

Analysis of Title

Tract No. 91

Fred Floyd--647.14 Acres.

This tract is covered in part by each of the following Grants, towit:

Grant 501	to Felix Walker
" 203	to Rufus G. Floyd
" 224	to William Cathcart
" 823	to John Mingus
" 824	to John Mingus
The Land Tract	(no grant found)
Grant 122	to W. P. Hyde
" 1012	to W. P. Hyde
" 8486	to W. H. Queen

G R A N T N O. 5 0 1.

1. Grant No. 501 was issued to Felix Walker, May 9, 1795 for 2550 acres. This grant was issued while the lands covered by this grant were a part of Buncombe County. It covers the eastern portion of Tract No. 91. This grant will be found set out on page 588 of the Abstract of Title to Tract No. 57.

2. We have not been able to find any conveyance from Felix Walker covering the portion of Tract No. 91 embraced within this grant. However, it is one of the oldest settled areas in Swain County and has been in possession of the Floyds and those under whom they claim for almost a century. This land was claimed by John Mingus at the time of his death and was conveyed by his heirs by deeds which will subsequently be set out.

G R A N T S N O S. 8 2 3 and 8 2 4.

3. Grant No. 823 was issued to John Mingus on November 28, 1862 containing sixty-five acres. The northern portion of the eastern end of this grant is covered by Tract No. 91. It includes all of the portion of Grant 823 lying north of Mingus Creek. This grant is recorded in Swain County, page 170 of Abstract of Title to Tract No. 88.

4. Grant No. 824 was issued to John Mingus on November 28, 1862, containing one hundred acres. It lies North of Mingus Creek and adjoins No. 823 on the North and is entirely included within Tract No. 91. It is recorded in Jackson County. See page 237 of this Abstract.

THE LAND TRACT

5. We have not been able to find a grant covering this tract; but the first conveyance is a deed from Abraham Enloe to John Mingus, dated April 9, 1847, describing a fifty acre tract on Ocona Luffy River, known by the name of the land place. This tract lies on both sides of Mingus Mill Creek and the portion lying on the north side of said creek is included in Tract No. 91.

6. John Mingus died seized and possessed of the lands covered by Grants 823 and 824 and apparently the tract known as the Land Tract, and left two children, Sarah Angeline Floyd and A. Mingus as his heirs at law.

7. We then have a conveyance from Abram Mingus to Sarah Angeline Floyd conveying a tract of land which includes the eastern end of Tract No. 91 covered by Grant No. 501 and the portion of said tract included within Grant 823, the Land Tract and all of Grant 824 and a portion of Tract 91 lying east of the west bank of Ocona Luffy River. This deed was for the purpose of affecting a division between Sarah Angeline Floyd and Abraham Mingus of the lands which descended to them from their father, John Mingus, and the deed is recorded in Swain County and is set out on page 258 of the Abstract of Title to Tract No. 90.

GRANT NO. 203.

8. Grant No. 203 was issued to Rufus G. Floyd on October 5, 1855, for a tract of one hundred acres lying on the waters of Ocona Luffy River. The southern end of this tract is included within Tract No. 91. Rufus G. Floyd was the husband of Sarah Angeline Floyd referred to in the above deed. This grant is recorded in Jackson County. See page 238 of this Abstract.

9. Sarah Angeline Floyd and husband, Rufus G. Floyd, died leaving the following children and heirs at law, to wit:

Lillie M. Rhymer
H. T. Floyd
Addie M. Miller
A. H. Floyd
A. S. Floyd
W. W. Floyd
Ellen Scott
J. L. Floyd

to whom their title to the lands vested in them by the foregoing conveyances descended.

10. We then have the following conveyances from the heirs at law of Sarah Angeline Floyd and Rufus G. Floyd, to wit:

- (a) Lillie M. Rhymmer and husband, William Rhymmer to M. C. Floyd, deed dated June 12, 1903 and recorded in Swain County and set out on page 260 Abstract of Tract No. 90.
- (b) H. T. Floyd and wife, Jane, to M. C. Floyd, deed dated June 12, 1903 and recorded in Swain County and set out on page 262 of the Abstract of Tract 90.
- (c) Addie M. Miller and husband, J. F. Miller, to M. C. Floyd, deed dated June 12, 1903, registered in Swain County and set out on page 264 of Abstract of Tract No. 90.
- (d) A. H. Floyd and wife, Pearle Floyd, to M. C. Floyd, deed dated September 10, 1903 and recorded in Swain County and set out on page 266 of the Abstract of Tract No. 90.
- (e) A. S. Floyd to M. C. Floyd, deed dated June 12, 1903, registered in Swain County and set out on page 268 of the Abstract of Tract No. 90.
- (f) W. W. Floyd and wife, Katie, to M. C. Floyd, deed dated June 12, 1903, registered in Swain County and set out on page 270 of the Abstract of Tract 90.

11. Felix E. Alley, Administrator of the Estate of S. A. Floyd to J. L. Floyd, deed dated December 19, 1904. This deed states that it is a conveyance of the entire interest legal or equitable, of Ellen Scott, wife of Charles Scott, in certain lands lying on Ocona Luffy River known as the John Mingus Home lands. The lands are described by metes and bounds and cover the portion of Tract No. 91 included in the deed hereinbefore set out from A. Mingus to Sarah Angeline Floyd. The proceeding by said Felix Alley, Administrator of S. A. Floyd, under which the above sale was made and said deed are set out on page 278 to 285 of the Abstract of title to Tract No. 90.

All of the above deeds contain the same description by metes and bounds, the lands being referred to as the John Mingus home lands. However, it will be noticed that the southern portion of Grant 203 which was granted to Rufus G. Floyd, the husband of Sarah Angeline Floyd, is included within the particular description given in these conveyances. While it is evidently not a part of the John Mingus home lands, we think there can be no doubt that the title passed by the above deeds from the heirs of Sarah Angeline Floyd who were also the heirs at law of Rufus G. Floyd, her husband.

12. From the foregoing conveyances this portion of Tract No. 91 became vested in M. C. Floyd and her husband, J. L. Floyd, the latter also being an heir at law of Sarah Angeline Floyd and Rufus G. Floyd.

Other portions of Tract No. 91 also became vested in J. L. Floyd and M. C. Floyd and the title under the foregoing conveyances will be continued hereafter in this analysis.

GRANTS NOS. 122 and 1012.

13. Grant No. 122 was issued to W. P. Hyde on October 18, 1880, for 300 acres. This grant is not very material in considering Tract No. 91 for the reason that the portion of Tract 91 covered by 122 lies entirely within the land Tract, which is an older and superior title to Grant 122. This grant is, however, fully set out on page 973 of the Abstract of title to Tract No. 78.

14. W.P. Hyde and wife, Susannah E. Hyde, conveyed to A. Mingus by deed dated November 25, 1883, a tract containing two hundred acres, which would include the portion of Tract 91 covered by Grant 122. This deed is recorded in Swain County and is set out on page 172 of Tract No. 88.

15. A. Mingus conveyed to Sarah Angeline Floyd by deed hereinbefore referred to, certain lands lying north of Mingus Mill Creek including the portion of the land tract lying north of said creek, which deed would also include any portion of Tract 91 covered by said Grant 122. This deed is set out on page 229 of this Abstract

16. Whatever title under 122, which became vested in Sarah Angeline Floyd passed by the several deeds from her heirs hereinbefore enumerated to M. C. Floyd. J. L. Floyd, one of the heirs, retained his interest.

GRANT NO. 1012.

17. Grant 1012 was issued to W. P. Hyde for five hundred acres and is dated June 1890 and duly recorded in Swain County. See page 243 of the Abstract of Title to Tract 90-b.

18. W. P. Hyde and wife, P. L. Hyde, by deed dated March 14, 1908, conveyed to J. L. Floyd and wife, M. C. Floyd, a tract of land containing three hundred acres more or less. This deed covers a large portion of Tract 90-b, but also includes a portion of No. 91 lying north of the line of Grant No. 824 and south and southwest of the line of Grant 846. This deed is recorded in Swain County and is set out on page 245 of the Abstract of Title to Tract No. 90-b.

19. W. P. Hyde and wife, S. E. Hyde, by deed dated February 22, 1892 had also conveyed to D. C. Mills, a tract described as containing 225 acres, which is largely included within Tract No. 90-b; but also covers a portion of Grant 1012 lying northwest of Grant 824. This deed is recorded in Swain County and is set out on page 247 of Abstract of Title to Tract No. 90-b.

20. D. C. Mills and wife, M. M. Mills, then conveyed to J. E. Rabb by deed dated August 28, 1895, the same tract of land. This deed is recorded in Swain County, see page 248 of the Abstract of Title to Tract 90-b.

21. J. E. Rabb and wife, M. A. Rabb, by deed dated October 20, 1897 conveyed to J. E. Byrd a portion of the 225 acres described in the last mentioned deed. J. E. Rabb also conveyed to M.L.J. Cagle by deed dated October 15, 1895, a tract of forty acres, being the portion of the 225 acre tract not conveyed by him to J. E. Bird and covering an area included within Grant 1012 lying between Tract No. 93

and the western line of Grant 824. This deed is recorded in Swain County and is set out on page 239 of this Abstract.

22. M.L.J. Cagle then conveyed to M. C. Floyd by deed dated April 1, 1903, the same tract of forty acres. This deed is recorded in Swain County, page 240 of this Abstract.

23. J. E. Bird and wife, J. A. Bird, by deed dated February 5, 1898, conveyed to J. W. Bird a tract described as containing 225 acres. It covers a portion of No. 91 included within the 225 acre tract described in the above deed lying north of Tract No. 93 and the line of Grant 8486. This deed is recorded in Swain County and is set out on page 252 of the Abstract of Title to Tract 90-b.

24. J. W. Bird and wife, Sophia, then conveyed the same tract described in the last mentioned deed to R. M. Loftis by deed dated August 14, 1903 and recorded in Swain County. See page 250 of the Abstract of Title to Tract No. 90-b.

25. The tract conveyed by the deed to R. M. Loftis apparently laps upon what has been referred to as the Land Tract, originally owned by John Mingus. While R. M. Loftis was the owner of this tract, an action was instituted in the Superior Court of Swain County by M. C. Floyd, who was the widow of J. L. Floyd, F.F. Floyd, Edgar Floyd and Hattie Floyd Hayes and husband, Julius C. Hayes and Lola Floyd against R. M. Loftis. In this action, upon verdict by jury, the plaintiffs were awarded that portion of the lands involved lying within what is known as the Land Tract and whatever claim Loftis may have had thereto was extinguished in favor of the plaintiffs. The record in this cause is filed in the Office of the Clerk of the Superior Court of Swain County. See page 308 of the Abstract of Tract 93.

26. R. M. Loftis and wife, M. A. Loftis, by deed dated December 9, 1907 conveyed to J. L. Floyd two tracts of land. The first tract lies largely within Tract 90-b; but also covers a small strip or area above referred to lying north of Tract No. 93 and east of the line of Tract No. 90-b. This deed is recorded in Swain County and is set out on page 253 of the Abstract of Title to Tract 90-b.

The title of J. L. and M. C. Floyd under the above conveyances will be continued hereinafter.

27. W. P. Hyde by deed dated August 25, 1896 conveyed a further portion of Tract No. 1012 to W. H. Queen. This deed covers an area lying north of the northern line of Grant 824 and between that line and the line of Grant 8486. This deed is recorded in Swain County. Page 241 of this Abstract.

GRANT NO. 8486.

28. Grant No. 8486 was issued to W. H. Queen on April 23, 1888 for seventy-seven acres. This grant covers the north eastern portion of Tract 91 lying north of Grant 824. It is recorded in Swain County and is set out on page 568 of the Abstract of Title to Tract 56.

29. W. H. Queen, then conveyed to Leonard Queen by deed dated May 26, 1902 a tract of land described as containing 141 acres more or less. This deed covers the portion of Tract 91 embraced within Grant 8486 lying north and northwest of the line of the Tract hereinbefore referred to conveyed by Abraham Mingus to Sarah Angeline Floyd. It also within its description, the tract conveyed by W. P. Hyde to W. H. Queen by deed above set out. There is, however, some doubt as to the exact location of the southeastern line of this grant. If platted according to the calls, it apparently would not cover the small area at the southeastern end of the Tract conveyed by this deed. There are apparently two ridges coming together at the end of the second call south of the main ridge and if the deed should run with the eastern ridge it would cover the area in question, if it runs with the other ridge it would not cover the area mentioned. This deed is recorded in Swain County, page 64 of the Abstract of Title to Tract 90-b.

30. By deed dated September 27, 1906, Leonard Queen and wife, Jane Queen, conveyed to J. L. Floyd the same tract of 141 acres. The same difficulty set out in the last mentioned deed is true as to this conveyance. This deed is recorded in Swain County and is set out on page 256 of the Abstract of Title to Tract No. 90-b.

31. From the foregoing conveyance the lands described therein and covering Tract No. 91 became vested in J. L. Floyd and his wife, M. C. Floyd, both of whom are dead, having left three children as their only heirs at law, to-wit: F. F. Floyd, Ed Floyd and Hattie Floyd Hayes, wife of Julius C. Hayes.

32. Subsequent to the death of J. L. Floyd and M. C. Floyd, Hattie Floyd Hayes, wife of Julius Hayes, filed a petition in the Superior Court of Swain County for the purpose of dividing between them as tenants in common the lands which had descended to them from their father and mother. In this proceeding, Commissioners were appointed to make a partition of the lands. The report of the Commissioners allotted to Frederick F. Floyd the lands covered by Tract No. 91. This petition is set out on page 220 to 242 inclusive of the Abstract of title to Tract No. 90.

GRANT NO. 224

33. Grant No. 224 was issued to William Cathcart on August 9, 1796, for a very large tract of land containing 53280 acres. This grant covers a small portion of the eastern end of Tract No. 91 and we have not been able to find any conveyances connecting the title of F. F. Floyd and those under whom he claims with the title under grant 224. However, we regard this as immaterial because of the fact that there has been long continuous adverse possession, probably for at

least seventy-five years and we think there can be no question as to the title acquired by such possession against any possible claim under Grant 224.

N O T E: In the foregoing analysis, Paragraph 11, deed from Felix E. Alley, Administrator of S.A. Floyd, to J. L. Floyd is referred to. This deed undertakes to convey the interest of Ellen Scott, wife of Charles Scott, as an heir at law of S. A. Floyd, in the lands described in the deed and covering Tract No. 91. The proceeding upon which this deed appears to be based was brought by said Alley as Administrator of S. A. Floyd against W. W. Floyd and others including Ellen Scott and husband, Charles Scott, who were the heirs at law of said S. A. Floyd. The petition recites that said S. A. Floyd had executed a Bond for Title to J. L. Floyd for the lands involved and that said J. L. Floyd had given to S. A. Floyd, who was his mother, a note for \$4,000.00 for the purchase money. It seems that after this transaction, S. A. Floyd died and this petition was brought to settle the accounts of the Administrator. It alleges that suit had been brought and the \$4,000.00 note against J. L. Floyd had been reduced to judgment; and that said J. L. Floyd had purchased all of the interests of his brothers and sisters as heirs at law and taken deeds from them. These deeds are set out in the Abstract. It seems, however, that there was no deed from Ellen Scott and husband, but the record shows that she was a party to the proceeding and accepted \$750.00 as her portion of the proceeds from the \$4,000.00 note which had been given by J. L. Floyd to his mother, S. A. Floyd, for the land. We do not find in the proceeding any authority on the part of the Administrator to convey the interest of Ellen Scott, but think that in view of the fact that she was a party to the proceeding and that it recites without denial the Bond for Title from her mother, S. A. Floyd to the said J. L. Floyd and that the record shows a receipt by her for her portion of the purchase money that this would be sufficient to estop her from making claim against these lands. The Bond for Title is not found of record. The lands referred to in the deed from Alley, Administrator, cover Tract No. 91 in part.

P R I O R C O N V E Y A N C E S

34. 34. M. C. Floyd, widow, F. F. Floyd, unmarried, Ed Floyd and wife, Mary, H. M. Hayes and husband, J. C. Hayes, to Ocona Luffy Railroad Company. This is a deed for a right of way for a strip of land thirty feet in width over the lands of the grantors. This deed is dated July 4, 1917, and is recorded in Swain County. See page 242 of this Abstract.

D E E D S I N T R U S T

1. On April 5, 1924, F. F. Floyd executed to T. C. Queen for L. C. Connor, Guardian, a deed in trust to secure \$5200.00, describing the lands as the interest of F. F. Floyd in lands descended to him as an heir at law of J. L. Floyd and M. C. Floyd. This deed in trust is canceled by L. S. Connor and is set out in the Abstract of this tract, page 243.

2. On December 24, 1925, F. F. Floyd executed a deed in trust to S. W. Black, Trustee for McKinley Edwards to secure \$2100.00 covering his interest in the J. L. Floyd estate. This deed in trust is canceled. See page 244 of this Abstract.

3. F. F. Floyd executed a further deed in trust dated March 31, 1926 to McKinley Edwards, Trustee for Hugh N. Lambert to secure \$2000.00. Deed in trust describes and covers the lands allotted to said F. F. Floyd in the division of the Floyd estate. This deed in trust is not canceled of record. It is set out on page 245 of this Abstract.

4. There appears a further deed in trust from F. F. Floyd to T. C. Queen, Trustee for L. S. Connor, Guardian, dated April 5, 1924 to secure \$5200.00. The lands described is the same as those owned by F. F. Floyd as an heir at law of J. L. and M. C. Floyd. This deed in trust is not canceled of record and is set out on page 246 of this Abstract.

J U D G M E N T S

There appears of record the following judgments:

- (a) The Citizens Bank, Bryson City, against F. F. Floyd, Ed Floyd and R. L. Sandidge, Jr., book 10, page 515, dated June 3, 1929 for \$1434.00 interest and costs.
- (b) Merchants & Manufacturers Bank against F. F. and Ed Floyd dated July 15, 1925, \$500.00 interest and costs.
- (c) I. J. Cooper Lumber Company against F. F. Floyd and Ed Floyd for \$379.28, with interest and costs.

The above are set out in the Abstract of Title to Tract No. 88-a, page 208 to 210.

(d) See also judgment in favor of the Garden City Gummed Paper Company against F. F. Floyd, dated January 22, 1923, for \$74.00, interest and costs. This judgment is set out on page 247 of this Abstract.

Tract No. 91-a

Fred Floyd--70.04 Acres.

1. This tract is covered entirely by Grant 469, which was issued to Abraham Mingus on November 25, 1850 for one hundred acres. This grant is recorded in Swain County and is set out on page 257 of this Abstract.

2. A. Mingus died having left a will, which is dated January 31, 1902 and duly probated and recorded in the Office of the Clerk of the Superior Court of Swain County. Item No. 3 of this will gives and devises to Fred Floyd the one hundred acre tract of land on Mingus Mill Creek, which includes the upper end of the orchard place on Mill Creek and beginning on a chestnut tree at the mouth of the branch and runs according to the calls set forth in grant to Abram Mingus. This covers Grant 469. This will is fully set out on page 25 of the Abstract of Tract No. 3.

J U D G M E N T S

For judgments see Abstract of Title to Tract No. 91.

D E E D S I N T R U S T

There are a number of deeds of trust set out in Abstract of title to Tract No. 91, but apparently none of them cover this tract for the reason that they all describe the lands as the lands which descended to F. F. Floyd from his father and mother, J. L. and M. C. Floyd. As the above tract was allotted to him direct by his uncle, Abram Mingus, this tract would not be included in these deeds in trust.

L A P P A G E S

There are some lappages upon this tract, notably by Grant No. 122 to W. P. Hyde. However, this portion of 122 was conveyed by W. P. Hyde and wife, to A. Mingus in 1883 and for this reason and also because of the fact that Grant 469 is a very old grant dated in 1850, the title is superior to any other grant which might lap upon it.