

NORTH CAROLINA

SWAIN COUNTY

The foregoing certificate of John H. Phillips a Notary Public of Graham County, is adjudged to be correct, in due form and according to law.

Let the instrument and the certificate be registered.

This the 10 day of July, 1930.

V. A. Browning
Clerk Superior Court

Filed for Registration at 10:00 o'clock A.M., July 10th, 1930, and registered in the Office of the Register of Deeds for Swain County, North Carolina, in Book 59, page 264, July 10th, 1930.

Ellie Burnette
Register of Deeds

NORTH CAROLINA

IN THE SUPERIOR COURT

BUNCOMBE COUNTY.

BEFORE THE CLERK

STATE OF NORTH CAROLINA

Petitioner:

- VS -

FINAL JUDGMENT.

MONTVALE LUMBER COMPANY,
CHARLES E. COCKEY, TRUSTEE
FONTANA MINING CORPORATION
GEORGE H. WRIGHT, TRUSTEE
CENTRAL BANK AND TRUST COMPANY
TRUSTEE, FEDERAL MORTGAGE COMPANY and
MRS. MYRTLE MITCHEL,

Respondents

This cause coming on to be heard before the undersigned Clerk of the Superior Court of Buncombe County, North Carolina, on this Monday, the 1st day of July, 1929, and being heard and the court having found, and hereby finding, the facts as follows, to-wit:

1. That this action and proceeding are duly constituted in this court, that is to say, that summons in this proceeding was duly issued on the 13th day of November 1928, and that the duly verified petition of the State of North Carolina was on said day duly filed in this court, and that the said summons and the said duly verified petition herein have been duly served upon the residents herein, and every of them, in all respects as required by law, and that the notice required by chapter 48, Section 19 of the public Laws of North Carolina, Session of 1927, has been duly published in all respects as therein required by whereby all persons whom it may concern and all persons having or claiming any estate or interest in the lands sought to be condemned in this proceeding have been duly notified and required to appear in this proceeding at the time and place herein mentioned and to make such answer, defence or plea as they may be advised; that thereafter, upon the motion and petition of the Federal Mortgage Company, an order was duly made herein, of date November 22, 1928 by which said Federal Mortgage Company was made a respondent in this cause, and thereafter upon the motion and petition of Mrs. Myrtle Mitchell, Successor in title to John H. Mitchell, deceased, and order was duly made in this cause, of date May 6, 1929, making the said Mrs. Myrtle Mitchell, successor in title to John H. Mitchell, deceased, as aforesaid, a party respondent herein; and it further appearing to the Court that the respondents, Montvale Lumber Company and Charles E. Cockey, Trustee, have heretofore duly entered their appearance in this cause

in writing and have asked that " the value of the lands described in the petition be appraised in accordance with the paryer of the petition", and that the respondents, Federal Mortgage Company, Central Bank & Trust Company, Trustee, Fontana Mining Corporation, George H. Wright Trustee, and Mrs. Myrtle Mitchell, Successor in title to John H. Mitchell, Deceased, have heretofore duly appeared and answered herein; and it further appearing that the last named respondent, Mrs. Myrtle Mitchell, having made a party Respondent herein after the judgment and order appointing commissioners in this cause has been duly made and entered, the said respondents made written stipulations in this cause, in substance to the efect that the appraisers appointed in said order were in all respects satisfactory to the respondents, and that she expressly waived her right to challenge any of said appraisers and consented to their appointment, all of which will more fully and particularly appear by the records and files in this cause; and it further appearing, and the Court hereby finding as a fact, that no other person, firm or corporation has appeared herein, or in any manner asserted any interest in the subject matter of this action and proceeding, which likewise will more fully appear by the records.

2. That the right of eminent Domain appertains to and resides in the petitioner as a sovereign State, and that the petitioner has those other and further rights and powers to condemn and appropriate the lands described in the petition for the purposes in said petition mentioned and enumerated under and by virtue of Chapter 48 of the Public Laws of North Carolina, Session of 1927.

3. That the lands described in the petition lie wholly within the boundaries of the proposed Great Smoky Mountains National Park as defined and Delimited in the Act of the General Assembly of North Carolina, entitled "An Act to Provide for the Acquisition of Parks and recreational Facilities in the Great Smoky Mountains of North Carolina," Ratofied on the 25th day of February, 1927, the same being Chapter 48 of the Public Laws of North Carolina, Session of 1927, and particularly in Section 4 of said Act, and that all of said lands are embraced within the area of 214,00 acres of land situate in the State of North Carolina designated by the Secretary of the Interior of the United States, under authority of the Act of Congress, mentioned in the Statute aforesaid, namely, Chapter 48, Public laws of North Carolna, Session of 1927, as properly constituting a portion of the said Great Smoky Mountains National Park, all of which will more parti cularly appear by reference to said Act of Congress and to said Chapter 48, Public laws of North Carolina, Session of 1927, aforementioned.

4. That it is both lawful and Necessary for the petitioner to condemn the lands described in the petition for the purposes therein expressed and declared and that the petitioner is entitled to the releif demanded in the petition.

5. That the respondent, Montvale Lumber Company, and/or the respondent Charles E. Cockey, Trustee, and /or the respondent, Fontana Mining Corporation, and /or the respondent George H. Wright, Trustee, and or/ the respondent, Central Bank and Trust Company, Trustee, and/or the Respondent, Federal Mortgage Company, and/or the respondent Mrs Myrtle Mitchell, successor in title to John H. Mitchell, deceased, are solely seized and possessed and the owners in fee simple of all the lands decribed in the petition and of all and every right title, property, interest and estate vested, contingent or in any manner expectant, whatsoever, legal and/or equitable, of, in and to all the lands described in the petition; and it further appearing to the Court and the Court having found as a fact, that no person, firm or corporation other than the respondents above

named has or claims any right, title, property, interest or estate whatsoever, in the lands and premises described in the petition and condemned herein.

6. That heretofore, to-wit, on the 22nd day of April, 1929, the undersigned Clerk of the Superior Court of Buncombe County, North Carolina, duly made and entered in interlocutory Judgment and order in this cause wherein and whereby it was duly considered, ordered and adjudged, inter alia, that Claude S. Kinsland, R. J. Noyes, ~~Holmes~~ Bryson be and they were, duly appointed Commissioners of the Court and required fairly and impartially to appraise the lands mentioned in the petition and to ascertain and determine the compensation which ought to justly be made by the petitioner to the parties owning or interested in the real estate so appraised by them, and to make report thereof to the Court, according to law, and said commissioners were duly required, before entering upon their ~~dates~~ to take and subscribe an oath in form of law that they would fairly and impartially assess and award the compensation aforesaid as required by law, all of which will more fully appear by reference to said order and all and singular the provisions and requirements thereof, as the same may appear upon the records and files of this cause, and said Commissioners proceeded, conformably to the provisions and requirements of said order, to duly appraise the same as required by said order, and thereafter, to-wit, on the 6th day of June, 1929, the said Commissioners made written report of their said proceedings and returned the same into Court, together with the testimony produced before and taken by them and reduced to writing, together with the exhibits and documents introduced in evidence on said hearing and said report, evidence and accompanying exhibits and documents were duly filed in this court on the 7th day of June 1929, all of which will more particularly appear by the record of the proceedings in this cause, which are hereby particularly referred to.

7. That the Commissioners and appraisers by their report in the last proceeding hereof mentioned, appraised, ascertained and determined the compensation of which ought justly to be made by the petitioner to the party or parties owning or interested in the lands or real estate described in the petition, and appraised by them at the sum of Sixty-Four Thousand, Thirty-Three and 70/100 Dollars (\$64,033.70).

8. That, as before stated, the aforementioned report of said commissioners and appraisers has been on file in this Court since the 7th day of June, 1929, and no objection or exception, whatsoever, has been made to said report by any of the parties to this cause, or by any other person or persons, whomsoever;

NOW THEREFORE IN THE PREMISES AFORESAID AND UPON MOTION OF COUNSEL FOR THE PETITIONER, IT IS CONSIDERED, ORDERED AND ADJUDGED BY THE COURT, as follows:

I. That the interlocutory Judgment and order appointing commissioners in this cause, of date the 22nd day of April, 1929, hereinbefore referred to be, and the same hereby is, in all respects, approved, ratified and confirmed.

2. That the aforementioned report of said commissioners and appraisers as the same appears in the records and files of this cause, be, and the same hereby is, in all respects, approved, ratified and confirmed.

3. That the Petitioner forthwith pay into the registry of this Court the sum of Sixty Four Thousand, Thirty-three and 70/100 Dollars (\$64,033.70), in full of the compensation which ought justly to be made by the petitioner to the party or parties owning or interested in the lands described in the petition and so appraised by said commissioners, conformably to the report of said commissioners; the said sum of money to be paid out and disbursed, under the orders of this Court, to the party or

parties, person or persons, entitled thereto, as their interest or interests severally may be made to appear.

4. That, upon the payment into Court by the petitioner of the sum of Sixty Four Thousand, Thirty Three and 70/100 Dollars (\$64,033.70), as hereinbefore required, the title to all and singular the lands premises and realestate described in the petition and hereinafter more particularly described, shall so instati pass to and vest in the petitioner, the State of North Carolina, in fee simple, for the uses and purposes expressed and declared in said petition and in Chapter 48th Public Laws of North Carolina, Session of 1927, of free and discharged of and from all adverse claims, liens and encumbrances whatsoever. and the respondents and all other persons, whomsoever, as well such persons not parties to this action, if any, as the parties hereto, are forever barred from claiming or asserting any manner of estate or interest in said lands, either legal or equitable, whatsoever, the person or persons not parties hereto, having or claiming such estate or interest, if any being hereby remitted to the right of recourse upon the money so paid into Court by the petitioner, as provided by law.

5. The lands described in the petition and containing 12,081.83 acres, the title to which, through and by virtue of the proceedings had in this cause, become vested in the petitioner, the State of North Carolina, are more fully described as follows:

Lying on the waters of Eagle Creek. Beginning on top of the Smoky Mountain and on the North Carolina-Tennessee State line, at the point where the ridge dividing the waters of Eagle Creek and Twenty Mile Creek Joins the main Mountain Top. Thence with the North Carolina-Tennessee Stateline, along the top of the Smoky Mountain, in a General N. E. direction to the point where the ridge dividing the waters of Eagle Creek and Hazel Creek joins the main Mountain Top. Thence down the ridge dividing the waters of Eagle Creek and Hazel Creek, in a Southerly direction, about Four and one fourth miles to a point on said ridge, which is N. 46-16 E. from the top of little Shuck Stack Mountain, this point being S. 21-02 E. .22 chains from a post scribed A-W; thence S. 66-16 W. 430.90 chains to the top of little shuck Stack Mountain; thence with the top of the ridge dividing the waters of Eagle Creek and Leqellyn Branch in a generally N.W. direction, about one-half mile to the top of Big Shuck stack Mountain. Thence with the Top of the ridge dividing the waters of Eagle Creek and Twenty Mile Creek, in a Northerly direction to the place of beginning.

Excepting however from the above described boundary such parts of the following tracts as may lie within the said boundary.

FIRST: Grants 2326, 2327, 2329, all granted to E. H. Cunningham, dated April 28, 1860, and recorded in Deed Book C, page 29, et seq., of the records of Swain County.

SECOND: The tract conveyed by Elizabeth Winchester to Samuel W. Richey by deed dated October 31, 1925, and recorded in Deed Book 52, page 338 of the records of Swain County.

THIRD: The following described Tract: BEGINNING at a beech in the State line near New Road thence West 8 poles to a stake; thence South 90 poles to a post; thence East 178 poles to a post; thence North 90 poles to a post in the State line; thence 170 poles to the beginning., being state Grant No. 441.

FOURTH: BEGINNING at a beech at the old Scence Cabin, State line; thence West 178 poles to a post in the State line; thence South 90 poles to a post; thence East 178 poles to a post; thence North 90 poles to the beginning, being State Grant No. 462.

FIFTH: State Grant No. 13,752, to W. L. Myers, dated December 31, 1898 and recorded in Deed Book 21, page 48, of the Records of Swain County.

1. Part of 181
2. 183
3. 191
4. 191a
5. 185

The above lands of the Montvale Lumber Company, containing approximately 12,000 acres and being shown outlined in red on the map entitled "Montvale Lumber Company Tract (178) Swain County, N. C.," attached to the petition in this cause and hereby expressly referred for further description of said lands.

And also all the right, title, interest and estate of any, of the montvale Lumber Company in the lands mentioned and described in the several exceptions above set out.

IT IS FURTHER CONSIDERED, ORDERED AND ADJUDGED BY THE COURT, that all the costs of this proceeding, properly incurred by both the petitioner and respondents, up to and including the cost of this judgment, to be taxed by the Clerk, shall be paid by the petitioner. This shall be deemed the final Judgment in this cause in respect of the rights, interest and obligations of the petitioner, the State of North Carolina, and in respect of the title acquired by said petitioner in and to the lands and premises above described, but this cause is retained for the purpose of adjudication of any and all claims that may be asserted in, to or against the money to be paid in to the Court by the petitioner, pursuant to the provisions of this judgment, and for no other purpose whatsoever.

This the 1st day of July, 1929.

Signed J. B. Cain
Clerk of the Superior
Court, Buncombe County,
North Carolina.

STATE OF NORTH CAROLINA

COUNTY OF BUNCOMBE

In The Superior Court

I, J. B. Cain, Clerk Superior Court of Buncombe County, North Carolina, do hereby certify that the foregoing is a true and perfect copy of the Decree in the case of State of North Carolina, Petitioner -vs- Montvale Lumber Company, Charles E. Cockey, Trustee, Fontana Mining Corporation, George H. Wright, Trustee, and central Bank and Trust Company, Trustee, Respondents, as the same appears on file, and as Recorded in Minute Docket Special Proceeding No. 35, at page 89, in my said Office.

Witness my hand and Official Seal, this the 31st day of October, 1929.

J. B. Cain *
Clerk Superior Court, Buncombe
County, North Carolina

Filed for Registration at 3:30 p'clock P.M., July 15, 1930, and registered in the Office of the Register of Deeds for Swain County, North Carolina, in Book 59, page 265, July 17, 1930.

Ellis Russell
Register of Deeds