

STEWART GEORGE ET ALS C/O GERTRUDE STEWART BOX 132 ELKHORN CITY KY 41522	DATE RECORDED	
	DEED OR WILL BOOK	<i>108-4500</i>
	CONSIDERATION	
	DATE RECORDED	<i>3-26-99</i>
<i>Dickinson County</i> <i>P O Box 1098</i> <i>Clintwood, Va 24228</i>	DEED OR WILL BOOK	<i>344-112</i>
	CONSIDERATION	<i>4 tracts 86,023</i>
	DATE RECORDED	
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	DATE RECORDED	
	DEED OR WILL BOOK	
	CONSIDERATION	
	DATE RECORDED	

CLASS		LEGAL DESCRIPTION		
7-4		RUSSELL FORK		
ZONING		19 AC		
DISTRICT		WILLIS DIST		
		09		
1992				
1993				
1994	35,700		41,300	<i>altered</i>
1995	35,700		41,300	<i>altered</i>
1996	6593		6593	<i>altered</i>
1997	6593		6593	<i>altered</i>
1998	6593		6593	
1999				
2000				
2001				
2002				
2003				

NOTES: VALUE OF MINERALS 5,400

AFTER TITLE SEARCH THERE WAS ONLY 19 AC

SEE ATTACHMENT - FRENCH CARD IS CARD # 9108

[illegible]

VIRGINIA:

IN THE CIRCUIT COURT OF DICKENSON COUNTY

CHARLES G. FRENCH, et als.

Plaintiffs

v.

PHILLIP STEWART, et als.

Defendants

Chancery No. 6101

FINAL DECREE

This cause came on to be heard on March 28, 1994, upon the bill and amended bill and exhibits filed therewith; upon the answer of the defendant, Jesse M. Stewart, to interrogatories, in which the successors and owners of the George Stewart one-half undivided interest in the land in dispute in this case were identified as Jesse M. Stewart and his wife, Christine Stewart, and the successors and owners of the Brack Stewart one-half undivided interest in said land were identified as Lowell Stewart, Danny Stewart, Gay Nell Stewart (now the defendant, Nell Raines), Sharon Stewart Barrett, Speed M. Stewart, Charlotte Stewart Potter, Geraldine Stewart Potter, and Arnold Stewart, who died intestate and without issue; upon personal service upon Nell Raines (formerly Nell Looney), more than twenty-one days having elapsed since service of process and she having failed to appear, plead, answer or demur; upon service by a

deputy for the Sheriff of Pike County, Kentucky by delivery of process in person in said County to Gertrude Stewart, Jessie Stewart, Jessie M. Stewart, Christine Stewart, Lowell Stewart and Danny Stewart, all of whom are residents of the State of Kentucky; upon service by order of publication upon Sharon Stewart Barrett, as well as upon the heirs, devisees, successors and assigns of George Stewart (also known as Stuart), deceased, and Brack Stewart (also known as Stuart), deceased, and persons made defendants by the general description of "Parties Unknown," and they having failed to appear, plead, answer or demur by the 4th day of April, 1988, as stated in the order of publication; upon the answer filed herein by the defendant, Jesse M. Stewart; upon the answer of Jesse Stewart, George C. Looney, Jr., and Jessie C. Looney to plaintiffs' request for admissions; upon the answer of any unknown infant or incompetent heirs of George Stewart or Brack Stewart, by Joye Thomas Baker, their duly appointed guardian ad litem; upon all former proceedings had herein, including the testimony of witnesses for plaintiffs heard orally by the Court on September 25, 1987, a transcript of said testimony, with exhibits, having been duly filed herein, with the agreement of counsel for the defendants that such testimony, except for the testimony of Ray S. Dixon and the exhibits filed with his testimony, shall be considered by the Court as to all defendants; upon the testimony of Boyd Leman Kendrick, a Virginia Certified Land

Surveyor, taken by deposition on October 28, 1993, a transcript of which has been duly filed herein; the testimony of Boyd Leman Kendrick having been taken in the presence of the guardian ad litem; and was argued by counsel.

Upon consideration of which, the Court finds that:

(1) All persons who may have an interest in the 164.56 acre tract which is the subject matter of this suit are properly before the Court by process, answer or otherwise; and the Court has jurisdiction over the subject matter and the parties involved in this cause.

(2) The plaintiffs, Charles G. French, Francis R. French, David F. French, Calvin S. French, and Catherine F. Stookey, derive their title to a 164.56 acre tract of land situated in Willis Magisterial District of Dickenson County, Virginia, the ownership of which is the subject of this litigation, as devisees of Bessie French, who acquired her title to said tract of land from W. R. [Riley] Hall and Louisa Hall, husband and wife, by deed dated January 1, 1940, of record in the Clerk's Office of this Court in Deed Book No. 80, page 27.

(3) Plaintiffs' title is derived through a regular series of conveyances, duly filed as exhibits as part of the evidence herein, from a grant from the Commonwealth of Virginia, dated April 3, 1884, recorded in the Clerk's Office of this Court in Deed Book No. 17, page 379, to the heirs of Amos Willis, namely, Winnie Willis (widow), Andrew Willis,

James C. Willis, Charley Willis, Jonathan S. Willis, Meredith Willis, Sarah E. Wood, and Nancy Ann Davis, for a tract of land described by metes and bounds as containing 343 acres, situated on the south side of Cumberland Mountain, in Dickenson County, Virginia, incorrectly said in the grant to be situated in Wise County.

(4) The eastern boundary of the Amos Willis 343 acre tract is described in the grant as "BEGINNING at a chestnut on Cumberland Mountain, and running thence S 7 E 250 poles to a stake; S 63 E 130 poles to six hickories in a flat . . ."

(5) Amos Willis also acquired a 665 acre tract of land by grant from the Commonwealth of Virginia, dated August 1, 1861, recorded in the Clerk's Office of Wise County, Virginia, in Deed Book No. 4, page 23, in which the western boundary of the 665 acre tract is described as extending from "a chestnut on top of the mountain," thence "S 7 E 259 poles to a stake S 63 E 160 poles to the BEGINNING", and the BEGINNING corner is described as "6 hickories in a flat."

(6) In a deed from Clinchfield Coal Corporation to W. R. (Riley) Hall and Louisa Hall, his wife, dated October 23, 1939, recorded in said Clerk's Office in Deed Book No. 74, page 68, which is one of the deeds in plaintiffs' chain of title, the northeastern corner of the 164.56 acre tract is described as three chestnuts on top of Cumberland Mountain, a corner of Amos Willis 665 acre grant; and the eastern

boundary of the 164.56 acre tract is then described as leaving the top of Cumberland Mountain and the Virginia-Kentucky State Line, and with the Amos Willis 665 acre tract on the left S 5 23 E 3226.5 feet to a stake in line of the Amos Willis 665 acre grant.

(7) Defendants' claim of title to the 164.56 acre tract is derived from a grant of a 100 acre tract of land located on the Virginia-Kentucky State Line, issued by the Commonwealth of Virginia to D. C. Lockhart on May 15, 1917, recorded in said Clerk's Office in Deed Book No. 41, page 452. Defendants also claim ownership of a 19 acre tract of land under a grant to D. C. Lockhart by the Commonwealth of Virginia, dated May 15, 1917, recorded in said Clerk's Office in Deed Book No. 41, page 453, but the 19 acre tract is not involved in the present case.

(8) The western boundary of the 100 acre tract is described in the D. C. Lockhart grant as beginning at a point on top of Cumberland Mountain in the Virginia-Kentucky State Line, a corner to the Willis heirs 343 acre tract; the final two calls in the description of the 100 acre tract show that its beginning corner is the northern terminus of the eastern boundary of the Amos Willis 343 acre grant; the description of the 100 acre tract proceeds from the beginning corner by four calls in a northeastern direction, which follow the State Line, that is, leaving the Willis heirs 343 acre tract, and describing land outside the boundaries of said

tract, to three chestnuts, a corner to A. B. Hudson; thence with the Hudson line S 6 E 3515 feet to a stake; thence leaving the Hudson line S 57 E 1419 feet to a stake, corner to the 343 acre tract (this bearing must be changed to S 57 W in order to run to the Willis 343 acre tract as called in the deed); thence N 7 W 4125 feet to the BEGINNING. Accordingly, the 100 acre grant describes land which adjoins the Amos Willis 343 acre tract on the east, but does not include any part of the 343 acre tract.

(9) An examination of the descriptions of the two Amos Willis grants and the deeds in the chains of title of the parties, together with the testimony of Boyd Leman Kendrick, Virginia Certified Land Surveyor, as to his survey of the 164.56 acre tract, clearly establishes that the Amos Willis 343 acre grant and the Amos Willis 665 acre grant have a common boundary from the chestnut at the top of the mountain to the stake, and thence to the 6 hickories in a flat; that the 343 acre tract lies to the west of the common boundary and the 665 acre tract to the east thereof. ~~What there is no~~ ~~ungranted land between the two Amos Willis grants, that~~ ~~there is no overlap or interlock between them, and that the~~ ~~land described in the D. C. Lockhart 100 acre tract had~~ ~~ready been granted to Amos Willis.~~

(10) Sophrona Lockhart, who acquired the D. C. Lockhart title to his lands, including the 100 acre and 19 acre tracts, by deed from G. Mark French, Special Commissioner

for the D. C. Lockhart heirs, dated April 16, 1936, recorded in said Clerk's Office in Deed Book No. 68, page 201, conveyed her title to the 100 acre and 19 acre tracts to George Stewart and Brack Stewart by deed dated June 23, 1936, recorded in said Clerk's Office in Deed Book No. 68, page 297.

(11) As shown by answers to plaintiff's interrogatories and by the evidence herein, the George Stewart 1/2 interest in the D. C. Lockhart 100 acre and 19 acre tracts is now owned by George Stewart's son, the defendant, Jessie (or Jesse) M. Stewart, and his wife, the defendant Christine Stewart; the said Jessie M. Stewart acquired the George Stewart 1/2 undivided interest as an heir of George Stewart, and together with Christine Stewart, by the purchase of Genoa Stewart Potter's interest in the property by deed dated June 25, 1971, recorded in said Clerk's Office in Deed Book No. 155, page 669. The Brack Stewart undivided 1/2 interest was inherited by eight heirs, the defendants Nell Raines, Lowell Stewart, Danny Stewart, Sharon Stewart Barrett, Speed M. Stewart, Charlotte Stewart Potter and Geraldine Stewart Potter, the eighth heir being Arnold Stewart, who thereafter died intestate and without issue.

(12) It was established by answers to plaintiff's interrogatories that defendants claim title to the 100 acre tract by adverse possession, under the deeds in their chain of title derived from D. C. Lockhart.

(13) Plaintiffs' predecessor in title, Bessie French,

acquired good title to the 164.56 acre tract of land by deed from W. R. and Louisa Hall, dated January 1, 1940, recorded in the Clerk's Office of this Court in Deed Book No. 80, page 27.

(14) Plaintiffs and Bessie French have since January 1, 1940, had exclusive and continuous possession of the 164.56 acre tract of land, and have used and exercised dominion over the same by leasing the land to a tenant who lived on the land for five years and cultivated the land and maintained fences for a period of 11 years, all of which occurred during the time when the period for perfection of title to land in Dickenson County was 10 years; plaintiffs and Bessie French have also paid all taxes assessed on the land since January 1, 1940; plaintiffs by separate leases leased the coal therein and the oil and gas; in 1939 a predecessor conveyed a power line easement in the land to Appalachian Electric Power Company, which in the same year constructed a high voltage transmission line, suspended from towers, across the land, which has been in continuous use since that time; that such possession, use and dominion has been actual, exclusive, continuous, hostile, open, visible and notorious and under a claim of right and color of title, to-wit:, the deeds of W. R. and Louisa Hall to Bessie French, and the will of Bessie French.

(15) The defendants have for many years asserted a claim of title to all or a part of the plaintiffs' 164.56

acre tract, claiming title as successors of D. C. Lockhart; the defendant, Phillip Stewart, has posted "No Trespassing" signs on the 164.56 acre tract, has stated that he plans to move on the land, and that anyone who interferes will have to answer to him; and since the institution of this suit defendants have paid taxes on 119 acres of land in Dickenson County, which include the D. C. Lockhart 100 acre tract.

(16) The plaintiffs are entitled to have said grant removed as a cloud on their title, and title perfected and vested in them by virtue both of the deed from W. R. and Louisa Hall to Bessie French, and of adverse possession for the prescribed period.

It is, accordingly, ADJUDGED, ORDERED and DECREED:

(1) That the plaintiffs, Charles G. French, Francis R. French, David F. French, Calvin S. French, and Catherine F. Stookey, have clearly established that they have title in fee simple to the 164.56 acre tract of land conveyed by W. R. and Louisa Hall to Bessie French by deed dated January 1, 1940, and recorded in the Clerk's Office of this Court in Deed Book No. 80, page 27; that plaintiffs' title is derived by a regular chain of conveyances from a grant for a 343 acre tract of land, issued by the Commonwealth of Virginia to the heirs of Amos Willis, dated April 3, 1884, recorded in said Clerk's Office in Deed Book No. 17, page 379; the plaintiffs have also clearly established the possession of the 164.56 acre tract by their predecessor, Bessie French,

beginning shortly after January 1, 1940, the date of the deed by which she acquired her title; that she had actual, exclusive, hostile, open and notorious possession of said tract of land under her deed, against all other persons, for a period of more than 10 years, at that time the period for perfection of title to lands in Dickenson County by adverse possession; and that she thereby acquired a good title, both by her deed from W. R. and Louisa Hall and by adverse possession; that plaintiffs acquired title in 1972 as devisees of Bessie French; that none of defendants has ever been in actual possession of any part of said land; and that accordingly plaintiffs are the owners of the 164.56 acre tract of land in fee simple and are entitled to the quiet and peaceful possession thereof.

(2) That the defendants Phillip Stewart, Jesse (or Jessie) M. Stewart, Christine Stewart, Jessie Stewart, Gertrude Stewart, Lowell Stewart, Danny Stewart, Sharon Stewart Barrett, Nell Raines, Speed M. Stewart, Charlotte Stewart Potter, Geraldine Stewart Potter, and all persons who claim any interest in the 164.56 acre tract of land as successors of D. C. Lockhart or as heirs, devisees or successors of George Stewart (also known as Stuart) or Brack Stewart (also known as Stuart), or either of them, the unknown heirs and successors of the said George Stewart and the said Brack Stewart; and all other persons who may claim any estate or interest in said land, all of whom were made defendants

herein as parties unknown, have no estate, right, title, lien or interest in or to said land or any part thereof.

(3) That the defendants Phillip Stewart, Jesse (or Jessie) M. Stewart, Christine Stewart, Jessie Stewart, Gertrude Stewart, Lowell Stewart, Danny Stewart, Sharon Stewart Barrett, Nell Raines, Speed M. Stewart, Charlotte Stewart Potter, Geraldine Stewart Potter, and all persons who claim any interest in the 164.56 acre tract of land as successors of D. C. Lockhart or as heirs, devisees or successors of George Stewart (also known as Stuart) or Brack Stewart (also known as Stuart), or either of them, the unknown heirs and successors of the said George Stewart and the said Brack Stewart; and all other persons who may claim any estate or interest in said land, all of whom were made defendants herein as parties unknown, be, and they are hereby, permanently restrained and enjoined from asserting any claim to the 164.56 acre tract.

(4) That the grant of a 100 acre tract of land by the Commonwealth of Virginia to D. C. Lockhart, dated May 15, 1917, recorded in the Clerk's Office of this Court in Deed Book No. 41, page 452; the deed from Sophrona Lockhart to George Stewart and Brack Stewart, dated June 23, 1936, recorded in the Clerk's Office of this Court in Deed Book No. 68, page 297, insofar as said deed purports to convey any interest in the D. C. Lockhart 100 acre tract described therein; and the deed from Genoa Potter and Charles Potter,

her husband, to Jesse M. Stewart and Christine Stewart, his wife, dated June 25, 1971, recorded in said Clerk's Office in Deed Book No. 155, page 698, insofar as said deed purports to convey any interest in the D. C. Lockhart 100 acre tract described therein, be, and they hereby are, cancelled and declared of no effect as to the title of Charles G. French, Francis R. French, David F. French, Calvin S. French and Catherine F. Stookey to the 164.56 acre tract of land conveyed to Bessie R. French by W. R. (Riley) and Louisa Hall, husband and wife, by deed dated January 1, 1940, recorded in said Clerk's Office in Deed Book No. 80, page 27.

(5) That a copy of this decree be recorded in the current deed book in the Clerk's Office of this Court, indexed in the names of the defendants as grantors of the D. C. Lockhart 100 acre grant; of FIRST TRACT in the deed from Sophrona Lockhart to George Stuart and Brack Stuart, dated June 23, 1936, recorded in said Clerk's Office in Deed Book No. 68, page 297; of TRACT #1 in the deed from Genoa Potter and Charles Potter, her husband, to Jesse M. Stewart and Christine Stewart, his wife, dated June 25, 1971, recorded in said Clerk's Office in Deed Book No. 155, page 698; and this decree shall also be indexed in the names of plaintiffs as grantees.

(6) It is further ORDERED that Joye Thomas Baker, one of the guardians ad litem, be allowed a fee of \$425, and that Melanie Blanton, the other guardian ad litem, be allow-