

DESCRIPTION OF THE BOUNDARY

OF THE

J. D. S. McMAHAN TRACT

(75)

Lying on the East bank of Ocona Lufty River, at the mouth of Ravens Fork.

Beginning at Corner 1, which is Corner 12 of the Parsons Pulp and Lumber Co. Tract;(68), a fallen ash and sycamore with witnesses, on the East bank of Raven's Fork of Ocona Lufty River.

Thence, down the river with its meanders.

S. 69-57 W.

9.13 A point at junction of Raven's Fork with main river.

S. 31-23 W.

7.09 A Point.

S. 8-47 W.

8.89 Corner 2, which is Corner 1 of the S. A. Smith Heirs Tract (76), a small marked sycamore, on the East bank of Ocona Lufty River.

Thence, with nine lines of the S. A. Smith Heirs Tract (76).

S. 84-59 E..

17.74 Corner 3, a point.

N. 8-51 E.

3.07 Corner 4, a planted stone.

S. 74-04 E.

6.73 Corner 5, a large chestnut with marks.

N. 82-17 E.

7.07 Corner 6, an 8" chestnut with chestnut oak witnesses.

N. 53-15 E.

4.02 Corner 7, a post with chestnut witnesses, scribed S. on South and M on North.

S. 64-28 E.

- 9.20 Corner 8, a post scribed M. and S. at intersection with marked line.

N. 70-29 E.

- 1.78 Corner 9, a chestnut on bank of stream, blazed and scribed M.S., beside a chestnut stump.

S. 65-30 E.

- 11.14 Corner 10, a locust post scribed M. S.

A 6" sourwood bears S. 45-00 W. .08 chain distant, scribed B.T.-S.

S. 1-06 W.

- 3.69 Corner 11, a post in the Indian Boundary Line, scribed I. B. M. and S.

A 16" chestnut bears S. 35-00 W. .04 chain distant.

Thence, with the Indian Boundary Line, along the meanders of a ridge.

N. 62-12 E.

- 1.18 A Point.

S. 53-05 E.

- 2.93 A Point.

N. 84-07 E.

- 1.49 A Point.

S. 66-15 E.

- 2.58 Corner 12, an iron post marked I.B.

Thence, N. 3-53 E.

With the Indian Boundary Line.

- 20.15 Corner 13, which is corner 17 of the Parson's Pulp and Lumber Co. Tract (68), a point in the Indian Boundary Line.

Set a post scribed P-S.

Thence, with five lines of the Parsons Pulp and Lumber Co. Tract (68).

S. 43-35 W.

- 2.80 Corner 14, a point on ridge.

S. 74-53 W.

12.27 Corner 15, a point on ridge.

N. 70-10 W.

6.92 Corner 16, a red oak stump.

N. 48-25 W.

1.68 Corner 17, a point with a chestnut witness.

Set a post scribed P.

N. 69-37 W.

12.61 Corner 18, which is Corner 2 of the Ravensford School Tract (74), a point on the southeast side of a small stream.

Thence, with two lines of the Ravensford School Tract (74).

S. 35-30 W.

1.86 Corner 19, a point on southeast side of the stream.

N. 70-40 W.

6.06 Corner 20, which is Corner 4 of the Ravensford Church Tract (73), a stake.

Thence, with two lines of the Ravensford Church Tract (73).

N. 71-34 W.

2.91 Corner 21, a stake.

N. 37-00 E.

With the East boundary of the railway right-of-way.

2.10 Corner 22, a point in a line of the Parsons Pulp and Lumber Co. Tract (68).

Thence, N. 69-37 W.

With the Parsons Pulp and Lumber Co. line.

8.73 The place of beginning, containing 75.32 acres.

Analysis of Title

Tract No. 75.

1. Tract No. 75 is entirely covered by Grant No. 224 to William Cathcart (page 169 of Abstract), and is largely covered by Grant No. 501 to Felix Walker (page 588 of Abstract); the western portion of Tract No. 75 is also covered by Grant No. 331 to Joseph Dobson and William Hill, dated Dec. 2, 1797 (page 822 of Abstract); the eastern portion of Tract No. 75 is covered by Grant No. 319 to Joseph Dobson, dated Dec. 22, 1797. Page 823 of Abstract.

2. We have been unable to connect the title of J.D.S. McMahan with any of said grants.

3. The first deed shown in this Abstract is a deed from Allen Fisher as Clerk and Master in Equity to Wesley M. Enloe dated June 22, 1868. The deed recites that it was made pursuant to a Decree of the Court of Equity held for the County of Jackson at the spring term of 1857 and after a public sale thereof as provided in said Decree. We were unable to locate the proceedings authorizing the execution of this deed and are, therefore dependent upon such recitals as are contained in the deed itself. However, we are of opinion that these proceedings are filed away in the Court House at Sylva, but our search failed to locate them. This deed conveys 450 acres and includes all of Tract Nos. 75 and 76, as well as other lands. This deed, even though the proceedings authorizing it are never located, constitutes color of title.

4. On March 1, 1902, W. M. Enlee, single, conveyed to A. L. Mullendore a tract of land containing 100 acres more or less, which tract embraces the whole of tracts Nos. 75 and 76. This deed is properly executed and is registered in Swain County. The Grantor attempts to convey a life estate to A. L. Mullendore with remainder to his heirs at law. After examination of the language of the deed, we are of opinion that the Rule in Shelby's Case applies and that the first taker, to-wit: A. L. Mullendore, obtains a fee simple estate.

5. On March 1904, A. L. Mullendore and wife, L. B. Mullendore, and others, children of the said A. L. and L. B. Mullendore convey to J.D.S. McMahan a tract of land containing 100 acres which includes the whole of Tracts Nos. 75 and 76. The presence of the children in this deed is accounted for on the assumption that the deed of W. M. Enloe to A. L. Mullendore conveyed to the latter a life estate only with remainder to his children; but as above stated, we are satisfied that A. L. Mullendore acquired a fee simple interest in said lands. There are some irregularities in the execution of this deed, namely:

- (a) The deed is not signed by Carrie Mullendore by the Guardian, although A. L. Mullendore signs in his Official capacity as Guardian.
- (b) The deed is not acknowledged by A. L. Mullendore in his Official capacity as Guardian.

However, these defects can be overlooked for the reason that the signatures of the children are unnecessary to convey the title.

6. On May 12, 1913, J.D.S. McMahan and wife conveyed to S.A. Smith a tract of land containing 40 acres, same being Tract No. 76 hereinafter discussed. The portion of the lands conveyed to J.D.S. McMahan by A. L. Mullendore and wife and others not conveyed to S. A. Smith constitutes Tract No. 75.

7. After making the aforesaid deed to S.A. Smith for Tract No. 76, J.D.S. McMahan conveyed to J. D. Smith on January 2, 1928, a tract of land containing 100 acres, being all of the lands which were conveyed to him by A. L. Mullendore and others aforesaid. By the terms of this deed the lands thereby conveyed are burdened with the support and maintenance of the said J.D.S. McMahan for the term of his natural life. So at the present time J.D.S. McMahan has no interest whatever in Tract No. 75 except the right of support therefrom and a life estate therein.

8. By reference to the map, there is a small triangular shaped parcel in the Northeast corner of Tract 75, which does not seem to be included within the calls as set out in the deeds of A. L. Mullendore and others to J.D.S. McMahan and from J.D.S. McMahan to J.D. Smith and wife. The fifth and sixth calls in the deed are "then N. 70 degrees east 24 poles to a rock on said ridge; then East to the South line of this 100 acre tract"; while the calls of the survey as indicated on the map are, "N. 74 degrees and 53' East 12.27 chains to a stake on a ridge; then N. 43 degrees and 35' East 2.80 chains to a stake in the Indian Boundary line". The line as surveyed is the line claimed by the parties, while the calls will probably locate it as designated by the black line on the map. This parcel may therefore belong to the Parsons Pulp & Lumber Company, and should be included in any conveyance from the latter.

9. This tract is also subject to the right of way in favor of the Appalachian Railway Company dated July 25, 1917. See deed on page 827.

10. On July 25, 1917, J.D.S. McMahan and wife conveyed to the Appalachian Railway Company a strip of land thirty feet in width extending over and through his lands. The lands conveyed are described by metes and bounds and contain 1.11 acres. The deed purports to convey the fee and not an easement for right of way; so that the acreage contained in this deed should be deducted proportionately from the acreage shown by the survey of Tracts Nos. 75 and 76.

ATTORNEY'S CERTIFICATE AND OPINION

Tract No. 75. (J.D.S. McMahan)

IT IS HEREBY CERTIFIED: That the title to the within described land as disclosed in the attached abstract which contains a full, complete and correct abstract of all instruments and court proceedings of record affecting the same from and including the beginning entry there of has been carefully examined and noted, and that the following named owner...s:

J. D. Smith and wife

are seized in fee simple of a good and valid title to the same, subject only to any lien, charge or encumbrance shown in this abstract and listed hereon.

ENCUMBRANCES

1. At the time the survey of these lands was made the title thereto was vested in J.D.S. McMahan. However, only recently he conveyed same to J. D. Smith and wife as will appear by reference to this Abstract. Not being able to show a connected title from the State of North Carolina to the present owner, we are therefore, dependent for title upon possession under color. The present owner can show a connected title since June 22, 1868 under deeds which are sufficiently definite to constitute color of title. The present owner, J. D. Smith and those under whom he claims have been in the actual occupancy and possession of the said premises for a period of forty years or more. See affidavits of possession on page hereof.

2. Reference is hereby more particularly made to Paragraph 8 of the Analysis of Title of this tract for discrepancy in the calls of the deed and the lines of the survey as indicated on the map. The triangular parcel located in the northeast corner of Tract No. 75 probably belongs to the Parsons Pulp & Lumber Company and should be included in any deed or other conveyance from it.

3. We are advised that J.D.S. McMahan is now dead, so that the life estate reserved in the deed of January 2, 1928 is ended and the title of J. D. Smith is, therefore, absolute in him.

4. This tract is also subject to the right of way granted by the deed of July 25, 1917.

5. This tract is also subject to a right of way for a water line running from the branch above the house of J.D.S. McMahan to Tract No. 110. See page of Abstract of Tract No. 110.

6. Taxes for the year 1928 amounting to \$ are unpaid and outstanding.

Allen Fisher
died 7 months

J. $\frac{4}{473}$

6-22-68
450 A.

W. M. Enloe

$\frac{23}{164}$

3-1-02
100 A
75-76

A. L. Mullendore

- L. B. Mullendore
- M. B. " " " " " " " "
- B. M. Nichols
- A. W. " "
- John W. Mullendore
- A. A. Keaton
- Forest Keaton
- Jennie Mullendore

A. L. Mullendore

$\frac{26}{516}$

3-1904
100 A
75+76

J. D. D. McMahon (75)

J. D. D. McMahon
Wife ad.

$\frac{46}{590}$

5-12-13
40 A.
(76)

(76) S. A. Durrant

J. D. D. McMahon
Wife ad.

$\frac{47}{194}$

3-12-19
7750 sq. ft.
(73)

N. A. Hall
Wife ad.

$\frac{45}{555}$

3-1-24
(110)

W. J. Hepps
R. L. Rudgin.

J. D. D. McMahon
Wife ad.

$\frac{44}{399}$

7-25-17
Right away
75-76

Appalachian R. R. Co.

W. M. Enloe Cross Conw
A. L. Mullendore " "
R. B. " " "
L. B. " " "
A. A. Keaton
Forest Keaton
J. D. D. McMahon

Acres conveyed
Deed of Trust &
Judy Ann
then little

(75)