
o white Walnuts near a branch S. 39 E 76 poles cr
sd branch several times to a large Poplar his cor
E. 43 poles crossing sd branch to a Chestnut and re
on a line of the patent and with sd line N 62 W.
to a white oak and hickory. Thence E. 32 poles to
le Chestnut oak. Thence N 35 E 68 poles to a Ches
snut oak. Thence S 80 E. 53 poles to a poplar & Ch
Thence S 35 E. 8 poles to a branch of Doyl's river
the several courses to the beginning. This deed also
two other tracts one containing twenty nine acres
ded as follows be the same more or less and the
ed to Kisling by patent bearing date 1 of June 183
ded as follows: Beginning at a pine a spruce p
on the north side of a branch of Doyl's river.
W. 8 poles to a poplar & Chestnut oak corner to
tract. Thence N 87 W. 54 poles to a Chesnut
Chesnut. Thence S 29¼ W. 70 poles to a Chesnut

0279

Appellees' Exhibit A

several courses of s^d River to the beginning the [illegible]
last tract contains forty three & three quarter acres a
being the same land conveyed by Thomas H. Brown by
bearing date 4 of December 1828 and duly recorded an
bounded as follows: Beginning at a gum on the ban
of a branch of Doys River and corner to the first m
tioned tract of 232 acres and thence down the seve
courses of said branch 123 poles to the mouth of Sta
Branch. thence up the several courses to the Turnp
road and with s^d road 93 poles to Richards road. T
along s^d road to Taylors line and with his line N
W. 35¼ poles to the beginning. To have and hold the
Tracts of land with the appurtenances thereunto belong
to them the s^d Benjamin and James Blackwell and
heirs or assigns forever. As witness my hand and sea
this second day of March 1839.

Leland Blackwell

At a Court held for Albemarle County 2nd March 1840.
This Indenture of Gift was produced in Cour
acknowledged by Leland Blackwell, a party thereto a
ordered to be recorded.

Teste, Ira Garrett C.C.

—"—"—

This Indenture made this twenty first day of Octob
one thousand eight hundred and thirty nine between John
Hurst of the one part and James D. Craddock of the other p
Witnesseth that the said John Hurst in consideration
sum of three hundred dollars lawful money of Virg
to him in hand paid at or before the signing and
ering of this indenture by these presents have bar
and sold and doth hereby bargain and sell unt
said James D. Craddock his heirs and assigns a
lot of land in the town of Milton designated
plan of said town as No. 16 containing one half
together with the houses and appurtenances thereto
ing. To have and to hold the said lot of land wit
appurtenances unto the said James D. Craddock he

0289

ellees' Exhibit

45/171

This Indenture made this 4th day of June in the year one thou
eight hundred and forty seven, between Leland Blackwell of the one
and Benjamin Blackwell of the County of Albemarle and State
Virginia of the other part. Witnesseth that the said Leland Blac
for and in consideration of the natural affection which he the
Leland Blackwell beareth towards his son Benjamin Blackw
and in consideration of the same - Hath given & by these pres
doth give and grant unto Benjamin Blackwell his heirs
assigns a certain tract or parcel of land lying and being in
County and State aforesaid on the head waters of Buckhorn
creek and Doyles River and bounded as follows. Beginning on
white walnut in the aforesaid Leland Blackwells line. then
with his lines North 65½ West 124 poles to a gum and Locu
thence South 71° west 82 poles to a chestnut oak pointers in
Brown's line thence with his lines south 26½° East 184 poles to
stump corner to Clifton Brown thence his lines south 42° E 36 pole
Chestnut thence N 87½° East 61 poles to a chestnut oak thence North
118 poles to two chestnut oaks thence North 36° West 92 poles to the
ning. Containing by a late survey one hundred and Ninety eight
a half acres. with all & singular the appertenances thereunto belo
To have and to hold the said tract or parcel of land with its a
tenances unto the said Benjamin Blackwell his heirs & assigns
And the said Leland Blackwell for himself and each of his
and assigns: do warrant and forever defend by these presents t
title & interest in said land. free from the claim or claims of all o
person whatsoever claiming: In Witness whereof I have hereunto
hand and affixed my seal the day & date first above written

Leland Blackw

In the Clerks Office of Albemarle County Court 8 June
This deed was presented to me in
Office and being acknowledged by the party thereto the same
Thereupon admitted to record

Teste

A.A. Gar

0231

This Indenture made this Sixth day of March
thousand Eight hundred and forty seven.. between Leland Blackwell
County of Albemarle State of Va. of the one part & William S. B
of the County State aforesaid of the other part Witnesseth that the

Appellees' Exhibit

444 48/144

within to Fountain & Dunn, J. B. Rogers
Geo S Abell Jr
E. C. Browning

Oct. 27th 1846. I assign 39 acres of the within to Benjn Blackwell & 34 acres to William Blackwell.
P. McGee
Test
Lewis C McGehee
Jas L Sloan

Octo. 27th 1846 — I assign two hundred & twenty acres of the within to Peter McGehee.
J. B. Rogers
Geo S Abell Jr
E C Browning

Nov. 19th 1846 — I assign 5 acres of the within to Thos. W Harris & 231 acres to Chapman Garrison.
Peter McGehee
Test
" Lewis C McGehee

Sup. r
Filed du
Ex. & Dec. of
May 23. 1858
J. H. Kidd

Blackwell
Deed
from J.

54/21 This Indenture made this twenty sixth day
year 1858 between Benjamin R. Blackwell, James M.
Elizabeth F. his wife of the County of Albemarle and Sta
the one part and Col. Jno B. Baldwin of Augusta C
said Trustee of John Miller of Rockingham County of
Witnesseth: That the said Benjamin R. Blackwell, Jam
and Elizabeth F. his wife for and in consideration of
five hundred dollars good and current money of Virg
hand paid by the said John B. Baldwin trustee of John
the sealing and delivery of these presents, the receipt
hereby acknowledge, thereof acquit and forever dis
John B. Baldwin trustee of John Miller their heirs
administrators by these presents have bargai
ed, enfeoffed, released and confirmed and by t
grant, bargain, sell, alien, enfeoff, release and
the said John B. Baldwin trustee of John Mille
heirs and assigns forever. The first tract of
lying and being in the County of Albemarle upon
of Doyle's River, and containing 203½ acres
or less and bounded as follows: Beginning at a
of Doyle's river, running thence N. 30 W. 12 poles, c
branch of Doyle's River to a locust N. 87 W.
ory and white oak, S 53 W. 130 poles crossing the Turnp
at the head of the branch and corner to James F. R
thence a new line S. 22 E. 45½ poles to a white oak
a branch and corner to said Joel F. Rosen & Wm. F.
39 & 70 po crossing crossing the said branch seve
poplar, S 67½ E 43 po. crossing the said branch to a
red oak on the line of the Patten and with
W 26 po to a white oak & hickory. due E 32 po
nut oak, Thence N 35 E 68 poles to a chestnut o
S 50 E 53 poles to a poplar and chestnut oak S 35 E 8 p
Doyle's River thence up the several corners of the same
The second tract containing 29 acres adjoining the
the same more or less and being the same which
granted by Patent bearing date the 1st day of
bounded as follows. Beginning at a spruce and
side of a branch of Doyle's river, thence N 45 W 8
Chestnut oak corner to the 203½ acre tract, thence N
chestnut oak and chestnut S 29¼ W 70 poles to lehe
E 41 poles to a maple and two poplars

0283

pellees' Exhibit

s Indenture made this twenty sixth day of October in the
ew Benjamin R. Blackwell, James M. Blackwell and
wife of the County of Albemarle and State of Virginia of
Col. Jno B. Baldwin of Augusta County State afore=
John Miller of Rockingham County of the other part.
at the said Benjamin R. Blackwell, James M. Blackwell
& his wife for and in consideration of the sum of Twenty
ollars good and current money of Virginia to them in
to said John B. Baldwin trustee of John Miller at or before
delivery of these presents, the receipt whereof they do
ledge, thereof acquit and forever discharge the said
w trustee of John Miller their heirs, executors and
ns by these presents have bargained sold, alien=
released and confirmed and by these presents do
, sell, alien, enfeoff, release and confirm unto
B. Baldwin trustee of John Miller and unto his
igns forever. The first tract of land situated
in the County of Albemarle upon the head waters
ew, and containing 203½ acres be the same more
unded as follows: Beginning at a gum on the Bank
, running thence N 30 W 12 poles crossing the said
yle's River to a locust N 87 W 156 poles to a hickory
ak, S 53 W 130 poles crossing the Turnpike road to a dogwood and gum and gum
the branch and corner to James F. Rosen & Wm F. Patten
ine S 22 E 45½ poles to a white walnut stump near
corner to said Joel F. Rosen & Wm F. Patten, thence S
ing crossing the said branch several times to a large
S 43 p. crossing the said branch to a chestnut and
the line of the Patten and with the same N 62
white oak & hickory due E 32 p to a double ches=
hence N 35 E 68 poles to a chestnut and chestnut oak
o a poplar and chestnut oak S 35 E 8 poles to branch of
nce up the several corners of the same to the beginning.
t containing 29 acres adjoining the first tract be
n Co. and being the same which was granted to
y Patent bearing date the 1st day of June 1830 recd
llows: Beginning at a spruce and gum on the North
de of Doyle's river, thence N 45 W 8 poles to poplar &
ners to the 203½ acre tract, thence N 83 W 54 poles to
ed chestnut S 29 1/4 W 70 poles to chestnut oak on ledge
41 poles to a maple and two poplars on the side of

0284

ppellees' Exhibit

red oak on the line of the Fallow and with the same N 87
W 26 po to a white oak & hickory due E 32 po to a double ches-
-nut oak, thence N 35 E 68 poles to a chesnut and chesnut oak
S 80 E 53 poles to a poplar and chesnut oak S 35 E 8 poles to branch of
Doyles River thence up the several corners of the same to the beginning.
The second tract containing 29 acres adjoining the first tract be
the same more or less and being the same which was granted to
Jacob Kisling by Patent bearing date the 15th day of June 1830 and
bounded as follows: Beginning at a spruce and gum on the North
side of a branch of Doyle's river, thence N 45 W 8 poles to poplar &
Chesnut oak corner to the 203 1/2 acre tract, thence N 83 W 54 poles to
chesnut oak and chesnut S 29 1/4 W 70 poles to chesnut oak on ledge
of rocks, S 46 E 41 poles to a maple and two poplars on the side of
Doyle's river thence up the several corners of the same to the begin-
-ning. The third tract adjoining the first tract contains 43 3/4 acres
being the same land conveyed to Jacob Kisling by Thomas H. Brown,
be the same more or less, and bounded as follows: Beginning at
a gum on the bank of a branch of Doyle's river thence down
the several corners of said branch 12 3 poles to the North of
Harrys branch thence up the several courses of same to the
old turnpike road thence with the said road 9 3 poles to Richards

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ellees' Exhibit

road, thence with the same to Tay lor's line, and with his line N. 32 W. 35 1/2 po to the beginning.— The fourth and last tract containing 100 acres be the same more or less adjoining the first on the North side and bounded as follows: beginning at a fallen oak in line of the first tract corner to Jonathan Taylor, thence with the line of the first tract N 87 W 56 poles to a white oak and hickory S 53 1/2 W 99 po to two Chestnut oaks near the Turnpike road into Alexander Givens N 53 W 52 po. to pointers in said Givens line, thence new lines N 57 3/4 E 46 po to pointers near the top of the ridge S 79 1/2 E 26 poles to the top of a cliff or a lodge of rocks N 57 E 216 po. pointers corner to the big survey, then the same corner continued along the line of the said survey in all 284 poles to pointers in John Hall's line thence with his line S 17 E 50 po. to pointers in John May Taylor's line, thence with his line N 72 W 16 poles to a Spanish oak, S 48 W 68 po. to a chestnut oak S 32 W 63 po to a white oak S 74 W 56 po to the beginning.— The four tracts as described above containing 376 1/4 acres be the same more or less, together with all the estate, right, title, interest and property, claim and demand whatever of them the said Benjamin C. Blackwell, James M. Blackwell and Elizabeth T. his wife [illegible] with the same

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Appellees' Exhibit

[illegible] in law or equity or otherwise however, of, in, to or out of the same.
To have and to hold the said lots or parcels of land and every part and parcel thereof, with their appurtenances unto the said John D. Baldwin trustee of John Miller, his heirs and assigns forever and to the only proper use and behoof of him the said John D. Baldwin trustee of John Miller his heirs and assigns forever. And the said Benjamin R. Blackwell, James M. Blackwell and Elizabeth his wife and their heirs and against the said lot or parcel of land, and premises hereby granted or intended so to be with the appurtenances unto the said John D. Baldwin trustee of John Miller his heirs and assigns against them the said Benjamin R. Blackwell, James M. Blackwell and Elizabeth F. his wife and their heirs and against all and every person or persons of whatsoever will warrant and forever defend by these presents. –

In witness whereof we have hereunto set our hands and affixed our seals the day and date first above written. Signed sealed and delivered in presence of –

Benjamin R. Blackwell (Seal)
James M. Blackwell (Seal)
Eliz: F. Blackwell (Seal)

State of Virginia:
County of Albemarle, to wit:
I, Geo. D. Brown, M. B. Jarman, Justices of the Peace for the County and State aforesaid do certify that Benjamin R. Blackwell

0287

Sale pursuant to S. D. Trust
J. Flannagan

Recorded in Book 37 page 1

Appellees' Exhibit

57/366

Articles of Agreement made and en
this 11th day of January One thousand eight hu
fifty Nine between James M. Blackwell and Be
Blackwell of the County of Albemarle & State of
the one part and Wm H. Batten and Joel T. Ropen of
Albemarle State aforesaid of the other part witnes
said James M. Blackwell and Benjamin R. Bla
and for Consideration of the sum of ($427.50) Four
twenty Seven dollars and fifty cents to be paid
Wm H. Batten and Joel T. Ropen pursuant to the Covena
ment of the said Wm H. Batten and Joel T. Ropen hereina
doth for themselves and their heirs covenant and ag
said Wm H. Batten and Joel T. Ropen as follows that
the said James M. Blackwell and Benjamin R. Blackw
heirs shall and will before the first day of Ja
ensuing make out a complete title in fee simple
to the said Wm H. Batten and Joel T. Ropen and their
(all manner incumbrance) all that tract of land
said James M. Blackwell & Benjamin R. Blackwell
agreed to retain of the original tract sold to John Mi
James M. Blackwell and Benjamin R. Blackwell conta
eight and half acres be the same more or less though
agreed by the parties that the land aforesaid shall
for the purchase money aforesaid. And the said
& Joel T. Ropen in consideration of the said James
& Benjamin R. Blackwell doth hereby for themselve
Executors & Administrators covenant and agree with
M. Blackwell & Benjamin R. Blackwell that the sa
Batten & Joel T. Ropen their heirs Executors or Adminis
will upon making such conveyances and assurance
said pay or cause to be paid to the said James M. B
Benjamin R. Blackwell their heirs Executors or Admi
sum of Two hundred and thirteen dollars & Seventy
on the of January one thousand eight hund
and two hundred and thirteen dollars Seventy five cen
first day of January One thousand eight hundred and
for and in full consideration for the whole purchase
said tract of land. In witness whereof the parties
hereunto affixed their hands & seals the day & date first above written

0608

Appellees' Exhibit
E

Articles of Agreement made and entered into
11th day of January One thousand eight hundred and
Nine between James M. Blackwell and Benjamin R
Blackwell of the County of Albemarle & State of Virginia of
one part and Wm H. Batten and Joel F. Rosen of the County
marle & State aforesaid of the other part witnesseth that
James M. Blackwell and Benjamin R Blackwell for
the Consideration of the sum of ($427.50) Four hundred a
ty Seven dollars and fifty cents to be paid by the sa
H Batten and Joel F. Rosen pursuant to the covenant and agre
nt of the said Wm H. Batten and Joel F. Rosen hereinafter mention
for themselves and their heirs covenant and agreement th
Wm H. Batten and Joel F. Rosen as follows, that is, that
said James M. Blackwell and Benjamin R. Blackwell or their
s shall and will before the first day of January next
ing make out a complete title in fee simple to, and conve
the said Wm H. Batten and Joel F. Rosen and their heirs forever
manner incumbrance) all that tract of land which the
James M. Blackwell & Benjamin R. Blackwell conditional
d to certain of the original tract sold to John Miller by the
es M. Blackwell and Benjamin R. Blackwell containing twenty
and half acres be the same more or less though it is expressly
d by the parties that the land aforesaid shall be held bound
the purchase money aforesaid And the said Wm H. Batten
l F. Rosen in consideration of the said James M. Blackwell
amin R. Blackwell doth hereby for themselves, their heirs
tors & administrators covenant and agree with the said Ja
Blackwell & Benjamin R. Blackwell that he the said Wm H.
and Joel F. Rosen & their heirs, Executors or Administrators shall
ll upon making such conveyances and appearances as afo
d pay or cause to be paid to the said James M. Blackwell &
jamin R. Blackwell their heirs, Executors or Administrators
s of two hundred and thirteen dollars & Seventy five ($213.
the of January one thousand eight hundred and sixty
two hundred and thirteen dollars Seventy five cents on the
day of January One thousand eight hundred and sixty one, a
and in full consideration for the whole purchase money of the
tract of land. — In witness whereof the parties aforesaid have
unto subscribed their hands & seals the day & date first above written. —

John his x mark Batten (Seal) James M. Blackwell (Seal)

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pellees' Exhibit

the one part and Wm H. Batten and Joel F. R
Albemarle State aforesaid of the other part
said James M. Blackwell and Benjamin
and for Consideration of the sum of $427.
twenty Seven dollars and fifty cents to
Wm H. Batten and Joel F. Rosen pursuant
ment of the said Wm H. Batten and Joel F. Rosen
doth for themselves and their heirs covenan
said Wm H. Batten and Joel F. Rosen as foll
the said James M. Blackwell and Benjamin
heirs shall and will before the first
ensuing make out a complete title in fee
to the said Wm H. Batten and Joel F. Rosen a
(all manner incumbrance) all that tract
said James M. Blackwell & Benjamin R.
agreed to retain of the original tract sold to
James M. Blackwell and Benjamin R. Black
eight and half acres be the same more or lo
agreed by the parties that the land aforesai
for the purchase money aforesaid. And
& Joel F. Rosen in consideration of the pur
& Benjamin R. Blackwell doth hereby for
Executors & administrators covenant and ag
M. Blackwell & Benjamin R. Blackwell th
Batten & Joel F. Rosen their heirs Executors
will upon making such conveyances a
said pay or cause to be paid to the said Ja
Benjamin R. Blackwell their heirs, Executors
sum of two hundred and thirteen dollars
on the of January one thousand
and two hundred and thirteen dollars
first day of January one thousand eight hun
for and in full consideration for the whole
said tract of land — In witness whereof
hereunto affixed their hands & seals the day & date first
attest John his x mark Batten Sr
Nancy her x mark P. Rosen
Pleasant his x mark M Manson

See Reg. book D.G.

1290

Appellees' Exhibit

253/112

THIS DEED, made and entered into this 2nd day of February, 1942, by and between MAMIE BELLE SOURS, a widow, party of the first part and WILLIE ROSSON, Party of the second part,

W I T N E S S E T H :

That for and in consideration of the sum of Two Hundred ($200.00) Dollars cash in hand paid, the receipt whereof is hereby acknowledged, the said party of the first part doth hereby GRANT, BARGAIN, SELL AND CONVEY WITH GENERAL WARRANTY OF TITLE unto the said Willie Rosson the following described property, to-wit: all that certain tract or parcel of land together with improvements thereon situated in the White Hall District of Albemarle County, Virginia, and containing by estimation 50 acres, more or less, and being the part of the property lying west of the road leading from Brown's Cove to Boonesville on the Virginia State Highway No. 230, which was conveyed by W. R. Richards, an unmarried man, to J. W. Elam by deed dated October 12, 1934, and being in all respects the same property that was conveye to the said Mamie Belle Sours by deed from J. W. Elam dated January 15, 1935, of record in the Clerk's Office of the Circuit Court of Albemarle County, Virginia, in D. B. 226, page 334. It is the intention of the parties that this sale is in gross and not by the acre.

The said party of the first part covenants that she has the right to make this conveyance; that she has done no act to encumber said land that the said land is free of encumbrances; that the grantee shall have quiet possession of said land, and that the said party of the first part will execute such further assurances of said land as may be requisite.

Witness the following signature and seal:

Mamie Belle Sours (SEAL)

STATE OF VIRGINIA,

COUNTY OF ALBEMARLE, to-wit:

I, Carrie T. Daniel, a Notary Public in and for the County of Albemarle, State of Virginia, do hereby certify that Mamie Belle Sours, whose name is signed to the foregoing writing, bearing date on the 2nd day of February, 1942, has acknowledged the same before me in my county aforesaid.

My commission expires the 23rd day of August, 1943.

Given under my hand this 2nd day of February, 1942.

Carrie T. Daniel, Notary Public

Commissioned Carrie E. Taylor.

VIRGINIA,

In the Clerk's Office of Albemarle Circuit Court, February 2nd, 1942.

This deed was presented to me in said office and with certificate annexed admitted to record at 3:30 P. M. & 55 cent stamp attached.

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llees' Exhibit