

NORTH CAROLINA PARK COMMISSION

ASHEVILLE, N. C.

REPORT ON THE W. F. LAWS TRACT NO. 138.LOCATION:

This tract is located on Noland Creek, about 7 miles from its mouth, lying on the public road.

DESCRIPTION:

This place contains 49.08 acres, of which about 11 acres are cleared, and has been used as a home place by the owner.

IMPROVEMENTS:

Two-room box house, barn and small grist mill, and has a young peach orchard located on hillside. Buildings are in poor condition.

VALUATION:

Two-room box house	\$200.00
Barn and Grist mill	125.00
Young peach trees	35.00
10 acres cultivated hillside	200.00
1 acre flat land on creek	50.00
38 acres cutover woodland	<u>190.00</u>
TOTAL	\$800.00

OPTION:

An option has been taken on this place for \$800.00, and the appraisers recommend its purchase.

Analysis of Title

Tract No; 138.

This tract is covered partly by Grants No.s 789, 152 and 167. The entire area is covered by Grant 587. These will be discussed in their order. 22

1. Grant No. 789 was issued to Jane Millsaps on September 12, 1861, containing one hundred acres. The description of this Grant is set out on page 1184 of the Abstract of Tract 137, which is also part of Grant 789.

2. By deed dated May 12, 1862, Jane Millsaps conveyed the lands covered by this grant to A. Cline. This deed is registered in Jackson County and is set out on page 1185 of the Abstract of Tract 137.

3. The records do not disclose any conveyance from A. Cline for this tract of land, and the next deed appearing on record is from G. W. Shuler and wife, Margaret Shuler to T. J. Shuler, dated January 30, 1883, conveying among other tracts of land, the lands covered by Grant 789. This deed is set out on page 1186 of the Abstract of Tract 137.

4. By deed dated May 20, 1885, T. J. Shuler and wife, Fannie C. Shuler, conveyed a tract containing twenty-three and one-fourth acres apparently a part of Grant 789 to J. U. Wiggins. This deed is recorded in Swain County and is set out on page 1187 of the Abstract of Tract No. 137. Another tract in same deed covers balance of Grant 789.

5. James U. Wiggins and wife, Lillie, conveyed to J. J. Combs by deed dated January 25, 1903, ten several tracts of land, the seventh tract and the tenth tract in said deed together covering Grant No. 789. This deed is set out on page 1188 of the Abstract of Tract No. 137.

6. J. J. Combs, then conveyed to the Monger Lumber Company, a partnership composed of T. Monger, J. M. Burns and C. E. Gordon by deed dated May 22, 1905, a number of tracts of land, the sixth tract and the ninth tract therein described together covering Grant No. 789.

7. By deed dated November 30, 1905, T. Monger, J. M. Burns and C. E. Gordon, trading and doing business as the Monger Lumber Co. and T. Monger and wife, Willie K. Monger, J. M. Burns and C. E. Gordon and wife, Lucy Gordon, individually, conveyed to W. T. Mason, nine several tracts of land, the sixth tract and the eighth tract therein covering the lands embraced in Grant No. 789. This deed is registered in Swain County, and is set out on page 1191 of the Abstract of Tract No. 137.

S. W. T. Mason then executed a Deed in Trust to Zebulon Weaver, Trustee for the Wachovia Bank & Trust Company to secure certain indebtedness therein described in which he conveyed a number of tracts of land including the lands covered by Grant No. 789. This deed in Trust is recorded in Swain County and is fully set out at page 1072 of the Abstract of Tract No. 134.

9. Subsequently said Zebulon Weaver, Trustee, sold said land under the provisions of said Deed in Trust to Corbin J. Decker, to whom he executed a deed dated June 9, 1914, conveying the lands covered by Grant No. 789 with a number of other tracts. This deed to Corbin J. Decker is recorded in Swain County and is set out and referred to at page 1075 of Tract No. 134.

10. Corbin J. Decker and wife, Katherine M. Decker, conveyed to W. F. Laws and wife, M. A. Laws, a part of Grant No. 789 and a part of Tract No. 138 by deed dated May 15, 1916. This deed is recorded in Swain County. Page of Abstract.

11. Corbin J. Decker and wife, then conveyed to W. F. Laws and wife, M. A. Laws, a portion of the lands covered by Tract No. 138 by deed not dated, but filed for record on June 10, 1918. The southern portion of the land conveyed by this deed crosses the line of No. 408 and a small portion lies within said Grant No. 408.

12. We then find a deed from J. E. Coburn to W. F. Laws, dated February 24, 1922, conveying that portion of the lands lying within 408 and covered by the foregoing deed from Corbin J. Decker to W. F. Laws. This small area lying south of the line of No. 408 is covered partly by Grant No. 152 and partly by Grant 167. The title to this small area had been acquired by J. E. Coburn by certain litigation heretofore pending and will be considered in connection with the title of Grant 152 and Grant 167. This deed, however, apparently vested good title in W. F. Laws to that portion of the lands lying south of the line of No. 408.

13. The next conveyance of record is a deed from Elizabeth C. Mason to W. F. Laws, dated November 23, 1921. This deed conveys two tracts of land, the second tract covering a part of Tract 138 and the deed recites that it is made for the purpose of conveying what is owned by Elizabeth C. Mason on the East side of the divide between Nolands Creek and Mill Creek not covered by former deeds. The description in the deed runs down the dividing ridge between Nolands Creek and Mill Creek but apparently Mrs. Elizabeth C. Mason had no title to that portion of the land conveyed by this deed lying West of the line of Grant No. 789 and between that line and Grant No. 22. This deed is recorded in Swain County. Page 841 of Abstract.

Attention is further called to the fact that Mrs. Elizabeth C. Mason did not acquire from Corbin J. Decker any land embraced within the above deed from her to W. F. Laws and in order to secure title to that portion of the land conveyed by said deed lying within No. 138, it will be necessary to secure a quit claim deed from Corbin J. Decker.

GRANTS 152 and 167.

14. As hereinbefore stated a small portion of Tract 138 extends south of the line of Grant 408. This small area is included partly in Grant 152 and partly in Grant 150. The title to these grants is as follows:

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15. Grant 152 was issued to J. T. Foster on April 20, 1855, containing 640 acres. This grant is fully set out in Abstract of Tract 134 at page 1101.

16. State Grant 167 was issued to J. T. Foster on July 6, 1855 and is recorded in Jackson County. Page 842 of Abstract.

17. By deed dated October 4, 1855, J. T. Foster conveyed Grant 167 to Charles F. Mayer. This deed is recorded in Jackson County. Page 843 of Abstract.

18. Charles F. Mayer by Mortgage Deed dated October 4, 1855, conveyed the same tract of land with a number of others to Henry Bell. This deed was given to secure certain indebtedness therein set out. It is recorded in Jackson County. Page of Abstract.

19. On January 22, 1856, Charles F. Mayer executed a warranty deed to Henry Bell conveying the same lands which is recorded in Jackson County. This deed was acknowledged before a Commissioner of Deeds and copied upon the records without any probate whatever. Page 844 of Abstract.

20. The next conveyance is a deed from Eugenia H. Bratt to George H. Smathers dated July 5, 1919. This deed conveys by metes and bounds the lands covered by Grant No. 167 issued to John T. Foster. This deed is recorded in Swain County. Page 846 of Abstract.

21. The next conveyance is from Janie M. Smith and husband Alfred Smith and Samuel Bratt and wife, Fannie Bratt and Gertrude Kirk and husband J. W. Kirk, Mary E. Baker, Daniel Baker and Daniel Baker and Alfred Baker, Executors for Mary Ann Bratt to George H. Smathers. This deed conveys by quit claim the lands covered by Grant 167. This deed is recorded in Swain County. Page 847 of Abstract.

22. A further deed was executed by Eliza M. Vankleech, widow of Robert B. Vankleech, Mary V. Mayer, widow of Lewis Mayer, Mary Dean Wallis, and husband, James T. Wallis, Lewis C. Mayer, Brantz Mayer, Maria L. Mayer, widow of Alfred M. Mayer, G. Mayer and wife, Harriett Mayer, Ellen B. Mayer, widow of Francis B. Mayer to George H. Smathers dated October 20, 1903, conveying the lands covered by Grant 167. This deed is recorded in Swain County. Page 848 of Abstract.

23. By deed dated November 20, 1920, George H. Smathers, Trustee, and George H. Smathers individually and wife Daisy R. Smathers executed a deed to Champion Fibre Company conveying all of Grants 152 and 167 except such portions thereof as lay within Grant 408. This deed is recorded in Swain County. Page of Abstract.

24. George H. Smathers on July 1, 1907 conveyed by quit claim deed to J. J. Combs a tract of land which includes that portion of Tract 138 lying south of the line of No. 408 and embraced within Grant 152 and Grant 167. This deed is recorded in Swain County. Page 451 of Abstract.

25. J. J. Combs by deed dated April 20, 1909, conveyed to J. M. Burns, the same tract of land described in the foregoing deed from George H. Smathers to said Combs including the portion of No. 138 above referred to. This deed is recorded in Swain County. Page 453 of Abstract.

26. J. M. Burns apparently died, leaving a widow, Mrs. Nora Ware Burns and Mary K. Burns, Margaret H. Burns, Daisy C. Burns, Lucretia M. Burns and J. J. Burns as his heirs at law. An Affidavit should be secured as to this descent.

27. By deed dated October 28, 1910, the heirs at law of J. M. Burns above mentioned together with the widow, Mary Ware Burns, executed a quit claim deed to W. T. Mason and J. E. Coburn, conveying the same tract of land which had theretofore been conveyed to said Burns by J. J. Combs. This deed is recorded in Swain County. Page 455 of Abstract.

28. There appears a further deed from George H. Smathers, Trustee, and George H. Smathers and wife Daisy R. Smathers, to J. E. Coburn, dated November 20, 1920, which conveys a tract of land including all these portions of Grants 152 and 166 and 167 as lie inside of Grant 408 to R. V. Welch, and J. B. Allison known as the "Eversole Boundary". This deed is recorded in Swain County. Page 457 of Abstract.

29. At the Spring Term, 1915, Superior Court of Swain County, J. E. Coburn in a suit therein pending obtained judgment against W.T. Mason and Albert Hall for a joint indebtedness of \$770.96, with interest and costs. Under this judgment and execution thereof issued on March 29, 1915, all the interest of W.T. Mason in the lands mentioned in the foregoing deed was sold by the Sheriff of Swain County. This judgment is recorded in the Office of the Clerk of the Superior Court of Swain County, Book 9, page 104. Page 459 of Abstract.

30. Pursuant to the above judgment and execution, W. B. Carringer sold said interest of W. T. Mason and executed a deed therefor dated May 5, 1915 to J. E. Coburn. This deed is recorded in Swain County. Page 860 of Abstract.

31. The next conveyance is a deed from J. E. Coburn and wife, to W.F. Laws, dated February 24, 1922, conveying the same tract of land covering that portion of Tract 138 which extends south of the line of No. 408. This deed excepts and reserves unto J. E. Coburn a right of way over, through and across said land for all necessary roads, railroads, tram roads, flumes, ^{and} chutes for the removal of forest products, mineral, etc. on adjoining land and all other land that said Coburn may own and thereafter acquire. 868

This deed is properly acknowledged by the grantors before the Clerk of the Superior Court of Swain County but there is no order by the Clerk to register the deed.

32. By deed dated May 20, 1916, Corbin J. Decker and wife, Katherine M. Decker, conveyed to Elizabeth C. Mason a large tract of land including all of his interest in the lands covered by Grant 408. This deed is recorded in Swain County. Page 464 of Abstract.

It will be observed from the foregoing Abstract that Corbin J. Decker had acquired these lands through a Deed in Trust executed by W. T. Mason in 1912 and that the judgment above set out under which the interest of W. T. Mason was sold by the Sheriff of Swain County and purchased by J. E. Coburn was taken subsequent to the registration of said Deed in Trust. Therefore, deed made by W. B. Carringer would not have been sufficient to pass the title of W. T. Mason in the lands embraced in Grant 408 and including that portion of Tract 138 lying South of its line because of this outstanding Deed in Trust and subsequent conveyance thereunder to C. J. Decker. However, attention is called to the following suit in the U. S. District for the Western District of North Carolina which had the effect of adjudicating the title for this area in J. E. Coburn.

33. The deed in trust referred to in the foregoing paragraph is from W. T. Mason to Zebulon Weaver, Trustee, for Wachovia Bank & Trust Company and is date June 29, 1912 and conveys the lands embraced within Grant 408 with various exceptions, none of which affect the tract under investigation. This deed is recorded in Swain County. Page 464 of Abstract.

34. Zebulon Weaver, Trustee, pursuant to a sale made under the said Deed in Trust from W. T. Mason conveyed to C. J. Decker the lands described therein by a conveyance dated May 9, 1914. This deed is recorded in Swain County. Page 466 of Abstract.

35. C. J. Decker and Elizabeth C. Mason brought a suit in the U. S. District Court at Asheville, in Equity against Norwood Lumber Company, W. A. Rexford, W. C. Mendenhall, W. M. Jenkins and J. E. Coburn. This suit came on for hearing at the May term, 1921, at which time a Decree was entered declaring Elizabeth C. Mason to be the owner of the lands covered by Grant 408, with various exceptions and excepting subsequently those portions of Grants 152, 166 and 167 which lie within the boundary of Grant 408.

The Decree further adjudges J. E. Coburn to be the owner in fee simple of all of Grants 152, 166 and 167 which lie within Grant 408, the boundary so established being set out by notes and bounds. The record of this proceeding is in the Office of the U. S. District Court at Asheville. Page 468 of Abstract.

36. All of Tract 138 is covered by Grant 587 to Love, Battle and Welch which was dated in 1859. Grant No. 22 under which a part of Tract 138 is held is senior in title to that grant, but it appears from well established evidence that the lands covered by Tract 138, in so far as the same is covered by deeds from C. J. Decker and Elizabeth C. Mason have been held in undisturbed, adverse possession for a sufficient length of time to mature title in the present claimants. See affidavit of W. T. Jenkins. 870.