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SUPREME COURT OF VIRGINIA
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IN THE

Supreme Court of Virginia

AT RICHMOND

RECORD NO. 800601

VIRGINIA E. FAISON, ET AL.,

.....Appellants

v.

UNION CAMP CORPORATION, ET AL.,

.....Appellees

JOINT APPENDIX

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Wakefield, Virginia 23888

Clinton B. Faison, Jr.
Wakefield, Virginia 23888

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APPELLATE PRINTING SERVICES, INC., HERITAGE BLDG., RICHMOND, VA. (804) 643-7789

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BILL OF COMPLAINT FOR
DECLARATORY JUDGMENT
AND INJUNCTION

To the Honorable Judges of the Circuit Court of Surry County, Virginia:

Your complainant, Union Camp Corporation, respectfully represents unto Your Honors as follows:

1. That it is the fee simple owner of all of the timber and trees situate, standing, lying, being or growing upon a portion of the Montpelier tract located in Surry County, Virginia, which were acquired by it by deed from Phillips M. Dowding, Trustee of a land trust designated as "Montpelier Land Trust" dated February 26, 1974, and recorded in the Clerk's Office of the Circuit Court of Surry County, Virginia, in Deed Book 77, at page 535, the land on which the said timber and trees are situate being described in the said deed as follows:

> All that certain tract or parcel of land in Guilford Magisterial District, Surry County, Virginia, known as a part of the Montpelier Tract, containing 480.7 acres, more or less, known and designated as Tracts 4, 5, 6 and 7 of Montpelier and more particularly shown and described on a certain plat entitled "Map showing part of a tract of land known as Montpelier" dated July 1952 made by W. G. Chappell, Certified Land Surveyor, the said plat being duly of record in the Clerk's Office of the Circuit Court of Surry County, Virginia, in Plat Book 5, at page 42, the said tract of land lying on the South side of Virginia Road 602 and being bounded on the North by the said road, on the East by H. B. Holdsworth, Jr., and Chippoke Creek, on the South by Continental Can Company, and on the West by Lacy L. Wooden, the said land having been conveyed to the said Phillips M. Dowding, Trustee under a certain Land Trust Agreement designated "Montpelier Land Trust" dated December 13, 1968, by deed from Deanetripp Company dated December 16, 1968, and recorded in the Clerk's Office aforeaid in Deed Book 68, at page 221, reference being hereby specifically made to the said plat of survey and deed for a more particular description of the said land.

2. That notwithstanding the fact that your complainant is the fee simple owner of the said timber and trees, and the fact that the said Virginia E. Faison has been told by counsel for your complainant that she has no ownership to any part

of the above described land on which your complainant owns the said timber and trees, she and the defendant, "John Doe" Shaw, are cutting and removing and have caused to be cut and removed from a portion of the said land containing ten acres some of the timber and trees thereon to the irreparable damage of your complainant.

3. That the said Virginia E. Faison and the said "John Doe" Shaw are also cutting seed trees which are required to be left on the said land under the Virginia Seed Tree Law.

4. That the aforesaid Montpelier Land Trust who conveyed the timber and trees aforesaid to your complainant acquired the land above described from Deanetripp Company dated December 16, 1968, and recorded in Deed Book 68, at page 221, and Deanetripp Company acquired the land from C. Brooks Faison and Virginia E. Faison, husband and wife, dated July 3, 1962, and recorded in the Clerk's Office aforesaid in Deed Book 59, at page 107, the said C. Brooks Faison having acquired title to the 480.7 acre tract of land aforesaid by deed from Albert H. Ochsner, et ux., dated April 1, 1955, and recorded in Deed Book 54, at page 356, the title to the said land having been conveyed in all of the said deeds with General Warranty and with English Covenants of Title and the land having been described in all of the said deeds by identically the same description.

5. That the defendant, Virginia E. Faison, was conveyed a ten acre portion of land by deed from C. B. Faison, who is one and the same person as C. Brooks Faison, and herself as his wife, dated October 6, 1969, and recorded in the Clerk's Office aforesaid in Deed Book 70, at page 218, the said deed reciting that the said C. B. Faison had acquired the said land by deed from Fred P. Hamrah, et ux., dated April 1, 1955, and recorded in the said Clerk's Office in Deed Book 54, at page 369, the said ten acre portion of land being described as being bounded on the North by Highway 602, on the East by Montpelier, on the South by the land of Lacey L. Wooden, and on the West by Highway 602.

6. That the said C. B. (Brooks) Faison held title to both the said ten acre portion of land described in the deeds aforesaid recorded in Deed Book 54, at page 369, and Deed Book 70, at page 218, and also the 480.7 acre tract of land described in the deeds aforesaid recorded in Deed Book 54, at page 356, and in Deed Book 59, at page 107, from April 1, 1955, until July 3, 1962, when he and his wife, the said Virginia E. Faison, conveyed the 480.7 acre tract of land to Deanetripp Company by deed with General Warranty and English Covenants of Title dated July 3, 1962, and recorded as aforesaid in Deed Book 58, at page 107, and in that deed there was no reservation reserving any ten acre parcel of land and the ten acre parcel of land which the said Virginia E. Faison apparently contends that she owns was squarely within the boundary line as shown on the plat of survey aforesaid of Tracts 4, 5, 6 and 7 of Montpelier recorded in the Clerk's Office aforesaid in Plat Book 5, at page 52, and in order for the said Virginia E. Faison now to own a ten acre portion of property lying within the boundary shown on the said plat of survey she would have to attack the title and deed conveyed and given by the said C. Brooks Faison and the said Virginia E. Faison, who were husband and wife, which was dated July 3, 1962, and recorded in the said Clerk's Office in Deed Book 59, at page 107, in which they conveyed title to the entire property with General Warranty and English Covenants of Title to your complainant's predecessor in title.

7. That even if the said C. Brooks Faison had separate titles to the ten acre tract of land and the 480.7 acre tract of land for which he had separate deeds, then the title to the separate tracts of land were merged, and his earlier deed conveying the 480.7 acre tract of land as aforesaid dated July 3, 1962, and recorded in Deed Book 59, at page 107, conveyed the merged title to Deanetripp Company as aforesaid with General Warranty and with English Covenants of Title so that the said Virginia E. Faison finds herself in the position of attacking the very deed in which she joined.

8. That the said "John Doe" Shaw is either cutting and removing from the

said land timber and trees for the said Virginia E. Faison or by reason of a deed or agreement from or with her and they are thereby causing great damage to your complainant for which it has no adequate remedy in law.

9. That there is a genuine dispute and controversy existing between the parties to this cause by reason of the facts (1) that Union Camp Corporation and Virginia E. Faison each claim to own the timber and trees standing, lying, being and growing upon the ten (10) acre portion of land described in the deed to her recorded as aforesaid in Deed Book 70, at page 218; (2) that the said Virginia E. Faison, on the one hand, and the said Morris W. Clements and Frances B. Clements, on the other hand, each claim legal title to the said ten (10) acre portion of land; (3) that the said Phillips M. Dowding, Trustee of the said "Montpelier Land Trust", conveyed legal title to the said timber and trees to the said Union Camp Corporation and legal title to the said land itself to the said Morris W. Clements and Frances B. Clements; and (4) that if the said Montpelier Land Trust and the said Trustee did not have lawful title to the ten (10) acre parcel of land which the said Virginia E. Faison contends she owns, then the said Montpelier Land Trust is liable to Union Camp Corporation for the value of the timber and trees on the said ten (10) acre parcel of land and to the said Morris W. Clements and Frances B. Clements for the value of the said ten (10) acre tract of land exclusive of such timber and trees, which dispute and controversy can only be decided and made binding on all of the parties hereto without a multiplicity of actions and causes in this one, single cause.

WHEREFORE, this bill of complaint for declaratory judgment and injunction is brought and the plaintiff asks this Court to declare the rights and obligations of the parties hereto with regard to the ten (10) acre portion or parcel of land mentioned herein and who is the true owner of the said timber and trees and the said ten (10) acre portion or parcel of land and to grant such other and further relief as the Court may deem to be just and proper.

And the plaintiff further prays that the said Virginia E. Faison and "John Doe" Shaw, their agents, employees and licensees, be enjoined and restrained from cutting and removing any timber and trees of any kind or specie from the aforesaid land, and that the said Virginia E. Faison and "John Doe" Shaw be required to compensate the complainant for any and all damages done and any and all timber and trees removed from the said land.

UNION CAMP CORPORATION

By _____
Counsel

Rodham T. Delk
Delk and Barlow,
Smithfield, Virginia, 23430

STATE OF VIRGINIA,

COUNTY OF ISLE OF WIGHT, to-wit:

This day personally appeared before me, Joyce E. Felts, a Notary Public in and for the County of Isle of Wight, in the State of Virginia, Rodham T. Delk, who, first being duly sworn,deposed and said that he is counsel for Union Camp Corporation and authorized to make this affidavit and to file the foregoing bill of complaint for declaratory judgment and injunction and that the facts and allegations contained in the foregoing bill of complaint for declaratory judgment and injunction are true to the best of his information, knowledge and belief.

Rodham T. Delk

Taken, subscribed and sworn to before me in my County and State aforesaid this the 27th., day of January, 1976.

Joyce E. Felts
Notary Public.

My commission expires: July 11, 1977.

Filed
January 27, 1976
L.R.M.
Judge.

25th January 1976

5.00
25.00
4 Summons 10.00
2 Mail Stamp 2.50
$ 42.50

Clerk

D. C.

ANSWER TO BILL OF
COMPLAINT FOR
DECLARATORY JUDGMENT
AND INJUNCTION

TO THE HONORABLE JUDGES OF THE AFORESAID COURT:

Your respondents, Morris W. Clements and Frances B. Clements, respectfully represent unto Your Honor as follows:

1. Your respondents admit the allegations contained in paragraphs 1, 2, 3, 4, 5, 6, 7, 8, and 9 of the Bill of Complaint for Declaratory Judgment and Injunction.

CROSS-BILL

2. That your respondents, Morris W. Clements and Frances B. Clements are the fee simple owners of a certain piece or parcel of land containing 105.25 acres which was acquired by deed from Phillips M. Dowding, Trustee of the land trust designated as "Montpelier Land Trust" dated the 1st day of July, 1974, and recorded in the Clerk's Office of the Circuit Court of Surry County, Virginia, in Deed Book 78, at page 282, the said 105.25 acres being described as follows:

> ALL that certain tract or parcel of land in Guilford Magisterial District, Surry County, Virginia, known as a part of Montpelier Tract, containing 105.25 plus or minus acres, more or less, known and designated as portions of Tracts 4, 6, and 7 of Montpelier to be acquired by Morris W. Clements, and more particularly shown and described on a certain plat entitled "Map Showing a Tract of Land Situated in Guilford Magisterial District, Surry County, Virginia, Composed of a Part of Tracts 4, 6, and 7 of the Montpelier Tract to be Acquired by Morris W. Clements." Reference is hereby specifically made to said plat of survey and

said plat is to be recorded simultaneously with this deed and to become a part of the description of this deed. The said tract or parcel of land being a portion of that tract or parcel of land conveyed to Phillip M. Dowding, Trustee, under a certain Land Trust Agreement designated as Montpelier Land Trust dated December 13, 1968, by deed from Deanetripp Company, dated December 16, 1968, and recorded in the Clerk's Office in Deed Book 68, at page 221.

3. That after the 1st day of July, 1974, the respondent, Virginia E. Faison has entered upon a portion of the aforesaid 105.25 acres and claimed ownership of same. That the said Virginia E. Faison has been advised by counsel for respondents that she was not the owner of said land and further has been given written notice that she is not to trespass upon said land; however, the said Virginia E. Faison continues to attempt to enter upon said land and remove certain standing timber located thereupon.

4. That your respondents have reviewed the Bill of Complaint for Declaratory Judgment and Injunction brought by Union Camp Corporation and agree without any exceptions as to the chain of title as enumerated therein. That the only difference between the chain of title to your respondents and Union Camp Corporation is the deed conveying the aforesaid 105.25 acres to your respondents and the deed conveying the said timber and trees on the aforesaid 105.25 acres to Union Camp Corporation, otherwise, the chain of title to Union Camp Corporation and your respondents is identically the same.

5. Your respondents also agree that the chain of title to

the said Virginia E. Faison as enumerated in the Bill of Complaint for Declaratory Judgment and Injunction as to the 10 acre tract of land is correct.

6. Therefore, it is the position of your respondents that if the said 10 acre tract of land is located within the aforesaid 105.25 acres of land then there has been a merger and Mrs. Virginia E. Faison's interest was conveyed in the manner enumerated in the Bill of Complaint for Declaratory Judgment and Injunction.

7. There is a general dispute in controversy existing between your respondents, Morris W. Clements and Frances B. Clements, and the respondent, Virginia E. Faison, by reason of the following facts: (1) that your respondents and Virginia E. Faison each claim they own in fee simple a 10 acre tract of land which is a portion of the land described in the deed to Respondents recorded as aforesaid in Deed Book 78, at page 282; (2) that the said Phillips M. Dowding, Trustee of said "Montpelier Land Trust", conveyed legal title to the said 105.25 acres and that if the said Montpelier Land Trust and the said Trustee did not have lawful title to the aforesaid 10 acre parcel of land which the said Virginia E. Faison contends she owns, then the said Montpelier Land Trust is liable to your respondents, Morris W. Clements and Frances B. Clements, for the value of the said 10 acre parcel of land. Your respondents agree with the Complainant, Union Camp Corporation, that the dispute in controversy should be decided and made binding on all parties without a multiciplicity of

action and causes in this one, single cause.

WHEREFORE, your respondents, Morris W. Clements and Frances B. Clements, join in with the Complainant, Union Camp Corporation and ask the Court to declare the rights and obligations of the parties hereto with regard to the 10 acre portion of land mentioned herein and in the Bill of Complaint and who is the true fee simple owner of the said 10 acre portion or parcel of land and the Court to grant to the respondents such other further relief as the Court may deem just and proper.

And your respondents further pray that the said Virginia E. Faison and her agents, employees and licensees be enjoined and restrained from trespassing or entering upon the aforesaid 105.25 acres and the said Virginia E. Faison be required to compensate your respondents, Morris W. Clements and Frances B. Clements, for any and all damages done to the said land.

MORRIS W. CLEMENTS and
FRANCES B. CLEMENTS

By: John C. Baker
Counsel

John C. Baker
Attorney at Law
Surry, Virginia 23883

CERTIFICATE

This is to certify that I have this 18th day of February, 1976, mailed a true copy of the foregoing Answer to Bill of Complaint for Declaratory Judgment and Injunction to Rodham T. Delk, Esquire, 229 Main Street, Smithfield, Virginia 23430, counsel for Union Camp Corporation, to E. Carter Nettles, Jr., Esquire, Wakefield, Virginia, counsel for Virginia E. Faison, to Phillips M. Dowding, Trustee of Montpelier Land Trust, at his office at 12335 Warwick Boulevard, Newport News, Virginia, to Montpelier Land Trust, care of Phillips M. Dowding, 12335 Warwick Boulevard, Newport News, Virginia 23606, and to "John Doe" Shaw, address unknown (Spring Grove, Virginia), counsel of whom is unknown to the undersigned.

John C. Baker

John C. Baker

Filed Feb 18, 1976

Clerk

A N S W E R

Now comes Virginia E. Faison and Albert "John Doe" Shaw, by counsel, and for answer to that certain Bill of Complaint for Declaratory Judgment answer and say as follows:

1. The allegations contained in paragraphs 1, 2, 3, 4, 6, 7, 8 and 9 of the Bill of Complaint are denied and your Respondents call for the strictest proof thereof;

2. The allegations contained in paragraph 5 of the Bill of Complaint are admitted;

3. The Complainant has an adequate remedy at law;

4. The Bill is multifarious;

5. Virginia E. Faison holds a ten (10) acre tract of land in fee simple lying in Guilford Magisterial District of Surry County, Virginia, bounded on the north by highway number 602, on the east by "Monteplier", on the south by the lands of Lacy L. Wooden, and on the west by highway number 602 and that no party to this suit have any interest therein;

6. That the matters in controversy between the said Union Camp Corporation and Virginia E. Faison have been previously litigated;

7. That the interest of Union Camp Corporation acquired under that certain deed from Phillip M. Dowding, Trustee, and recorded in Your Honor's Court in Deed Book 77 at page 535 terminates on February 26, 1976;

8. The evidence before the Court at the time of the

granting of the temporary injunction is insufficient to establish the complainant's equity as required by Section 8-620 of the 1950 Code of Virginia, as amended;

9. The injunction bond given by the complainant is insufficient as a matter of law;

10. No notice was given the respondent, Virginia E. Faison, as required by Section 8-621 of the 1950 Code of Virginia, as amended;

11. By way of an affirmative defense your respondent, Virginia E. Faison alleges that the ten (10) acre parcel which she holds has never been a part of that tract of land known as "Monteplier" and calls upon the complainant and other respondents to admit or deny this allegation.

WHEREFORE, your respondents pray that the temporary injunction granted against them be dissolved; that the Bill for Declaratory Judgment be dismissed and that they be granted such other, further and general relief as their case may require and to equity may seem meet.

VIRGINIA E. FAISON
ALBERT "JOHN DOE" SHAW

By _____
Counsel

_____, p.d.
E. Carter Nettles, Jr.
Attorney at Law
Wakefield, Virginia 23888

CERTIFICATE

I certify that a copy of the foregoing Answer was mailed to John C. Baker, Esquire, Surry, Virginia, Phillips M. Dowding, Esquire, 12335 Warwick Blvd., Newport News, Virginia; and Rodham T. Delk, Esquire, Smithfield, Virginia, attorneys of record, this 18th day of February, 1976.

E. Carter Nettles, Jr.

A N S W E R

For answer to the Bill of Complaint filed herein Defendant, Phillips M. Dowding, Trustee of Montpelier Land Trust, comes and says:

1. This Defendant admits the allegations in paragraph 1.

2. This Defendant is not advised as to the truth of the allegations in paragraphs 2 and 3.

3. This Defendant admits the allegations in paragraph 4.

4. This Defendant is not advised as to the truth of the allegations in paragraph 5.

5. This Defendant believes the allegations in paragraph 6 are substantially correct, but cannot admit the accuracy of the survey referred to therein.

6. This Defendant believes the allegations in paragraph 7 are correct.

7. This Defendant is not advised as to the truth of the allegations in paragraph 8.

8. As to the allegations in paragraph 9, this Defendant specifically denies that any dispute exists between him, in his capacity as Trustee for Montpelier Land Trust, and any other party to this suit at this time.

PHILLIPS M. DOWDING, TRUSTEE OF
"MONTPELIER LAND TRUST"

By _____
Of Counsel

PHILLIPS M. DOWDING
Attorney at Law
12335 Warwick Boulevard
Newport News, Virginia 23606

I hereby certify that on the 8th day of March, 1976, a true copy of the foregoing pleading was mailed to all counsel of record.

_____
Counsel for Defendant,
Phillips M. Dowding, Trustee of
"Montpelier Land Trust"

Filed March 9, 1976
Clerk

ORDER OVERRULING PLEA OF
FORMER ADJUDICATION

This cause came on to be heard upon the papers formerly read; upon the answer of Virginia E. Faison and Albert "John Doe" Shaw; upon the Bill of Complaint filed in the case of Union Camp Corporation vs. Edward Harrison and Virginia E. Faison, and upon the decree entered therein, and was argued by counsel.

It is ADJUDGED, ORDERED and DECREED that the plea of Virginia E. Faison of former adjudication be and the same is hereby overruled.

Refused November 11, 1976

~~ENTER this _____ day of _____, 1976.~~

Judge

I ask for this:

E. Carter Nettles, Jr.,
Attorney for Virginia E. Faison

SEEN:

Rodham T. Delk, Attorney for
Union Camp Corporation

John C. Baker, attorney for
Morris W. Clements and wife

Phillip M. Dowding, Trustee
and Attorney for Montpelier
Land Trust

Leave is granted the defendant to repleade an order overruling the plea of former adjudication in such form and when such content as the Court believes it can enter it

Judge

PLEA OF FORMER JUDGMENT

Now comes Virginia E. Faison, by counsel, and moves the Court that she be dismissed as a party respondent and that the complainant, Union Camp Corporation, be estopped from producing evidence against her herein for the following:

1. The case at bar was determined in a former proceeding under the style of Union Camp Corporation vs. Virginia E. Faison, et al., which resulted in a final order entered "with prejudice" on June 2, 1976, copies of the papers of such proceeding being hereto attached as an exhibit.

VIRGINIA E. FAISON

By _____
E. Carter Nettles, Jr., Counsel

_____
E. Carter Nettles, Jr.
Attorney at Law
Wakefield, Virginia 23888

BILL OF COMPLAINT

To the Honorable Judges of the Circuit Court of Surry County, Virginia:

Your complainant, Union Camp Corporation, respectfully represents unto Your Honors as follows:

1. That it is the fee simple owner of all of the timber and trees situate, standing, lying, being or growing upon a portion of the Montpelier tract located in Surry County, Virginia, which were acquired by it by deed from Phillips M. Dowding, Trustee of a land trust designated as "Montpelier Land Trust" dated February 26, 1974, and recorded in the Clerk's Office of the Circuit Court of Surry County, Virginia, in Deed Book 77, at page 535, the land on which the said timber and trees are situate being described in the said deed as follows:

> All that certain tract or parcel of land in Guilford Magisterial District, Surry County, Virginia, known as a part of the Montpelier Tract, containing 480.7 acres, more or less, known and designated as Tracts 4, 5, 6 and 7 of Montpelier and more particularly shown and described on a certain plat entitled "Map showing part of a tract of land known as Montpelier" dated July 1952 made by W. G. Chappell, Certified Land Surveyor, the said plat being duly of record in the Clerk's Office of the Circuit Court of Surry County, Virginia, in Plat Book 5, at page 52, the said tract of land lying on the South side of Virginia Road 602 and being bounded on the North by the said road, on the East by H. B. Holdsworth, Jr., and Chippoke Creek, on the South by Continental Can Company, and on the West by Lacy L. Wooden, the said land having been conveyed to the said Phillips M. Dowding, Trustee under a certain Land Trust Agreement designated "Montpelier Land Trust" dated December 13, 1968, by deed from Deanetripp Company dated December 16, 1968, and recorded in the Clerk's Office aforesaid in Deed Book 68, at page 221, reference being hereby specifically made to the said plat of survey and deed for a more particular description of the said land.

2. That notwithstanding the fact that your complainant is the fee simple owner of the said timber and trees, and the fact that the said Virginia E. Faison has been told by counsel for your complainant that she has no ownership to any part of the above described land on which your complainant owns the said timber and trees, she and the defendant, Edward R. Harrison, are cutting and removing and have caused to be cut and removed from a portion of the said land containing ten acres some of the timber and trees thereon to the irreparable damage of your complainant.

3. That the aforesaid Montpelier Land Trust who conveyed the timber and trees aforesaid to your complainant acquired the land above described from Deanetripp Company dated December 16, 1968, and recorded in Deed Book 68, at page 221, and Deanetripp Company acquired the land from C. Brooks Faison and Virginia E. Faison, husband and wife, dated July 3, 1962, and recorded in the Clerk's Office aforesaid in Deed Book 59, at page 107, the said C. Brooks Faison having acquired title to the 480.7 acre tract of land aforesaid by deed from Albert H. Ochsner, et ux., dated April 1, 1955, and recorded in Deed Book 54, at page 356, the title to the said land having been conveyed in all of the said deeds with General Warranty and with English Covenants of Title and the land having been described in all of the said deeds by identically the same description.

4. That the defendant, Virginia E. Faison, was conveyed a ten acre portion of land by deed from C. B. Faison, who is one and the same person as C. Brooks Faison, and herself as his wife dated October 6, 1969, and recorded in the Clerk's Office aforesaid in Deed Book 70, at page 218, the said deed reciting that the said C. B. Faison had acquired the said land by deed from Fred P. Hamrah, et ux.,

dated April 1, 1955, and recorded in the said Clerk's Office in Deed Book 54, at page 369, the said ten acre portion of land being described as being bounded on the North by Highway 602, on the East by Montpelier, on the South by the land of Lacey L. Wooden, and on the West by Highway 602.

5. That the said C. B. (Brooks) Faison held title to both the said ten acre portion of land described in the deeds aforesaid recorded in Deed Book 54, at page 369 and Deed Book 70, at page 218, and also the 480.7 acre tract of land described in the deeds aforesaid recorded in Deed Book 54, at page 356, and in Deed Book 59, at page 107, from April 1, 1955, until July 3, 1962, when he and his wife, the said Virginia E. Faison, conveyed the 480.7 acre tract of land to Deanetripp Company by deed with General Warranty and English Covenants of Title dated July 3, 1962, and recorded as aforesaid in Deed Book 58, at page 107, and in that deed there was no reservation reserving any ten acre parcel of land and the ten acre parcel of land which the said Virginia E. Faison apparently contends that she owns was squarely within the boundary line as shown on the plat of survey aforesaid of Tracts 4, 5, 6 and 7 of Montpelier recorded in the Clerk's Office aforesaid in Plat Book 5, at page 52, and in order for the said Virginia E. Faison now to own a ten acre portion of property lying within the boundary shown on the said plat of survey she would have to attack the title and deed conveyed and given by the said C. Brooks Faison and the said Virginia E. Faison, who were husband and wife, which was dated July 3, 1962, and recorded in the said Clerk's Office in Deed Book 59, at page 107, in which they conveyed title to the entire property with General Warranty and English Covenants of Title to your complainant's predecessor in title.

6. That if, for the sake of argument, the said C. Brooks Faison had separate titles to the ten acre tract of land and the 480.7 acre tract of land for which he had separate deeds, then the title to the separate tracts of land were merged, and his earlier deed conveying the 480.7 acre tract of land as aforesaid dated July 3, 1962, and recorded in Deed Book 59, at page 107, conveyed the merged title to Deanetripp Company as aforesaid with General Warranty and with English Covenants of Title so that the said Virginia E. Faison finds herself in the position of attacking the very deed in which she joined.

7. That the said Edward Harrison is either cutting and removing from the said land timber and trees for the said Virginia E. Faison or by reason of a deed or agreement from or with her and they are thereby causing great damage to your complainant for which it has no adequate remedy in law.

WHEREFORE, your complainant prays that the said defendants, Edward Harrison and Virginia E. Faison, their agents, employees and licensees, be enjoined and restrained from cutting and removing any timber and trees of any kind or specie from the aforesaid land, and that the defendants be required to compensate the complainant for any and all damges done and any and all timber and trees removed from the said land.

UNION CAMP CORPORATION

By _____
Counsel

Rodham T. Delk
Delk and Barlow
Attorneys at Law
229 Main Street
Smithfield, Virginia, 23430

Counsel for complainant

STATE OF VIRGINIA

COUNTY OF ISLE OF WIGHT, to-wit:

This day personally appeared before me, Vivian L. Darden, a Notary Public in and for the County of Isle of Wight, in the State of Virginia, Rodham T. Delk, who, first being duly sworn, deposed and said that he is counsel for Union Camp Corporation and authorized to make this affidavit and to file the foregoing Bill of Complaint and that the facts and allegations contained in the foregoing Bill of Complaint are true to the best of his information, knowledge and belief.

Rodham T. Delk

Taken, subscribed and sworn to before me in my County and State aforesaid this the 30th., day of August, 1974.

Vivian L Daiden
Notary Public

My commission expires April 27, 1977.

Filed
August 30. 1974
[illegible]
Judge

Filed in the Clerk's Office the 30th day of August, 1974
Writ Tax $ 5.00 Teste:
Fee 25.00
2 Sheriffs 2.50
Total Paid $ 32.50 [illegible], Clerk
[illegible] D. C.

VIRGINIA:

IN THE CIRCUIT COURT OF SURRY COUNTY

UNION CAMP CORPORATION

VS

EDWARD HARRISON
SPRING GROVE, VIRGINIA

REPORT OF COMMISSIONER IN CHANCERY

and

VIRGINIA E. FAISON
HIGHWAY 640
SURRY, VIRGINIA

Your Commissioner, to whom the papers were referred in this cause, respectfully submits the following report:

Pursuant to the direction of the Decree, your Commissioner has examined the records in the Clerk's Office pertinent to this matter and reports as follows:

1. The chain of title as the same might appear in the Clerk's Office of the Circuit Court of Surry County to that certain real estate described in the Bill of Complaint of Union Camp Corporation.

RESPONSE

1st. or Montpelier Tract

Deed Book 25 p. 443
August 1, 1892
Special Warranty

Caroline McQueen and the other heirs of John McQueen
to
Mary H. McQueen

All that certain tract or parcel of land lying and being in the County of Surry, State of Virginia, known as the Montpelier tract containing 733.99 acres, after reserving 125.20 acres, tract 9 on the map of Montpelier made by Samuel Z. Griscum, December 3, 1870.

Deed Book 30, p. 241
June 20, 1904
General Warranty

Mary H. McQueen and William McQueen, her husband
to
Crowell L. Ackin

Conveyed Monpelier, it being the same property conveyed to said Mary H. McQueen by the heirs of John McQueen excepting two certain lots of the said tract containing 150.43 acres being lots 2 and 3 on the map of Mont-

pelier.

Deed Book 36, p. 142
October 20, 1917
General Warranty

Erma Phebe Goodrich and Alice Acken, only child and widow of Crowell L. Acken

to

Albert H. Ochsner

conveyed Montpelier which "is the same land in all respects which was granted and conveyed unto the said Crowell L. Acken"

Deed Book 16, p. 30
February 26, 1872
No Warranty

2nd. or Broomfield Tract

Wilson Ruffin

to

Victor Wilson

A certain piece of land situate, lying, and being in the County of Surry, State of Virginia, and containing 10 acres bounded as follows to-wit: North and west by road known as the "Cabin Point and Laurel Spring Road", east by a portion of the Montpelier Estate, south by a slash commencing at a large pine on the above mentioned road; thence down said slas to the Montpelier line again .

Deed Book 29, p. 445
February 7, 1902
Special Warranty

A. S. Edwards Clerk

to

William H. Wilson

A tract of 10 acres of land more or less in Surry County, Virginia, conveyed to Victor Wilson by Wilson Ruffin by Deed dated Feb. 26, 1872 recorded in the Clerk's Office of Surry County in Deed Book 16, page 30 and therein described as bounded on the north and west by Road known as the Cabin Point Road and Laurel Spring road, east by a portion of the Montpelier estate, south by a slash commencing at the large pine on the above named road; thence down said slash to the Montpelier line again.

Deed Book 29, p. 467
Feb. 12, 1902
General Warranty

William H. Wilson and Mary Wilson, his wife,

to

John M. Bishop

Conveys 10 acres same description as above.

Deed Book 31, p. 311
May 1, 1902

John M. Bishop and Martha A. Bishop, his wife,
to
William H. Barnes
Conveys 10 acres, more or less, bounded on the north by the Laurel Spring Road on the south by lands of William S. Rogers, east by estate of Mary McQueen, west by the aforesaid road.

Deed Book 32, p. 231
January 15, 1909
General Warranty

William H. Barnes and Martha Barnes, his wife,
to
Crowell L. Acken
All of that certain tract or parcel of land lying and being in Guilford Magisterial District, in the County of Surry, in the State of Virginia, containing 10 acres, more or less, and bounded as follows: On the north by Road leading from Ruffins Post Office to Cabin Point, on the south by land belonging to J. T. Rogers, on the east by the lands of the said Crowell L. Acken, and on the west by the aforesaid road.

Deed Book 37, p. 390
Feb. 28, 1921
General Warranty

Erma Phebe Goodrich and E. E. Goodrich, her husband, and
Alice Acken, widow,
to
Robert Lachmund and Estella J. Lachmund
A tract of land containing 10 acres, more or less, and bounded as follows: On the north by road leading from Ruffins Post Office to Cabin Point, on the south by land belonging to J. H. Hanscom, on the east by the tract of land known as Montpelier, and on the west by the aforesaid road, being the same land conveyed to Crowell L. Acken by William H. Barnes and Martha Barnes, his wife, by Deed dated January 15, 1909 in Deed Book 32, page 231.

Will Book 17, p. 78
June 29, 1929

Robert Lachmund devised in his Will everything to his wife
Estella J. Lachmund

Deed Book 52, p. 55
November 3, 1951
General Warranty

Estelle J. Lachmund, widow,
to
Albert H. Ochsner
All of that certain tract or parcel of land lying and being in Guilford Magisterial District, in the County of Surry, State of Virginia, containing 10 acres, more or less, and bounded as follows: On the north by State Road #602, leading from Cabin Point to Ruffins corner, on the south

by lands belonging to Lacy L. Wooden, being a part of "Broomfield", on the east by other lands of the said Albert H. Ochsner, known as "Montpelier", on the west by the said State Road #602 being in all respects the same tract or parcel of land conveyed to Robert Lachmund and Estella J. Lachmund from Erma Phebe Goodrich and others by their Deed recorded in Deed Book 37, page 390.

Deed Book 52, p. 450
September 2, 1952
General Warranty

Albert H. Ochsner and Helen Kerr Ochsner, his wife,
to
Fred P. Hamrah
Conveys two tracts.
1st. All of that tract or parcel of land known as "Montpelier" lying and being situate in Guilford Magisterial District, Surry County, Virginia, containing 615.6 acres, more or less, described as follows: By reference to a certain Plat dated July, 1952 made by W. G. Chappell, C. L. S. of Dinwiddie, Virginia, a copy of which Plat is attached to this Deed and is to be recorded therewith, reference to which is hereby invited.

2nd. All of that certain tract or parcel of land, lying and being in Guilford Magisterial District, in the County of Surry, State of Virginia, containing 10 acres, more or less, and bounded as follows: On the north by State Road #602 leading from Cabin Point to Ruffins Corner; on the south by lands of Lacy L. Wooden, being a part of Broomfield; on the east by other lands of the said Albert Ochsner, known as Montpelier; on the west by said road #602 being of all respects the same land conveyed to the said Albert H. Ochsner by Estelle J. Lachmund by her Deed dated Nov. 3, 1951 and recorded in Deed Book 52, page 450.
Plat Book 5, page 52 shows tracts 1, 4, 5, 6, and 7 contains 615.6 acres as conveyed in Tract 1 above to Fred P. Hamrah. Plat dated July, 1952.

Deed Book 54, p. 114
June 16, 1954
General Warranty

Fred P. Hamrah and Mary Elizabeth Hamrah, his wife,
to
P. H. Cox
Conveys tract 1, as shown on the Montpelier Plat consisting of 134.9 acres.

Deed Book 54, p. 354
March 29, 1955
General Warranty

Fred P. Hamrah and Mary Elizabeth Hamrah, his wife,
to
Albert H. Ochsner and Helen Kerr Ochsner, his wife,
All that certain tract or parcel of land lying on the south side of State Highway No. 602 adjoining the lands of H. B. Holdsworth, Jr., Solon E. Wooden, Continental Cans, and others in Guilford Magisterial District, Surry County, Virginia, known as part of Montpelier and described on a certain Plat entitled "Map showing part of a tract of land known as Montpelier situate in Guilford District, Surry County, Virginia, owned by and surveyed for A. A. Ochsner", July, 1952 by W. G. Chappell, C. L. S. recorded

in the Clerk's Office of Surry County, Virginia, in Plat Book 5, page 52 as Tracts 4, 5, 6, and 7 aggregating 480.7 acres, more or less, and being a portion of the property conveyed to Fred P. Hamrah by Albert H. Ochsner and wife by Deed dated September 2, 1952 and recorded in Deed Book 52, page 450.

Deed Book 54, p. 356
April 1, 1955
General Warranty

lbert H. Ochsner and Helen Kerr Ochsner, individually and as husband and wife,
to
. B. Faison
Conveys 480.7 acres known as a part of Montpelier and same description as in Deed Book 54, page 354 and adding "being the same property conveyed to lbert H. Ochsner and wife by Deed dated March 29, 1955 from Fred P. Hamrah and wife to be recorded along with but piior to this Deed".

Deed Book 59, p. 107
July 3, 1962
General Warranty

. Brooks Faison and Virginia E. Faison, his wife,
to
eanetripp Company
Conveys 480.7 acres known as a part of Montpelier."The said property erein conveyed lying on the south side of State Road No. 602. It being the ame property conveyed unto C. B. Faison, also known as C. Brooks Faison y Deed dated April 1, 1955 and recorded April 2, 1955 in the aforesaid lerk's Office in Deed Book 54, page 356 from Albert H. Ochsner and Helen err Ochsner, husband and wife".

Deed Book 68, p. 221
Dec . 16, 1968
General Warranty

eanetripp Company
to
hillips M. Dowding of the City of Newport News, Virginia
rustee, under a certain Land Trust Agreement designated
Montpelier Land Trust, dated the 13th day of December, 1968
y and between Spurgeon T. Toney, W. P. Greene, H. N. Allen, Jr.,
ames G. Mabe, Forrest W. Coile, Sr. and Raymond E. Budlong and
hillips M. Dowding, Trustee"
Conveys 480.7 acres known as a part of Montpelier using same description s in Deed from C. Brooks Faison and wife to Deanetripp Company, Deed recorded n Deed Book 59, page 107.

Deed Book 77, p. 535
Feb. 26, 1974
General Warranty

hillips M. Dowding, Trustee, of a certain Land Trust esignated as "Montpelier Trust Company" created under trust agreement dated April 6, 1970 (herein after some times called Grantor")
to
nion Camp Corp.
All merchantable timer, wood, pulp wood and trees of every kind, species,

and description on all that certain tract or parcel of land in Guilford Magisterial District, Surry County, Virginia, known as a part of the Montpelier tract containing 480.7 acres, more or less, known and designated as Tracts 4, 5, 6, and 7 of Montpelier and more particularly shown and described on a certain Plat entitled "Map showing part of a tract of land known as Montpelier" dated July, 1952 made by W. G. Chappell, Certified Land Surveyor, the said Plat being duly of record in the Clerk's Office of the Circuit Court Surry County, Virginia, in Plat Book 5, page 52, the said tract of land lying on the south side of Virginia Road 602 and being bounded on the north by the said road, on the east by H. B. Holdsworth, Jr., and Chippoke Creek, on the south by Continental Can Co., on the west by Lacy L. Wooden, the said land having been conveyed to the said Phillips M. Dowding, Trustee, etc. from Deanetripp Company by Deed dated December 16, 1968 and recorded in Deed Book 68, page 221, reference is hereby specially made to the said Plat of Survey and Deed for a more particular description of the said land.

2. The chain of title as the same might appear in the Clerk's Office of the Circuit Court of Surry County to that certain real estate described in the Bill of Complaint of Virginia E. Faison.

RESPONSE

Will Book 10,p. 465
May 10, 1860 Date
Probated Oct.23,1860

Francis Ruffin
to
Wilson Ruffin, son

Francis Ruffin devised all his real property to his son, Wilson Ruffin.

Deed Book 16,p. 30
February 26, 1872
No Warranty

Wilson Ruffin
to
Victor Wilson

A certain piece of land situate, lying, and being in the County of Surry, State of Virginia, and containing 10 acres bounded as follows to-wit: North and West by road known as the "Cabin Point and Laurel Spring Road", east by a portion of the Montpelier Estate, south by a slash commencing at a large pine on the above mentioned road; thence down said slash to the Montpelier line again.

Deed Book 29, p.445
February 7, 1902
Special Warranty

A. S. Edwards Clerk
to
William H. Wilson

A tract of 10 acres of land more or less in Surry County, Virginia, conveyed to Victor Wilson by Wilson Ruffin by Deed dated Feb. 26, 1872 recorded in the Clerk's Office of Surry County in Deed Book 16, page 30 and therein

lescribed as bounded on the north and west by Road known as the Cabin Point Road and Laurel Spring Road, east by a portion of the Montpelier estate, south by a slash commencing at the large pine on the above named road; thence down said slash to the Montpelier line again.

Deed Book 29, p. 467
Feb. 12, 1902
General Warranty

William H. Wilson and Mary Wilson, his wife,
to
John M. Bishop
Conveys 10 acres same description as above.

Deed Book 31, p. 311
May 1, 1902

John M. Bishop and Martha A. Bishop, his wife,
to
William H. Barnes
Conveys 10 acres, more or less, bounded on the north by the Laurel Spring Road on the south by lands of William S. Rogers, east by estate of Mary McQueen, west by the aforesaid road.

Deed Book 32, p. 231
January 15, 1909
General Warranty

William H. Barnes and Martha Barnes, his wife,
to
Crowell L. Acken
All that certain tract or parcel of land lying and being in Guilford Magisterial District, in the County of Surry, in the State of Virginia, containing 10 acres, more or less, and bounded as follows: On the north by Road leading from RUffin Post Office to Cabin Point, on the south by land belonging to J. T. Rogers, on the east by the lands of the said Crowell L. Acken, and on the west by the aforesaid road.

Deed Book 37, p. 390
Feb. 28, 1921
General Warranty

Erma Phebe Goodrich and E. E. Goodrich, her husband, and
Alice Acken, widow,
to
Robert Lachmund and Estella J. Lachmund
A tract of land containing 10 acres, more or less, and bounded as follows: On the north by road leading from Ruffins Post Office to Cabin Point, on the south by land belonging to J. H. Hanscom, on the east by the tract of land known as Montpelier, and on the west by the aforesaid road, being the same land conveyed to Crowell L. Acken by William H. Barnes and Martha Barnes, his wife, by Deed dated January 15, 1909 in Deed Book 32, page 231.

Will Book 17, p. 78
June 29, 1929

Robert Lachmund devised in his Will everything to his wife,
Estella J. Lachmund

Deed Book 52, p. 55
November 3, 1951
General Warranty

Estelle J. Lachmund, widow,
to
Albert H. Ochsner

All of that certain tract or parcel of land lying and being in Guilford Magisterial District, in the County of Surry, State of Virginia, containing 10 acres, more or less, and bounded as follows: On the north by State Road #602, leading from Cabin Point to Ruffins Corner, on the south by lands belonging to Lacy L. Wooden, being a part of "Broomfield", on the east by other lands of the said Albert H. Ochsner, known as "Montpelier", on the west by the said State Road #602 being in all respects the same tract or parcel of land conveyed to Robert Lachmund and Estella J. Lachmund from Erma Phebe Goodrich and others by their Deed recorded in Deed Book 37, page 390.

Deed Book 52, p.450
Sept. 2, 1952
General Warranty

Albert H. Ochsner and Helen Kerr Ochsner, his wife,
to
Fred P. Hamrah

Conveys two tracts.

1st. A tract of 615.6 acres known as Montpelier.

2nd. All of that certain tract or parcel of land, lying and being in Guilford Magisterial District, in the County of Surry, State of Virginia, containing 10 acres, more or less, and bounded as follows: On the north by State Road #602 leading from Cabin Point to Ruffins Corner; on the south by lands of Lacy L. Wooden, being a part of Broomfield; on the east by other lands of the said Albert Ochsner, known as Montpelier; on the west by said road #602 being of all respects the same land conveyed to the said Albert H. Ochsner by Estelle J. Lachmund by her Deed dated Nov. 3, 1951 and recorded in Deed Book 52, page 450.

Deed Book 54, p. 369
April 1, 1955
General Warranty

Fred P. Hamrah and Mary Elizabeth Hamrah, his wife,
to
C. B. Faison

Conveys 10 acres as described in Deed Book 52, page 450, and stating that it was the second item in Deed Book 52, page 450, from Albert H. Ochsner and wife to Fred P. Hamrah.

Deed Book 70, p. 218
Oct. 6, 1969
General Warranty

C. B. Faison and Virginia E. Faison, his wife,
to
Virginia E. Faison

"Conveys all that certain tract or parcel of land situate, lying, and being in Guilford Magisterial District, Surry County, Virginia, and described as follows: Bounded on the north by State Highway #602, leading from Cabin Point to Ruffin's corner, on the south by lands belonging to Lacy L. Wooden, being a part of Broomfield, on the east by a tract of land known as Montpelier and on the west by said State Road #602 and containing

10 acres of land, more or less, and being the same land conveyed from Fred C. Hamrah and Mary Elizabeth Hamrah, his wife, by Deed dated the 1st day of April, 1955 and recorded in the Clerk's Office of the Circuit Court of Sur County in Deed Book 54, page 369, reference to said Deed is hereby invited

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

RESPONSE

It appears from the chain of title to the large or Montpelier tract that Albert H. Ochsner obtained this tract from the heirs of Crowell L. Aken in 1917; He obtained the 10 acres from Estelle J. Lachmund in 1951 .

Albert H. Ochsner and wife conveyed both tracts to Fred P. Hamrah in 1952.

Fred P. Hamrah and wife conveyed the large or Montpelier tract to Albert H. Ochsner and wife in March 29, 1955 .

Fred P. Hamrah and wife conveyed the 10 acres, or portion of Broomfield tract to C. B. Faison April 1, 1955.

Albert H. Ochsner and Helen Kerr Ochsner conveyed the Montpelier Tract April 1, 1955 to C. B. Faison.

The Plat of W. G. Chappell recorded in Plat 5, page 52 was dated July, 1952 for A. H. Ochsner.

In September 1952 when A. H. Ochsner and Helen Kerr Ochsner, his wife conveyed to Fred P. Hamrah the two tracts of land he described each tract separately, and the 10 acre tract is referred to as "being in all respects the same land conveyed to the said Albert H. Ochsner by Estelle J. Lachmund, her Deed dated November 3, 1951.

Fred P. Hamrah and wife subsequently conveyed the Montpelier tract to Albert H. Ochsner and wife March 29, 1955; and Fred P. Hamrah and wife on April 1, 1955 conveyed to C. B. Faison the 10 acre tract of land, both conveyances took place after the Plat recorded in Plat Book 5, page 52 was made.

Respectfully submitted this 23rd day of May, 1975.

Margaret C. Cymes
Commissioner in Chancery

FILED
Date May 23 1975
FRED P. FAISON, JR., Clerk
CIRCUIT COURT OF SURRY COUNTY, VIRGINIA
By ____ Clerk

DELK AND BARLOW
ATTORNEYS AND COUNSELORS AT LAW
229 MAIN STREET
SMITHFIELD, VIRGINIA 23430

RODHAM T. DELK
WILLIAM K. BARLOW
RODHAM T. DELK, JR.
RICHARD P. HACKMAN

AREA CODE 804
357-3181

January 15, 1976

Mr. E. Carter Nettles, Jr.,
Attorney at Law,
Wakefield, Virginia, 23888

Dear Carter:

In re: Union Camp Corporation
v.
Virginia E. Faison, et al.

Enclosed is my check for $700.00 payable to you as attorney for Mrs. Faison together with an order in the case to be endorsed by you and returned to me.

Sincerely yours,

Rodham T. Delk

RTD/jf
Encl:

RECEIVED JAN 23 1976

VIRGINIA: IN THE CIRCUIT COURT OF SURRY COUNTY

UNION CAMP CORPORATION

VS. DECREE

VIRGINIA E. FAISON, ET AL.,

On motion of the plaintiff, by counsel, in which the defendant, by counsel, concurs, this cause is dismissed, with prejudice.

Enter: 6/2/76

Judge

I ask for this decree:

Counsel for plaintiff

Seen and concurred in:

Counsel for defendant

SIXTH JUDICIAL CIRCUIT OF VIRGINIA
EMPORIA, VIRGINIA
23847

LIGON L. JONES
HOPEWELL, VIRGINIA

ROBERT G. O'HARA, JR.
EMPORIA, VIRGINIA

JUDGES

May 10, 1979

CITY OF EMPORIA
CITY OF HOPEWELL
BRUNSWICK COUNTY
GREENSVILLE COUNTY
PRINCE GEORGE COUNTY
SURRY COUNTY
SUSSEX COUNTY

Mr. John C. Baker
Attorney at Law
Surry, Virginia 23883

Mr. Rodham T. Delk
Attorney at Law
229 Main Street
Smithfield, Virginia 23430

Mr. E. Carter Nettles, Jr.
Attorney at Law
P. O. Box 356
Wakefield, Virginia 23888

Mr. Charles C. Wentworth, II
Attorney at Law
P. O. Box 252
Newport News, Virginia 23607

Re: Union Camp Corporation vs. Virginia E. Faison, et al
Filed in Circuit Court of Surry County, Surry, Virginia
January 28, 1976

Gentlemen:

Please accept the Court's apology for its delay in reaching its finding in this matter; your individual indulgence is appreciated.

The Court has reviewed and studied the pleadings; exhibits; both title "Chains;" briefs and memorandums of all parties and recalls the testimony and argument of counsel. After careful reflection upon the foregoing, the Court is of the following opinions:

1) That the ten-acre parcel in controversy was effectively merged or combined by proper reference and incorporation by plat with the larger tract commonly known as "Montpelier;"

2) That any deed ambiguity would be construed against the grantors thereof and in favor of the grantees;

3) That the plat of surveyor W. G. Chappell, properly referenced in subject conveyances, did become a part of the deed description itself. The defendant Faison, a grantor, in the conveyance to Deanetripp, would be estopped to assert or construe ambiguities in her favor as opposed to subsequent owners;

4) The fee-simple title to the subject ten-acre parcel is vested in Morris W. Clements and Frances B. Clements subject to the existing rights and privileges of Union Camp in and to the timber on said parcel.

I would request that Mr. Baker and Mr. Delk prepare the appropriate Order embodying the finding of the Court and forward a draft of same to the undersigned for approval.

This letter is to be considered the opinion of the Court and same to be filed and become a part of the record in this matter.

Very truly yours,

Robert G. O'Hara, Jr.

RGO'H/jlh

cc: → Frank V. Emmerson, Jr., Clerk

Filed May 14, 1979

Clerk

O R D E R

This cause came on to be heard on January 23, 1979, upon the papers formerly read herein, including specifically the Bill of Complaint for Declaratory Judgment and Injunction filed herein by the plaintiff, the Court having on January 27, 1976, entered herein a Decree enjoining the defendants, Virginia E. Faison and John Doe Shaw, from cutting trees on the tract of land described in the Bill of Complaint; and upon the Motion of Virginia E. Faison, by counsel, to Dissolve the said Injunction; and upon the Pleas of Former Judgment filed by Virginia E. Faison; and upon the Answer of Virginia E. Faison and Albert John Doe Shaw to the Bill of Complaint; and upon the Answer to the Bill of Complaint and upon the Cross-Bill filed by Morris W. Clements and Frances B. Clements; and upon the Motion to Quash the Bill of Complaint, the Demurrer to the Bill of Complaint, the Answer to the Bill of Complaint, the Demurrer to the Cross-Bill filed by Morris W. Clements and Frances B. Clements, and upon the Answer to such Cross-Bill, all filed by Phillips M. Dowding, Trustee of Montpelier Land Trust; the Court having theretofore denied the said Plea of Former Judgment and the said Motions and having overruled the said Demurrer and having on January 4, 1978, stated for the record from the Bench the denial of the said Plea and the Motions and the overruling of the said Demurrer.

WHEREUPON, the Court proceeded to hear the evidence

introduced by the plaintiff and the defendants and received in evidence the exhibits tendered by the parties; the Court also having considered the briefs and memoranda submitted by counsel to Judge Carlton E. Holladay, former Senior Judge of this Court, prior to his retirement; and the cause was argued by counsel:

WHEREUPON, the Court took the matter under advisement and on May 10, 1979, rendered its opinion in a letter of that date addressed to the Clerk of the Court and to all counsel of record in the cause, and the said Opinion is hereby made a part of the record in this cause.

ON CONSIDERATION WHEREOF, and the Court having maturely considered and reviewed the pleadings, the exhibits, the respective "chains of title" filed by the parties, and the evidence and briefs andmemoranda aforesaid, doth make the following findings:

1. That the 10 acre parcel in controversy was effectively merged or combined by proper reference and incorporation by plat with the larger tract commonly known as "Montpelier".

2. That any deed ambiguity would be construed against grantors thereof and in favor of the grantees.

3. That the plat of surveyor, W. G. Chappell, properly referenced in the subject conveyances, did become a part of the deed description itself and that the defendant, Virginia E. Faison, a grantor in the conveyance to Deanetripp, would be estopped to assert or construe ambiguities in her favor as opposed

to subsequent owners.

4. That the fee simple title to the subject 10 acre parcel is vested in Morris W. Clements and Frances B. Clements, subject to the existing rights and privileges of Union Camp Corporation in and to the timber on said parcel.

And the Court doth ADJUDGE, ORDER and DECREE that the fee simple title to the 10 acre tract of land described in the Bill of Complaint which is the subject of this cause is vested in Morris W. Clements and Frances B. Clements, husband and wife, as tenants by the entirety with right of survivorship as at common law, subject to the rights and privileges of Union Camp Corporation in and to the timber on the said parcel of land acquired by it by deed from Phillips M. Dowding, Trustee of the Montpelier Land Trust, dated February 26, 1974, and recorded in the Clerk's Office of this Court in Deed Book 77 at page 535.

And it is further ADJUGED, ORDERED and DECREED that a certified copy of this Decree be recorded by the Clerk of this Court in the current Deed Book in his office and be indexed by the Clerk in the General Indices to Deeds in his office in the names of all the parties to this suit.

And it is further ADJUGED, ORDERED and DECREED that the transcripts of the hearings on January 4, 1979 and January 23, 1979, prepared by Donn, Graham & Associates, Registered Professional Reporters, shall become a part of the record of this case.

~~And it is further ADJUDGED, ORDERED and DECREED that~~

~~Virginia E. Faison having expressed her desire to appeal to the Supreme Court of Virginia that the execution of this decree be suspended so long as she timely prosecutes her appeal and thereafter so long as the matter is under consideration by the Supreme Court~~. RLB

And it is further ADJUDGED, ORDERED and DECREED that since there is nothing more to be done in this matter, the suit be, and it hereby is, stricken from the docket and placed among other ended causes.

ENTER: 1/22/80

Robert E. Clifford
Judge

We ask for this Decree:

Rodham T. Delk, Counsel for
Union Camp Corporation

John C. Baker, Counsel for
Morris W. Clements and Frances
B. Clements

SEEN: and objected to!

E. Carter Nettles, Jr., Counsel
for Virginia E. Faison, et al.

Charles C. Wentworth, II,
Counsel for Phillips M. Dowding,
Trustee for Montpelier Land
Trust, and for Montpelier Land
Trust

A. ASSIGNMENT OF ERROR

Virginia E. Faison assigns the following errors:

1. The Court erred in its ruling that the 10 acre parcel in controversy was effectively merged or combined with the larger tract known as "Montpelier".
2. The Court erred in its ruling that there are ambiguities in the deed from Faison, et vir. to Deanetripp and that Faison is estopped to construe them in her favor.
3. The Court erred in its ruling that fee simple title to the subject 10 acre parcel is vested in Clements subject to Union-Camp to the timber.
4. The Court erred in overruling Faison's plea of *res adjudicata*.

THE COURT: I have your chain of certified copies, and Mr. Nettles --

MR. DELK: He doesn't have certified copies but --

THE COURT: Any objection to the certification or to the copies that they propose to introduce?

MR. NETTLES: No, sir. There's no objection to that. That is the chain of title to Montpelier. It is our position that the subject property is not part of Montpelier.

THE COURT: I understand that.

MR. NETTLES: We would add the chain of title to Broomfield of which the subject property is a part, and then we have other evidence that the land on the face of it is a part of the Broomfield tract.

MR. DELK: If that is agreeable, then, if Your Honor please, and if the record would show it, I would introduce certified copies of deeds of record, sir.

THE COURT: I understand you wish them to come in and they be received as exhibits, and you need not state what, in fact, they are. Some of them are rather old.

MR. DELK: The first deed we would introduce, then, would be a deed recorded in Deed Book 16, page 473. The second would be in Deed Book 19, page 257; the third, Deed Book 25, page 243; the next one Deed Book 30, page 241; Deed Book 36, page 141; Deed Book 36, page 159; Deed Book 52, page 450; Deed Book 54, at page 354; Deed Book 54, at page 356; Deed Book 59, at page 107; Deed Book 68, at 221; Deed Book 77, at page 535; and Deed Book 78, at page 282.

All these deeds, and a plat is attached to it -- The last deed mentioned was Deed Book 78, at page 282, and is incorporated therein by reference as having been recorded simultaneously therewith. All of these copies, sir, are certified by the Clerk of the Court as being true copies from the deed books.

There is one deed that has been mentioned in discussion with counsel, but that was an off-conveyance, and, being an off-conveyance, was not in the chain of title to the property.

We would then tender these. (Handing)

THE COURT: They will be received as Complainant's Exhibits.

(Received in evidence by the Court as

Complainant's Exhibits.)

MR. DELK: And the Court may number them as exhibits. I cannot.

THE COURT: You have researched them for the record?

MR. DELK: Yes, sir. We would also tender as a part of the chain of title a plat recorded in the Clerk's Office of the Circuit Court of Surry County in Plat Book 5, at page 52, that being a plat entitled "Map Showing Part of a Tract of Land Known as Montpelier, Situated in Guilford District, Surry County, Virginia, Owned by and Surveyed for A. H. Ochsner." The scale is one inch/ 400 feet. It is dated July, 1952, by J. Chappell, Certified Land Surveyor, Dinwiddie, Virginia.

We would offer this as part of the chain of title, sir, and beg leave of the Court to permit counsel to, through the services of the Clerk, procure through the greater electronic services that are available to us in our day, sir, a copy of this to be certified as a part of the record in the case, sir.

THE COURT: All right. Thank you, Mr. Delk.

~~Any additional?~~

MR. BAKER: The documents put in also would be put in on behalf of Mr. Clements, my client.

MR. DELK: That is all.

THE COURT: Do you have oral testimony?

MR. BAKER: Your Honor, we have Mr. Chappell here, but at this point, I do not know what Mr. Nettles' evidence may or may not be, and I reserve him for rebuttal if necessary.

THE COURT: Mr. Nettles, do you have any evidence you wish to offer at this time?

MR. NETTLES: We would stand on the Court's rulings that you would permit us to produce our evidence at a later time, and we're prepared to agree on the date at this time.

MR. DELK: If we could agree on his chain of title, I thought possibly -- And we had not had that moment to check it out.

MR. NETTLES: I prefer to do it all at one time.

THE COURT: Is there any reason your documentary evidence could not come in?

MR. NETTLES: We do not have copies, and we would prefer to put all the evidence in on one date, perhaps some date later.

DIRECT EXAMINATION

BY MR. NETTLES:

Q State your name.

A James K. Alivis, Jr.

Q What is your occupation?

A Professional Certified Land Surveyor.

Q How long have you been so employed?

A Ten years. Solely employed I have been four years.

Q Have you ever testified in court before?

A Yes, sir, I have.

Q And what training have you had?

A I have got the certification from the State. I have been practicing my profession for twenty years or better.

Q Did you have occasion to make a survey for one Virginia E. Fason?

A Yes, sir, I did.

Q And where is that land located?

A It's located on Route 602. I'm not real familiar with the local terms as to where the properties are. It's on Kevin Point Road.

Q I show you this plat and ask you if you can identify it?

A Yes. This is the survey that I did and gave Mrs. Fason to be recorded.

MR. NETTLES: We offer this as Defendant's Exhibit 4.

THE COURT: Mr. Delk, have you seen it?

MR. BAKER: Yes, sir. We have been furnished copies of it.

MR. DELK: We have no objection to it.

THE COURT: It will be received as Defendant's Exhibit 4.

(Marked by the Clerk and received in evidence as Defendant's Exhibit 4.)

BY MR. NETTLES:

Q Now, in preparing the plat, what did you do? How did you prepare it?

A Well, to start with, the properties were shown to me as far as location. I then came back to the courthouse to start checking the records, starting off with your land tax map, finding the names that it's recorded as, as far as who was paying the taxes on it. I checked for both this property and the adjoining properties.

Q With reference to the 10 acres, what did you find?

A On the 10 acres, to my satisfaction, the

records show that it was in the name of Virginia Fason. I have to check for it. Yes, in the name of Virginia E. Fason.

Q And the land that is to the east, whose name did you find that was in?

A I don't know that I have that.

Q You can refer to the plat.

A May I see the plat?

(Document handed to the witness for examination.)

To the east, it's shown on there as M. W. Clements on Tract Number 4 of Montpelier.

Q I show you now --

THE COURT: Mr. Delk's point is well-taken. This map of Montpelier the Court would like to admit as collectively one Exhibit. This would be Exhibit 2. Complainant's Exhibit 2 refer to it as an Exhibit as the entire chain of title, the Complainant's chain.

BY MR. NETTLES:

Q I show you Complainant's Exhibit 2, being a map of Montpelier, and ask if you have ever seen that before?

A Yes, sir, I have. It's recorded in Plat Book 5, page 52.

Q And what does it purport to show?

A If I could give a little background on it, how I came across this in tracing the title back to this thing, it switched hands several different times and in -- Well, there's a deed record of Albert H. Ochsner and Wife to Fred P. Hamrah. This deed was September 2, 1952, in Deed Book 52, page 450. This plat is of July, 1952, that same year. The properties here, in my search, the 10 acres was found to be in the name of Ochsner and also at this time will show 615.6 acres known as Montpelier.

Q And what tracts of Montpelier?

A This is shown on the map as Tracts 1, 4, 5, 6, and 7 of Montpelier. It is not uncommon for an owner of several parcels of land together to have a surveyor do a plat of the whole thing where he knows what he's got and where it's located. There's also an older plat done of Montpelier in 1870. That is here in the courthouse, and Mr. Chappell I'm sure had reference to that plat because he shows a division line between Tracts 4 and 5 as a former property line. He shows a former property line between Tracts 4 and 6 and 7 and also between this 10-acre parcel, which is not labeled in any way on the map -- there's shown a former property line between Tracts 4 and the 10 acres in question. I don't know how the plat was done or anything, but it looks like Montpelier plus an additional piece of property that was compiled on the plat.

THE WITNESS: Your plat follows the same plat.

THE COURT: It's a question of weight, Mr. Delk, and the Court will receive it and accord it with whatever weight it deems appropriate.

MR. NETTLES: As an authority to this, we had the same issue in the boundary case.

BY MR. NETTLES:

Q I show you and ask you if you have ever seen the original of this copy?

A I have seen -- I don't know it was the original, but I know it was a plat of that, yes, which there was a whole lot of. The originals are not in the courthouse, they are copies that are submitted to record, but whether this is the original now, or not, I do not recall for positive.

Q You considered this in the preparation of your plat?

A Yes, sir, I did.

Q Does this have any bearing on Complainant's Exhibit 2? Would you explain --

A This is marked Defendant's Exhibit 5.

Q Would you take Defendant's Exhibit 5, Complainant's Exhibit 2, and explain them to the Judge?

A This one of 1870 is done at the Montpelier farm showing Tracts 1 through 9. At the time of 1952 when

this plat was done, Mr. Ochsner owned these tracts here (indicating), which are shown as being parts of Tract 1, Tract 2, with a former line, this line -- I'm sorry. The line between here is a division line on this. It was taken out and shown as a former line. The line dividing 4 from 6 and 7 is also done in the same way. The line between 6 and 7 is also shown as former. The tracts are all combined, the Montpelier pieces are all combined from here. (Indicating)

Q Did your investigation show that acreage in Tract 1 of record was --

A The Parcel 1 was sold to Mr. Aycox and the acreage is shown on the old 1870 plat as to what's recorded in various Deed Books, but only a half-acre, yes, sir.

Q On Complainant's Exhibit 2, there's a parcel of land that's been described as the pie in the corner. Do you see that parcel?

A Yes, sir.

Q Would you point it out to the Court?

A (The witness complied.)

Q Now, would you show the Court where that property would be on Defendant's Exhibit 5?

A It was located right here. (Indicating)

Q Would you, for the purposes of the record, take this red pen and place it in schematically on Defendant's Exhibit 5?

A (The witness complied.) No scale intended.

Q Were you able to determine from your investigation whether or not this 10 acres had ever been a part of Montpelier?

MR. BAKER: I object. That calls for a conclusion.

THE COURT: Sustained. I think that's the issue.

MR. BAKER: Your Honor, also for the record, I have objected to the introduction of this map for the same reasons as Mr. Delk.

THE COURT: I understand.

Anything further, Mr. Nettles?

BY MR. NETTLES:

Q What is the meaning of a former PL?

A That's meaning a former property line between the 1870 plat and the 1952 plat. It was divided into several tracts, and when the one man owned these particular tracts, he had them put together on one plat, which is very commonly done.

MR. NETTLES: Answer Mr. Wentworth, Mr. Baker, and Mr. Delk.

CROSS-EXAMINATION

BY MR. DELK:

Q Taking your last answer first, if you will, Mr. Alivis, do I understand you to say that where a person owns a large body of land, we'll say made up of several various parcels, that it is quite frequently that the survey of the whole will be embodied in one plat; is that what you say, sir?

A Yes. If the man owned this all, it's all put into that, and the plat at the time was drawn in July of 1952, and at that time by the deed in Deed Book 52, page 450. Albert Ochsner had conveyed two tracts to Hamrah. He sells first the Montpelier piece and, second, the 10-acre piece, which is spelled out separately on those.

Q And after that, did you find it conveyed by the parcel surveyor back to Mr. Ochsner?

A Yes. Let's see. The 615 acres was changed because when Hamrah had it, he sold off the parcel shown on here as one being 134.9 as the deed states in Deed Book 54, page 356, and the 10-acre tract, and -- I rather you didn't look over my shoulder.

Q I was trying to get an Exhibit.

A (Continuing) Now, Fred Hamrah and his wife deeded it to Albert Ochsner as referred to the plat in Plat

Book 5, page 52, that he conveyed only 5, 6 and 7, and he retained the 10-acre tract at this point. In 1955 --

MR. NETTLES: Slow down.

BY MR. DELK:

Q Just a minute, sir. Now, sir, did you say -- If I understood you while I was looking for the Exhibit, you were still talking about Mr. Hamrah having acquired from Ochsner the lands you described in Deed Book 54 at page 354.

A Deed Book 54, page 354.

Q They deeded the tracts 4, 5, 6 and 7 with reference to this plat which was referred to in the deed to Mr. Ochsner; is that correct?

A They referred to it as the plat in Plat Book 5, page 52, yes, sir. That's correct, sir.

Q And then you said he also reserved the 10-acres?

A He retained the 10-acres. He did not reserve it. I said he retained it. He did not convey it.

Q Can you show me where?

A Not in that deed, but he turned around --

Q You have to respond to the question. You'll be allowed to explain it, but respond to the question. If you wish to explain, you will be given that opportunity.

In Deed Book 54 at page 354 -- I have a certified copy which you may examine -- is it not a fact that Mr.

Hamrah conveyed to Mr. Ochsner with general warranty the tracts of land shown on the map that you have referred to in Plat Book 5, tracts 4, 5, and 6, and 7 --

A Yes, sir.

Q -- for an aggregate of 480.7 acres of land?

A That's a fact.

Q Now, that, then, would be the tracts of land shown on Plaintiff's Exhibit 2, which is the plat recorded in Plat Book 5, page 52? That is the land shown on this plat as being 4, and 5, and 6, and 7; is that correct? Did it not take in 4, 5, 6, and 7 by this map?

A On this plat, yes. Tracts 4, 5, 6, and 7.

Q So, it did convey what's shown on this plat as 4, 5, 6, and 7?

A Absolutely, sir. Yes, sir.

Q Now, you said that your plat that you have introduced into evidence is the same parcel, and you had that in red?

A Yes, sir.

Q And your testimony, as I understood it, was that a person owning a large body of land which may have been made up of several tracts frequently in a survey had them embodied on one plat?

A That's correct, sir.

Q Is it not a fact that one owner did own 4, 5,

6, and 7, and, if you will, the 10-acres, too?

A Yes, sir.

Q So that's inconsistent with your testimony.

A Yes, it is.

Q Now, you show delineated on this plat -- There is delineated a former property line?

A Yes, sir.

Q And would you point them out? And, may I show you, pointing to Plaintiff's Exhibit 2, this plat, in the northeast corner of the property there is shown on it where you see a bent line, an approximate former line; is that right?

A Yes, sir.

Q Will you show me and show the Court where the north end of that approximate line is?

A The north end?

Q As shown on the plat.

A As shown on the plat. The line stops here (indicating) to not interfere with --

Q Without marking it, will you point to it, where it is?

A The line on the plat stopped somewhere in this neighborhood. (Indicating)

Q Thank you, sir. And, it doesn't go to Highway 602, does it, on this plat?

A On this plat it does not.

Q Okay. That's all we're concerned with, what it shows.

MR. DELK: That's all I have of this gentleman.

MR. BAKER: I won't belabor this matter, but I need Exhibit 2, and, also, Judge, this is in my chain of title, Exhibit 1.

CROSS-EXAMINATION

BY MR. BAKER:

Q This is the deed dated the 1st day of July, 1974, by Phillips M. Dowding, Trustee of a certain land trust known as Montpelier Land Trust, as recorded in Deed Book 78, at 282. In that, a certain portion of land is conveyed to Mr. Clements. Now, I want to show you this deed, and I want you to familiarize yourself with it.

(Pause)

Are you familiar with it now, sir?

A To some extent, yes, sir.

Q Can you take your plat that you have previously introduced as Exhibit 3, I believe, or whatever the Exhibit is? Will you take that, sir, and would you please take that in your hand?

THE COURT: Exhibit No. 4?

MR. BAKER: That's Exhibit 4.

BY MR. BAKER:

Q Would you take that in your hand, sir, and as soon as you can get Exhibit 2, I would like for you to take that in your hands, sir.

(Pause)

Here's Exhibit 2 now. (Handing) Now, will you review Exhibit 4 for respondant, and also Exhibit 2 and also the deed I have just shown you to Mr. Clements?

In your survey, can you locate any land on any of these plats as the same area of land that you surveyed?

A We have got some differences in here, but it's virtually this area here. (Indicating)

Q Don't mark it, sir. Just please describe it for the Court Reporter what you're talking about.

A This line through, up the creek and back. (Indicating)

Q You're talking about a triangle-shaped piece?

A Uh-huh.

Q And that is the same piece you surveyed?

A Yes, sir.

Q And looking at that plat conveyed to Mr. Clements, is it similar? Any similarities there?

A Exhibit 2, yes.

Q Where is that?

A This same parcel would be virtually the same over here. (Indicating)

Q What lay term did we give that?

THE COURT: The Court phrased it as a pie in the corner.

BY MR. BAKER:

Q So this deed to Mr. Clements and the plat that he received, there's no question that that deed included the pie in the corner; would that be your testimony?

MR. NETTLES: I object. That calls for a conclusion, and that's what the Court is here to decide.

BY MR. BAKER:

Q Based on your knowledge as a certified land surveyor, all three lands show what is known as the pie in the corner; is that correct?

A Yes, sir.

Q Is there any notation on Mr. Clements' plat separating the pie in the corner from the rest of the land he purchased?

A Not on that one, no, sir.

Q So, there's no question, then, by your survey

that the land -- that the pie in the corner -- Based on your knowledge as a certified land surveyor, there's no question that the area shown on all three plats known as the pie in the corner is the one and the same parcel of land?

A I would say they are the same.

THE COURT: I think, hopefully, we've all agreed as to where it is.

BY MR. BAKER:

Q Would you look at Exhibit 2, again? How many times is the former boundary line mentioned on that plat, based on your experience as a surveyor?

A The one -- See you have got a former -- You got one, two, three, four times.

Q Four times? And one of the four times would include the area in the center of the pie in the corner; is that correct?

A Yes, sir.

Q Based on your knowledge and experience as a certified land surveyor, is there any question in your mind that the pie in the corner is included in this survey, Exhibit 2?

A Let me hear your question again.

Q Based on your knowledge and experience as a certified land surveyor, is or is not the pie in the corner

included in the survey of Exhibit 2?

A It's included in the survey, not as Tract 4, in my opinion.

Q But it is included in the survey?

A It's included in the survey.

Q Let me ask you a question. There are no bearings or degrees separating that tract from the rest of the tract; is that correct?

A Nor is there from 6 and 7 and 5.

Q Six and seven and five are not separated by any --

A That's correct. That's just shown as former property lines.

MR. BAKER: That's all I have, Your Honor.

REDIRECT EXAMINATION

BY MR. NETTLES:

Q Would you show the Court the boundary line of Tract No. 4 of Montpelier?

A As to this plat right here; is that what you want? Montpelier, Tract 4 is shown -- The division line is through here, goes all the way around and comes here, through here and back to here again. (Indicating)

Q How many acres are contained in Tracts 4, 5, 6,

THE COURT: The Court will come to order.

Your next witness, Mr. Nettles?

MR. NETTLES: I would like to call Mr. Emmerson, the Clerk of the Court.

MR. BAKER: I believe we better wait for Mr. Wentworth. I will find him, if I can.

(Pause)

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FRANK V. EMMERSON, JR., called as a witness on behalf of the defendants, having been first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

BY MR. NETTLES:

Q What is your name and occupation?

A Frank V. Emmerson, Jr., Clerk of the Circuit Court of Surry County.

Q I show you a map, Respondent's Exhibit 5, and ask you if you can identify that?

A It's a photocopy or Xerox copy of a plat that came from a bin in our records, which we inherited.

Q Has it been marked?

A It has a numerical mark and an index to the bin which also came to me when I came to the office. It indicates that they are unrecorded plats and certain other papers.

Q I show you this book and ask you if you can identify this.

A It's a book prepared by Professor James Cornwall, Guide to the Buildings of Surry of the American Revolution.

Q Does this have reference to Montpelier and Broomfield?

A I believe that it does.

MR. NETTLES: We offer this as an exhibit, a scholarly treatise.

MR. BAKER: Your Honor, we object.

THE COURT: Sustained. I'm sure it's a well done work and it's not passing on that.

MR. NETTLES: We would note our exception to the Court's ruling. We think that this would have a bearing on the meaning of the words in the deeds. That's all the questions I have of the Clerk.

THE COURT: Are there any questions?

MR. BAKER: Yes.

MR. NETTLES: No, sir.

THE COURT: You're excused.

MR. NETTLES: I'd like to call Mr. Solon Wooden.

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SOLON WOODEN, called as a witness on behalf of the defendants, having been first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

BY MR. NETTLES:

Q What is your name?

A Solon Wooden.

Q What is your occupation?

A Farmer.

Q And where do you live?

A Broomfield Farm, Surry County.

Q Do you hold any public office or have you ever?

A No, I do not.

Q Have you ever been on the School Board?

A Never been on the School Board.

MR. BAKER: I'll stipulate that Mr. Wooden is a highly outstanding citizen and his reputation for truth and veracity is beyond question.

MR. DELK: I do, too.

MR. NETTLES: We accept their stipulation.

BY MR. NETTLES:

Q I show you a plat marked Respondent's Exhibit 4. Are you familiar with that parcel of land?

A Yes, I am. It joins the Broomfield Farm. It is part of Broomfield Farm.

Q Has it ever been part of Montpelier Farm?

MR. BAKER: I object, Your Honor. That calls for a conclusion.

THE COURT: I assume that's the way it's known in the community.

THE WITNESS: That's right.

BY MR. NETTLES:

Q How long have you lived in this area?

A I was born here.

Q And how old are you?

A Sixty-five.

MR. NETTLES: Answer Mr. Delk and Mr. Baker.

CROSS-EXAMINATION

BY MR. DELK:

Q Mr. Wooden, do you know Mr. Albert Ochsner?

A Yes.

Q Do you know whether he owned this particular piece that was shown on the complainant's exhibit?

A He did at one time.

Q And he owned the adjoining piece?

A He owned Montpelier, then he bought this afterwards.

Q I understand later he acquired it back from one deed -- we don't dispute the deed anyway. He did own them all at the same time?

A He did as far as I know, sir.

MR. DELK: Thank you.

MR. BAKER: No questions.

THE COURT: Would Mr. Wooden be excused?

MR. NETTLES: Yes, sir.

THE COURT: You may be excused with the thanks of the Court.

MR. NETTLES: I would like to call Lacy L. Wooden.

THE COURT: Would it be cumulative to what I assume another member of his family has testified to?

COMPLAINTANT'S EXHIBITS

Exhibit 1-A (D.B. 16-473)

Exhibit 1-B (D.B. 19, Pg. 257)

Exhibit 1-C (D.B. 25, Pg. 443)

Exhibit 1-D (D.B. 30-241)

Exhibit 1-E (D.B. 36, Pg. 142)

Exhibit 1-F (D.B. 36, Pg. 159)

Exhibit 1-G (D.B. 52-450)

Exhibit 1-H (D.B. 54-354)

Exhibit 1-I (D.B. 54-356)

Exhibit 1-J (D.B. 59-107)

Exhibit 2 (Plat Book 5, Page 52)

PRINTERS NOTE:

The above mentioned exhibits can not be reasonably reproduced. A copy of each exhibit may be found filed with the record in the Clerk's Office, Supreme Court of Virginia.

68/221

THIS DEED, made this 16th day of December, 1968, by and between DEANETRIPP COMPANY, a limited partnership, by Raymond Ovide, sole general partner, having its principal place of business in the City of Newport News, Virginia, party of the first part, and PHILLIP M. DOWDING, of the City of Newport News, Virginia, Trustee under a certain Land Trust Agreement designated, "Montpelier Land Trust", dated the 13th day of December, 1968, by and between Spurgeon T. Toney, W. P. Greene, H. N. Allen, Jr., James G. Mabe, Forrest W. Coile, Sr., and Raymond E. Budlong and Phillip M. Dowding, Trustee, party of the second part.

WITNESSETH: That for and in consideration of the sum of TEN DOLLARS ($10.00), cash in hand paid, the receipt of which is hereby acknowledged by the said party of the first part at and before the signing, sealing and delivery of these presents, and for other good and valuable consideration, the said party of the first part does grant and convey with GENERAL WARRANTY OF TITLE unto the said party of the second part, his successors and assigns, in fee simple absolute, the following described property, to-wit:

> All that certain tract, piece or parcel of land, situate, lying and being in Guliford Magisterial District, County of Surry, Commonwealth of Virginia, containing 480.7 acres, more or less, known as Montpelier and also known as Tracts No. 4, 5, 6, and 7, and particularly shown on that certain plat entitled, "Map Showing Part of a Tract of Land Known as Montpelier", dated July, 1952, made by W. G. Chappel, Certified Land Surveyor, and of record in the Clerk's Office of the Circuit Court of Surry County, Virginia, in Plat Book 5, at page 52, to which said plat reference is

hereto particularly made. The said property herein conveyed lying on the Southside of State Route No. 602.

Together with all and singular, the tenements, hereditaments and appurtenances thereunto belonging or in anywise appertaining.

TO HAVE AND TO HOLD the said land together with the improvements thereon, unto the said party of the second part, his successors and assigns, in fee simple absolute.

The said party of the first part covenants that it is seised in fee simple of the said land; that it has the right to convey the same to the said party of the second part; that the said land is free and clear of all encumbrances; that the said party of the second part shall have quiet and peaceful possession of the said land; and that the said party of the first part will execute such further assurances of the said land as may be requisite.

Full power and authority is hereby granted to the party of the second part and his successors, to protect and care for the above described property; to sell, contract to sell and grant options to purchase the said property, and any right, title or interest therein on any terms; to exchange the said property or any part thereof for any other real or personal property upon any terms; to convey the said property by deed or other conveyance to any grantee; to mortgage, pledge or otherwise encumber the said property or any part thereof; to lease, to contract to lease, grant options to lease and renew, extend, amend or otherwise modify leases on the said property or any part thereof from time to time, for any period of time, for any rental and upon any other terms and conditions; and to release, convey or assign

any other right, title or interest whatsoever in the said property or any part thereof. No person dealing with the said party of the second part shall be required to inquire as to the right of the said party of the second part to another, nor shall he be required to inquire as to the disposition of any proceeds. The party of the second part shall have no individual liability or obligation whatsoever arising from his ownership as Trustee, of the legal title to said property, or with respect to any act done or contract entered into or indebtedness incurred by him in dealing with said property, or in anywise acting as such Trustee, except only so far as said trust property or any trust funds in the actual possession of the Trustee shall be applicable to the payment and discharge thereof. This deed is governed by and is to be read and construed with reference to said Section 55-17.1, Code of Virginia, 1950, as amended, and now in force.

WITNESS the following signature and seal:

DEANETRIPP COMPANY, a Limited Partnership

By _____
Raymond Ovide, Sole General Partner

COMMONWEALTH OF VIRGINIA

CITY OF HAMPTON, to-wit:

I, Joyie L. Wright, a Notary Public duly commissioned and qualified in and for the Commonwealth and City aforesaid, whose commission

expires on the 4th day of July, 1971, do hereby certify that RAYMOND OVIDE, Sole General Partner of DEANETRIPP COMPANY, a Limited Partnership, whose name is signed to the foregoing Deed bearing date of the 16th day of December, 1968, has acknowledged the same before me in my Commonwealth and City aforesaid.

Given under my hand this 17th day of December, 1968.

Joyce L. Wright

Joyce L. Wright, Notary Public

VIRGINIA: In the Clerk's Office of the Circuit Court of Surry County, this 20th day of December, 1968, at 2:55 o'clock P.M., the foregoing instrument was received and, upon certificate of acknowledgment thereto annexed, admitted to record. The taxes imposed by Section 58-54, (a) and (b) of the Code have been paid.

Teste: Frank V. Emmerson, Jr., Clerk

By: D.B. James D. C.

A COPY TESTE:

FRANK V. EMMERSON, JR., Clerk
CIRCUIT COURT OF SURRY COUNTY, VIRGINIA

By: [illegible] (Deputy) Clerk

#1-L

THIS DEED, made this 26th., day of February, 1974, between PHILLIPS M. DOWDING, TRUSTEE, of a certain Land Trust designated as "MONTPELIER LAND TRUST", created under a Trust Agreement dated April 6, 1970, (hereinafter sometimes called "Grantor"), party of the first part, and, UNION CAMP CORPORATION, a Virginia corporation (hereinafter sometimes called "Company"), party of the second part:

WITNESSETH: That for and in consideration of the sum of Ten Dollars ($10.00) and other good and valuable considerations, the receipt whereof is hereby acknowledged, the said Grantor hereby grants, bargains, sells and conveys unto the said Company, in fee simple and with GENERAL WARRANTY and with ENGLISH COVENANTS OF TITLE, all of the merchantable timber, wood, pulpwood and trees (hereinafter called "Timber") of every kind, species and description, lying, standing, being or growing upon the following described real estate, to-wit:

> All that certain tract or parcel of land in Guilford Magisterial District, Surry County, Virginia, known as a part of the Montpelier Tract, containing 480.7 acres, more or less, known and designated as Tracts 4, 5, 6 and 7 of Montpelier and more particularly shown and described on a certain plat entitled "Map showing part of a tract of land known as Montpelier" dated July 1952 made by W. G. Chappell, Certified Land Surveyor, the said plat being duly of record in the Clerk's Office of the Circuit Court of Surry County, Virginia, in Plat Book 5, at page 52, the said tract of land lying on the South side of Virginia Road 602 and being bounded on the North by the said road, on the East by H. B. Holdsworth, Jr., and

Chippoke Creek, on the South by Continental Can Company, and on the West by Lacy L. Wooden, the said land having been conveyed to the said Phillips M. Dowding, Trustee under a certain Land Trust Agreement designated "Montpelier Land Trust" dated December 13, 1968, by deed from Deanetripp Company dated December 16, 1968, and recorded in the Clerk's Office aforesaid in Deed Book 68, at page 221, reference being hereby specifically made to the said plat of survey and deed for a more particular description of the said land.

(1) It is understood and agreed that the said Timber may be cut, and the Company shall have the unrestricted right and privilege of cutting the same, without restriction as to size, except as to the seed trees on a 35 acre portion of the said tract of land hereinafter mentioned.

(2) It is understood and agreed that the Company shall have, and it is hereby granted, the full term of three (3) years, ending on the 26th., day of February, 1977, in which to cut and remove the Timber from the said land, at any time and from time to time during said term, including the right to cut over the said land or any portion thereof as many times as the Company may desire.

(3) Should, however, the Timber be not cut and removed from the said land on or before the 26th., day of February, 1976, the Company will pay the sum of Five thousand five hundred ninety-five ($5595.00) Dollars, for the third (3rd) year of the said term in which to complete the cutting and removal of the said Timber, provided, however, that the Company shall only be liable for such pro-rata part of the said payment for such third (3rd) year of the said term as is equal to that part of

such year in which the said Timber remains on the said land. It is specifically understood and agreed that the making of such payment by the Company as hereinabove provided shall not be considered or construed as a condition to the continuance of the rights and privileges granted by this deed, but the agreement to make such payment shall be considered and construed as only a personal covenant by the Company to make such payment.

(4) It is further agreed, for the same consideration, that the Company shall have, and it is hereby granted, all rights, ways, privileges and easements in, over and upon the said land which may be useful, convenient, ncessary or desirable in cutting, removing, handling or manufacturing the Timber, or any other timber, wood, pulpwood or trees, or other thing whatsoever, and the exclusive right to locate, build, construct, erect, maintain, operate and utilize roads, skidders, teams, vehicles, tools and appliances, and any other means or instrumentalities that the Company may see fit or desire, on, over and across the said land for all such purposes as the Company may see fit or desire, together with full rights of ingress and egress thereto and therefrom, for itself, its agents, employees and licensees, and also the right to cut, use and remove any small timber and trees, undergrowth, brush or earth, the cutting, use or removal of which may be useful, convenient, necessary or desirable in the exercise of any of the rights granted hereby. All of the rights and privileges hereby granted shall continue until the expiration of

the full term hereinabove granted for the cutting and removal of said Timber from the said land, whether or not the said Timber be cut and removed from the said land prior to the expiration of said term. The Company shall not be liable for any damages that may be done the timber, trees or undergrowth not conveyed by this deed in the cutting, handling or removal of the Timber hereby conveyed or in the exercise of any of the rights or privileges herein granted. The Company shall have the right to remove any property whatsoever placed by it upon the said land, at any time during the continuance of this contract and within three (3) months after the expiration of the rights and privileges enumerated in this paragraph.

(5) The Grantor further covenants that the Company shall not be required to leave uncut on the said land any seed trees as described in the Virginia Seed Tree Law, except seed trees on a 35 acre portion of the said tract of land situate on the Southwest side thereof which said seed trees shall be appropriately marked with paint or otherwise and that the Grantor will, when the cutting of the said Timber has been completed, if reforestation thereof is required, under the said Virginia Seed Tree Law, reforest the said land at his expense pursuant to an Alternate Management Plan to be written by the Virginia Division of Forestry and procured by the Grantor.

(6) All of the covenants, conditions and provisions hereof shall bind and enure to the benefit of the parties hereto, their respective heirs, personal representatives, successors or assigns, whether herein so expressed or not.

Witness the following signature and seal:

Phillips M. Dowding, Trustee (SEAL)
Trustee of a certain Land Trust designated as Montpelier Land Trust, created under a Trust Agreement dated April 6, 1970.

STATE OF VIRGINIA,

CITY OF NEWPORT NEWS, to-wit:

The foregoing instrument was acknowledged before me this 27th day of February, 1974, by Phillips M. Dowding, Trustee of a certain Land Trust designated as Montpelier Land Trust, created under a Trust Agreement dated April 6, 1970.

My commission expires June 24, 1974

Sara Allen
Notary Public

VIRGINIA: In the Clerk's Office of the Circuit Court of Surry County, this 4th day of March, 19 74, at 4:05 o'clock P M., the foregoing instrument was received and, upon certificate ____ of acknowledgment annexed, admitted to record.

Teste: Frank V. Emmerson, Jr., Clerk

By: Frank Emmerson, Jr. D. C.

A COPY TESTE:
FRANK V. EMMERSON, JR., Clerk
CIRCUIT COURT OF SURRY COUNTY, VIRGINIA
By Patricia Allen (Deputy) Clerk

78/282

THIS DEED, Made this 1st day of July, 1974, by and between PHILLIPS M. DOWDING, TRUSTEE, of a certain Land Trust designated as "MONTPELIER LAND TRUST", created under a Trust Agreement dated April 6, 1970, party of the first part, and MORRIS W. CLEMENTS and FRANCES B. CLEMENTS, husband and wife as tenants by the entireties with the right of survivorship as at common law, parties of the second part. #1M

WITNESSETH: That for and in consideration of the sum of Ten ($10.00) Dollars cash in hand paid and other good and valuable consideration, receipt which is hereby acknowledged, the party of the first part doth grant and convey with SPECIAL WARRANTY, to and unto the parties of the second part as tenants by the entireties with the right of survivorship as at common law, the following described property, to-wit:

> All that certain tract or parcel of land in Guilford Magisterial District, Surry County, Virginia, known as a part of Montpelier Tract, containing 105.25 plus or minus acres, more or less, known and designated as portions of Tracts 4, 6, and 7 of Montpelier to be acquired by Morris W. Clements, and more particularly shown and described on a certain plat entitled "Map Showing a Tract of Land Situated in Guilford Magisterial District, Surry County, Virginia Composed of a Part of Tracts 4, 6, and 7 of the Montpelier Tract to be Acquired by Morris W. Clements". Reference is hereby specifically made to said plat of survey and said plat is to be recorded simultaneously with this deed and to become a part of the description of this deed. The said tract or parcel of land being a portion of that tract or parcel of land conveyed to Phillip M. Dowding, Trustee, under a certain Land Trust Agreement designated as Montpelier Land Trust

dated December 13, 1968, by deed from Deanetripp Company, dated December 16, 1968, and recorded in the Clerk's Office in Deed Book 68, at page 221.

The said party of the first part covenant that he has the right to convey the said land to the Grantees; that he has done no act to encumber the said land; that the Grantees shall have quiet possession of the land, free from all encumbrances, and that he, the said party of the first part, will execute such further assurance to the said land as may be requisite.

WITNESS the following signature and seal.

Phillip M. Dowding Trustee (SEAL)

Phillip M. Dowding, Trustee

This deed is to be governed by and is to be read and construed with reference to Sections 55-59 and 55-60 of the Code Virginia of 1950, as now in force.

Subject to all (call) upon default.

Renewal or extension permitted.

Deferred purchase money.

C. Exemptions waived.

D. Fire and extended coverage insurance $ 26,500.00

G. Identified by signature of one of the trustees

Advertisement required: After first advertising the time, place and terms of sale for five times, which need not be successive, in some newspaper having general circulation in the City or County in which the property is located, the last of which may appear on the day of sale, or, in the discretion of the Trustees, by advertising by written or printed notices posted at the front door of the City Hall if the property is located in a City, or at the front door of the Courthouse if the property is located in a County, and at two or more public places in said City or County.

In the event of any default hereunder, the Trustees shall have the right, upon demand of the noteholder, to take mediate possession of the premises, to rent the same at such rental as they may deem proper, to collect the rents, to make y necessary repairs or replacements to the property, and after paying the cost of renting the property, collecting the rents, d the making of any repairs to the property, to apply the balance on the obligations hereby secured, and if there is not ficient net rental money received to pay the cost of repairs, then any balance shall be secured hereby along with the te and bear the same rate of interest.

The holder of the note hereby secured, with or without cause, is hereby authorized and empowered to substitute and point, by an instrument recorded wherever this Deed of Trust is recorded, a Trustee in the place of any Trustee hereder. All power and discretion vested in the Trustees by this Deed may be exercised by either or both of said Trustees or substitute Trustee, and, after any sale hereunder title to the property so sold, by the Trustee so acting, shall be ficient to pass title to said property.

Whenever used, the singular number shall include the plural, and the plural the singular.

WITNESS the following signatures and seals as of the day and year first above written.

Rocco Mosconi (Se

Christina D. Mosconi (Se

STATE OF VIRGINIA
CITY OF Petersburg

I, Bonnie R. Pond, a Notary Public in and for the City aforesaid, in the State of Virgi
do hereby certify that Rocco Mosconi and Christina D. Mosconi, h/w
whose name(s) are (is) signed to the writing above, bearing date of 27th day of ~~July~~ June
19 74, have this day acknowledged the same before me in my City aforesaid.

My Commission expires May 8, 1978

Given under my hand this 1st day of July, 19 74

Notary Public

VIRGINIA: In the Clark's Office of the Circuit Court of Surry County, this 2nd day of July, 1974, at 10:15 o'clock A M., the foregoing instrument was received and, upon certificate of acknowledgment annexed, admitted to record.

Teste: Frank V. Emmerson, Jr., Clerk

By: D. C.

STATE OF VIRGINIA

CITY OF NEWPORT NEWS, to-wit:

I, Brenda S. Bradley, a Notary Public in and for the State and City aforesaid do hereby certify that Phillips M. Dowding, whose name is signed to the foregoing annexed writing bearing date on the 1st day of July, 1974, has acknowledged the same before me in my State and City aforesaid.

Given under my hand this 2nd day of July, 1974.

My commission expires: April 13, 1976

Brenda S. Bradley
Notary Public

VIRGINIA: In the Clerk's Office of the Circuit Court of Surry County, this 5th day of July 19 74 at 11:50 o'clock A M, the foregoing instrument was received and, upon certificate _____ of acknowledgment thereto annexed, admitted to record. The taxes imposed by Sections 58-54 and 58-54.1 of the Code have been paid as follows

#54-58 _____ $ 102.75
#54-58.1 ____ $ 68.50

Teste: Frank V. Emmerson, Jr., Clerk
By _____ D.C.

A COPY TESTE:
FRANK V. EMMERSON, JR., Clerk
CIRCUIT COURT OF SURRY COUNTY, VIRGINIA
By _____ (Deputy Clerk)

DEFENDANT'S EXHIBIT 1

(Commissioner's Report)

PRINTERS NOTE:

The above mentioned exhibit may be found on Appendix pages 25 through 33.

DEFENDANT'S EXHIBIT 2-A

THIS DEED, Made this 6th day of October 1969, by and between C. B. Faison and Virginia E. Faison, his wife, the parties of the first part and Virginia E. Faison the party of the second part.

10-218

Rep 2 A

WITNESSETH: That for and in Consideration of the love and affection the parties of the first part have for the party of the second part, the said parties of the first part grant and convey with General Warranty to and unto the said party of the second part, the following property to-wit: All of that tract or parcel of land situate, lying, and being in Guilford Magisterial District, Surry County, Virginia and described as follows: Bounded on the north by State Highway No. 602 leading from Cabin Point to Ruffin's Corner, on the south by lands belonging to Lacy L. Wooden, being a part of "Broomfield" , on the east by a tract of land known as "Montpelier", andon the west by said State Road 602, and containing ten acres of land, more or less, and being the same land conveyed from Fred P. Hamrah and Mary Elizabeth Hamrah, his wife, by Deed dated the 1st day of April 1955 and recorded in the Clerk's Office of the Circuit Court of Surry County in Deed Book 54, page 369, reference to said Deed is hereby invited.

The said parties of the first part covenant that they have the right to convey the said land to the grantee; that they have done no act to encumber the said land; that the grantee shall have quiet possession of the land free from all encumbrances, and that they, the said parties of the first part, will execute such further assurances of the said land as may be requisite.

Witness the following signatures and seals.

C. B. Faison (S

Virginia E. Faison (S

State of Virginia

County of Surry, to-wit

I, Margaret C. Crymes, a Commissioner in Chancery for the Circuit Court of Surry County, in and for the County and State aforesaid do

certify that C. B. Faison and Virginia E. Faison, whose names are signed to the foregoing and hereto annexed writing bearing date on the 6th day of October have acknowledged, the same before me in my County and State aforesaid.

Given under my hand this 23rd day of April 1970.

Margaret C. Cypress
Commissioner in Chancery

VIRGINIA: In the Clerk's Office of the Circuit Court of Surry County, this 23rd day of April, 1970, at 4:10 o'clock P.M., the foregoing instrument was received and, upon certificate of acknowledgment annexed, admitted to record.

Teste: Frank V. Emmerson, Jr., Clerk

By: A B James D. C.

A COPY TESTE:
FRANK V. EMMERSON, JR., Clerk
CIRCUIT COURT SURRY COUNTY, VIRGINIA
By: Clerk

DEFENDANT'S EXHIBITS

Exhibit 2-B (D.B. 54-369)

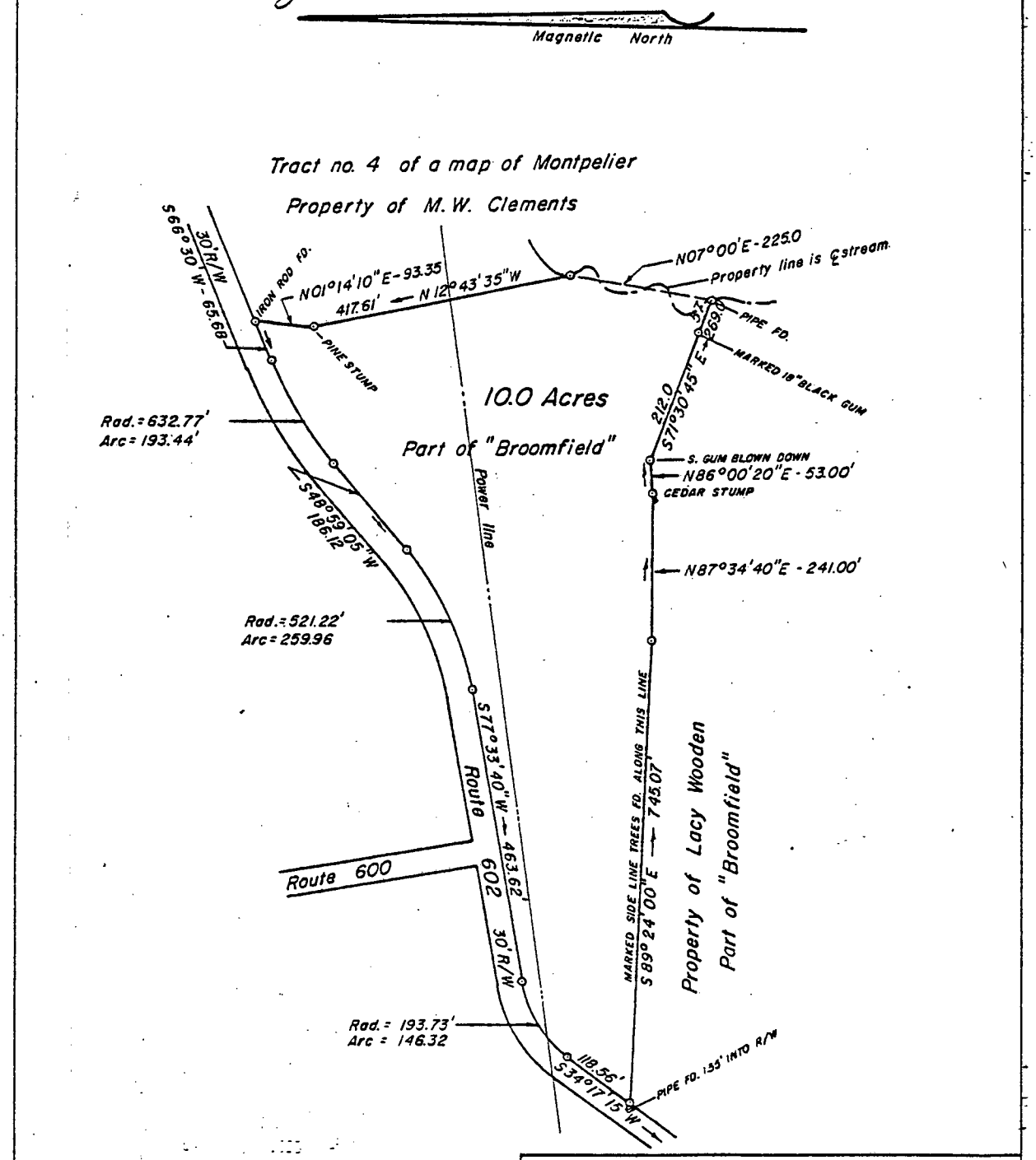
Exhibit 2-C (D.B. 52-450) Same as Complaintant's Exh. 1-G

Exhibit 5 (Map of Montpelier)

PRINTERS NOTE:

The above mentioned exhibits can not be reasonably reproduced. A copy of each exhibit may be found filed with the record in the Clerk's Office, Supreme Court of Virginia.

Union Camp Corp
-5
Virginia E Faison et al
Respondents Exhibit # 4
Admitted in evidence
1/23/79
L. Holt Judge



I certify that this perimeter survey is correct to the best of my knowledge and belief, subject to easements, servitudes and covenants of record.

James K. Alvis, Jr. C.L.S. 1025

Plat of the property of
Virginia E. Faison
10.0 Acres
Guilford District
Surry County
Virginia

James K. Alvis, Jr., Land Surveyor
317 Parkway Dr., Newport News, Virginia
Scale: 1" = 200' February 10, 1976

87

Job no.