

21816

RECORD ON APPEAL

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

RECEIVED

APR 15 2015

SC Court of Appeals

APPEAL FROM KERSHAW COUNTY
Court of Common Pleas
John K. DuBose, III, Special Referee

Civil Action No. 2011-CP-28-0073
Appellate Case No. 2014-001012

Albert H. Hough, individually, and as Personal Representative
of the Estate of Harold W. Hough and as Person Representative
of the Estate of Elizabeth P. Hough; George J. Hough; and
Angela Hough,.....

Respondents

v.

Richard Wesley Hough, Joel Pitts Hough and
Mary Louise Robinson,.....Defendants,

Of whom

Richard Wesley Hough is.....Appellant,

And

Joel Pitts Hough and
Mary Louise Robinson are.....Respondents.

RECORD ON APPEAL

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803-479-0605
Respondent / pro se

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STATE OF SOUTH CAROLINA
COUNTY OF KERSHAW
IN THE COURT OF COMMON PLEAS

JUDGMENT IN A CIVIL CASE

CASE NO. 2011 CP-28-00073

Albert H. Hough, etc., et al.

Richard Wesley Hough, et al.

PLAINTIFF(S)

DEFENDANT(S)

Submitted by: John K. DuBose, III, Special Referee

Attorney for : ☐ Plaintiff ☐ Defendant
or
☐ Self-Represented Litigant

DISPOSITION TYPE (CHECK ONE)

- ☐ **JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- ☒ **DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered. ☐ See Page 2 for additional information.
- ☐ **ACTION DISMISSED (CHECK REASON):** ☐ Rule 12(b), SCRPC; ☐ Rule 41(a), SCRPC (Vol. Nonsuit); ☐ Rule 43(k), SCRPC (Settled); ☐ Other
- ☐ **ACTION STRICKEN (CHECK REASON):** ☐ Rule 40(j), SCRPC; ☐ Bankruptcy ☐ Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; ☐ Other
- ☐ **DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX)**
☐ Affirmed; ☐ Reversed; ☐ Remanded; ☐ Other

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

IT IS ORDERED AND ADJUDGED: ☒ See attached order (formal order to follow) ☐ Statement of Judgment by the Court:

ORDER INFORMATION

This order ☐ ends ☒ does not end the case.

Additional Information for the Clerk :

Order On Plaintiffs' Motion to Strike Defendant Richard Hough's S.C. Code Ann. §15-61-25 Notice

INFORMATION FOR THE JUDGMENT INDEX

Complete this section below when the judgment affects title to real or personal property or if any amount should be enrolled. If there is no judgment information, indicate "N/A" in one of the boxes below.

Judgment in Favor of (List name(s) below)	Judgment Against (List name(s) below)	Judgment Amount To be Enrolled (List amount(s) below)
		\$
		\$
		\$

If applicable, describe the property, including tax map information and address, referenced in the order:

The judgment information above has been provided by the submitting party. Disputes concerning the amounts contained in this form may be addressed by way of motion pursuant to the SC Rules of Civil Procedure. Amounts to be computed such as interest or additional taxable costs not available at the time the form and final order are submitted to the judge may be provided to the clerk. Note: Title abstractors and researchers should refer to the official court order for judgment details.

~~Circuit Court Clerk~~ John K. DuBose, III
Special Referee

Judge Code

ATTEST True, 5/07/2014, Certified
Copy of Original on File in this
Court

For Clerk of Court Office Use Only

This judgment was entered on the _____ day of _____, 20____ and a copy mailed first class or placed in the appropriate attorney's box on this _____ day of _____, 20____ to attorneys of record or to parties (when appearing pro se) as follows:

B. Michael Brackett, Esquire

ATTORNEY(S) FOR THE PLAINTIFF(S)

Kathleen McDaniel, Esquire

M. Scott Rankin, Esquire

Mary Louise Robinson, pro se

ATTORNEY(S) FOR THE DEFENDANT(S)

CLERK OF COURT

Court Reporter:

ADDITIONAL INFORMATION REGARDING DECISION BY THE COURT AS REFERENCED ON PAGE 1.

This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.

STATE OF SOUTH CAROLINA)
)
COUNTY OF KERSHAW)

IN THE COURT OF COMMON PLEAS

C/A No. 2011-CP-28-073.

Albert H. Hough, individually and)
as Personal Representative of the Estate)
of Harold W. Hough and as Personal)
Representative of the Estate of Elizabeth)
P. Hough; George J. Hough and)
Angela Hough,)

Plaintiffs,)

vs.)

Richard Wesley Hough, Joel Pitts)
Hough, and Mary Louise Robinson,)

Defendants.)

ORDER ON PLAINTIFFS' MOTION
TO STRIKE DEFENDANT RICHARD
HOUGH'S S.C. CODE ANN. §15-61-25
NOTICE

FILED FOR RECORD
2014 MAY -7 AM 11:28
JOYCE McDONALD
CLERK OF COURT
KERSHAW COUNTY, S.C.

Under a common reading of the matter of time computation, and application of statutory and case law referenced in memoranda and arguments by both counsel for Plaintiffs and counsel for Defendant Richard Hough, I find that Defendant Richard Hough's notice pursuant to S.C. Code Ann. §15-61-25(A) was timely.

1. Despite finding that notice pursuant to S.C. Code Ann. §15-61-25(A) was timely, I find that the notice has no impact on the present proceedings.

2. S.C. Code Ann. §15-61-25(A) is applicable to actions for partition by sale and not actions for partition in kind.

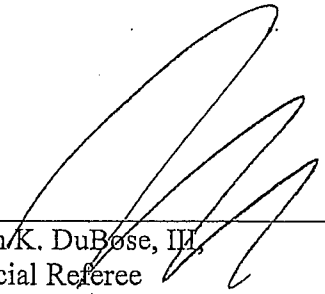
3. Partition in kind is favored when it can be fairly made without injury to the parties. Smith v. Pearson, 210 S.C. 524, 43 S.E.2d 479 (1947). The party seeking a partition by sale carries the burden of proof to show that partition in kind is not practicable or expedient.

Smith v. Pearson, 43 S.E.2d at 482. Defendant Richard Hough admitted in his Answer to Second Amended Compliant that the property is capable of being partitioned in kind.

4. The Court finds that partition in kind can be fairly made without injury to the parties.

5. Trial of the case will proceed on May 12, 2014 as currently noticed.

IT IS SO ORDERED.



John K. DuBose, III,
Special Referee

Camden, South Carolina
May 7, 2014

STATE OF SOUTH CAROLINA)
COUNTY OF CHARLESTON)

IN THE MASTER IN EQUITY COURT
FOR CHARLESTON COUNTY

STANDING ORDER IN ALL PARTITION ACTIONS

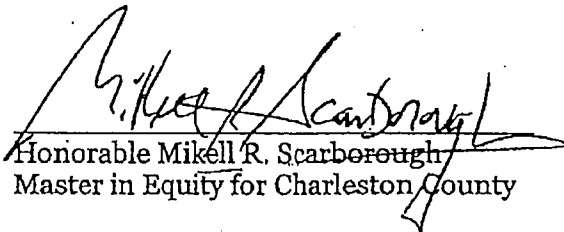
This court is now regularly seeing partition actions in which the purpose of the action is the contemplated sale of the real estate contained therein. Therefore, pursuant to Section 15-61-25, 1976 SC Code of Laws, as Amended, (2007 Supp.), this court shall require Notice of the requirements of this statute to be served upon all parties in the action and upon all joint tenants or tenants in common. This statute states:

"The Court shall provide for the non-petitioning joint tenants or tenants in common who are interested in purchasing the property to notify the Court of that interest no later than ten (10) days prior to the date set for the trial of the case. The non-petitioning joint tenants or tenants in common shall be allowed to purchase the interests in the property as provided in this section whether default has been entered against them or not." 1976 SC Code of Laws, Section 15-61-25 (A).

This notice shall be served upon all parties and the required tenants in common at the time the Notice of Hearing is served herein. Proof of service of the Notice of Hearing and this Order providing Notice to the tenants of their rights in the property shall be required at the time of the hearing.

IT IS SO ORDERED!

December 20, 2007
Charleston, South Carolina


Honorable Mikell R. Scarborough
Master in Equity for Charleston County

STATE OF SOUTH CAROLINA

IN THE COURT OF COMMON PLEAS

COUNTY OF KERSHAW

2011-CP-28-073

Albert H. Hough, individually and
as Personal Representative of the Estate
of Harold W. Hough and as Personal
Representative of the Estate of Elizabeth
P. Hough; George J. Hough and
Angela Hough,

Plaintiffs,

v.

Richard Wesley Hough, Joel Pitts
Hough, and Mary Louise Robinson,

Defendants.

SECOND AMENDED COMPLAINT
FOR TEMPORARY RESTRAINING
ORDER WITHOUT NOTICE;
TEMPORARY INJUNCTION (RULE 65,
SCRPC); PARTITION AND DAMAGES
TO REAL PROPERTY (WASTE AND
NUISANCE)

FILED FOR RECORD
2011 MAR 21 AM 8:57
CLERK OF COURT
KERSHAW COUNTY, S.C.

1. The Plaintiffs, Albert Hough, George Hough and the Defendants Richard Hough, Joel Hough and Mary Louise Robinson are the children of Harold Hough, deceased, and Elizabeth Hough, deceased; the Plaintiff Angela Hough is the wife of Albert Hough; Albert H. Hough is the Personal Representative of the Estates of Harold W. Hough and Elizabeth P. Hough.
2. The parties are tenants in common, with various undivided interests, of the real properties identified and described on Exhibit A attached to and incorporated herein as Exhibit A.
3. This is an action for partition of real properties located in Kershaw County, and partially in Lee County, and for related relief.
4. This Court has subject matter jurisdiction pursuant to S.C. Code Ann. §15-61-50 (rev. 2005).
5. Venue is properly in Kershaw County pursuant to S.C. Code Ann. §15-5-10(2) (rev. 2005) and Daniels v. Moses, 12 S.C. (1879).

For a First Cause of Action - All Defendants

(Partition of Real Property)

6. The Plaintiffs re-allege all of the allegations set out hereinabove.
7. The Plaintiffs are informed and believe that all of the real property in which the parties have undivided interests, being those described on Exhibit A, are divisible in kind and should be apportioned among the parties entitled thereto according to their severable rights, as provided for in Rule 71 SCRPC and §15-61-10 et seq. of the South Carolina Code of Laws.
8. That the Plaintiffs are further informed and believe that they are entitled to reasonable attorney's fees and costs in connection with this action and as provided by law.

For a Second Cause of Action Against Defendant Richard Hough

(Waste)

9. The Plaintiffs re-allege all of the allegations set out hereinabove.
10. That heretofore, on or about July 12, 2010, the Defendant Richard Wesley Hough, a tenant-in-common to the real properties at issue herein, began a course of conduct designed to demand that the real property be re-conveyed into three equal shares. (Exhibit B)
11. That on or about October 19, 2010, the Defendant Richard Wesley Hough demanded that the Plaintiff Albert Hough further divide his one-half interest with himself and his brother George Hough. (Exhibit C)

12. That when the Plaintiff Albert Hough refused to re-divide the property, the Defendant Richard Wesley Hough purchased a bull dozer and began to damage and destroy the Pine Farm property (TMS # 300-00-00-006) by digging six-foot deep trenches, destroying water lines, building high berms, destroying pasture land and fences; further, preventing the Plaintiffs from entering the property by placing gates and locks on the roadways. (Exhibit D)
13. That the Plaintiffs used the property primarily for horse and cattle grazing on the pasture lands, some of the cattle belonging to the father and mother of the Parties.
14. That as the Defendant Richard Wesley Hough would intentionally and maliciously destroy the water lines, build berms and dig ditches, the Plaintiffs would attempt to repair the damage but the Defendant Richard Wesley Hough would again intentionally and maliciously rebuild the berms, re-dig the trenches, and re-dig the water lines.
15. That the malicious and intentional acts of the Defendant Richard Wesley Hough as described above, at a time when he was a tenant-in-common with the other parties hereto, injured the commonly owned land and prevented the Plaintiffs from providing water and hay to the proximate 150 head of cattle and several horses located on the property.
16. The damages and injuries described above were and are prejudicial to the interests of the Plaintiffs, who are also tenants-common.
17. Plaintiffs are informed and believe that they are entitled to recover actual and punitive damages from Defendant Richard Hough for the repair of the commonly owned property damaged by his conduct as alleged hereinabove.

For a Third Cause of Action Against Defendant Richard Hough

(Nuisance)

18. The Plaintiffs re-allege all of the allegations set out hereinabove.
19. Defendant Richard Hough's conduct as alleged constitutes an unreasonable interference with the Plaintiffs' use and enjoyment of the commonly owned land.
20. Defendant Richard Hough's intentional and malicious conduct is the proximate cause of the damage to the land and of the Plaintiffs' damages for interference with their use and enjoyment of the commonly owned land.
21. Plaintiffs are informed and believe that Defendant Richard Hough's conduct as alleged is an actionable nuisance that gives rise to a claim for actual and punitive damages suffered by Plaintiffs.

For a Fourth Cause of Action Against Defendant Richard Hough

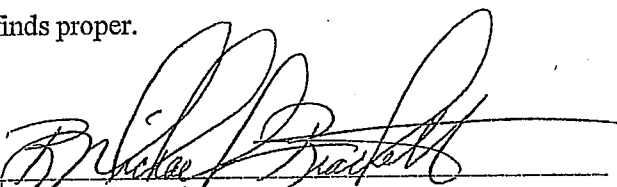
(Injunctive Relief)

22. The Plaintiffs re-allege all of the allegations set out hereinabove.
23. That such malicious and intentional conduct by the Defendant Richard Wesley Hough has caused immediate and irreparable harm to the pasture lands, the water lines, the fences, and further has prevented the Plaintiffs from entering the property by placing gates and locks; that the Plaintiffs are informed and believe that such conduct would do irreparable harm, cause loss and damage to the livestock if they are not allowed to restore the fences, restore the water lines and have access through the gates and locks placed there by the Defendant Richard Wesley Hough.

24. That as the Plaintiffs attempted to repair the water lines, fences, and pasture lands, the Defendant Richard Wesley Hough has tried to run them over with his bull dozer and tried to hit the Plaintiff Albert Hough's truck.
25. That the Plaintiffs have notified Kershaw County Sheriff's Department who have investigated the acts of the Defendant Richard Wesley Hough and have written reports attached hereto as Exhibit E.
26. The Plaintiffs are informed and believe that they are entitled to an immediate temporary restraining order, without notice, and a temporary injunction until such time as the property can be partitioned and sold as demanded herein.

WHEREFORE, the Plaintiffs pray for:

1. A temporary restraining order without notice;
2. A temporary injunction;
3. Partition in kind of the property described in Exhibit A;
4. Award of actual and punitive damages;
5. Award of attorney's fees and costs of this action; and
6. Such other relief as the Court finds proper.


B. Michael Brackett
Moses & Brackett, PC
P.O. Box 100261
Columbia, SC 29202
803.461.2312
mbrackett@mkb-law.com
Attorney for Plaintiffs


March 20, 2014

STATE OF SOUTH CAROLINA

IN THE COURT OF COMMON PLEAS

COUNTY OF KERSHAW

2011-CP-28-073

Albert H. Hough, individually and
as Personal Representative of the Estate
of Harold W. Hough and as Personal
Representative of the Estate of Elizabeth
P. Hough; George J. Hough and
Angela Hough,

Plaintiffs,

CERTIFICATE OF SERVICE

v.

Richard Wesley Hough, Joel Pitts
Hough, and Mary Louise Robinson,

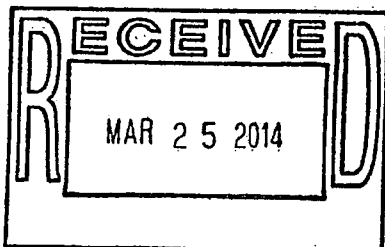
Defendants.

I, Linda T. Abernethy, Legal Assistant to B. Michael Brackett, Esquire, attorney for the Plaintiffs in the above-captioned matter, do hereby certify that I have served **Plaintiffs' Second Amended Complaint, filed March 21, 2014** on the Counsel for Defendant Richard Hough and Joel Hough and Defendant Robinson by United States Mail, postage prepaid and return address clearly indicated on said envelope on this 24th day of March, 2014, at the following address:

Kathleen M. McDaniel, Esquire
P.O. Box 1390
Columbia, SC 29202
Attorney for Defendant Richard W. Hough

Mary Louise Robinson
1100 Gunter Circle
West Columbia, SC 29169
pro se

M. Scott Rankin, Esquire
P.O. Box 1445
Camden, SC 29021
Attorney for Defendant Joel P. Hough



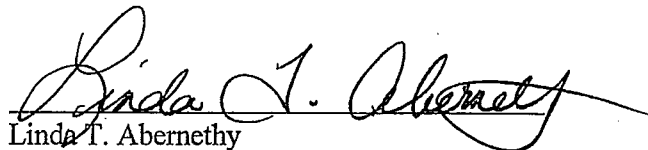

Linda T. Abernethy

Exhibit A to Second Amended Complaint

I. Beaver Dam Property

All that certain piece, parcel or tract of land with improvements thereon, if any, lying, situate and being in the State of South Carolina, County of Kershaw, about fourteen miles northeast of Camden, on waters of Beaver Dam Creek, containing one hundred thirty nine (139) acres, more or less, and bounded north by lands of Bowater Timber 4, east by lands of Donna G. Robinson, James F. Ray, Donald W. Watkins and Perry Bowers, south by Robinson Town Road and west by lands of Bowater Timber 4.

TMS # 153-00-00-005. A survey plat prepared by Thomas W. Broadway, Jr. dated February 18, 2012 shows this parcel to contain 143.05 acres, more or less.

II. Timber Creek Property

All that certain piece, parcel or tract of land with improvements thereon, if any, lying, situate and being in the State of South Carolina, Counties of Kershaw and Lee, about nine miles East of the City of Camden, fronting on Lucknow Road, containing two hundred sixty-nine (269) acres, more or less; about two hundred and sixty (260) being in Kershaw County and about nine (9) acres being in Lee County; bounded North by lands of Jack R. Corbett, et al., and Byron L. McCaskill, Jr.; East by lands of Byron L. McCaskill, Jr., Charlie B. and Edith G. Peebles, and Marshall Church; South by Marshall Church and Lucknow Road and West by lands of Lavern Branham, William Carlton, and Jack R. Corbett, et al.

TMS # 262-00-00-009. A survey plat prepared by Thomas W. Broadway, Jr. dated May 8, 2012 shows this parcel to contain 266.45 acres, more or less.

III. The real property cumulatively referred to as "**Pine Farm**," containing approximately 876.23 acres according to updated survey plats, is comprised of the following separate tracts or parcels:

A. 88 acres

All that certain piece, parcel or tract of land, lying and being in Kershaw County, South Carolina about four miles east of the City of Camden, lying on north side of South Carolina Highway Number 34, being that portion of "Pine Farm" containing eight-seven and seventy-eight hundredths (87.78) acres more or less, bounded north by lands of Chewning and Reams, formerly lands of Hermitage Cotton Mills, east by lands of Springdale, Small Family Partnership and South Carolina Pipe Line Company, south by South Carolina Highway Number 34, and west by lands of Rabon and Langley, formerly lands of Mickel, said property separated from the remainder of said "Pine Farm" by South Carolina Highway Number 34.

TMS # 286-00-00-004. A survey plat prepared by Thomas W. Broadway, Jr. dated February 29, 2012 shows this parcel to contain 88.47 acres, more or less.



B. Mount Olivet Property

All that certain piece, parcel or tract of land with improvements thereon, if any, lying, situate, and being in the State of South Carolina, County of Kershaw containing seventy-five (75) acres, more or less, about three miles east of the city of Camden, lying on the south side of Long Branch said branch separating said land from the remainder of "Pine Farm". Said piece, parcel or tract of land containing seventy-five (75) acres, more or less, and is a portion of "Pine Farm". The tract of land is bounded on the north by the remainder of "Pine Farm", east by property of Kershaw County, south by property of David Graves, west by property of David Graves.

TMS # 300-00-00-006A

C. 428.65 Acres- Pastureland

All that certain piece, parcel or tract of land with improvements thereon, if any, lying, situate, and being in the State of South Carolina, County of Kershaw containing four hundred thirty seven (437) acres, more or less, about three miles east of the city of Camden, lying on the south side of Highway 34 South known as the Bishopville Highway, and west of a paved road designated as Dr. Humphries Road. Said piece, parcel or tract of land containing Four Hundred Thirty Seven (437) acres, more or less, and is a portion of "Pine Farm" which was conveyed to Elizabeth Pitts Hough by deeds of Harold W. Hough. The tract of land is bounded on the north by South Carolina Highway 34; east by Dr. Humphries Road separating it from other Hough property; on the south by the highwater mark of Long Branch and on the west by lands of Mickle and Marsh.

TMS # 300-00-00-006. A survey plat prepared by Daniel D. Riddick dated January 20, 2012 shows this parcel to contain 428.65 acres, more or less, not including 5.8 acres deeded to Albert Hough by deed recorded in Book 2293 at Page 96.

D. 1089 Bishopville Highway Property

All that certain piece, parcel or tract of land containing two hundred and sixty-one acres more or less, bounded North by paved South Carolina Highway number 34 separating said land from property of Cecil J. and Betty J. Walls; thence center line of old Highway 34 (dirt) separating property from property of Robert G. and Suzanne McKenzie, thence paved South Carolina Highway number 34 separating said land from property of Eisenback Equipment Company ; thence Eastward up Brewer Springs Road; thence North by lands of Einsenback; thence center line of old highway number 34 (dirt) separating property on North side from Church of God of Prophecy, Robert and Dorothy Beasley and Elizabeth Frazier; East by property of Emanuel United Methodist Church and Galloway; South by property of Clebow Subdivision; West by property formally of C. M. Ford, J.C. West and S. Tetterton' and remainder of Pine Farm, separated by Dr. Humphries Road.

TMS # 301-00-00-001. A survey plat prepared by Thomas W. Broadway, Jr. dated March 18, 2012 shows this tract or parcel to contain a total of 284.11 acres, more or less, being comprised of 231.17 acres south of Highway 34, east of Dr. Humphries Road, and west of Brewer Springs Road; 1.77 acres north of Highway 34 and 51.17 acres east of Brewer Springs Road.

Jones, Seth, Skyles & Killen, LLP

Richard Cogburn Jones

G. Cabot Seth

Franklin Maurice Skyles

Patrick McFadden Killen

Richard Thomas Jones

Law Offices

5 New Range

P.O. Box 1268

Sumter, South Carolina 29151-1268

Tel.

(803) 773-8676

Fax

(803) 775-3461

Real Estate Fax

(803) 774-2025

July 12, 2010

CC/E

Richard Wesley Hough
945 Scaleybark Road
Charlotte, NC 28209

RE: Deed Preparation - 437 acres in Kershaw County
My File No.: 15734.00-R250

Dear Mr. Hough:

Thank you for allowing me to serve as your attorney in the above real estate transaction. I am delighted to have you as my client. Please review the following, and contact me with any questions or concerns you may have. If I am unavailable, you may direct any questions or concerns to my legal assistant, Mrs. Ginger Bloomer.

1. **Statement of Transaction / Attorney Fees.** You have requested that I prepare a deed which will convey property located in Kershaw County, South Carolina, containing approximately 437 acres from yourself and your brothers, Albert H. Hough and George J. Hough to the three of you equally. Currently, Albert holds an undivided, one-half interest in the property and you and George each hold a one-quarter interest. You want the three of you to each hold a one-third interest in the property. My fee for this transaction is **\$350.00**. This does not include certification of the property title. You understand that our search of the property records in the Register of Deeds Office, Assessor's Office, and/or Probate Court will be limited to gathering sufficient information in order to complete the deed.
2. **Recording Fees.** A recording fee of **\$10.00** is due and payable when we file the deed with the Register of Deeds Office.
3. **Deed Execution.** Since you, Albert and George all now own the property, all three of you will need to execute the deed. Once the deed is ready, I will forward it to each of you with instructions for execution.
4. **Survey.** I understand that there is no survey recorded for this property. I will use the same property description as that listed in the deed you provided.
5. **Property Taxes.** My fee for deed preparation normally does not include a search of the Assessor's records to determine the amount of the property taxes, nor do I certify whether or not property taxes have been paid. You will need to ensure that any property taxes which are due or past due are paid, as this will present a lien against the property.



July 12, 2010

Page 2

I do look forward to helping you conclude this matter. I hope you will let me know if there is anything further I can do to make this entire process go more smoothly.

Sincerely,



Franklin M. Shuler
Attorney at Law

FMS/glb

cc: Albert H. Hough
George J. Hough

Jones, Seth, Shuler & Killen, LLP

Richard Eugene Jones

Law Offices

J. Carol Seth

5 Law Prange

Franklin Murray Shuler

P.O. Box 1268

Patrick McFadden Killen

Sunrise, South Carolina 29151-1268

Richard Thomas Jones

Tel.

(803) 773-8676

Fax:

(803) 775-3461

Real Estate Fax:

(803) 774-7025

October 19, 2010

Richard Wesley Hough
945 Scaleybark Road
Charlotte, NC 28209

RE: Deed Preparation - 437 acres in Kershaw County
My File No.: 15734.00-R250

*Albert,
Sign and mail back
to me by Friday Nov. 19, 2010.
You have 30 days.
Richard 10/20/10*

Dear Mr. Hough:

Please find enclosed the revised deed, or Title to Real Estate, which will need to be executed by your brother, Albert H. Hough. The deed will transfer one-sixth interest from Albert to you and George J. Hough, with each of you acquiring a one-twelfth interest, for that portion of the interest in the property which was conveyed in Deed Book 2562 at page 36.

Albert will need to sign the deed on page two (2), where indicated, in the presence of two witnesses. A notary public must be present to witness the execution of the deed and will need to complete and notarize the acknowledgment section which follows Albert's signature. The notary can act as one of the two witnesses. Please refer to the enclosed example.

Albert will also need to execute the Affidavit of Consideration on page four (4) of the deed and have his signature notarized.

I understand that it may be some time before you return the original executed deed to us for recording. We will hold our file open until that time. However, please remit your payment for the enclosed invoice as soon as possible.

If you have any questions or further instructions, please feel free to contact this office.

Sincerely,

Ginger L. Bloomer

Ginger L. Bloomer
Real Estate Division Director

/glb
Enclosure



PREPARED BY:

JONES, SETH, SHULER & KILLEN, L.L.P.
POST OFFICE BOX 1268
SUMTER, SC 29151-1268

File Number: 15734.00-R250

STATE OF SOUTH CAROLINA
COUNTY OF KERSHAW

)
)
)
TITLE TO REAL ESTATE

WHEREAS, Elizabeth P. Hough conveyed all of her remaining rights, title and interest in the property described hereinbelow to Albert H. Hough, an undivided one-half (1/2) interest, Richard W. Hough, an undivided one-quarter interest (1/4) and George J. Hough, an undivided one-quarter (1/4) interest, by that deed dated and recorded August 11, 2009 in Deed Book 2562 at page 36 in the records of the Register of Deeds Office for Kershaw County; and

WHEREAS, prior to the above conveyance, various amounts of interest in said property were conveyed by Elizabeth P. Hough to Albert H. Hough, Richard W. Hough and / or George J. Hough by the following deeds: Deed recorded March 6, 1984 in Deed Book 1T at page 2112; Deed recorded December 31, 1987 in Deed Book JA at page 2650; Deed recorded December 31, 1990 in Deed Book 5 at page 19; Deed recorded December 31, 1991 in Deed Book 62 at page 44; Deed recorded January 16, 1992 in Deed Book 65 at page 160; Deed recorded December 31, 1992 in Deed Book 140 at page 46; Deed recorded December 31, 1992 in Deed Book 140 at page 112; Deed recorded November 12, 2004 in Deed Book 1664 at page 25; Deed recorded December 28, 2007 in Deed Book 2293 at page 96; and Deed recorded December 31, 2008 in Deed Book 2459 at page 52; and

WHEREAS, it is the intention of the grantor herein that the interest conveyed in Deed Book 2562 at page 36 to himself, Richard W. Hough and George J. Hough should be divided equally among the three, so that following the execution and recording of this deed, Albert H. Hough, Richard W. Hough and George J. Hough will each have an undivided one-third (1/3) interest in that portion of the property conveyed in Deed Book 2562 at page 36; NOW, THEREFORE,

KNOW ALL MEN BY THESE PRESENTS, THAT I

ALBERT H. HOUGH

for and in consideration of the sum of a Gift to my brothers,

RICHARD W. HOUGH and
(an undivided 1/12 interest)
945 Scalaybark Road
Charlotte, NC 28209

GEORGE J. HOUGH
(an undivided 1/12 interest)
1407 Monument Square
Camden, SC 29020

in the State aforesaid, County aforesaid, have granted, bargained, sold and released, and by these Presents do grant, bargain, sell and release unto the said: Richard W. Hough and George J. Hough, their heirs and assigns forever, the following described property to wit:

An undivided 1/6 or 2/12 interest, with each of the grantees acquiring a 1/12 interest. In and to that portion or interest conveyed in Deed Book 2562 at page 36 for that property described as: All that certain piece, parcel, or tract of land, together with any improvements thereon, lying and being situate in the County of Kershaw, State of South Carolina, containing four hundred thirty-seven (437) acres, more or less, about three miles east of the City of Camden, lying on the south side of Highway 34 South, known as the Bishopville Highway, and west of a paved road designated as Dr. Humphries Road. Said piece, parcel or tract of land is a portion of "Pine Farm" which was conveyed to Elizabeth Pitts Hough by deeds of Harold W. Hough. The tract of land is bounded as follows: On the NORTH by S.C. Highway 34; on the EAST by Dr. Humphries Road separating it from property now or formerly of Hough; on the SOUTH by the high water mark of Long Branch; and on the WEST by lands now or formerly of Mickle and Marsh.

Tax Parcel No.: 300-00-00-006.

This being the identical property conveyed to Albert H. Hough, Richard W. Hough and George J. Hough by that deed of Elizabeth P. Hough dated and recorded August 11, 2009 in Deed Book 2562 at page 36 in the records of the Register of Deeds Office for Kershaw County.

This conveyance is subject to all visible and recorded covenants, rights-of-way and easements affecting said property.

TOGETHER with all and singular the rights, members, hereditaments and appurtenances to the said premises belonging, or in anywise incident or appertaining.

TO HAVE AND HOLD, all and singular, the said Premises before mentioned unto the said Richard W. Hough and George J. Hough, their heirs and assigns forever.

And I do hereby bind myself and my heirs, assigns, executors and administrators, to warrant and forever defend, all and singular, the said Premises unto the said Richard W. Hough and George J. Hough, their heirs and assigns, against myself and my heirs and assigns and against every person whomsoever lawfully claiming or to claim the same or any part thereof.

WITNESS my hand and seal this _____ day of _____ in the year of our Lord two thousand ten and in the two hundred and thirty-fifth year of the Sovereignty and Independence of the United States of America.

SIGNED, SEALED AND DELIVERED
IN THE PRESENCE OF:

Witness #1 (required)

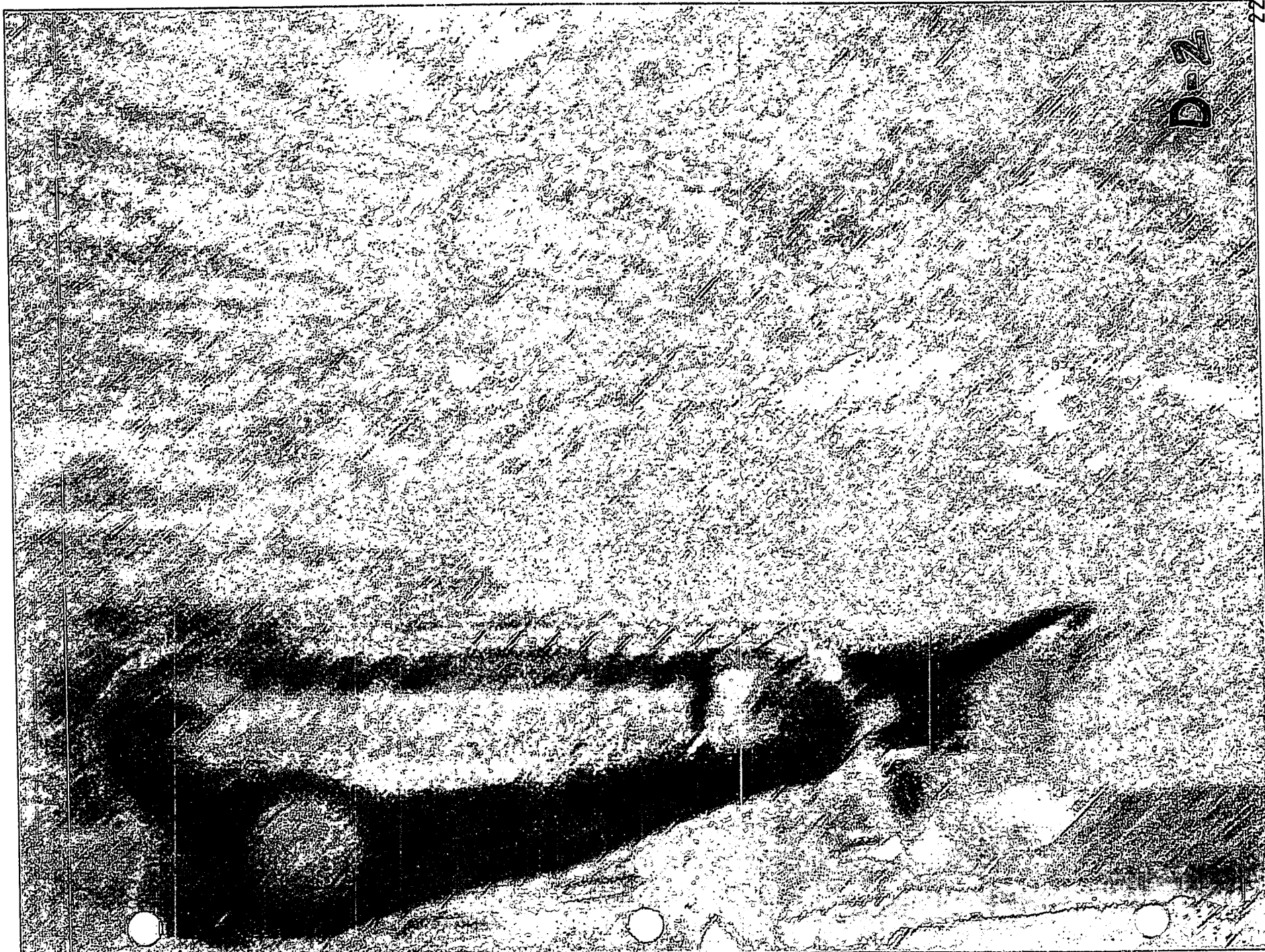
_____, (L.S.)
ALBERT H. HOUGH

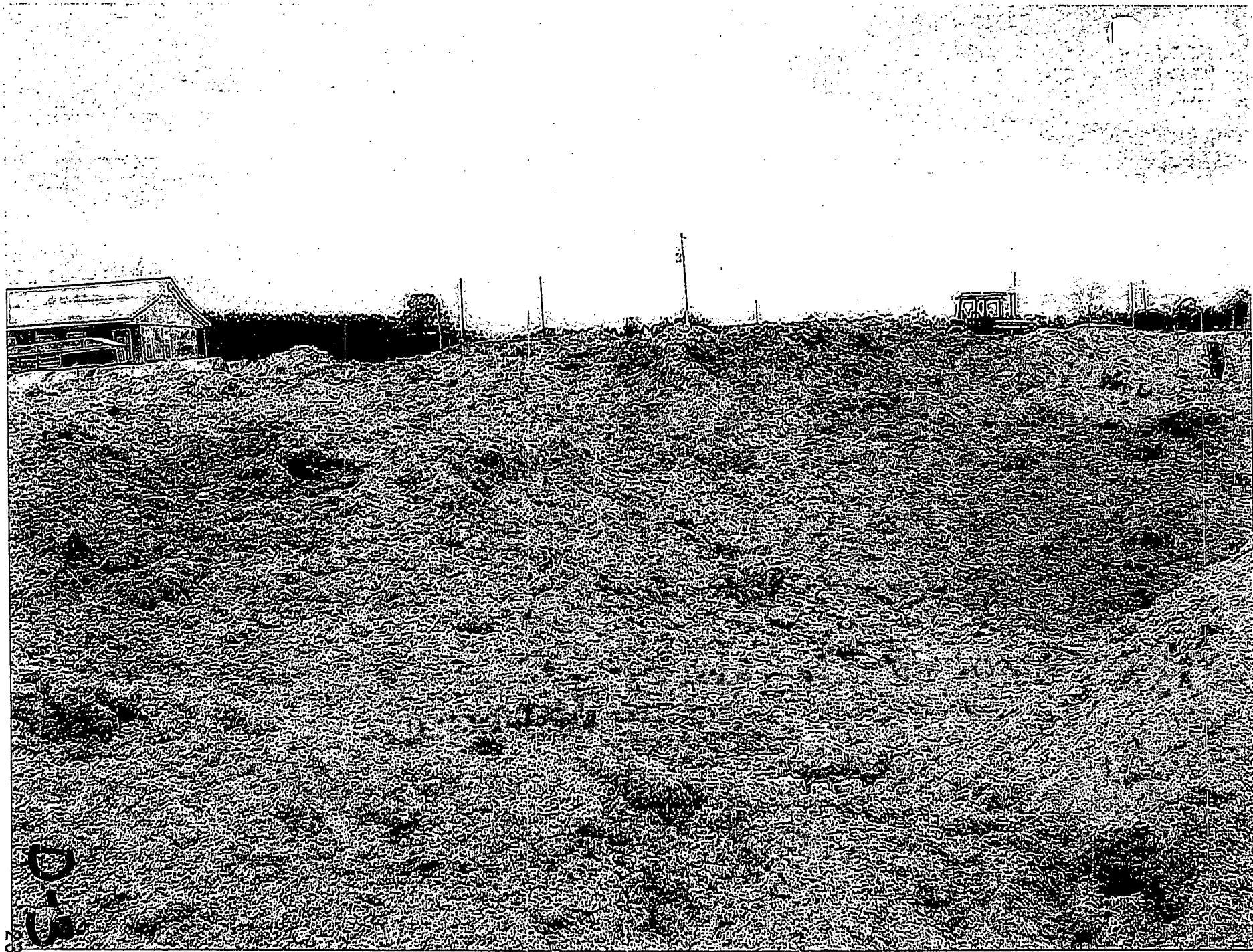
Witness #2 (required)

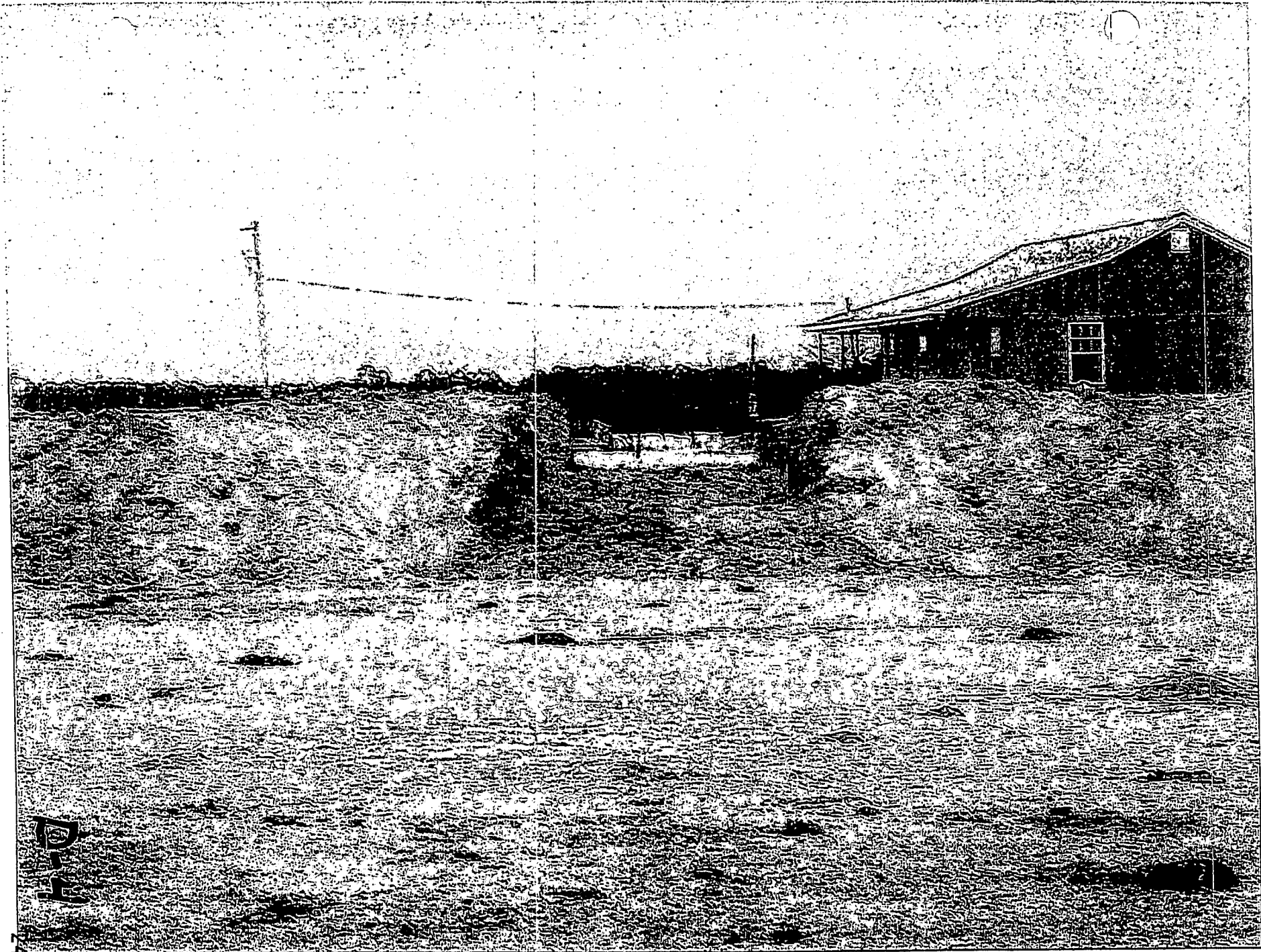
NO TITLE EXAMINATION PERFORMED NOR IS TITLE CERTIFIED BY



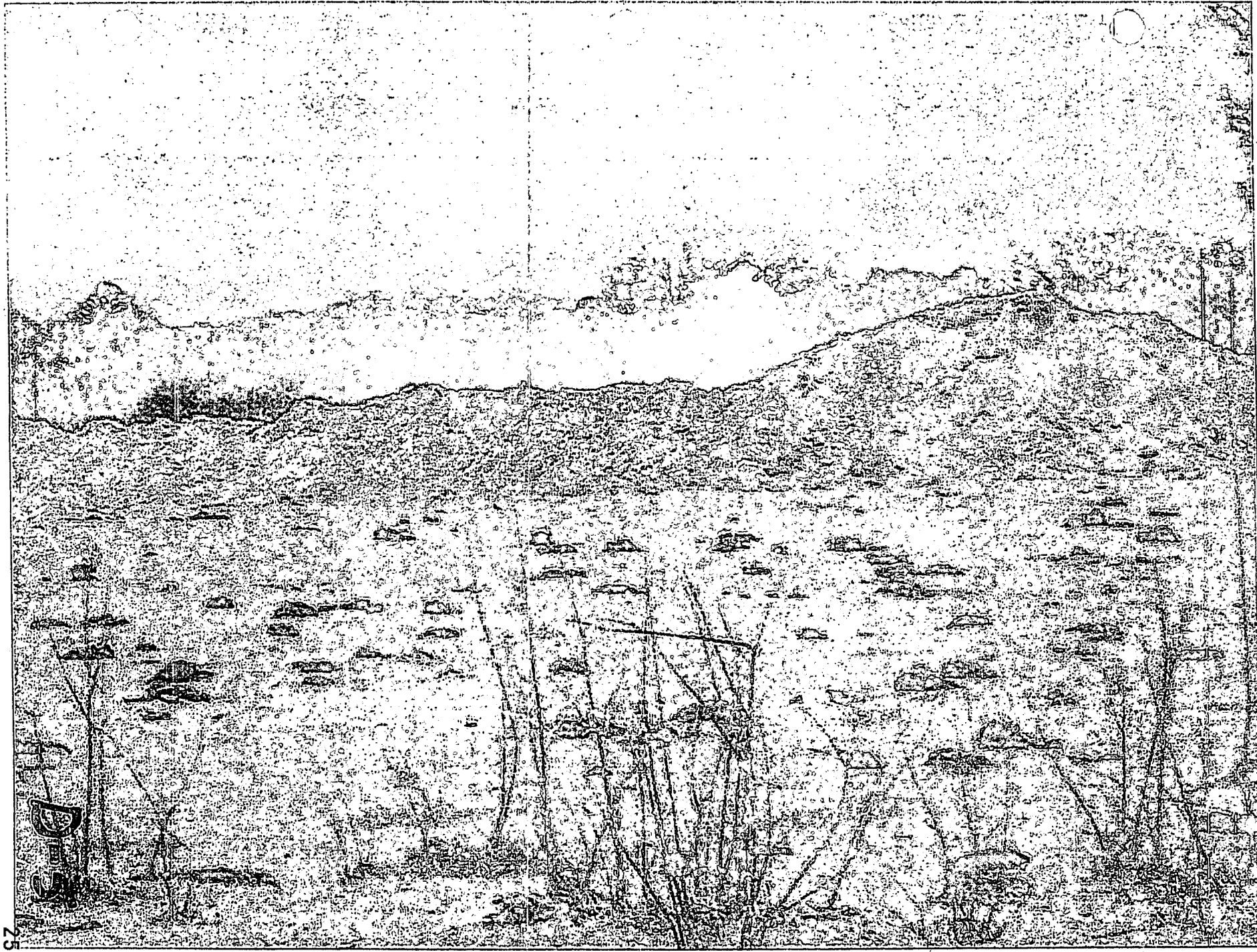
D-1





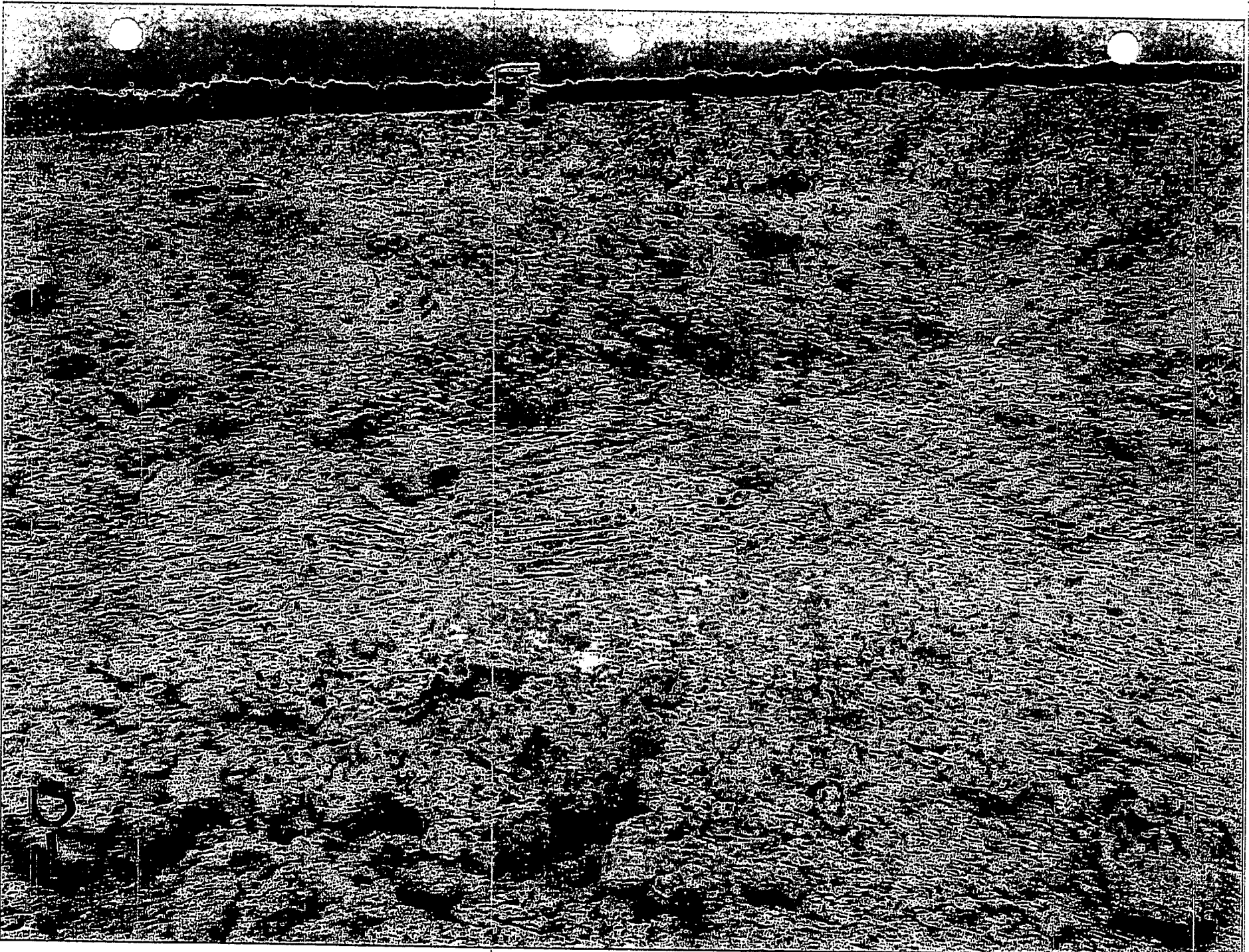


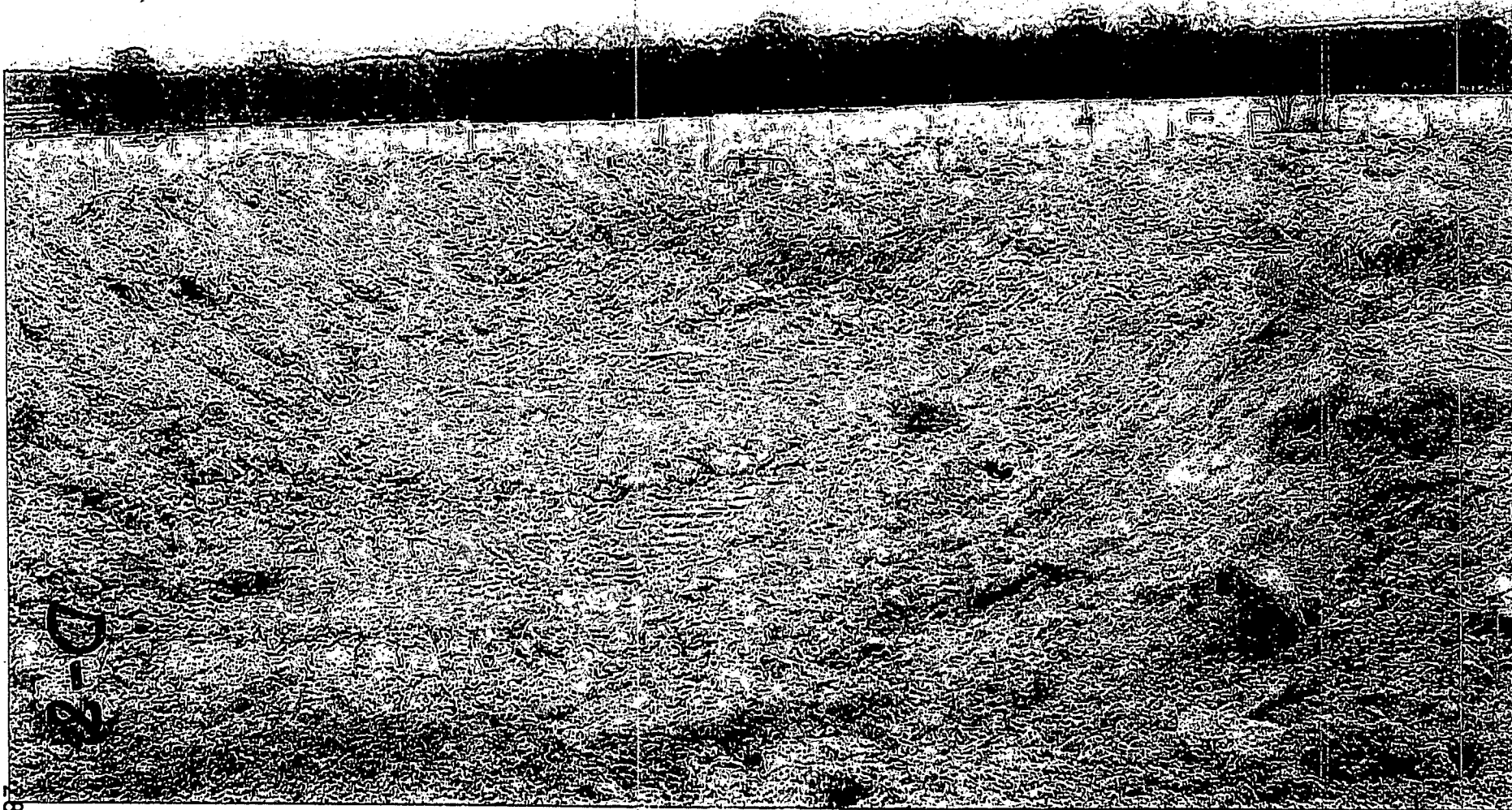
D-4



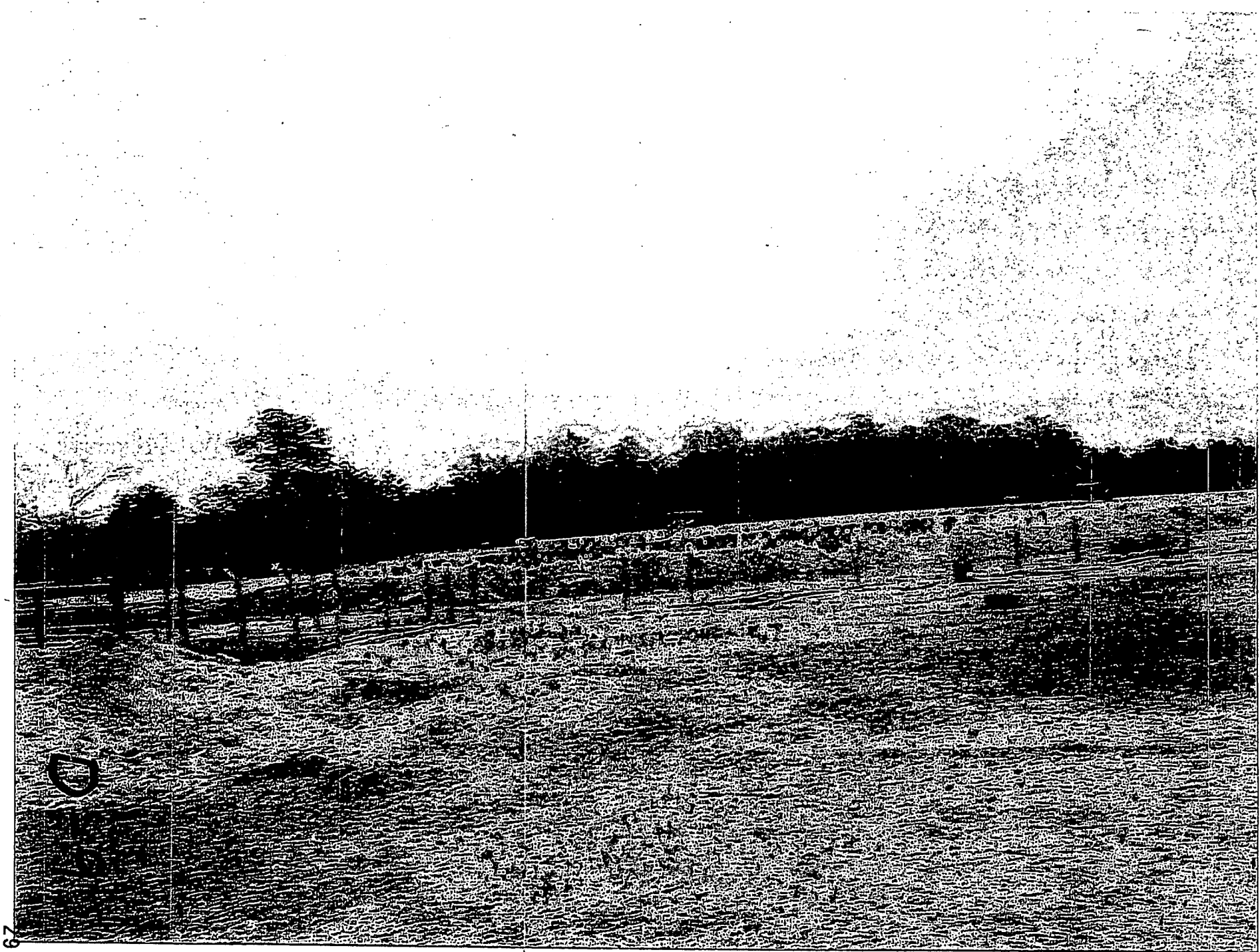


D-2

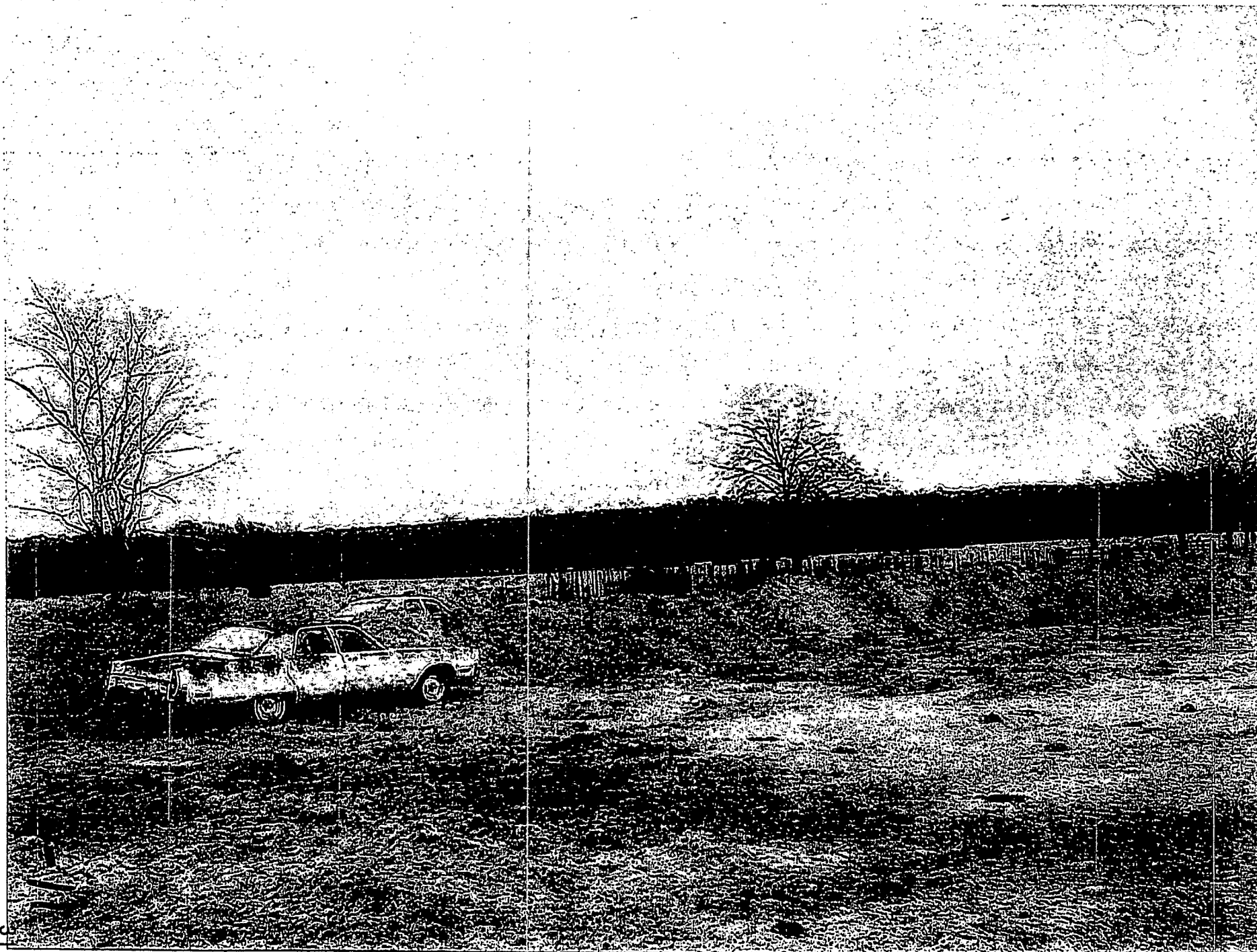


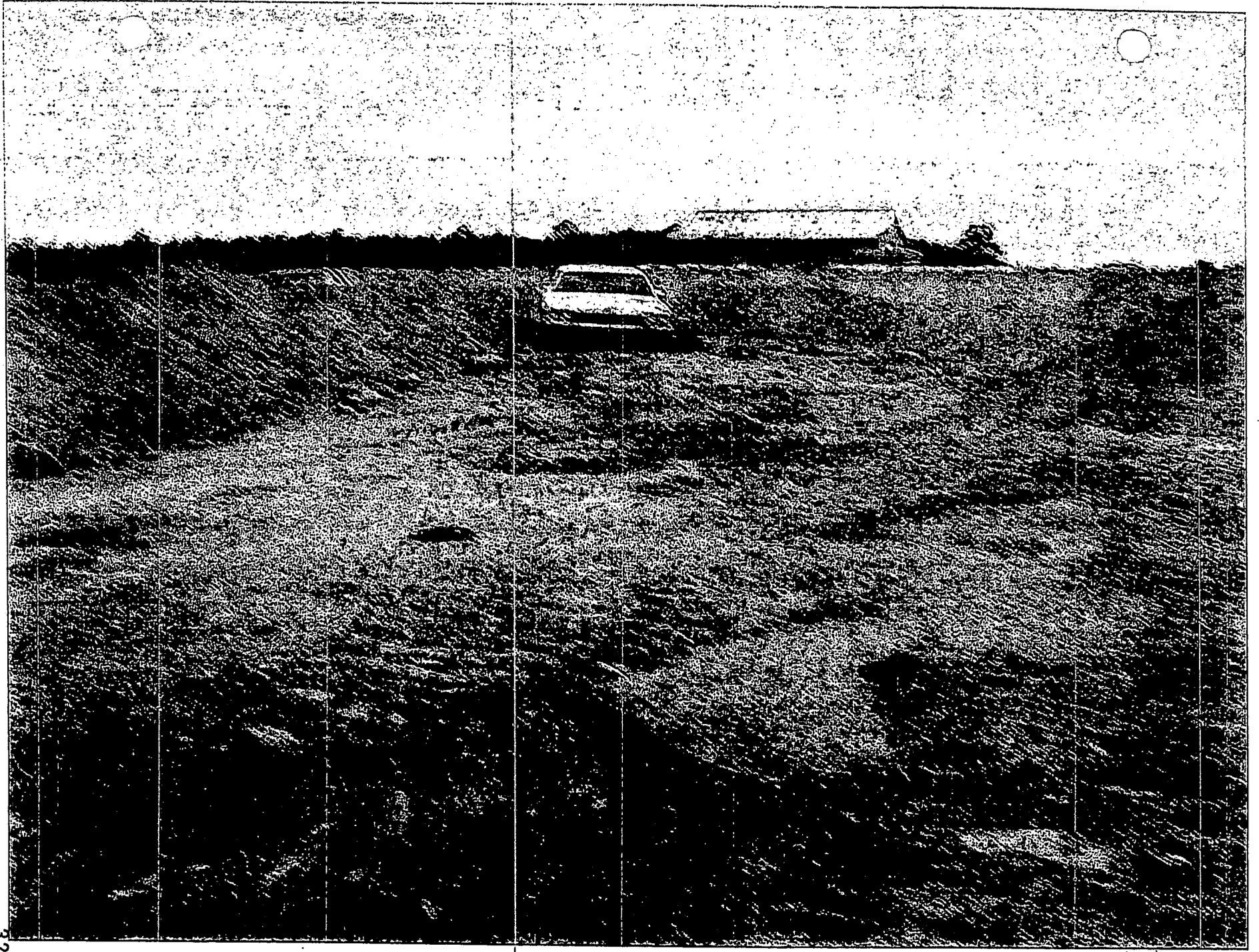


D-2



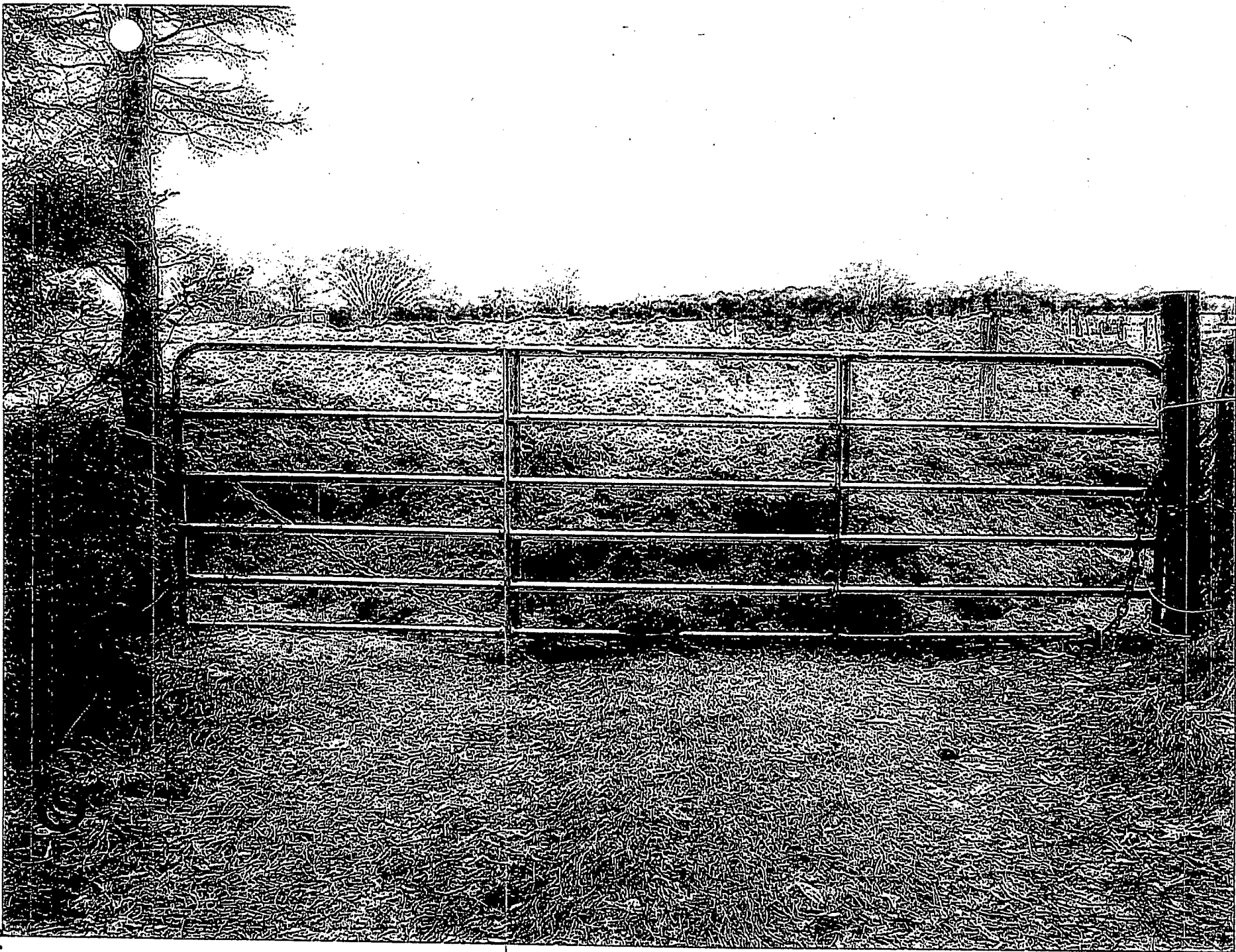






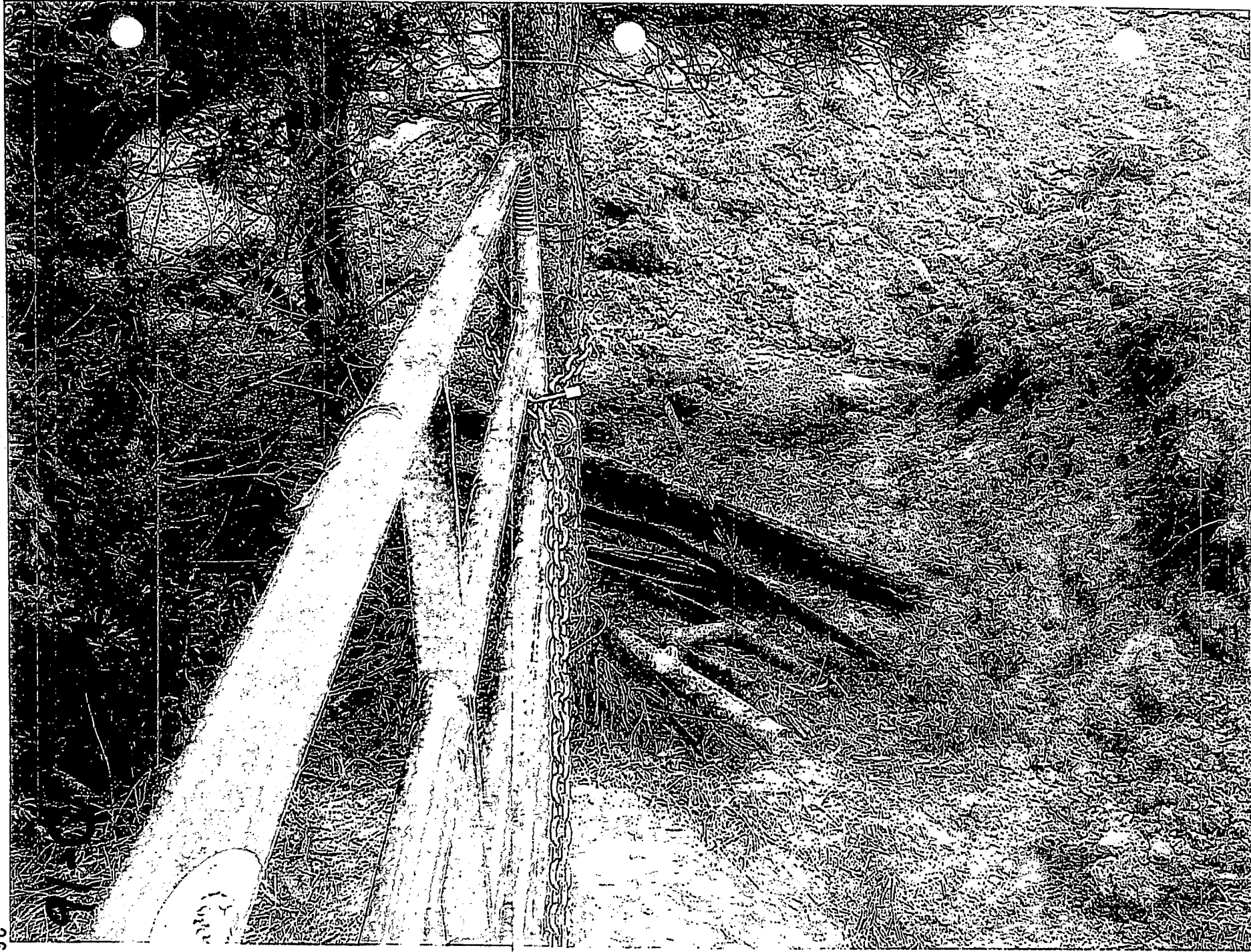


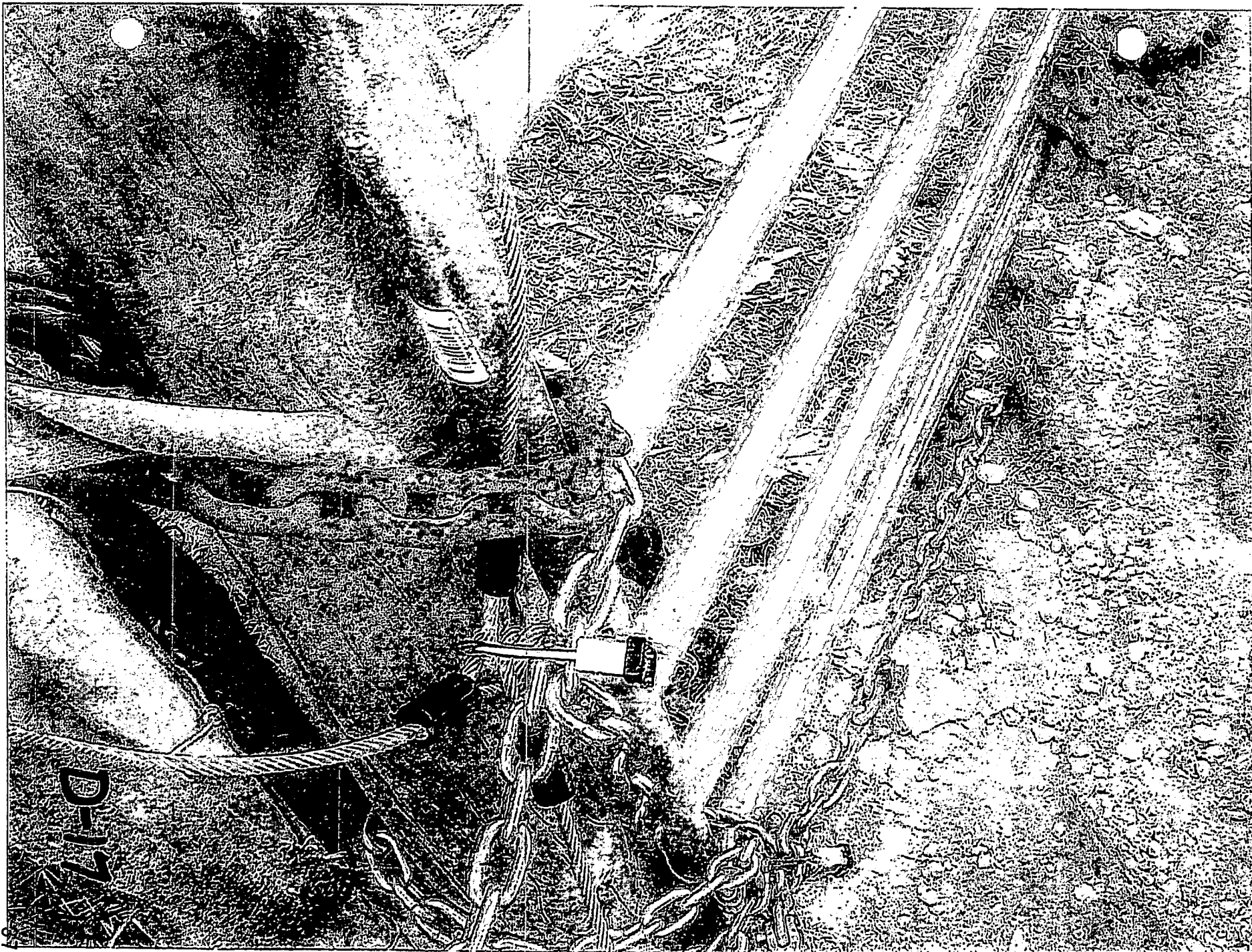
D-15

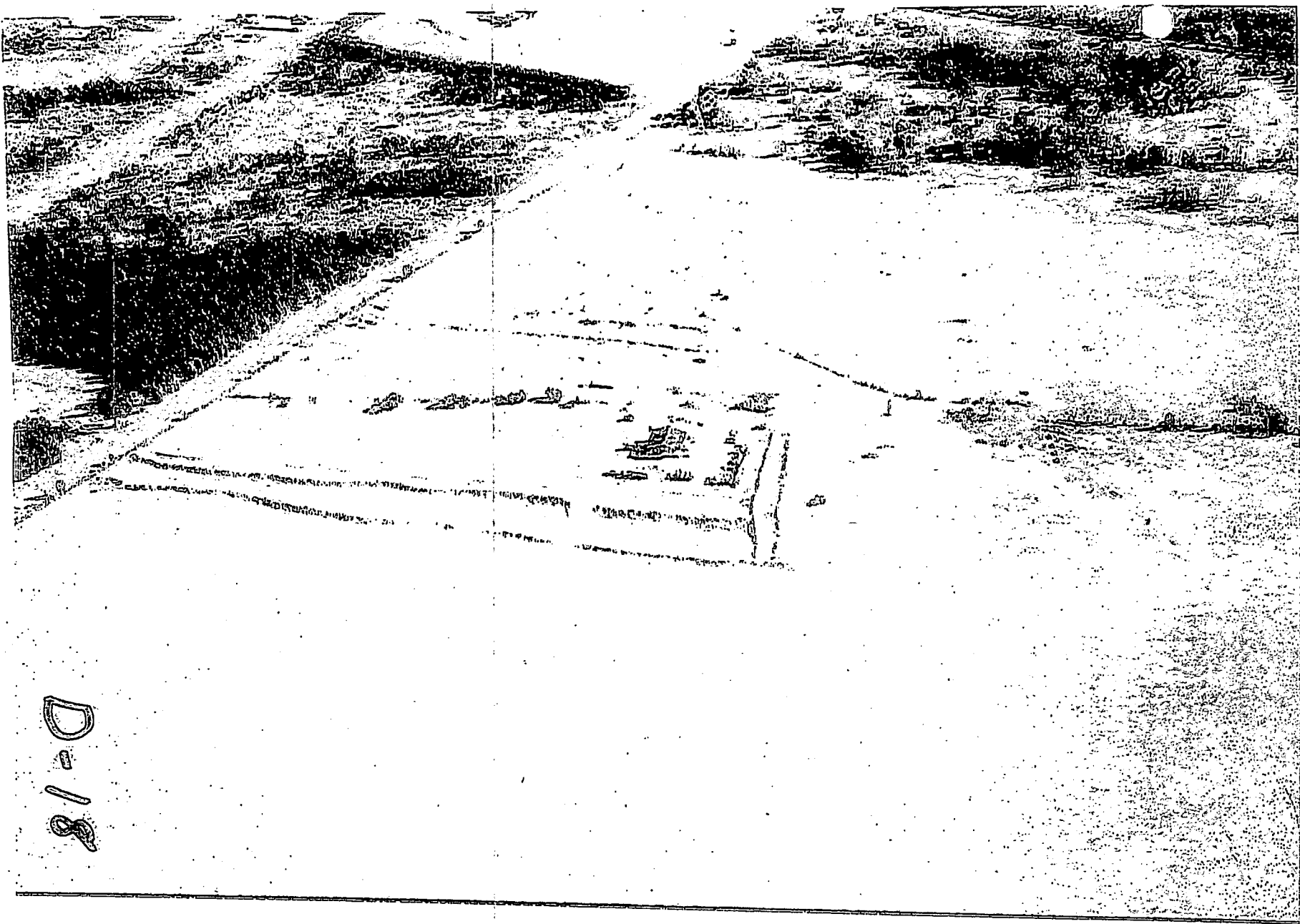




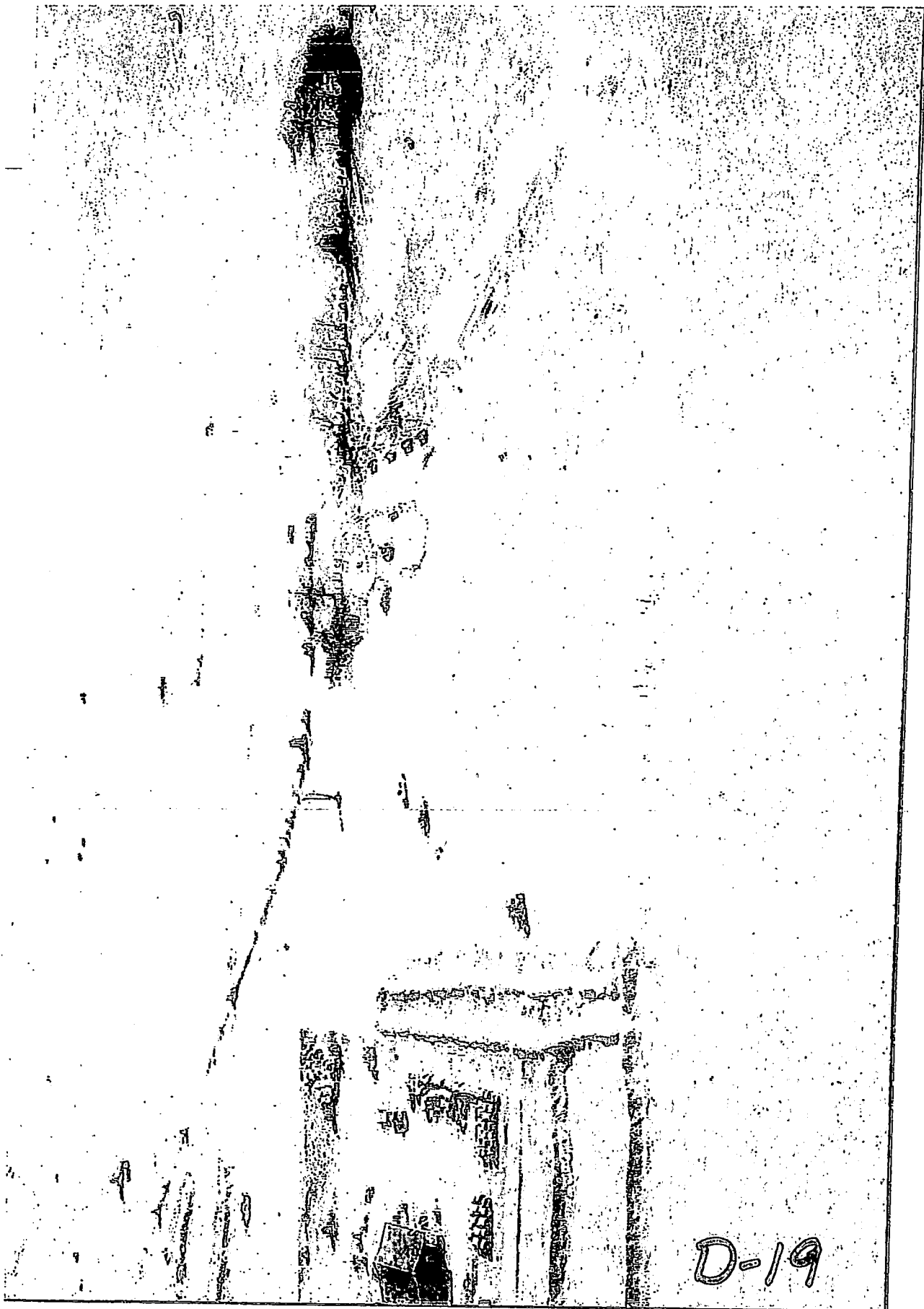
D-1/5







D-18



D-19

SC0280000

KERSHAW COUNTY SO

INCIDENT REPORT

Case Number

2010- 4667

NCIC

INQ ENTD

INCIDENT TYPE		COMPLETED	FORCED ENTRY	PREMISE TYPE	UNITS ENTERED	TYPE VICTIM
1. INFORMATION ONLY		☒ Yes ☐ No	☐ Yes ☒ No	RESIDENCE/HOME	0	☒ Individual ☐ Business ☐ Financial Inst. ☐ Government ☐ Relig. Orgn. ☐ Soc./Public ☐ Other ☐ Unknown ☐ Police Off
2.						
3.						
INCIDENT LOCATION (SUBDIVISION, APARTMENT AND NUMBER, STREET NAME AND NUMBER)				ZIP CODE	WEAPON TYPE	
849 BISHOPVILLE HWY CAMDEN SC 29020				29020	UNARMED	
INCIDENT DATE	24 HR CLOCK	TO	DATE	24 HR CLOCK	REPORT DATE	DISPATCH DATE/TIME 24 HR CLOCK
11/23/2010	14:10		11/23/2010	14:20		DISP DATE DISP TIME TIME ARRIVED DEPART TIME
COMPLAINANT'S NAME (LAST, FIRST, MIDDLE)		RELATIONSHIP TO SUBJECT		RESIDENT	RACE	AGE
HOUGH ANGELA				J		
ADDRESS		CITY		STATE	ZIP CODE	LOCATION NO
42 MAGNOLIA LANE		LUGOFF		SC	29078	1
VICTIM'S NAME (LAST, FIRST, MIDDLE)		RELATIONSHIP TO SUBJECT		RESIDENT	RACE	AGE
HOUGH ALBERT H		SB		J	W	55
HEIGHT	WEIGHT	HAIR	EYES	FACIAL HAIR, SCARS, TATTOOS, GLASSES, CLOTHING, PHYSICAL PECULIARITIES, ETC.	DAY TIME PHONE	EVENING PHONE
						803-438-8874
ADDRESS		CITY		STAT	ZIP CODE	LOCATION NO
42 MAGNOLIA LN		LUGOFF		SC	29078	1
VISIBLE INJURY (VICT. 1)		☐ YES ☒ NO EXPLAIN None		COMPLAINT OF ANY NON-VISIBLE INJURIES ☐ YES ☒ NO		
VICTIM (NO. 1) USING ALCOHOL		☐ YES ☐ NO ☒ UNK		DRUGS ☐ YES ☐ NO ☒ UNK TYPE:		
TYPE ASSIGNMENT		J - This Jurisdiction S - State O - Out of State U - Unknown				
☒ SUBJECT	NAME (LAST, FIRST, MIDDLE)		RACE	SEX	AGE	ETN
☐ RUNAWAY	HOUGH RICHARD					
☐ WANTED	FACIAL HAIR, SCARS, TATTOOS, GLASSES, CLOTHING, PHYSICAL PECULIARITIES, ETC.		DATE OF BIRTH			
☐ WARRANT			00/00/000			
☐ ARREST	ADDRESS		CITY		STATE	ZIP CODE
☐ JAIL						
☐ SUMMONS	SUBJECT (NO. 1) USING: ALCOHOL ☐ YES ☐ NO ☒ UNK		ARRESTED NEAR OFFENSE SCENE ☐ YES ☒ NO		DATE/TIME OF OFFENSE	
		DRUGS ☐ YES ☐ NO ☒ UNK TYPE:		TOTAL # ARRESTED 0		DATE/TIME OF ARREST
				11/23/2010 14:52		
R/O RESPONDED TO INCIDENT LOCATION IN REFERENCE TO A DAMAGED WATER LINE THAT WAS DAMAGED BY A BACK HOE. THE VICTIMS BELIEVE THE DAMAGE WAS CAUSED BY THE VICTIMS BROTHER RICHARD HOUGH BECAUSE OF AN ONGOING PROPERTY DISPUTE. R/O ADVISED THAT SINCE THE PROPERTY WAS IN ALL PARTIES NAMES THAT THE INCIDENT IS A CIVIL MATTER. REPORTING REQUESTED A REPORT TO BE COMPLETED R/O COMPLIED.						
TYPE GROUP			JURISDICTION OF THEFT LAW ENFORCEMENT AGENCY		JURISDICTION OF RECOVERY LAW ENFORCEMENT AGENCY	
STOLEN	\$0.00 0	\$0.00 0	\$0.00 0	\$0.00 0	\$0.00 0	\$0.00 0
DAMAGED	\$0.00 0	\$0.00 0	\$0.00 0	\$0.00 0	\$0.00 0	\$0.00 0
BURNED	\$0.00 0	\$0.00 0	\$0.00 0	\$0.00 0	\$0.00 0	\$0.00 0
RECOVERED	\$0.00 0	\$0.00 0	\$0.00 0	\$0.00 0	\$0.00 0	\$0.00 0
SEIZED	\$0.00 0	\$0.00 0	\$0.00 0	\$0.00 0	\$0.00 0	\$0.00 0
SUBJECT IDENTIFIED		SUBJECT LOCATED		INCIDENT CASE STATUS		
☒ YES ☐ NO		☐ YES ☒ NO		ACTIVE		
REASON FOR EXCEPTIONAL		OFFENDER		ARRESTED UNDER 18 ☐ EX-CLEAR UNDER 18 ☐		
				ARRESTED 18 AND OVER ☐ EX-CLEAR 18 AND OVER ☐		
		NO PROSECUTION ☐ EXTRADITION DENIE ☐ VICTIM DECLINES COOPERATION ☐ JUVENILE NO CUST ☐				
REPORTING OFFICER(S)		DATE	UNIT	APPROVING OFFICER		DATE
ARRELL, MIKE		11/23/2010	44	MORRIS, BRIAN		11/23/2010
				FOLLOW UP INVESTIGATION		UNIT
				YES ☒ NO ☐		40
				11/23/20		



ADDITIONAL NARRATIVES

Narrative Entered By / Modifications

MCARRELL 11/23/2010 3:10:07PM

MTAYLOR 11/26/2010 2:32:56PM

MTAYLOR 11/26/2010 2:31:38PM

SUPPLEMENTAL NARRATIVES

ON 11-26-2010, CPL TAYLOR, DID RESPOND TO THE SAME INCIDENT LOCATION TO SPEAK WITH THE COMP OVER SAME PROBLEM. COMP STATED THAT THE WATER LINE WAS REPAIRED AND THAT THE DITCH WAS COVERED UP. THE BROTHER HAD DAMAGED THE LINE. COMP STATED THAT ON TODAY'S DATE IT WAS FOUND THAT THE WATER HAD BEEN DUG UP AND BROKEN AGAIN BY A BULLDOZER WITH AN APPROXIMATELY SIX FOOT DEEP DITCH AT A G WHERE THE COMP MUST PASS THROUGH TO WATER AND FEED HIS CATTLE. R/O ALSO ADVISED THAT THIS IS AN ONGOING PROBLEM OVER LAND.

Supplemental Narrative Entered By / Modifications

MTAYLOR 11/26/2010 2:32:56PM

MTAYLOR 11/26/2010 2:31:38PM

SC0280000

KERSHAW COUNTY SO

Case Number

NCIC

2010-4667

INQ. ENTD

PAGE 2 of 3 PAGES

☒ ORIGINAL
☐ MODIFIES
☐ ORIGINAL

☐ SUPPLEMENTAL
☐ CASE
☐ STATUS

☐ ADDITIONAL
☐ VICTIMS
☐ ADDITIONAL
☐ OFFENDERS

☐ ADDITIONAL
☐ STOLEN PROPERTY
☐ ADDITIONAL
☐ RECOVERED PROPERTY

VICTIM/SUBJ. I.D. OVERFLOW	☐ COMPLAINANT	NAME (LAST, FIRST, MIDDLE)		VICTIM RELATIONSHIP TO SUBJECT		RESIDENT	RACE	SEX	AGE	DOB	ETN	
	☐ VICTIM #	HEIGHT	WEIGHT	HAIR	EYES	FACIAL HAIR, SCARS, TATTOOS, GLASSES, CLOTHING, PHYSICAL PECULIARITIES, ETC.						
	☐ SUBJECT #	ADDRESS		CITY	STATE	ZIP CODE	LOCATION NO	DAY PHONE	EVENING PHONE			
	☐ RUNAWAY	☐ VICTIM NO. ☐ VISIBLE ☐ YES ☐ NO		COMPLAINT OF ANY NON-VISIBLE INJURIES		☐ VICTIM USING ALCOHOL ☐ YES ☐ NO ☐ UNK		TYPE ASSIGNMENT				
	☐ WANTED	EXPLAIN		☐ YES ☐ NO		DRUGS ☐ YES ☐ NO ☐ UNK		TYPE:				
	☐ WARRANT	☐ SUBJECT NO. ☐ USING ALCOHOL: ☐ YES ☐ NO		USING DRUGS: ☐ YES ☐ NO		TYPE:		☐ UNK				
	☐ ARREST	NAME (LAST, FIRST, MIDDLE)		VICTIM RELATIONSHIP TO SUBJECT		RESIDENT	RACE	SEX	AGE	DOB	ETN	
	☐ JAIL	HEIGHT	WEIGHT	HAIR	EYES	FACIAL HAIR, SCARS, TATTOOS, GLASSES, CLOTHING, PHYSICAL PECULIARITIES, ETC.						
	☐ SUMMONS	ADDRESS		CITY	STATE	ZIP CODE	LOCATION NO	DAY PHONE	EVENING PHONE			
	☐	☐ VICTIM NO. ☐ VISIBLE ☐ YES ☐ NO		COMPLAINT OF ANY NON-VISIBLE INJURIES		☐ VICTIM USING ALCOHOL ☐ YES ☐ NO ☐ UNK		TYPE ASSIGNMENT				
☐	EXPLAIN		☐ YES ☐ NO		DRUGS ☐ YES ☐ NO ☐ UNK		TYPE:					
☐	☐ SUBJECT NO. ☐ USING ALCOHOL: ☐ YES ☐ NO		USING DRUGS: ☐ YES ☐ NO		TYPE:		☐ UNK					

Please see Additional Narratives on attached page

NAR.

VEHICLE/ETC 1

PROPERTY EST.	STATUS		TYPE		VIN AND/OR LICENSE NO		JURISDICTION OF THEFT LAW ENFORCEMENT AGENCY		JURISDICTION OF RECOVERY LAW ENFORCEMENT AGENCY		
	☐ STOLEN	☐ VEHICLE							BOAT HULL NO AND/OR REG NO		
	☐ RECOVERED	☐ GUN			SERIAL AND/OR OWNER APPLIED NO				STATE		
	☐ FOUND	☐ BOAT			YEAR OF REGISTRATION		YEAR OF EXPIRATION	YEAR	MAKE	TYPE	
	☐ TOWED	☐ LICENSE PLATE			MODEL		STYLE	COLOR	BRAND NAME	CALIBER	
	☐ SUSPECT	☐ SECURITIES/BONDS/STOCKS			NIC NO		DENOTATION	ISSUER	SECURITIES DATE		
	☐ VICTIM	☐ ARTICLE			MISCELLANEOUS						
TYPE GROUP											
STOLEN	\$0.00	0	\$0.00	0	\$0.00	0	\$0.00	0	\$0.00	0	\$0.00
DAMAGED	\$0.00	0	\$0.00	0	\$0.00	0	\$0.00	0	\$0.00	0	\$0.00
BURNED	\$0.00	0	\$0.00	0	\$0.00	0	\$0.00	0	\$0.00	0	\$0.00
RECOVERED	\$0.00	0	\$0.00	0	\$0.00	0	\$0.00	0	\$0.00	0	\$0.00
SEIZED	\$0.00	0	\$0.00	0	\$0.00	0	\$0.00	0	\$0.00	0	\$0.00

ADMINISTRATIVE	SUBJECT IDENTIFIED		SUBJECT LOCATED		INCIDENT CASE STATUS		☐ ARRESTED UNDER 18		☐ EX-CLEAR UNDER 18		
	☒ YES ☐ NO		☐ YES ☒ NO		ACTIVE		☐ ARRESTED 18 AND OVER		☐ EX-CLEAR 18 AND OVER		
	REASON FOR EXCEPTIONAL		☐ OFFENDER		☐ NO PROSECUTIO		☐ EXTRADITION DENIE		☐ VICTIM DECLINES COOPERATI		
	PORTING OFFICER(S)		DATE		UNIT		APPROVING OFFICER		DATE		
	CARRELL, MIKE		11/23/2010		40		MORRIS, BRIAN		11/23/2010		
						FOLLOW UP					
						INVESTIGATION ☐ YES ☐ NO				11/23/2011	

ADDITIONAL NARRATIVES

(Richard) was advised that he had his court date on the summons to be 12-15-2010 at 3:00 pm at the Kershaw County Court House room 201. (Richard Hough) was told he needed to park the bulldozer and stop any further damages pending the matter is handled in court.

(Albert Hough) said he estimated the damages to the pasture between (\$3000) and (\$5000), damages to the fencing between (\$300) and (\$500), and that the water line was also dug up again by (Richard Hough) with about a 20 foot section dug out of the ground from about 6 feet deep. The estimate on the damage to replace the water line is about (\$2000). This water line is for the purpose of watering the cattle in the various pastures and is essential for the well being of the animals.

(Albert Hough) wishes to press any and all charges possible on (Richard Hough).

Narrative Entered By / Modifications

JSLATEN 12/4/2010 6:57:04PM

INCIDENT REPORT

Case Number

NCIC

SC0280000

KERSHAW COUNTY SO

2010- 4760

INQ.

ENTD

INCIDENT TYPE		COMPLETED	FORCED ENTRY	PREMISE TYPE	UNITS ENTERED	TYPE VICTIM																																																	
1. DESTRUCTION/DAMAGE/VANDALISM/OF PROPERTY		☒ Yes ☐ No	☐ Yes ☒ No	FIELD/WOODS	0	☒ Individual ☐ Business ☐ Financial Inst. ☐ Government ☐ Relig. Orgn. ☐ Soc/Public ☐ Other ☐ Unknown ☐ Police Off																																																	
2. <i>malicious injury to persons property</i>																																																							
3.																																																							
INCIDENT LOCATION (SUBDIVISION, APARTMENT AND NUMBER, STREET NAME AND NUMBER)				ZIP CODE	WEAPON TYPE																																																		
849 BISHOPVILLE HWY CAMDEN SC				29020																																																			
INCIDENT DATE	24 HR CLOCK	TO	DATE	24 HR CLOCK	REPORT DATE	DISPATCH DATE/TIME 24 HR CLOCK																																																	
11/23/2010	10:00		12/01/2010	09:48		DISP DATE	DISP TIME																																																
						TIME ARRIVED	DEPART TIME																																																
						12/01/2010	09:48																																																
						09:48	09:48																																																
COMPLAINANT'S NAME (LAST, FIRST, MIDDLE)				RELATIONSHIP TO SUBJECT	RESIDENT	RACE	AGE																																																
							SEX																																																
							ETN																																																
							DAY TIME PHONE																																																
							EVENING PHONE																																																
ADDRESS				CITY	STATE	ZIP CODE	LOCATION NO																																																
VICTIM'S NAME (LAST, FIRST, MIDDLE)				RELATIONSHIP TO SUBJECT	RESIDENT	RACE	AGE																																																
HOUGH ANGELA				IL		W	47																																																
						F	N																																																
							DAY TIME PHONE																																																
							EVENING PHONE																																																
							803-438-8874																																																
HEIGHT	WEIGHT	HAIR	EYES	FACIAL HAIR, SCARS, TATTOOS, GLASSES, CLOTHING, PHYSICAL PECULIARITIES, ETC.																																																			
ADDRESS				CITY	STAT	ZIP CODE	LOCATION NO																																																
42 MAGNOLIA LN				LUGOFF	SC	29078	1																																																
VISIBLE INJURY (VICT. 1)				COMPLAINT OF ANY NON-VISIBLE INJURIES																																																			
☐ YES ☒ NO EXPLAIN None				☐ YES ☒ NO																																																			
VICTIM (NO.1) USING ALCOHOL				DRUGS																																																			
☐ YES ☐ NO ☒ UNK				☐ YES ☐ NO ☒ UNK TYPE:																																																			
TYPE ASSIGNMENT				J - This Jurisdiction S - State O - Out of State U - Unknown																																																			
☒ SUBJECT	NAME (LAST, FIRST, MIDDLE)			RACE	SEX	AGE	ETN																																																
☐ RUNAWAY	HOUGH RICHARD			W	M	53	N																																																
☐ WANTED	FACIAL HAIR, SCARS, TATTOOS, GLASSES, CLOTHING, PHYSICAL PECULIARITIES, ETC.			DATE OF BIRTH																																																			
☐ WARRANT				00/00/000																																																			
☐ ARREST	ADDRESS			CITY	STATE	ZIP CODE	LOCATION NO																																																
☐ JAIL	945 SCALLYBARK RD			CHARLOTTE	NC		1																																																
☐ SUMMONS	SUBJECT (NO.1) USING: ALCOHOL			ARRESTED NEAR OFFENSE SCENE		DATE/TIME OF OFFENSE																																																	
☐ YES ☐ NO ☐ UNK			☐ YES ☒ NO		12/01/2010 09:48		DATE/TIME OF ARREST																																																
DRUGS			TOTAL # ARRESTED																																																				
☐ YES ☐ NO ☐ UNK TYPE:			0																																																				
THE SUBJECT WHO IS THE VICTIMS SISTER IN LAW HAS BEEN DOING DAMAGE TO A WATER LINE THAT IS FOR SEVERAL CATTLE IN ABOUT 439 ACRES. THE SUBJECT ACTUALLY USES A BULLDOZIER AND DIGS UNDER THE GROUND AND RIPS UP THE WATER PIPES. THE SUBJECT IS UPSET OVER A LAND DISPUTE BETWEEN FAMILY MEMBERS. THE SUBJECT HAS DONE THIS DAMAGE TWO TIMES ALREADY. ONCE AS THE TIME LISTED AND ON NOVEMBER 26. THE VICTIM DOES HAVE A WITNESS (GEORGE HOUGH) ACTUALLY SEEING HIM DO THE DAMAGE ALSO. THIS VICTIM WILL GO TO THE MAGISTRATES OFFICE TO SEEK SOME RELIEF FROM THIS.																																																							
<i>Witness to prove same</i>																																																							
JURISDICTION OF THEFT LAW ENFORCEMENT AGENCY				JURISDICTION OF RECOVERY LAW ENFORCEMENT AGENCY																																																			
<table border="1"> <thead> <tr> <th>TYPE GROUP</th> <th></th> <th></th> <th></th> <th></th> <th></th> <th></th> <th></th> </tr> </thead> <tbody> <tr> <td>STOLEN</td> <td>\$0.00</td> <td>0</td> <td>\$0.00</td> <td>0</td> <td>\$0.00</td> <td>0</td> <td>\$0.00</td> </tr> <tr> <td>DAMAGED</td> <td>\$0.00</td> <td>0</td> <td>\$0.00</td> <td>0</td> <td>\$0.00</td> <td>0</td> <td>\$0.00</td> </tr> <tr> <td>BURNED</td> <td>\$0.00</td> <td>0</td> <td>\$0.00</td> <td>0</td> <td>\$0.00</td> <td>0</td> <td>\$0.00</td> </tr> <tr> <td>RECOVERED</td> <td>\$0.00</td> <td>0</td> <td>\$0.00</td> <td>0</td> <td>\$0.00</td> <td>0</td> <td>\$0.00</td> </tr> <tr> <td>SEIZED</td> <td>\$0.00</td> <td>0</td> <td>\$0.00</td> <td>0</td> <td>\$0.00</td> <td>0</td> <td>\$0.00</td> </tr> </tbody> </table>								TYPE GROUP								STOLEN	\$0.00	0	\$0.00	0	\$0.00	0	\$0.00	DAMAGED	\$0.00	0	\$0.00	0	\$0.00	0	\$0.00	BURNED	\$0.00	0	\$0.00	0	\$0.00	0	\$0.00	RECOVERED	\$0.00	0	\$0.00	0	\$0.00	0	\$0.00	SEIZED	\$0.00	0	\$0.00	0	\$0.00	0	\$0.00
TYPE GROUP																																																							
STOLEN	\$0.00	0	\$0.00	0	\$0.00	0	\$0.00																																																
DAMAGED	\$0.00	0	\$0.00	0	\$0.00	0	\$0.00																																																
BURNED	\$0.00	0	\$0.00	0	\$0.00	0	\$0.00																																																
RECOVERED	\$0.00	0	\$0.00	0	\$0.00	0	\$0.00																																																
SEIZED	\$0.00	0	\$0.00	0	\$0.00	0	\$0.00																																																
SUBJECT IDENTIFIED		SUBJECT LOCATED		INCIDENT CASE STATUS		ARRESTED UNDER 18																																																	
☐ YES ☒ NO		☐ YES ☒ NO		ACTIVE		☐ EX-CLEAR UNDER 18																																																	
						☐ EX-CLEAR 18 AND OVER																																																	
REASON FOR EXCEPTIONAL		OFFENDER		NO PROSECUTIO		EXTRADITION DENIE																																																	
						VICTIM DECLINES COOPERATI																																																	
						JUVENILE NO CUST																																																	
REPORTING OFFICER(S)		DATE	UNIT	APPROVING OFFICER		DATE	UNIT																																																
S.KNAFELC		12/01/2010	16																																																				
				FOLLOW UP INVESTIGATION		12/01/2011																																																	
				YES ☒ NO ☐																																																			

AGENCY I.D.

SUPPLEMENTAL INCIDENT REPORT

Case Number

NCIC

SC0280000

KERSHAW COUNTY SO

2010-4760

INQ. INTD

☒ ORIGINAL REPORT
☐ SUPPLEMENTAL REPORT
☐ ADDITIONAL VICTIMS
☐ ADDITIONAL STOLEN PROPERTY
☐ MODIFIES ORIGINAL
☐ CASE STATUS
☐ ADDITIONAL OFFENDERS
☐ ADDITIONAL RECOVERED PROPERTY

PAGE 2 of 3 PAGES

VICT/SUBJ. I.D. OVERFLOW

☐ COMPLAINT	NAME (LAST, FIRST, MIDDLE)				VICTIM RELATIONSHIP TO SUBJECT		RESIDENT	RACE	SEX	AGE	DOB	ETN
☐ VICTIM #	HEIGHT	WEIGHT	HAIR	EYES	FACIAL HAIR, SCARS, TATTOOS, GLASSES, CLOTHING, PHYSICAL PECULIARITIES, ETC.							
☐ SUBJECT #	ADDRESS				CITY	STATE	ZIP CODE	LOCATION NO	DAY PHONE	EVENING PHONE		
☐ RUNAWAY	☐ VICTIM NO. ☐ VISIBLE INJURY ☐ YES ☐ NO				COMPLAINT OF ANY NON-VISIBLE INJURIES ☐ YES ☐ NO		VICTIM USING ALCOHOL ☐ YES ☐ NO ☐ UNK		TYPE ASSIGNMENT			
☐ WANTED	EXPLAIN						DRUGS ☐ YES ☐ NO ☐ UNK					
☐ WARRANT	☐ SUBJECT NO. ☐ USING ALCOHOL: ☐ YES ☐ NO											
☐ ARREST	USING DRUGS: ☐ YES ☐ NO TYPE: ☐ UNK											
☐ JAIL												
☐ SUMMONS												

VICT/SUBJ. I.D. OVERFLOW

☐ COMPLAINT	NAME (LAST, FIRST, MIDDLE)				VICTIM RELATIONSHIP TO SUBJECT		RESIDENT	RACE	SEX	AGE	DOB	ETN
☐ VICTIM #	HEIGHT	WEIGHT	HAIR	EYES	FACIAL HAIR, SCARS, TATTOOS, GLASSES, CLOTHING, PHYSICAL PECULIARITIES, ETC.							
☐ SUBJECT #	ADDRESS				CITY	STATE	ZIP CODE	LOCATION NO	DAY PHONE	EVENING PHONE		
☐ RUNAWAY	☐ VICTIM NO. ☐ VISIBLE INJURY ☐ YES ☐ NO				COMPLAINT OF ANY NON-VISIBLE INJURIES ☐ YES ☐ NO		VICTIM USING ALCOHOL ☐ YES ☐ NO ☐ UNK		TYPE ASSIGNMENT			
☐ WANTED	EXPLAIN						DRUGS ☐ YES ☐ NO ☐ UNK					
☐ WARRANT	☐ SUBJECT NO. ☐ USING ALCOHOL: ☐ YES ☐ NO											
☐ ARREST	USING DRUGS: ☐ YES ☐ NO TYPE: ☐ UNK											
☐ JAIL												
☐ SUMMONS												

Please see Additional Narratives on attached page

MARR

VEH/GUN/ETC 1

STATUS		TYPE		VIN AND/OR LICENSE NO				BOAT HULL NO AND/OR REG NO			
☐ STOLEN	☐ VEHICLE										
☐ RECOVERED	☐ GUN			SERIAL AND/OR OWNER APPLIED NO				STATE			
☐ FOUND	☐ BOAT			YEAR OF REGISTRATION		YEAR OF EXPIRATION		YEAR	MAKE	TYPE	
☐ TOWED	☐ LICENSE PLATE			MODEL		STYLE		COLOR	BRAND NAME		CALIBER
☐ SUSPECT	☐ SECURITIES/BONDS /STOCKS			NIC NO		DENOTATION		ISSUER	SECURITIES DATE		
☐ VICTIM	☐ ARTICLE			MISCELLANEOUS							

PROPERTY EST.

TYPE GROUP											
STOLEN	\$0.00	0	\$0.00	0	\$0.00	0	\$0.00	0	\$0.00	0	\$0.00
DAMAGED	\$0.00	0	\$0.00	0	\$0.00	0	\$0.00	0	\$0.00	0	\$0.00
BURNED	\$0.00	0	\$0.00	0	\$0.00	0	\$0.00	0	\$0.00	0	\$0.00
RECOVERED	\$0.00	0	\$0.00	0	\$0.00	0	\$0.00	0	\$0.00	0	\$0.00
SEIZED	\$0.00	0	\$0.00	0	\$0.00	0	\$0.00	0	\$0.00	0	\$0.00

ADMINISTRATIVE

SUBJECT IDENTIFIED ☐ YES ☒ NO		SUBJECT LOCATED ☐ YES ☒ NO		INCIDENT CASE STATUS ☐ ACTIVE		☐ ARRESTED UNDER 18		☐ EX-CLEAR UNDER 18	
REASON FOR EXCEPTIONAL ☐ OFFENDER		☐ NO PROSECUTION		☐ EXTRADITION DENIE		☐ VICTIM DECLINES COOPERATION		☐ JUVENILE NO CUSTODY	
REPORTING OFFICER(S)			DATE	UNIT	APPROVING OFFICER			DATE	UNIT
S. KNAPFLC			12/01/2010					0/0/0	
FOLLOW UP INVESTIGATION ☐ YES ☐ NO					12/01/2011				

ADDITIONAL NARRATIVES

Narrative Entered By / Modifications

SKNAFELC 12/1/2010 9:57:53AM

SKNAFELC 12/1/2010 9:58:43AM

AGENCY I.D.

INCIDENT REPORT

Case Number

NCIC

SC0280000

KERSHAW COUNTY SO

2010- 4810

INQ.

ENTD

INCIDENT TYPE		COMPLETED	FORCED ENTRY	PREMISE TYPE	UNITS ENTERED	TYPE VICTIM	
1. DESTRUCTION/DAMAGE/VANDALISM/ OF PROPERTY		☒ Yes ☐ No	☐ Yes ☒ No	FIELD/WOODS	0	☒ Individual ☐ Business ☐ Financial Inst. ☐ Government ☐ Relig. Orgn. ☐ Soc/Public ☐ Other ☐ Unknown ☐ Police Off	
2.							
3.							
INCIDENT LOCATION (SUBDIVISION, APARTMENT AND NUMBER, STREET NAME (AND) NUMBER)				ZIP CODE	WEAPON TYPE		
849 BISHOPVILLE HWY				29020	UNARMED		
INCIDENT DATE	24 HR CLOCK	TO	DATE	24 HR CLOCK	REPORT DATE	DISPATCH DATE/TIME 24 HR CLOCK	
12/04/2010	15:00		12/04/2010	17:25		DISP DATE	DISP TIME
						12/04/2010	17:25
						17:25	17:55
						LOCATION NO	
						1	
COMPLAINANT'S NAME (LAST, FIRST, MIDDLE)		RELATIONSHIP TO SUBJECT	RESIDENT	RACE	AGE	SEX	ETN
ADDRESS		CITY	STATE	ZIP CODE	LOCATION NO		
VICTIM'S NAME (LAST, FIRST, MIDDLE)		RELATIONSHIP TO SUBJECT	RESIDENT	RACE	AGE	SEX	ETN
HOUGH ALBERT H		SB	J	W	55	M	N
DAY TIME PHONE		EVENING PHONE					
803-477-4180		803-477-4180					
HEIGHT	WEIGHT	HAIR	EYES	FACIAL HAIR, SCARS, TATTOOS, GLASSES, CLOTHING, PHYSICAL PECULIARITIES, ETC.			
ADDRESS		CITY	STAT	ZIP CODE	LOCATION NO		
42 MAGNOLIA LN		LUGOFF	SC	29078	1		
VISIBLE INJURY (VICT. 1)		☐ YES ☒ NO		EXPLAIN		None	
COMPLAINT OF ANY NON-VISIBLE INJURIES		☐ YES ☒ NO					
VICTIM (NO.1) USING ALCOHOL		☐ YES ☒ NO ☐ UNK		DRUGS		☐ YES ☒ NO ☐ UNK	
TYPE ASSIGNMENT		J - This Jurisdiction S - State O - Out of State U - Unknown					
☒ SUBJECT	NAME (LAST, FIRST, MIDDLE)		RACE	SEX	AGE	ETN	DATE OF BIRTH
	HOUGH RICHARD		W	M	45	N	00/00/000
☐ RUNAWAY	FACIAL HAIR, SCARS, TATTOOS, GLASSES, CLOTHING, PHYSICAL PECULIARITIES, ETC.		HEIGHT	WEIGHT	HAIR	EYES	
			600	230	BRO		
☐ WANTED	BROWN						
☐ WARRANT	ADDRESS		CITY	STATE	ZIP CODE	LOCATION NO	
	945 SCALLYBARK RD.		CHARLOTTE	NC		1	
☐ ARREST	SUBJECT (NO.1) USING: ALCOHOL ☐ YES ☒ NO ☐ UNK		ARRESTED NEAR OFFENSE SCENE ☐ YES ☒ NO		DATE/TIME OF OFFENSE		
					12/04/2010 17:25		
☐ JAIL	DRUGS ☐ YES ☐ NO ☒ UNK TYPE:		TOTAL # ARRESTED 0		DATE/TIME OF ARREST		
☐ SUMMONS							
On 12-4-2010 at about 15:26 hrs (Mr. Albert Hough) called 911 to report that his brother (Richard Hough) was on the property located at 849 Bishopville Hwy, Camden Kershaw County and destroying the pasture and fence with bulldozer. The computer also showed a courtesy summons on (Richard Hough), and [Cpl. Slaten] was advised. Around 17:25 hrs [Cpl. Slaten] was able to respond to deal with call and serve the summons. (Richard Hough) was found in one of the pastures on a bulldozer cutting several trenches, or moles as (Richard) called them when talking with [Cpl. Slaten]. (Richard) also admitted to removing sections of fencing when asked. He was told he was responsible if any of the cattle was to get onto the roadway and claimed they were still inside another perimeter fence. The sections of trenches dug looked to be around 20 feet wide and around 200 yards long. There seemed to be two separate trenches cut by (Richard).							
JURISDICTION OF THEFT LAW ENFORCEMENT AGENCY				JURISDICTION OF RECOVERY LAW ENFORCEMENT AGENCY			
TYPE GROUP	OTHER	OTHER					
STOLEN	\$0.00 0	\$0.00 0	\$0.00 0	\$0.00 0	\$0.00 0	\$0.00 0	\$0.00
DAMAGED	\$5,000.00 1	\$500.00 1	\$0.00 0	\$0.00 0	\$0.00 0	\$0.00 0	\$5,500.00
BURNED	\$0.00 0	\$0.00 0	\$0.00 0	\$0.00 0	\$0.00 0	\$0.00 0	\$0.00
RECOVERED	\$0.00 0	\$0.00 0	\$0.00 0	\$0.00 0	\$0.00 0	\$0.00 0	\$0.00
SEIZED	\$0.00 0	\$0.00 0	\$0.00 0	\$0.00 0	\$0.00 0	\$0.00 0	\$0.00
SUBJECT IDENTIFIED		SUBJECT LOCATED		INCIDENT CASE STATUS			
☒ YES ☐ NO		☒ YES ☐ NO		ACTIVE			
REASON FOR EXCEPTIONAL		OFFENDER		NO PROSECUTIO		EXTRADITION DENIE	
						VICTIM DECLINES COOPERATI	
						JUVENILE NO CUST	
REPORTING OFFICER(S)		DATE	UNIT	APPROVING OFFICER		DATE	UNIT
SLATEN, JOHN		12/04/2010	51	SLATEN, JOHN		12/04/2010	51
				FOLLOW UP INVESTIGATION		12/04/2011	
				YES ☒ NO ☐			

INCIDENT REPORT

Case Number

NCIC

KERSHAW COUNTY SO

2011- 295

INQ.

ENTD

INCIDENT TYPE		COMPLETED	FORCED ENTRY	PREMISE TYPE	UNITS ENTERED	TYPE VICTIM	
1. AGGRAVATED ASSAULT		☐ Yes ☒ No	☐ Yes ☒ No	FIELD/WOODS	0	☒ Individual ☐ Business ☐ Financial Inst. ☐ Government ☐ Relig. Orgn. ☐ Soc/Public ☐ Other ☐ Unknown ☐ Police Off	
2.							
3.							
INCIDENT LOCATION (SUBDIVISION, APARTMENT AND NUMBER, STREET NAME AND NUMBER)				ZIP CODE	WEAPON TYPE		
849 BISHOPVILLE HWY CAMDEN				SC 29020	MOTOR VEHICLE		
INCIDENT DATE	24 HR CLOCK	TO	DATE	24 HR CLOCK	REPORT DATE	DISPATCH DATE/TIME 24 HR CLOCK	
01/15/2011	14:30		01/15/2011	15:00		DISP DATE	DISP TIME
						TIME ARRIVED	DEPART TIME
						01/15/2011	15:08
						15:31	16:24
						LOCATION NO	
						1	
COMPLAINANT'S NAME (LAST, FIRST, MIDDLE)			RELATIONSHIP TO SUBJECT	RESIDENT	RACE	AGE	SEX
ADDRESS			CITY	STATE	ZIP CODE	LOCATION NO	
VICTIM'S NAME (LAST, FIRST, MIDDLE)			RELATIONSHIP TO SUBJECT	RESIDENT	RACE	AGE	SEX
HOUGH ALBERT H			SB	J	W	55	M
DAY TIME PHONE			EVENING PHONE				
803-477-4180			803-477-4180				
HEIGHT	WEIGHT	HAIR	EYES	FACIAL HAIR, SCARS, TATTOOS, GLASSES, CLOTHING, PHYSICAL PECULIARITIES, ETC.			
ADDRESS			CITY	STAT	ZIP CODE	LOCATION NO	
42 MAGNOLIA LN			LUGOFF	SC	29078	1	
VISIBLE INJURY (VICT. 1) ☒ YES ☐ NO EXPLAIN Apparent Minor Injuries							
COMPLAINT OF ANY NON-VISIBLE INJURIES ☐ YES ☒ NO							
VICTIM (NO.1) USING ALCOHOL ☐ YES ☐ NO ☒ UNK DRUGS ☐ YES ☐ NO ☒ UNK TYPE:							
TYPE ASSIGNMENT							
J - This Jurisdiction S - State O - Out of State U - Unknown							
☒ SUBJECT	NAME (LAST, FIRST, MIDDLE)			RACE	SEX	AGE	ETN
☐ RUNAWAY	HOUGH RICHARD			W	M	45	N
☐ WANTED	FACIAL HAIR, SCARS, TATTOOS, GLASSES, CLOTHING, PHYSICAL PECULIARITIES, ETC.						
☐ WARRANT	BROWN						
☐ ARREST	ADDRESS			CITY	STATE	ZIP CODE	LOCATION NO
☐ JAIL	945 SCALLYBARK RD.			CHARLOTTE	NC		1
☐ SUMMONS	SUBJECT (NO.1) USING: ALCOHOL ☐ YES ☐ NO ☒ UNK			ARRESTED NEAR OFFENSE SCENE ☐ YES ☒ NO		DATE/TIME OF OFFENSE	
DRUGS ☐ YES ☐ NO ☒ UNK TYPE:			TOTAL # ARRESTED 0		01/15/2011 17:30		
DATE/TIME OF ARREST							
R/O WAS CALLED TO ABOVE LOCATION TO SPEAK WITH THE VICTIM AND HE STATES THAT HIS BROTHER (SUSPECT) TRIED TO RUN OVER HIM WITH A BULL DOZER. VICTIM STATES THAT THERE IS AN ON GOING SITUATION WITH THE SUSPECT OVER LAND. VICTIM STATES THAT SUSPECT IS DIGGING BURMS AROUND THE LAND THAT HE SHARES WITH HIS BROTHER. VICTIM STATES THAT HE WAS IN HIS TRUCK IN THE PASTURE WHEN THE SUSPECT TRIED TO HIT HIS TRUCK WITH THE DOZER. VICTIM STATES THAT THE SUSPECT HAS DONE THIS BEFORE. THE VICTIMS WIFE (ANGELA HOUGH) STATES THAT SHE IS VERY SCARED THAT THINGS ARE GOING TO GET OUT OF CONTROL AND SOMEONE IS GOING TO GET HURT. VICTIM STATES THAT THEY HAVE BEEN TO COURT AND THE SUSPECT WAS NOT SUPPOSED BE DIGGING AND NOW HE IS. VICTIM STATES THAT THE SUSPECT WILL PUSH DIRT IN FRONT OF THE GATE WHERE HE CANT GET TO THE COWS. VICTIM ALSO STATES THAT							
JURISDICTION OF THEFT LAW ENFORCEMENT AGENCY				JURISDICTION OF RECOVERY LAW ENFORCEMENT AGENCY			
TYPE GROUP							
STOLEN	\$0.00	0	\$0.00	0	\$0.00	0	\$0.00
DAMAGED	\$0.00	0	\$0.00	0	\$0.00	0	\$0.00
BURNED	\$0.00	0	\$0.00	0	\$0.00	0	\$0.00
RECOVERED	\$0.00	0	\$0.00	0	\$0.00	0	\$0.00
SEIZED	\$0.00	0	\$0.00	0	\$0.00	0	\$0.00
SUBJECT IDENTIFIED		SUBJECT LOCATED		INCIDENT CASE STATUS		ARRESTED UNDER 18	
☒ YES ☐ NO		☐ YES ☒ NO		ACTIVE		☐ EX-CLEAR UNDER 18	
REASON FOR EXCEPTIONAL		OFFENDER		NO PROSECUTIO		EXTRADITION DENIE	
						VICTIM DECLINES COOPERATI	
						JUVENILE NO CUST	
REPORTING OFFICER(S)		DATE	UNIT	APPROVING OFFICER		DATE	UNIT
BAXLEY, CHUCKIE		01/15/2011	53	COBB, TY		1/15/2011	50
				FOLLOW UP INVESTIGATION		01/15/2012	
				YES ☒ NO ☐			

STATE OF SOUTH CAROLINA

COUNTY OF KERSHAW

Albert H. Hough, individually, and as
Personal Representative of the Estate of
Harold W. Hough and as Personal
Representative of the Estate of Elizabeth
P. Hough; George J. Hough and
Angela Hough,

Plaintiffs,

v.

Richard Wesley Hough, Joel Pitts
Hough and Mary Louise Robinson,

Defendants.

IN THE COURT OF COMMON PLEAS
FIFTH JUDICIAL CIRCUIT

Case No.: 2011-CP-2800073

SUMMONS

FILED FOR RECORD
2014 APR 11 PM 12:34
CLERK OF COURT
KERSHAW COUNTY, S.C.

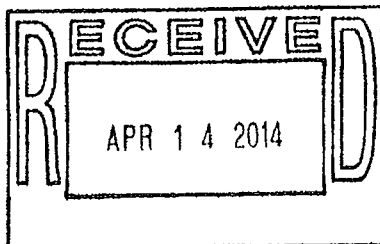
TO: M. SCOTT RANKIN, ESQUIRE, *Guardian Ad Litem* for Joel Pitts Hough:

Defendant Richard Hough has filed a Cross-Claim against Joel Hough in the above-referenced litigation. Within 15 days after service of this Summons on Joel Hough (not counting the day you received it), Joel Hough must serve on the Defendant Richard Hough an answer to the attached Defendant Richard Wesley Hough's Amended Answer to Plaintiffs' Second Amended Complaint, Counterclaims, and Cross-Claim or a motion under Rule 12 of the South Carolina Rules of Civil Procedure. The answer or motion must be served on Richard Hough's attorney, whose name and address are below. If Joel Hough fails to respond, judgment by default will be entered against him for the relief demanded in the Cross-Claim. Joel Hough also must file his answer or motion with the Kershaw County Court of Common Pleas.

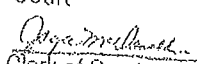
CALLISON TIGHE & ROBINSON, LLC


Kathleen M. McDaniel
Post Office Box 1390
Columbia, SC 29202
Tel: 803.404.6900
Fax: 803.404.6901
kathleenmcdaniel@callisontighe.com

ATTORNEY FOR RICHARD W. HOUGH



ATTEST True, Correct & Certified
Copy of Original on File in this
Court


Clerk of Court Kershaw County

STATE OF SOUTH CAROLINA)
COUNTY OF KERSHAW)
Albert H. Hough, individually, and as)
Personal Representative of the Estate of)
Harold W. Hough and as Personal)
Representative of the Estate of Elizabeth)
P. Hough; George J. Hough and)
Angela Hough,)
Plaintiffs,)
v.)
Richard Wesley Hough, Joel Pitts)
Hough and Mary Louise Robinson,)
Defendants.)

IN THE COURT OF COMMON PLEAS
FIFTH JUDICIAL CIRCUIT

Case No.: 2011-CP-2800073

DEFENDANT RICHARD WESLEY
HOUGH'S ANSWER TO SECOND
AMENDED COMPLAINT,
COUNTERCLAIMS, AND
CROSS-CLAIMS AGAINST JOEL HOUGH

FILED
2011 FEB 11 PM 12:34
CLERK OF COURT
KERSHAW COUNTY S.C.

TO: B. MICHAEL BRACKETT, ESQUIRE, Attorney for Plaintiffs; MARY LOUISE ROBINSON, *pro se*; and M. SCOTT RANKIN, ESQUIRE, *Guardian ad Litem* for Joel Pitts Hough;

Defendant Richard Wesley Hough ("Richard Hough"), answering the Plaintiffs' Second Amended Complaint for Temporary Restraining Order Without Notice; Temporary Injunction (Rule 65, SCRCP); Partition and Damages to Real Property (Waste and Nuisance) (herein after referred to as "Second Amended Complaint") would respectfully show unto this Court as follows:

FOR A FIRST DEFENSE

1. Richard Hough denies each and every allegation of the Second Amended Complaint not herein specifically admitted, qualified, or explained.
2. Richard Hough admits the allegations of Paragraph 1 of the Second Amended Complaint.
3. Richard Hough admits the allegations of Paragraph 2 of the Second Amended Complaint to the extent that certain of the parties are tenants in common of certain of the real properties that are the subject of this action. Richard Hough denies the remaining allegations of

Paragraph 2 of the Second Amended Complaint. Answering further, not all parties are tenants in common of each of the real properties that are the subject of this action.

4. Richard Hough admits the allegations of Paragraphs 3 and 4 of the Second Amended Complaint.

5. As to Paragraph 5 of the Second Amended Complaint, Richard Hough admits that venue is proper in Kershaw County, South Carolina. Answering further, however, the proper authority for such venue is S.C. Code Ann. § 15-7-10(2).

FOR A SECOND DEFENSE

6. Richard Hough realleges and incorporates by reference hereto Paragraphs 1 and 5 in response to Paragraph 6 of the Second Amended Complaint.

7. Richard Hough admits the allegations of Paragraph 7 of the Second Amended Complaint to the extent they allege that certain of the parties own undivided interests in certain of the real properties that are the subject of this action and that those interests are divisible in kind as provided for by the South Carolina Rules of Civil Procedure and the South Carolina Code of Laws. Richard Hough denies the remaining allegations of Paragraph 7 of the Second Amended Complaint. Answering further, Richard Hough will refer herein after to the real properties described in Exhibit A of the Second Amended Complaint as "the subject real properties."

8. Richard Hough denies the allegations of Paragraph 8 of the Second Amended Complaint.

FOR A THIRD DEFENSE

9. Richard Hough realleges and incorporates by reference hereto Paragraphs 1 through 8 in response to Paragraph 9 of the Second Amended Complaint.

10. Richard Hough denies the allegations of Paragraph 10 of the Second Amended Complaint.

11. Richard Hough admits the allegations of Paragraph 11 of the Second Amended Complaint to the extent that on October 19, 2010, he sent a deed to Albert Hough for his execution for the purpose of dividing certain of Albert Hough's interest in real property between Richard Hough and George Hough. Richard Hough denies the remaining allegations of Paragraph 11 of the Second Amended Complaint.

12. Richard Hough admits the allegations of Paragraph 12 of the Second Amended Complaint to the extent that he purchased a bulldozer. Richard Hough denies the remaining allegations of Paragraph 12 of the Second Amended Complaint.

13. Richard Hough admits the allegations of Paragraph 13 to the extent that certain of the subject real properties have been used for grazing horses and cattle, some of the cattle belonging or having belonged to the parties' parents. Richard Hough denies the remaining allegations of Paragraph 13 of the Second Amended Complaint.

14. Richard Hough admits the allegations of Paragraph 14 of the Second Amended Complaint to the extent they allege that he built berms and dug ditches on some portion of the subject real properties. Richard Hough denies the remaining allegations of Paragraph 14 of the Second Amended Complaint.

15. Richard Hough denies the allegations of Paragraphs 15, 16, and 17 of the Second Amended Complaint.

FOR A FOURTH DEFENSE

16. Richard Hough realleges and incorporates by reference hereto Paragraphs 1 through 15 in response to Paragraph 18 of the Second Amended Complaint.

17. Richard Hough denies the allegations of Paragraphs 19, 20, and 21 of the Second Amended Complaint.

FOR A FIFTH DEFENSE

18. Richard Hough realleges and incorporates by reference hereto Paragraphs 1 through 17 in response to Paragraph 22 of the Second Amended Complaint.

19. Richard Hough denies the allegations of Paragraphs 23 and 24 of the Second Amended Complaint.

20. Richard Hough admits the allegations of Paragraph 25 of the Second Amended Complaint to the extent he was interviewed as a result of one or more of the reports. Richard Hough is without information or knowledge sufficient to form a belief as to the truth of the remaining allegations of Paragraph 25 of the Second Amended Complaint and, therefore, denies the same.

FOR A SIXTH DEFENSE

21. In response to Plaintiff's prayer for relief, Richard Hough joins in the request that the real properties be partitioned in kind. Richard Hough denies the remaining portions of the Plaintiffs' prayer for relief in the Second Amended Complaint.

FOR A SEVENTH DEFENSE

22. All matters heretofore alleged not inconsistent herewith are hereby realleged and made a part hereof as if though fully again set forth herein.

23. The Plaintiffs fail to state facts sufficient to constitute causes of action for waste, nuisance, and injunctive relief; therefore, those causes of action should be dismissed pursuant to Rule 12(b)(6), SCRCP.

24. In particular, the Plaintiffs' claim for injunctive relief has previously been adjudicated by the Kershaw County Court of Common Pleas, and Richard Hough would crave reference to the Order Granting Injunction, filed February 11, 2011.

FOR AN EIGHTH DEFENSE

25. All matters heretofore alleged not inconsistent herewith are hereby realleged and made a part hereof as if though fully again set forth herein.

26. With regard to some or all causes of action set forth in the Second Amended Complaint, one or more of the Plaintiffs lacks standing to bring said claims.

27. Said claims should, therefore, be dismissed as to those Plaintiffs for lack of standing.

FOR A NINTH DEFENSE

28. All matters heretofore alleged not inconsistent herewith are hereby realleged and made a part hereof as if though fully again set forth herein.

29. Any alleged conduct by Richard Hough was not the cause in fact or the proximate cause of any injury suffered by the Plaintiffs.

FOR AN TENTH DEFENSE

30. All matters heretofore alleged not inconsistent herewith are hereby realleged and made a part hereof as if though fully again set forth herein.

31. The Plaintiffs are estopped or have waived their right to pursue some or all of their claims against Richard Hough.

FOR AN ELEVENTH DEFENSE

32. All matters heretofore alleged not inconsistent herewith are hereby realleged and made a part hereof as if though fully again set forth herein.

33. Richard Hough is entitled to a setoff for any overpayments made by him with respect to the subject real properties.

FOR A TWELFTH DEFENSE

34. All matters heretofore alleged not inconsistent herewith are hereby realleged and made a part hereof as if though fully again set forth herein.

35. Richard Hough has not acted with malice or ill-will towards the Plaintiffs, or recklessly or wantonly, or with a conscious disregard for the Plaintiffs' rights.

FOR A THIRTEENTH DEFENSE

36. All matters heretofore alleged not inconsistent herewith are hereby realleged and made a part hereof as if though fully again set forth herein.

37. An award of punitive damages under South Carolina law violates the Fifth, Sixth, and Fourteenth Amendments of the United States Constitution; Article 1, Section 3 of the South Carolina Constitution; and the Excessive Fines Clause of the South Carolina Constitution.

38. To the extent Richard Hough is found to be liable to the Plaintiffs (which is again denied) any award of punitive damages against Richard Hough is barred because of the lack of clear and convincing evidence for such an award under the facts of this case.

FOR A FOURTEENTH DEFENSE

39. All matters heretofore alleged not inconsistent herewith are hereby realleged and made a part hereof as if though fully again set forth herein.

40. With regard to some or all of the causes of action for which the Plaintiffs seek damages, the Plaintiffs' claims are barred, in whole or in part, because of their failure or the failure of their agents to mitigate said alleged damages.

FOR A FIFTEENTH DEFENSE

41. All matters heretofore alleged not inconsistent herewith are hereby realleged and made a part hereof as if though fully again set forth herein.

42. With regard to some or all of the Plaintiffs' causes of action in the Second Amended Complaint, the Plaintiffs' claims for attorney's fees are barred.

**FOR A SIXTEENTH DEFENSE AND BY WAY OF A FIRST COUNTERCLAIM AGAINST
THE PLAINTIFFS
(Partition of 5.8 acre parcel)**

43. All matters heretofore alleged not inconsistent herewith are hereby realleged and made a part hereof as if though fully again set forth herein.

44. This is an action for the partition of real property located in Kershaw County, South Carolina.

45. The Plaintiffs Albert Hough, George Hough, and Angela Hough are residents and citizens of Kershaw County, South Carolina, and own interests in real property located in Kershaw County, South Carolina.

46. The Plaintiff Albert Hough is the personal representative of the Estates of Harold W. Hough and Elizabeth P. Hough, which estates are pending in the Probate Court for Kershaw County, South Carolina.

47. This Court has subject matter jurisdiction pursuant to S.C. Code Ann. § 15-61-50.

48. Venue is proper in Kershaw County, South Carolina.

49. By Title to Real Estate, recorded on December 28, 2007 in the Kershaw County Register of Deeds at volume 2293 page 96, Elizabeth P. Hough conveyed to Albert Hough all of her interest in certain real property (herein after "the 5.8 acre parcel") described as follows:

All that certain piece, parcel or tract of land with improvements thereon, if any, lying, situate and being in the State of South Carolina, County of Kershaw, located near Camden, the same being shown on a plat prepared for Albert H. Hough by Daniel Riddick and Associates, Inc., dated October 2, 2007 and recorded in the Office of the ROD for Kershaw County in Plat Book C-27 at page 2-B on October 30, 2007.

This being a portion of the "Pine Farm" which was conveyed to Elizabeth Pitts Hough by deed of Harold W. Hough dated 20 April 1992 and recorded in the Office of the ROD for Kershaw County in Deed Book 0140 at page 046 on December 31, 1992.

50. A copy of the Title to Real Estate is attached as **Exhibit A** and incorporated herein by reference.

51. The plat prepared in 2007 and referenced in the Title to Real Estate for the 5.8 acre parcel is attached as **Exhibit B** and incorporated herein by reference.

52. Richard Hough is informed and believes that Elizabeth P. Hough was not the sole owner of the entirety of the 5.8 acre parcel she purported to convey to Albert Hough.

53. Richard Hough is informed and believes that he had an ownership interest in at least some portion of the 5.8 acre parcel purported to be conveyed to Albert Hough.

54. Richard Hough is informed and believes that he and certain of the Plaintiffs are co-owners of the 5.8 acre parcel.

55. Richard Hough is informed and believes that his and the certain Plaintiffs' interests constitute the entire ownership of the 5.8 acre parcel, and that this property is subject to no other claim.

56. The 5.8 acre parcel is divisible in kind and should be partitioned in kind in conjunction with the subject real properties.

57. The 5.8 acre parcel should be apportioned among Richard Hough and the certain Plaintiffs according to their particular ownership interests as provided for in Rule 72, SCRPC, and S.C. Code Ann. § 15-61-10 *et seq.*

58. Richard Hough has incurred and is entitled to recover reasonable attorney's fees and costs in conjunction with the partition of the 5.8 acre parcel.

**FOR A SEVENTEENTH DEFENSE AND BY WAY OF A SECOND COUNTERCLAIM
AGAINST THE PLAINTIFFS AND FIRST CROSS-CLAIM AGAINST JOEL HOUGH
(Unjust Enrichment)**

59. All matters heretofore alleged not inconsistent herewith are hereby realleged and made a part hereof as if though fully again set forth herein.

60. The Plaintiffs and Joel Hough are the owners of certain cattle, which are housed, raised, and fed on the subject real properties and 5.8 acre parcel.

61. In addition to housing, raising, and feeding cattle on a portion of the subject real properties and the 5.8 acre parcel, Albert and Angela Hough use the subject real properties and 5.8 acre parcel for the operation of a cattle business in which Richard Hough is not involved.

62. The Plaintiffs and Joel Hough derive a non-gratuitous benefit from their use of the subject real properties and 5.8 acre parcel, including Richard Hough's interest.

63. The Plaintiffs and Joel Hough have not compensated Richard Hough for their use of the subject real properties and 5.8 acre parcel or Richard Hough's interest therein.

64. The Plaintiffs and Joel Hough have retained benefits of the use of the subject real property which in justice and equity belong Richard Hough.

65. Richard Hough is entitled to recover his fractional share of the amount of the Plaintiffs and Joel Hough's unjust enrichment.

66. Richard Hough is entitled to recover actual damages, punitive damages, and pre-judgment interest on such amount.

**FOR A EIGHTEENTH DEFENSE AND BY WAY OF A THIRD COUNTERCLAIM AGAINST
THE PLAINTIFFS AND A SECOND CROSS-CLAIM AGAINST JOEL HOUGH
(Accounting)**

67. All matters heretofore alleged not inconsistent herewith are hereby realleged and made a part hereof as if though fully again set forth herein.

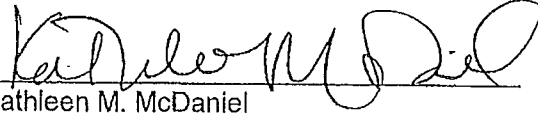
68. The Plaintiffs and Joel Hough have derived rents and profits from their use and enjoyment of the subject real properties and the 5.8 acre parcel.

69. Richard Hough is entitled to an accounting for such rents and profits.

WHEREFORE, having fully answered the Second Amended Complaint and having asserted the foregoing counterclaims, Richard Hough prays as follows:

- A. That the Court determine the parties who have an ownership interest in the 5.8 acre parcel and their respective percentage ownership interests;
- B. That the Court partition in kind the 5.8 acre parcel along with the subject real properties;
- C. That the Court require an accounting from the Plaintiffs for all rents and profits derived from the property;
- D. That Richard Hough be granted restitution, actual damages, punitive damages, and pre-judgment interest;
- E. That Richard Hough be award his attorney's fees, costs, and expenses incurred in this action; and
- F. That this Court award such other and further relief as is deemed just and proper.

CALLISON TIGHE & ROBINSON, LLC



Kathleen M. McDaniel

Post Office Box 1390

Columbia, SC 29202

Tel: 803.404.6900

Fax: 803.404.6901

kathleenmcdaniel@callisontighe.com

ATTORNEY FOR RICHARD W. HOUGH

April 10, 2014
Columbia, South Carolina

Exhibit A

TITLE TO REAL ESTATE

STATE OF SOUTH CAROLINA)

COUNTY OF Kershaw)

200700013289
Filed for Record in
KERSHAW COUNTY SC
BILLIE MCLEOD, REGISTER
12-28-2007 At 11:52 am.
DEED 10.00
STATE .00
COUNTY .00
OR Volume 2293 Page 96 - 98

KNOW ALL MEN BY THESE PRESENTS: That I, **Elizabeth P. Hough**, of Camden, State of South Carolina

In the State aforesaid, County of Kershaw in consideration of the sum of **Gift** to my son, **Albert H. Hough**, of Lugoff, South Carolina.

In the State aforesaid have granted, bargained, sold and released, and by these presents do grant, bargain, sell and release unto the said **Albert H. Hough**: All that certain piece, parcel or tract of land with improvements thereon, if any, lying, situate and being in the State of South Carolina, County of Kershaw, located near Camden, the same being shown on a plat prepared for **Albert H. Hough** by Daniel Riddick and Associates, Inc., dated October 2, 2007 and recorded in the Office of the ROD for Kershaw County in Plat Book C-27 at page 2-B on October 30, 2007. Said plat is incorporated herein by reference for a more complete and accurate description.

The above described property is a portion of "Pine Farm" which was conveyed to Elizabeth Pitts Hough by deed of Harold W. Hough dated 20 April 1992 and recorded in the Office of the ROD for Kershaw County in Deed Book 0140 at page 046 on December 31, 1992.

GRANTEES MAILING ADDRESS: 42 Magnolia Lane, Lugoff, South Carolina 29078

TMS: part of 300-00-00-006

TOGETHER with all and singular, the rights, members, hereditaments and appurtenances to the said premises belonging or in anywise incident or appertaining.

TO HAVE AND TO HOLD all and singular the premises before mentioned unto the said **Albert H. Hough**, his Heirs and Assigns forever.

AND I do hereby bind myself and my Heirs, Executors and Administrators, to warrant and forever defend all and singular the said premises unto the said **Albert H. Hough**, his Heirs and Assigns, against myself and my Heirs and against every person whomsoever lawfully claiming, or to claim, the same or any part thereof.

Recorded this 28th Day
Of December, 2007

Robin H. Watkins,
Kershaw County Auditor

WITNESS my Hand and Seal the 28th of December in the year of our Lord two thousand and seven in the two hundred and thirty second of the Sovereignty and Independence of the United States of America.

SIGNED, SEALED AND DELIVERED
IN THE PRESENCE OF

Kini Gagne x Elizabeth P. Hough (Seal)
Witness
[Signature] (Seal)
Witness

STATE OF SOUTH CAROLINA,
County of Kershaw,

PERSONALLY appeared before me the undersigned witness who, being duly sworn, says that (s)he saw the within named, Elizabeth Pitts Hough, sign, seal and as her act and deed, deliver the within written Deed for the uses and purposes therein mentioned, and that (s)he, with the other witness whose signature appears witnessed the execution thereof.

SWORN to before me
28th day of December, 2007

Kini Gagne
Witness

[Signature] (LS)
Notary Public of South Carolina
My Commission Expires: 5-27-2013

STATE OF SOUTH CAROLINA)
COUNTY OF Kershaw)

AFFIDAVIT FOR EXEMPT TRANSFERS

PERSONALLY appeared before me the undersigned, who being duly sworn, deposes and says:

1. I have read the information on the back of this affidavit and I understand such information.
2. The property being transferred is located at _____
bearing Kershaw County Tax Map Number pt of 300-00-00-086
was transferred by Elizabeth P. Hough
to Albert H. Hough
_____ on
December 28, 2007

3. The deed is exempt from the deed recording fee because (See Information section of affidavit):
Family Transfer

If exempt under exemption #14 as described in the Information section of this affidavit, did the agent and principal relationship exist at the time of the original sale and was the purpose of this relationship to purchase the realty? Check Yes _____ or No _____

4. As required by Code Section 12-24-70, I state that I am a responsible person who was connected with the transaction as:
Grantee

5. I understand that a person required to furnish this affidavit who wilfully furnishes a false or fraudulent affidavit is guilty of a misdemeanor and, upon conviction, must be fined not more than one thousand dollars or imprisoned not more than one year, or both.

Albert H. Hough
Responsible Person Connected with the Transaction

Albert H. Hough
Print or Type Name Here

SWORN to before me this 28 day of Dec 2007

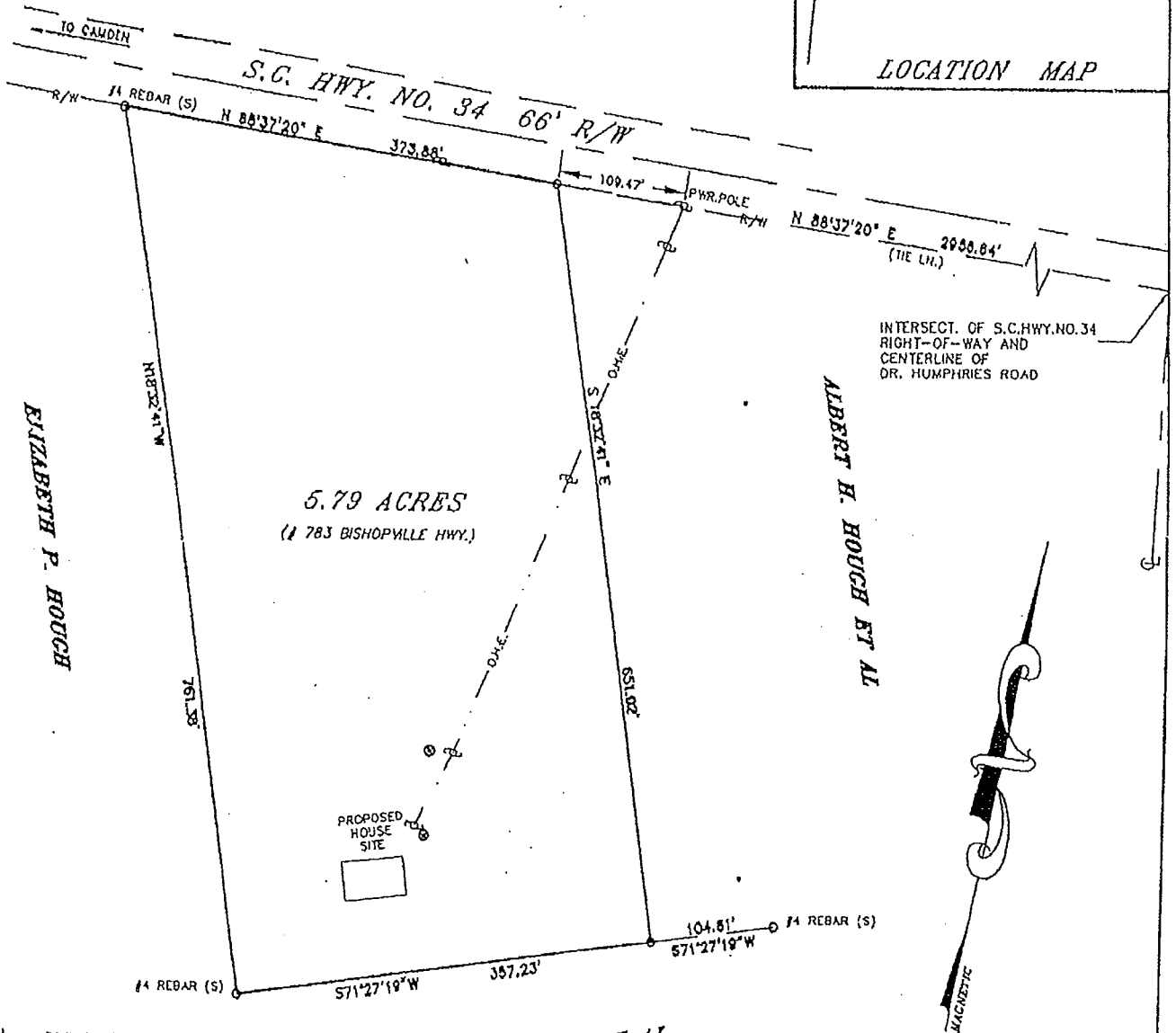
Dana M. Reed
Notary Public for SC

My Commission Expires: 10-30-08

Exhibit B

BISHOPVILLE HWY. S.C. HWY. NO. 34
KERSHAW COUNTY SCHOOL DISTRICT
PLAT BOOK 195 PAGE 10

LOCATION MAP



ALBERT H. HOUGH ET AL

BOUNDARY SURVEY FOR
ALBERT H. HOUGH
LOCATED APPROXIMATELY 9 MILES EAST OF CANDEN
DEKALB TOWNSHIP - KERSHAW COUNTY - SOUTH CAROLINA



SCALE : 1 in. = 100 FT.

OCTOBER 2, 2007

REFERENCE : TAX MAP NO. 300-00-00-006 , PLAT BOOK 9 PAGE 29

I HEREBY STATE THAT TO THE BEST OF MY KNOWLEDGE, INFORMATION, AND BELIEF, THE SURVEY SHOWN HEREIN WAS MADE IN ACCORDANCE WITH THE REQUIREMENTS OF THE MINIMUM STANDARDS MANUAL FOR THE PRACTICE OF LAND SURVEYING IN SOUTH CAROLINA, AND MEETS OR EXCEEDS THE REQUIREMENTS FOR A CLASS "B" SURVEY AS SPECIFIED THEREIN; ALSO THERE ARE NO VISIBLE ENCROACHMENTS OR PROJECTIONS OTHER THAN SHOWN.

THIS IS TO CERTIFY THAT THE LOT SHOWN HEREON IS LOCATED IN ZONE "X" AS SHOWN ON F.E.M.A. FLOOD MAP NO. 45055C0460E DATED DECEMBER 19, 2006

PREPARED BY : DANIEL RIDDICK & ASSOCIATES, INC.
4 LAFAYETTE CT. - P.O. BOX 309 - CANDEN, S.C. - 29020 - (803) 432-5105

[Signature]

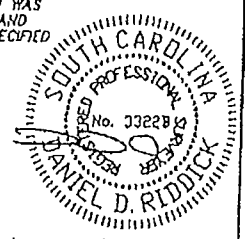
DANIEL D. RIDDICK P.S. NO. 3322B

ACAD (RIDDICK\LSN05956) 958-32(58)

10-30-07
Date
Planning and Zoning Official

CERTIFICATE

This is to certify that this plat is approved by the Kershaw County Planning & Zoning Department for recording in the office of the Kershaw County Register of Deeds.



STATE OF SOUTH CAROLINA)

COUNTY OF KERSHAW)

Albert H. Hough, individually, and as)
Personal Representative of the Estate of)
Harold W. Hough and as Personal)
Representative of the Estate of Elizabeth)
P. Hough; George J. Hough and)
Angela Hough,)

Plaintiffs,)

v.)

Richard Wesley Hough, Joel Pitts)
Hough and Mary Louise Robinson,)

Defendants.)

IN THE COURT OF COMMON PLEAS
FIFTH JUDICIAL CIRCUIT

Case No.: 2011-CP-2800073

CERTIFICATE OF SERVICE

FILED FOR RECORD
2014 APR 11 PM 12:34
CLERK OF COURT
KERSHAW COUNTY, S.C.

I do hereby certify that I have served a copy of the following as indicated hereinbelow, by mailing a copy of same on the date below by First Class United States Mail, postage prepaid, addressed to the following:

Document Served:

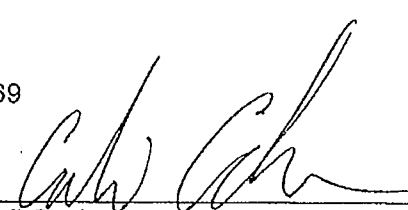
**Defendant Richard Wesley Hough's Amended Answer to
Plaintiffs' Second Amended Complaint, Counterclaims, and
Cross-Claim**

Party Served:

B. Michael Brackett, Esquire
Moses & Brackett, PC
Post Office Box 100261
Columbia, SC 29202
Attorney for Plaintiffs

M. Scott Rankin, Esquire
Post Office Box 1445
Camden, SC 29021
Guardian Ad Litem for Joel Hough

Mary Louise Robinson
1100 Gunter Circle
West Columbia, SC 29169


Carli Cochran

April 10, 2014
Columbia, South Carolina

STATE OF SOUTH CAROLINA)

IN THE COURT OF COMMON PLEAS

COUNTY OF KERSHAW)

Docket No.: 2011-CP-28-0073

Albert H. Hough, individually, and as)
Personal Representative of the Estate)
of Harold W. Hough and as Personal)
Representative of the Estate of)
Elizabeth P. Hough; George J. Hough,)
and Angela Hough,)

Plaintiffs,)

v.)

Richard Wesley Hough, Joel Pitts)
Hough and Mary Louise Robinson,)

Defendants.)

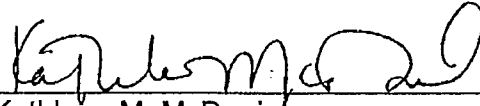
**NOTICE OF DISMISSAL WITHOUT
PREJUDICE PURSUANT TO RULES
41(c) AND 41(a)(1), SCRCP, OF
DEFENDANT RICHARD WESLEY
HOUGH'S FIRST COUNTERCLAIM
AGAINST PLAINTIFFS**

2014 APR 25 AM 9:00
CLERK OF COURT
KERSHAW COUNTY, S.C.

YOU WILL PLEASE TAKE NOTICE that Defendant Richard W. Hough hereby voluntarily dismisses without prejudice his First Counterclaim Against Plaintiffs for partition of a 5.8 acre parcel, which Counterclaim is contained in Defendant Richard Wesley Hough's [Amended] Answer to Second Amended Complaint, Counterclaims and Cross-Claims Against Joel Hough¹ served April 8, 2014, and filed with this Court April 11, 2014. As of the date of this Notice of Dismissal, Plaintiffs have not moved, answered or otherwise replied to the subject Counterclaims against them.

¹ This pleading was erroneously captioned as *Defendant Richard Wesley Hough's Answer to Second Amended Complaint, Counterclaims, and Cross-Claim Against Joel Hough*.

CALLISON TIGHE & ROBINSON, LLC



Kathleen M. McDaniel

1812 Lincoln Street, 1st and 2nd Floors

Post Office Box 1390

Columbia, South Carolina 29202

Telephone: 803-404-6900

Fax: 803-404-6901

kathleenmcdaniel@callisontighe.com

ATTORNEY FOR DEFENDANT

RICHARD WESLEY HOUGH

April 23, 2014

Columbia, South Carolina

CERTIFICATE OF SERVICE

I, Margaret S. Kirkland, do hereby certify that I have served a copy of the following as indicated hereinbelow, by mailing a copy of same on the date below by First Class United States Mail, postage prepaid, addressed to the following:

Document Served: NOTICE OF DISMISSAL WITHOUT PREJUDICE PURSUANT TO RULES 41(c) AND 41(a)(1), SCRCP, OF DEFENDANT RICHARD WESLEY HOUGH'S FIRST COUNTERCLAIM AGAINST PLAINTIFFS

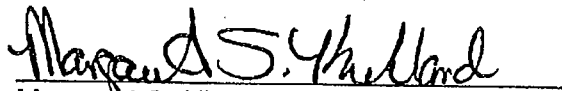
Party Served:

B. Michael Brackett, Esquire
Moses & Brackett, PC
Post Office Box 100261
Columbia, SC 29202
Attorneys for Plaintiffs

M. Scott Rankin, Esquire
Post Office Box 1445
Camden, SC 29021
Guardian ad Litem for Joel Hough

Mary Louise Robinson
1100 Gunter Circle
West Columbia, SC 29169

FILED
CLERK OF COURT
KERSHAW COUNTY, S.C.
2014 APR 25 AM 9:03


Margaret S. Kirkland

April 23, 2014
Columbia, South Carolina

STATE OF SOUTH CAROLINA

IN THE COURT OF COMMON PLEAS

COUNTY OF KERSHAW

2011-CP-28-073

Albert H. Hough, individually and
as Personal Representative of the Estate
of Harold W. Hough and as Personal
Representative of the Estate of Elizabeth
P. Hough; George J. Hough and
Angela Hough,

Plaintiffs,

v.

Richard Wesley Hough, Joel Pitts
Hough, and Mary Louise Robinson,

Defendants.

PLAINTIFFS' REPLY TO
DEFENDANT RICHARD HOUGH'S
AMENDED ANSWER TO SECOND
AMENDED COMPLAINT, AND
COUNTERCLAIMS

Plaintiffs, replying to the counterclaims of the Defendant Richard Hough in his Amended Answer to Second Amended Complaint, respectfully shows to the Court:

1. That they deny each and every allegation of the counterclaims not hereinafter specifically admitted, qualified or otherwise explained.

FOR A FIRST REPLY TO THE SIXTEENTH DEFENSE AND FIRST COUNTERCLAIM

2. Paragraph 43 is denied.
3. Paragraph 44 is admitted; however, it is denied that Plaintiff is entitled to partition the 5.8 acre parcel.
4. Admit paragraph 45.
5. Admit paragraph 46.

6. Admit paragraph 47.
7. Admit paragraph 48.
8. Admit paragraph 49.
9. Admit paragraph 50.
10. Admit paragraph 51.
11. Deny paragraphs 52, 53, 54, 55, 56, 57, and 58.

FOR A SECOND REPLY TO THE SIXTEENTH DEFENSE AND FIRST COUNTERCLAIM

12. The first counterclaim is entirely frivolous and is brought in bad faith, thereby entitling Plaintiffs to sanctions, including an award of attorney fees and costs.

FOR A FIRST REPLY TO THE SEVENTEENTH DEFENSE
AND SECOND COUNTERCLAIM

13. Deny paragraph 59.
14. Only so much of paragraph 60 is admitted as alleges that the Plaintiffs and Defendant Joel Hough are the owners of certain cattle, which are housed, raised and fed on the subject real properties other than the 5.8 acre parcel. The remainder of paragraph 60 is denied.
15. Only so much of paragraph 61 is admitted as alleges that in addition to housing, raising and feeding cattle on a portion of the subject real properties, Plaintiffs Albert and Angela Hough used the subject real properties for the operation of a cattle business in which Richard Hough is not involved. The remaining allegations of paragraph 61, with respect to the use of the 5.8 acre parcel is denied.

16. Deny paragraphs 62, 63, 64, 65 and 66.

FOR A FIRST REPLY TO THE EIGHTEENTH DEFENSE AND THIRD COUNTERCLAIM

17. Deny paragraphs 67, 68 and 69.

FOR AN ADDITIONAL DEFENSE TO ALL COUNTERCLAIMS

18. Defendant Richard Hough's counterclaims are barred by the applicable statute of limitations.

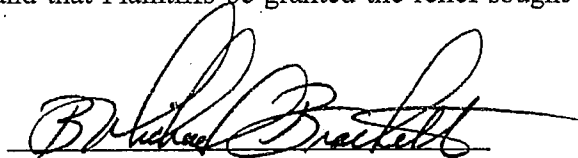
FOR A SECOND ADDITIONAL DEFENSE TO ALL COUNTERCLAIMS

19. Defendant Richard Hough's claims are barred by the doctrine of laches.

FOR A THIRD ADDITIONAL DEFENSE TO ALL COUNTERCLAIMS

20. Defendant Richard Hough's claims are barred by the doctrine of estoppel.

WHEREFORE, having fully replied to the counterclaims of Defendant Richard Hough, Plaintiffs pray that the same be dismissed and that Plaintiffs be granted the relief sought in the Second Amended Complaint.



B. Michael Brackett, Esquire
1333 Main Street, Suite 260
Post Office Box 100261
Columbia, South Carolina 29202-3261
(803) 461-2312
Attorney for Plaintiffs

April 24, 2014

STATE OF SOUTH CAROLINA

IN THE COURT OF COMMON PLEAS

COUNTY OF KERSHAW

2011-CP-28-073

Albert H. Hough, individually and
as Personal Representative of the Estate
of Harold W. Hough and as Personal
Representative of the Estate of Elizabeth
P. Hough; George J. Hough and
Angela Hough,

Plaintiffs,

CERTIFICATE OF SERVICE

v.

Richard Wesley Hough, Joel Pitts
Hough, and Mary Louise Robinson,

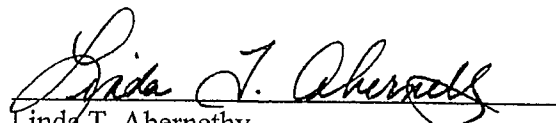
Defendants.

I, Linda T. Abernethy, Legal Assistant to B. Michael Brackett, Esquire, attorney for the Plaintiffs in the above-captioned matter, do hereby certify that I have served counsel for the Defendant Joel P. Hough and the other Defendants, Richard Hough, pro se and Mary Louise Robinson, pro se with a copy of **Plaintiffs' Reply to Defendant Richard Hough's Amended Answer to Second Amended Complaint, and Counterclaims** by United States Mail, postage prepaid and return address clearly indicated on said envelope, on this 24th day of April, 2014 at the following addresses:

Kathleen M. McDaniel, Esquire
P.O. Box 1390
Columbia, SC 29202
Attorney for Defendant Richard W. Hough

Mary Louise Robinson
1100 Gunter Circle
West Columbia, SC 29169
pro se

M. Scott Rankin, Esquire
P.O. Box 1445
Camden, SC 29021
Attorney for Defendant Joel P. Hough


Linda T. Abernethy

Kathleen McDaniel – Attorney
803-404-690
kathleenmcdaniel@callisontighe.com

FILED FOR RECORD CALLISON TIGHE
2014 MAY -2 PM 4:57

JOYCE McDONALD
CLERK OF COURT
KERSHAW COUNTY, S.C.

May 2, 2014

(Via Hand-Delivery)

The Honorable Joyce McDonald
Kershaw County Clerk of Court
Post Office Box 1557
Camden, SC 29021-1557

RE: Albert H. Hough, individually, and as the Personal Representative of the Estate of Harold W. Hough and as the Personal Representative of Elizabeth P. Hough, George J. Hough and Angela Hough v. Richard Wesley Hough, Joel Pitts Hough and Mary Louise Robinson
Case Number: 2011-CP-2800073
Our Case Number: 11127.003

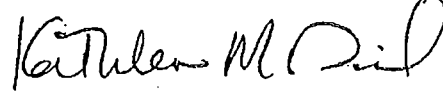
Dear Ms. McDonald:

I am writing on behalf of Richard Wesley Hough, a non-petitioning defendant in the above partition action, to inform the Court that, pursuant to Section 15-61-25 of the South Carolina Code of Laws, Richard Hough is "interested in purchasing the property" that is the subject of this partition action. Please let this letter serve as Richard Hough's notice of such interest in purchasing the property. A trial in this matter is set to begin on May 12, 2014.

I am by copy of this letter serving all parties with a copy of this letter as well as providing a copy to Special Referee John DuBose.

With kind regards, I am

CALLISON TIGHE & ROBINSON, LLC



Kathleen McDaniel

cc: Special Referee John DuBose
B. Michael Brackett, Esquire
M. Scott Rankin, Esquire
Mary Louise Robinson

STATE OF SOUTH CAROLINA

IN THE COURT OF COMMON PLEAS

COUNTY OF KERSHAW

2011-CP-28-073

Albert H. Hough, individually and
as Personal Representative of the Estate
of Harold W. Hough and as Personal
Representative of the Estate of Elizabeth
P. Hough; George J. Hough and
Angela Hough,

Plaintiffs,

Plaintiffs' Motion to Disallow or to Strike
Defendant Richard Hough's § 15-61-25
Notice of Interest in Purchasing Property

v.

And, For Expedited Hearing

Richard Wesley Hough, Joel Pitts
Hough, and Mary Louise Robinson,

Defendants.

Plaintiffs oppose the S.C. Code Ann. § 15-61-25(A) notice filed and served by Defendant Richard Hough and move the Court to expeditiously strike or disallow it as being untimely.

The trial in this partition case has been set for Monday, May 12, 2014. On the afternoon of Friday, May 2, 2014, Defendant Richard Hough filed with the Court and delivered to the Judge and to the other parties and attorneys the attached letter, dated May 2, 2014, notifying the Court and the parties of Richard Hough's interest in purchasing the properties that are the subject of this partition action. (Exhibit A.) The notice was emailed to the Judge at essentially the same time. (Exhibit B.)

The notice was given pursuant to S.C. Code Ann. § 15-61-25(A). Defendant Richard Hough had not previously expressed an interest in buying the property, and in his Answer to Second Amended Complaint, dated April 10, 2014, he admitted that the properties are divisible in kind. (Richard Hough Answer to Second Amended Complaint, ¶ 7). It is also worthy of note that

Defendant Richard Hough's eleventh-hour motion for continuance was denied by Order dated May 1, 2014.

By the terms of the statute, Defendant Richard Hough's notice was untimely given. The statute requires that the Court be notified of a party's interest in purchasing the property "no later than ten days prior to the date set for the trial of the case."¹ South Carolina law provides that the word "day" means a civil day of twenty-four hours, beginning and ending at midnight. . . and that fractions of days are not recognized in our laws." Town of Summerville v. City of North Charleston, 662 S.E.2d 40 (S.C. 2008.) Where the time requirement in a statute does not speak in terms of specific hour periods, the courts will not interpret a day to mean anything other than a calendar day. Id. In the case *sub judice*, the calculation of the ten-day period is made in reverse because of the period is expressed as being "no later than ten days prior . . ."

Courts differ on the time computation for a ten-day period expressed as "no [or not] later than." The general rule is that either of the terminal days may be included and the other excluded. 86 C.J.S. Time § 16. The general rule is to exclude the first day and include the last day. Id. South Carolina law follows this rule.

Rule 6(a), SCRCP, provides:

TIME (a) Computation. In computing any period of time prescribed or allowed by these rules, by order of court, or by **any applicable statute, the day of the act, event, or default after which the designated period of time begins to run is not to be included. The last day of the period so computed is to be included,** unless it is a Saturday, Sunday or a State or Federal holiday, in which event the period runs until the end of the next day which is neither a Saturday, Sunday nor such holiday. When the period of time prescribed or allowed is less than seven days, intermediate Saturdays, Sundays and holidays shall be excluded in the computation. A half holiday shall be considered as other days and not as a holiday.

¹ The statute describes the notice period in terms of days and not hours or other fractional parts of days.

The relevant period at issue herein is ten days with the notice period being completed or fully run by midnight May 11. Counting in reverse, the day of the event (trial) after which [prior to] the period begins to run, is May 12. May 12 is the excluded day per Rule 6(A), SCRCF. The tenth day, the "included" terminal day in the period, is Friday, May 2. In other words, May 2 is one of the ten days of the notice period that must follow the giving of notice. In order to satisfy the statute's requirement of ten days notice prior to the date set for trial (ten 24-hour days running from midnight to midnight without counting fractions of days), the latest that notice could have been timely given was midnight on May 1, 2014. By giving notice on May 2, 2014, and late in the day at that, Defendant Richard Hough gave only nine days notice prior to the date of trial.

Because of the impending trial date, Plaintiffs move the court to hear and decide this motion on a super-expedited basis, as permitted by Rule 6(d), SCRCF, which gives the Court discretion to hear motions on less than ten-days notice. The undersigned certifies that prior consultation with opposing counsel could not be had in this instance, and that such consultation, if held, would serve no useful purpose.



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Attorneys for Plaintiffs

May 5, 2014

Kathleen McDaniel – Attorney
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CALLISON  TIGHE

May 2, 2014

(Via Hand-Delivery)

The Honorable Joyce McDonald
Kershaw County Clerk of Court
Post Office Box 1557
Camden, SC 29021-1557

RE: Albert H. Hough, individually, and as the Personal Representative of the Estate of Harold W. Hough and as the Personal Representative of Elizabeth P. Hough, George J. Hough and Angela Hough v. Richard Wesley Hough, Joel Pitts Hough and Mary Louise Robinson
Case Number: 2011-CP-2800073
Our Case Number: 11127.003

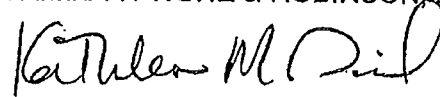
Dear Ms. McDonald:

I am writing on behalf of Richard Wesley Hough, a non-petitioning defendant in the above partition action, to inform the Court that, pursuant to Section 15-61-25 of the South Carolina Code of Laws, Richard Hough is "interested in purchasing the property" that is the subject of this partition action. Please let this letter serve as Richard Hough's notice of such interest in purchasing the property. A trial in this matter is set to begin on May 12, 2014.

I am by copy of this letter serving all parties with a copy of this letter as well as providing a copy to Special Referee John DuBose.

With kind regards, I am

CALLISON TIGHE & ROBINSON, LLC



Kathleen McDaniel

cc: Special Referee John DuBose
B. Michael Brackett, Esquire
M. Scott Rankin, Esquire
Mary Louise Robinson

Ex A

Mike Brackett

From: Kathleen McDaniel <KathleenMcDaniel@callisontighe.com>
Sent: Friday, May 02, 2014 4:49 PM
To: johnd@duboselaw.com; Mike Brackett; scott@scottrankinlawfirm.com;
'marylhough@aol.com' (marylhough@aol.com)
Subject: Hough matter
Attachments: Clerk.010 (interested in purchasing the property (5-2-14)).pdf

Dear Judge DuBose,

Per the attached correspondence, Richard Hough is interested in purchasing the property that is the subject of this partition action pursuant to S.C. Code Ann. § 15-61-25. I am having the attached letter hand-delivered to the Kershaw County Clerk of Court's office, to your office, and to Mr. Rankin's office today. I have hand-delivered a copy this afternoon to Mr. Brackett and will be taking a copy to Mrs. Robinson later this afternoon.

Sincerely,
Kathleen McDaniel

CALLISON  TIGHE

Kathleen McDaniel
Callison Tighe & Robinson, LLC
1812 Lincoln Street
P.O. Box 1390

P: 803.404.6900 **F:** 803.404.6901
Email: KathleenMcDaniel@callisontighe.com

Columbia, SC 29202-1390

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Please consider your environmental responsibility before printing this e-mail.

Ex B
1

STATE OF SOUTH CAROLINA

IN THE COURT OF COMMON PLEAS

COUNTY OF KERSHAW

2011-CP-28-073

Albert H. Hough, individually and
as Personal Representative of the Estate
of Harold W. Hough and as Personal
Representative of the Estate of Elizabeth
P. Hough; George J. Hough and
Angela Hough,

Plaintiffs,

v.

Richard Wesley Hough, Joel Pitts
Hough, and Mary Louise Robinson,

Defendants.

Plaintiffs' Supplemental Memorandum of
Law in Support Of Motion to Disallow or Strike
Defendant Richard Hough's
§15-61-25 Notice of Interest
in Purchasing Property

This memorandum of law supplements the law and analysis contained in the Motion previously filed and served. The undersigned has determined that the analysis in the Motion was confusing and incomplete.

The trial date is May 12, 2014. Defendant Richard Hough's notice pursuant to § 15-61-25(A) was delivered during the afternoon of May 2, 2014. The statute requires that the Court be notified of a party's interest in purchasing the property **"no later than ten days prior to the date set for the trial of the case."**

The Court is called on to construe the statute's intent with respect to whether the ten day notice period must contain ten full or clear days or if the period may contain nine full days and a portion of another day. If the statute requires full days, Defendant Richard Hough's notice was untimely. If the statute is construed to apply Rule 6(a), SCRPC, the notice may be timely.

The general rule for computing time periods is found in Rule 6(a), SCRPC, (include one

terminal day and exclude the other) which provides:

TIME (a) Computation. In computing any period of time prescribed or allowed by these rules, by order of court, or by any applicable statute, **the day of the act, event, or default after which the designated period of time begins to run is not to be included. The last day of the period so computed is to be included,** unless it is a Saturday, Sunday or a State or Federal holiday, in which event the period runs until the end of the next day which is neither a Saturday, Sunday nor such holiday. When the period of time prescribed or allowed is less than seven days, intermediate Saturdays, Sundays and holidays shall be excluded in the computation. A half holiday shall be considered as other days and not as a holiday.

This rule anticipates time periods that follow a certain event, whereas §15-61-25(A) refers to a time period which precedes an event, namely the commencement of trial. Adapting Rule 6(a) to §15-61-25(A) requires the computation to count backwards rather than forward.

Not to be overlooked is the case of Town of Summerville v. City of North Charleston, 662 S.E.2d 40 (S.C. 2008) in which it is that South Carolina law provides that the word “day” means a civil day of twenty-four hours, beginning and ending at midnight. . . and that fractions of days are not recognized in our laws.” Town of Summerville v. City of North Charleston, 662 S.E.2d 40 (S.C. 2008.) Where the time requirement in a statute does not speak in terms of specific hour periods, the courts will not interpret a day to mean anything other than a calendar day. Id. But this does not fully resolve the issue now before the Court.

There appears to be a conflict of opinion with respect to the effect of the expressions “at least” or “not less than” when used in statutes that require a certain number of days before a known future date or event. The expression “no later than” used in §15-61-25(A) would appear to fall into this category. See J. A. Bock, Annotation, Inclusion or Exclusion of First and Last Days in Computing the Time for Performance of an Act or Event Which Must Take Place a Certain Number of Days Before a Known Future Date, 98 A.L.R.2d 1331. The Annotation reviews the cases holding that the use of these expressions does not affect the operation of the general rule of including one terminal day and excluding the other. Id. at § 8[a]. The Annotation also reviews the cases holding

that use of the expressions “at least” or “not less than” imply a count of clear days and that where an act is required to take place “at least” or “not less than” a certain number of days before a known date, both the first and the last terminal days must be excluded from the computation. Id. at § 8[b]. Cases applying this legal principle include Treat v. Town Plan & Zoning Com., 139 A.2d 601 (Conn. 1958); Baugh v. Rural High School Dist., 340 P.2d 891 (Kan. 1959); Pumphrey v. Stockett, 49 A.2d 804 (Md. 1946); State ex rel. Sullivan v. District Court of Second Judicial Dist. in and for Silver Bow County, 196 P.2d 452 (Mont. 1948); Courtney v. Commonwealth, Civil Service Comm. 391 A.2d 6 (Pa. Cmwlth. 1978); Anderson v. Cook, 130 P.2d 278 (Utah 1942). Most importantly for the motion now before this Court, the Annotation identifies South Carolina as a jurisdiction requiring that when a notice period must precede a known future date by “not less” than a given number of days, both terminal days must be excluded and the notice period must contain full or clear days, citing Adkins v. Moore, 43 S.C. 173, 20 S.E. 985 (1895) and Williams v. Halford, 67 S.C. 296, 45 S.E. 207 (1903).

In Williams v. Halford, 67 S.C. 296, 45 S.E. 207 (1903), the Court construed the relationship of code section 2881 and section 407. Section 407 was the general time computation statute that provided that time to do an act shall be computed by excluding the first day and including the last day.¹ Section 2881 was the *de bene esse* deposition statute that provided that such a deposition could be taken subject to “reasonable notice, **not less than ten days**, must first be given in writing by the party or his attorney proposing to take such deposition.” (emphasis added.)² The deposition notice in Williams was served on November 10 for a deposition to be taken on November 20. The opinion makes special note of the statutory description of the notice period: “It will be observed that the

¹ A predecessor to Rule 6(a), SCRPC.

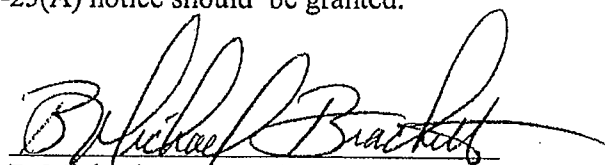
² A predecessor to Rule 27, SCRPC, and to S.C. Code § 19-17-40, now repealed.

notice required shall be not less than 10 days.” Notwithstanding the general time computation statute, the Court held that the use of the expression “not less than 10 days” in the *de bene esse* statute means the running of a full 10 days, and the notice of deposition was found not to comply with the minimum notice mandated by the *de bene esse* statute.

Applying the law of Williams v. Halford, 67 S.C. 296, 45 S.E. 207 (1903); Town of Summerville v. City of North Charleston, 662 S.E.2d 40 (S.C. 2008); and the language of § 15-61-25(A), leads to the inescapable conclusion that the notice period required by § 15-61-25(A) is a full, clear ten days with each day running from midnight to midnight, notwithstanding Rule 6(a), SCRPC. The full ten-day notice period would run from midnight, the last moment of May 11, to midnight, the first moment of May 2. To be timely, Defendant Richard Hough’s notice must have been given prior to midnight, the last moment of May 1. His notice was not given until the afternoon of May 2, and, consequently, it was untimely and ineffective.

Conclusion

The motion to disallow or strike the § 15-61-25(A) notice should be granted.



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May 6, 2014

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45 S.E. 207 (S.C. 1903)

67 S.C. 296

WILLIAMS et al.

v.

HALFORD et al.

Supreme Court of South Carolina

August 4, 1903

Appeal from Common Pleas Circuit Court of Colleton County; James J. Izlar, Special Judge.

Action by Julia Williams and J. H. Williams against J. R. Halford et al. From decree for plaintiffs, defendants appeal. Reversed.

Howell & Gruber, for appellants. Griffin & Padgett, for respondents.

GARY, A. J.

This action was brought under section 2368 of the Code of Laws, which is as follows: "If any person who is an inhabitant of this state, or who has any estate herein, shall have already begotten, or shall hereafter beget, any bastard child, or shall live in adultery with a woman, the said person having a wife or lawful children of his own living, and shall give, or settle, or convey, either in trust or by direct conveyance, by deed of conveyance, by deed of gift, legacy, devise, or by any other ways or means whatsoever, for the use and benefit of the said woman with whom he lives in adultery, or of his bastard child or children, any larger or greater proportion of the real value of his estate, real or personal, after payment of his debts, than one-fourth part thereof, such deed of gift, conveyance, legacy or devise, made or hereafter to be made, shall be null and void, in favor of wife and legitimate children, for so much of the amount or value thereof as shall or may exceed

[67 S.C. 298] such fourth part of his real and personal estate." The complaint alleges that the plaintiffs are the widow and son of James J. Williams, alias Halford, and that the defendants J. R. Halford, Harriet Turner, and Laura Abbot, are the illegitimate children of the said James J. Williams, alias Halford, begotten of Jane Crosby, after his marriage with Julia Williams. That Jane Crosby, alias Halford, died in 1894, and James J. Williams in 1896. That in 1871 James J. Williams conveyed certain real and personal property described in the fourth paragraph of the complaint to Jane Crosby, in trust for his children by the said Jane Crosby; and that the

said personal property, with its increase, was in the possession of Jane Crosby at the time of her death, but belonged to James J. Williams. That in 188 James J. Williams caused the said Jane Crosby to sell certain lands therein mentioned to S. M. J. Carter; that the funds arising from such sale were supplemented by the personal funds of James J. Williams, and were reinvested in the purchase of certain lands therein described. That in 1892 James J. Williams, without consideration, conveyed to Jane Crosby all his real and personal estate of whatever kind soever. That in 1881 Jane Crosby conveyed certain of the property hereinbefore mentioned to her children by James J. Williams. That since the decease of James J. Williams the children born of Jane Crosby as aforesaid, for and in consideration of \$100, conveyed to the defendant J. W. Halford certain of the property described in the complaint.

The 10th, 11th, 12th, and 13th paragraphs of the complaint are as follows:

"(10) That all property, both real and personal, in possession of the said Jane Crosby, alias Jane Halford, at her decease, of whatsoever kind or description, was conveyed to her by the said James J. Williams, alias James J. Halford, and Miner Carter, was, and is, in fact, the personal earnings and property of him, the said James J. Williams, alias James J. Halford, and was conveyed to her, the said Jane Crosby, alias Jane Halford, while they were living together in adultery,

[67 S.C. 299] and she to her children, all of which was illegal, null, and void; which said deeds and conveyances were made for the express purpose of evading section 1887 of the Revised Statutes of South Carolina.

(11) That the said James R. Halford, B. F. Halford, J. W. Halford, Harriet Turner, and Laura Abbott have been receiving the rents and profits of said estate property, and have disposed of and wasted the personal property of said estate of the value of \$800, more than one-fourth of the value of said estate.

(12) That the plaintiff Julia Williams is entitled to one undivided third part of three-

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fourths of said estate, and J. H. Williams to two-thirds of three-fourths thereof.

(13) That J. E. Halford, B. F. Halford, J. W. Halford, Laura Abbott, and Harriet Turner were entitled to one-fifth each of one-fourth of the entire estate."

The defendants J. R. Halford, B. F. Halford, and Laura Abbott answered the complaint as follows:

"First, for a first defense: (1) That they deny each and

every allegation in the said complaint contained, and allege that they and their codefendants, Harriet Turner and J. W. Halford, are the exclusive owners of all the lands mentioned and described in the complaint.

Second, for a second defense: (1) That neither the plaintiffs nor their ancestors, nor predecessors nor grantors, were seised or possessed of the premises described in the complaint within 10 years last past before the commencement of this action. (2) That these defendants' ancestress, Jane Halford, under whom they claim, entered into possession of the premises described in the complaint under claim of title, exclusive of any other right, founding such claim upon a written instrument as being a conveyance of the premises in question, and there has been a continued occupation and possession by the said Jane Halford of the premises included in this instrument under such claim for more than 10 years past

[67 S.C. 300] before the commencement of this action and before the death of the said Jane Halford." The third paragraph alleges the erection of certain improvements therein described.

His honor the presiding judge submitted the following issues to the jury, to which the answers are attached, to wit: "(1) Are the defendants the exclusive owners of all the lands mentioned in the complaint? Answer. Yes. (2) Did James J. Williams intermarry with one Julia Albrighton, in the state of Florida, in 1852? Answer. Yes. (3) Is J. H. Williams, the plaintiff herein, the legal son of said marriage? Answer. Yes. (4) Are both the said Julia Williams, the wife, and J. H. Williams, the son, now alive? Answer. Yes. (5) Did the said James J. Williams afterwards leave the state of Florida, come to the state of South Carolina, change his name to J. J. Halford, and while his wife, Julia, was alive, contract a second marriage with one Jane Crosby, and cohabit with her until his death? Answer. Yes. (6) Are the defendants the fruit of the marriage entered into between James J. Halford and Jane Crosby? Answer. Yes. (7) Did the said James J. Halford during his lifetime make the conveyances of his property as mentioned and set forth in the complaint herein? Answer. Yes. (8) Did the said Jane Halford, on the 6th January, 1881, in consideration of natural love and affection, convey the lot or parcel of land described in paragraph five (5) of the complaint to her children? Answer. Yes. (9) Was the 200-acre tract mentioned in paragraph 4 of the complaint, and conveyed with other property by James J. Halford to Jane Halford in trust for the children of the said James J. and Jane Halford, sold at the instance of James J. Halford, and the proceeds reinvested in the purchase of that certain lot of land in the town of Walterboro? Answer. No."

In commenting on these issues, his honor the presiding

[67 S.C. 301] Judge instructed the jury as follows: "The

question here of legal title is raised by the pleadings, and must go to the jury, according to the rule established by our courts. Yet this does not prevent the court from submitting other issues to the jury for determination along with the question of title. And, while you may find for the defendants on the question of legal title, you may find such facts which would enable the court, when the cause comes up for hearing on the equity side of the court, to do justice among the parties, and in that court resort to the process of partition, if necessary to obtain the proper results. The issues which you must determine upon the pleadings, including legal title to the premises in question, are stated in the issues which I have submitted to you. The answer of the jury to these questions is necessary to determine the rights of the parties, and to secure to them, respectively, their rights on the equity side of the court. Now, while under the strict principles of the law, so far as the legal title is concerned, you may, if you find the other facts outside of the legal title to be true, not be able to find the legal title in the plaintiffs, and be compelled to find for the defendants, or, in other words, while you may be compelled to say, in answer to the issue of title raised, that it is in the defendants, still this finding would not be inconsistent with your other findings of fact. For under the law the legal title may be in the illegitimate child or children, yet the lawful wife or child or children might, by reason of a violation of the act, still have such an interest or right in the property over the one-fourth part thereof as would in equity be preserved and secured on them."

The circuit judge refused a motion for a new trial as to the finding of the jury upon the issue of title. The cause was then called on calendar No. 2. After considering the testimony, the circuit judge rendered his decree, which concludes as follows: "It is therefore ordered and adjudged that it be and hereby is referred to the master of Colleton county to take testimony and report to this court the value of the several tracts or parcels of land conveyed by J. J.

[67 S.C. 302] Williams, alias J. J. Halford, and by Miner Carter, to Jane Crosby, alias Jane Halford, at the time the same came into her possession; also the value of all the personal property transferred by said deeds, or any or either of them, and which passed into the possession of the said Jane Crosby, alias Jane Halford, thereunder for the benefit of herself and children, whether the said real and personal property was conveyed in

Page 209

trust or otherwise; also the indebtedness of the said J. J. Williams, alias J. J. Halford, at the time of making, or causing to be made, any of the deeds of conveyance in question; also the rents and profits of the real estate so conveyed since the death of the said J. J. Williams, alias J. J. Halford, over and above all permanent improvements enhancing the value thereof and all taxes paid thereon by the defendant. And that said master do further report,

under the principles herein announced, whether the amount of said real and personal property exceeded one-fourth of the clear value of the property, real and personal, at the time of the conveyances, or any or either of them, were made by the said J. J. Williams, alias J. J. Halford, and the amount of the excess over and above the one-fourth thereof. And it is further ordered and adjudged that the defendants have ten days from the hearing of said report, or any exceptions thereto and order therein, to elect whether or not they will pay the sum, if any, ordered by the court in excess of one-fourth to be paid to the plaintiffs and retain the property; and, if the defendants shall fail or refuse to elect within the time aforesaid, the plaintiffs have leave to apply to this court for a writ or writs of partition to enforce their rights under this decree, in order that a proper and necessary result in the said cause may be obtained; but in case the said report and order therein shall be that the value of the property in question does not exceed one-fourth in value of the clear value of the said property, after deducting the amount of the indebtedness of the said J. J. Williams, alias J. J. Halford, after the payment of all his just debts at the time of the conveyances as aforesaid, then that the title of the defendants

[67 S.C. 303] stands confirmed, and the complaint be dismissed. It is further ordered and adjudged that the parties have leave to apply for further orders in the cause, either in open court or at chambers, upon due notice upon the coming in of the master's report, and that all questions as to the costs of said action be reserved until the order of the court is made on said report."

The appellants' exceptions are numerous, but, under the view which this court takes of the case, many of them present merely abstract questions, and therefore need not be considered.

We will first consider the question whether the presiding judge submitted the question of title to the jury in proper form under the pleadings in this case, or gave due effect to the finding of the jury. In order that the plaintiffs may be able to get relief by the assertion of their equitable rights under the statute hereinbefore mentioned, it is incumbent on them to establish the fact that the defendants derive their title from the father of the alleged bastards. But a bastard is allowed to purchase property even from his putative father, if it is founded upon valuable consideration. *King v. Johnson, 2 Hill, Eq. 624*. In the case just mentioned the court uses this language: "The obligations between parents and children are reciprocal. On the parent devolves the duty of maintaining, educating, and providing for the child; in return for which the child owes obedience and assistance during minority, and reverence and respect always; and it follows necessarily that, if in law either is absolved from those obligations, so also is the other. Now it is very clear that the putative father is not entitled in law to the custody of his natural child, in opposition to the claims of the mother, nor is he bound to provide for it further than

is required by express enactments of the Legislature. 2 Kent's Com. (1st Ed.) 178. The child cannot inherit from the father, and the extent to which the father can provide for his illegitimate child is limited by the act above referred to. The father is not, therefore, entitled in

[67 S.C. 304] law to the services of his natural child. It is said, however, that when the other assumes and discharges the duties of a parent, corresponding duties arise on the part of the natural child; and this is true so long as this relation exists. But these relations are merely conventional, and, being voluntary, may be dissolved at pleasure. Not so as to the relations between the father and his legitimate children. The obligations between them are imposed by law, and neither can be dissolved from them. The right of the putative father to the custody and services of his natural child must therefore arise out of contract, in which the parties are at liberty to stipulate for themselves. There is certainly nothing in these relations to prevent the father from rewarding the child for its labor, or being its agent to invest the proceeds; on the contrary, in despite of the stern policy which alienates the bastard from his putative father, nature has bound them together by ties which cannot be severed; and it is impossible to resist the feeling that there is a moral duty imposed on the father to aid the child when he can do so without violating the law or doing wrong to others. I am well aware that there is much danger of abuse in the application of this principle, and that without great circumspection it will be made a cover for evading the act, but of its correctness there can be no question; and abuses may be guarded against by requiring clear and unequivocal evidence of the fairness and reasonableness of the transaction. Of this the present case may serve as an example; for it is apparent the defendant's testator was a mere drone in the hive, and that the land conveyed to the defendants is a very inadequate compensation for the long and faithful services of the defendants, out of the proceeds of which it was paid for."

The appellants denied the allegations of the complaint that their title was derived from James J. Williams as a gift, and likewise set up an independent title by adverse possession. This was sufficient to raise the question of paramount title, in the trial of which by the

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jury the plaintiffs are required to

[67 S.C. 305] be the actors. *Bank v. Peterkin, 52 S.C. 236, 29 S.B. 546, 68 Am. St. Rep. 900*. The presiding judge does not seem to have considered the issue of title as arising out of chancery, and that its submission to the jury was for the enlightenment of the conscience of the court; but it is evident he did regard the title upon which the appellants relied as sufficient to defeat the equitable rights of the plaintiffs under the statute. In case it was established to the satisfaction of the jury. The question of

title was not a legal issue arising out of chancery, the submission of which to the jury was for the enlightenment of the court's conscience. If the presiding judge, when he submitted to the jury the issue, "Are the defendants the exclusive owners of all the lands mentioned and described in the complaint?" meant "exclusive owners" as against the equity of the plaintiffs, then he should have regarded the verdict as sufficient to defeat the plaintiffs' equity; while, on the other hand, if he did not intend that the jury should find a verdict that would defeat the equitable rights of the plaintiffs, he misconceived the scope of the issue of title raised by the pleadings. Upon the trial of the legal issue of title by the jury, it is incumbent upon the plaintiffs to introduce testimony tending to prove all the material requirements of the statute alleged in the complaint, in order to show that the title of the appellants is not paramount to their right to assert their equity under the statutes. The defendants may defeat the case as made by the plaintiffs' testimony either by the introduction of testimony directly contradicting it, or may show that valuable consideration was paid for the property, or that they have an independent title arising from any other facts. We desire, however, it should be distinctly understood that we do not undertake at this time to decide whether the defense of adverse possession is available or applicable in this case, as such question is not properly before us for consideration, and is therefore left open. This is a case in which the circuit court might find it advisable to direct the jury to find a special verdict as to the manner in which the appellants had title to the land under section 283 of the Code.

[67 S.C. 306] Having reached the conclusion that there should be a new trial upon the question of title, and that the pleadings raise a question of title in the appellants paramount to the claim of the plaintiffs, and which would therefore defeat it if sustained by the testimony, we do not deem it proper to decide any other question except that as to the time of serving notice to take testimony *de bene esse*. Notice to take the testimony of Julia Williams *de bene esse* was served on the defendants' attorneys on the 10th day of November, 1902, and the testimony was taken on the 20th day of November, 1902. Section 2881 of the Code of Laws requires that "reasonable notice, not less than ten days, must first be given in writing by the party or his attorney proposing to take such deposition to the opposite party or his attorney of record." It will be observed that the notice required shall be not less than 10 days. This case comes within the principle announced in *Adkins v. Moore*, 43 S.C. 173, 20 S.E. 985, in which the court says: "The defendants were entitled to full twenty days from the time of service of the complaint till the day therein fixed for trial, and, as they were required to appear on the twentieth day from the service thereof, the time was shorter than that required by law." It is true, section 407 of the Code provides that "the time within which an act is to be done, as herein provided, shall be computed by excluding the first day and including the last," but this was not a case in which the defendants

were required to act "within" 10 days. When such is the requirement, the party is in time if he acts on the tenth day, for that is "within" 10 days. If, however, the party is entitled to a notice of "not less than 10 days," he is not required to act until the expiration of 10 days, or, in other words, after 10 days. The notice in this case was not sufficient, unless "within" and "not less than" or "after" mean the same thing, which cannot be successfully contended.

It is the judgment of this court that the judgment of the circuit court be reversed, and that the case be remanded to that court for a new trial upon the issue of title, and for

[67 S.C. 307] such further proceedings as may be necessary under the pleadings.

STATE OF SOUTH CAROLINA)
)
COUNTY OF KERSHAW)

IN THE COURT OF COMMON PLEAS
FIFTH JUDICIAL CIRCUIT

Case No.: 2011-CP-28-0073

Albert H. Hough, individually, and as)
Personal Representative of the Estate of)
Harold W. Hough and as Personal)
Representative of the Estate of Elizabeth)
P. Hough; George J. Hough and)
Angela Hough,)

Plaintiffs,)

v.)

Richard Wesley Hough, Joel Pitts)
Hough and Mary Louise Robinson,)

Defendants.)

**DEFENDANT RICHARD HOUGH'S
MEMORANDUM IN OPPOSITION TO
PLAINTIFFS' MOTION TO DISALLOW OR
STRIKE DEFENDANT RICHARD HOUGH'S
§ 15-61-25 NOTICE OF INTEREST IN
PURCHASING PROPERTY**

Defendant Richard Wesley Hough submits this memorandum in opposition to the Plaintiffs' motion to disallow or strike Richard Hough's notice of interest in purchasing the property that is the subject of this partition action.

As an initial matter, the Plaintiffs set up as one reason to disallow Richard Hough's notice the fact that he has admitted that the real property at issue is capable of being partitioned in kind. Such admission is no basis for disallowing a non-petitioning party to provide the Court with its notice of interest in purchasing the property or disallowing such purchase of the property following a determination of the proper valuation. In fact, the statute at issue, S.C. Code Ann. § 15-61-25, provides that even a defaulting party may be allowed to purchase the such interests in the property, even if a default judgment has been entered against them. If a party in default, who will be determined to have admitted each of the allegations in a partition complaint, can purchase the interests, then an answering party certainly has that right as well, regardless of whether he admits or denies that the property is susceptible to partition in kind.

The Plaintiffs' main point of contention regarding Richard Hough's notice of interest in purchasing the property is the claim that notice of such interest was untimely. The right of first

refusal statute provides that non-petitioning parties must inform the Court of an interest in purchasing the property "no later than ten days prior to the date set for trial of the case." S.C. Code Ann. § 15-61-25. In this case, Richard Hough filed a letter informing the Court of his interest in purchasing the property with the Kershaw County Clerk of Court on May 2, 2014.

(Ex. A, Richard Hough's clocked-in letter informing Court of interest in purchasing property.) The trial in the date set for trial of this case was May 12, 2014. Under any common reading of the manner of time computation, the notice would appear to have been submitted to the Court ten days prior to May 12, 2014.

The Plaintiffs assert that in order for the notice to have been timely submitted it must have been submitted no later than 12:00 a.m. the morning of May 2, 2014. This is an incorrect interpretation of the statute.

The Supreme Court has considered a similar issue. *Holt v. Settlemyer*, 79 S.C. 263 (1908). In *Holt*, the rules regarding elections in Gaffney, South Carolina provided that anyone seeking to be added to the ballot for primary had to file a pledge with the chairman of the executive committee 5 days before the election. *Id.* The primary was set for January 7. *Id.* Holt filed his pledge on January 2. *Id.* The executive committee decided that his pledge was untimely and excluded him from the ballot. *Id.* The Supreme Court reversed, holding that the filing on January 2 complied with the "five days before" requirement. *Id.*

Although the Supreme Court does not provide a detailed analysis, we can deduce that in order to reach such a decision, the Supreme Court must have determined that either the day of filing or the day of the election (at least one of the terminal days) must have been countable in the time computation. If both terminal days had been excluded, then the pledge could not have been filed 5 days before the election. Applying this logic to the case at hand, Richard Hough's notice was filed and served 10 days before the trial of the case.

An older case is also instructive. *Buist v. Mitchell*, 5 S.C.L. 485 (1814). In *Buist*, the Constitutional Court of Appeals of South Carolina considered the timeliness of service of

process. *Id.* Such return was due 15 days before the next sitting of court, which was to occur on November 3. *Id.* Service of a writ was made on the defendant's residence on October 19.

Id. In *Buist*, the court concluded that the service was timely. *Id.* In so ruling, the court held:

The rule of law is, that there are no fractional parts of a day, so that if process be served before twelve o'clock at night, it shall be accounted served on that day to which the twenty hours belong. If then the day on which the writ be served, is to be account as one of the fifteen days, it will be in time, as it will be fifteen days next before the sitting of the court to which it is returnable.

Id. Counting the day of service (even though it was during the day and not apparently not at the stroke of midnight) and excluding the day of the court's sitting, the service was made 15 days before the sitting of the court. *Id.* Applying this rule in the instant matter and counting the day of service (even though not at midnight), such service was made 10 days before the trial of the case.

The general weight of authority further provides that where something is to be done on a particular day, a party has that entire day to complete that action. For example, one secondary source states, "Thus, where one is given a stated number of days in which to perform an act, he or she may perform at any time up to midnight of the last day." Am. Jur. 2d Time § 10 Day. This general rule is acknowledged in *South Carolina Nat. Bank v. Guest*, 232 S.C. 367, 102 S.E.2d 215 (1958). In *Guest*, the dispute regarded the priority of two liens. In analyzing the priority issue, the Supreme Court noted that although lien priority is an exception, the general rule is that "the term 'date' embraces the whole day and fractions thereof are not considered in computation of time." *Id.* Thus, if the general rule is that computation of time does not recognize fractions of days, then an act completed at any time before the end of the day, i.e. midnight, occurs on that day.

The Plaintiffs rely heavily upon a more recent case to support their position; however, that case is inapposite here. *Town of Summerville v. City of North Charleston*, 378 S.C. 107, 662 S.E.2d 40 (2008). In *Town of Summerville*, the Supreme Court considered whether notice of a hearing was published 30 days before the hearing. *Id.* In that case, the notice was

published on April 28. The hearing was held on May 27. In order for there to have been 30 days' notice, the time computation must have included the day of publication as well as the day of the hearing, i.e. both terminal days must have been included in order for the statutory requirement to have been met. *Id.* The Supreme Court recognized that the applicable statute specifically provided for the computation of time so as to exclude the day of publication and include the day of the event. *Id.* Thus, the notice was not timely.

The scenario presented in *Town of Summerville* is quite different that presented in this matter. Under no manner of computing time could the annexation hearing notice have been timely as there were only 30 days if both terminal days were included. In this partition matter, the applicable time period is 10 days. If both terminal days are included, then there are 11 days' notice. However, even if only one of the terminal days is included, Richard Hough has given the required 10 days' notice.

Furthermore, *Town of Summerville* does not support the Plaintiffs' position that a day only counts as a day if notice is given no later than midnight on the morning of that day. In fact, it supports the exact opposite conclusion. In *Town of Summerville*, the appellant was attempting to argue that a day constituted a 24 hour period counted backwards from the exact time that the meeting was held. The Supreme Court held that day does not mean *any* 24 hour period but it means the *specific* 24 hour period from midnight to midnight, i.e. a calendar day. The Supreme Court held, "where the time prescription mentions only the passage of a number of days, a 'day' means a calendar day, beginning and ending at midnight." *Id.* Thus, where an act is accomplished at any time prior to midnight, it is accomplished on that day. Applying that reasoning to this case, Richard Hough's notice of interest to purchase was filed and served 10 days prior to the trial of this case.

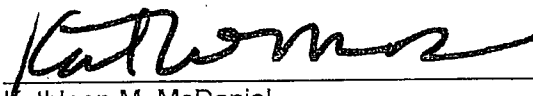
Finally, another holding from the other South Carolina relied upon by the Plaintiffs has been superseded by the South Carolina Rules of Civil Procedure. *William v. Halford*, 67 S.C. 296, 45 S.E. 207 (1903). In that case, the Supreme Court held that a deposition *de benne esse*

had not been noticed timely prior to its taking where the notice was served on November 10 and the deposition was to occur on November 20. *Id.* The rule at that time required 10 days' notice. *Id.* However, depositions are now subject to Rule 6, SCRCP, which provides for inclusion of the last day of the period to be included in time computation. Under Rule 6, SCRCP, the deposition notice would be timely. Accordingly, this holding in *William* should be of no moment to this Court.

CONCLUSION

Based upon the foregoing, Richard Hough respectfully requests that this Court deny the Plaintiffs' Motion to Disallow or Strike his notice of interest to purchase and permit Richard Hough to proceed as permitted by the partition statute to purchase the real property that is the subject of this partition action.

CALLISON TIGHE & ROBINSON, LLC



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ATTORNEY FOR RICHARD W. HOUGH

May 6, 2014
Columbia, South Carolina

EXHIBIT A

Kathleen McDaniel – Attorney
803-404-690
kathleenmcdaniel@callisonltighe.com

FILED FOR RECORD

CALLISON TIGHE

2014 MAY -2 PM 4:57

JOYCE McDONALD
CLERK OF COURT
KERSHAW COUNTY, S.C.

May 2, 2014

(Via Hand-Delivery)

The Honorable Joyce McDonald
Kershaw County Clerk of Court
Post Office Box 1557
Camden, SC 29021-1557

RE: Albert H. Hough, individually, and as the Personal Representative of the Estate of Harold W. Hough and as the Personal Representative of Elizabeth P. Hough, George J. Hough and Angela Hough v. Richard Wesley Hough, Joel Pitts Hough and Mary Louise Robinson
Case Number: 2011-CP-2800073
Our Case Number: 11127.003

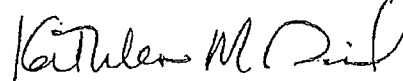
Dear Ms. McDonald:

I am writing on behalf of Richard Wesley Hough, a non-petitioning defendant in the above partition action, to inform the Court that, pursuant to Section 15-61-25 of the South Carolina Code of Laws, Richard Hough is "Interested in purchasing the property" that is the subject of this partition action. Please let this letter serve as Richard Hough's notice of such interest in purchasing the property. A trial in this matter is set to begin on May 12, 2014.

I am by copy of this letter serving all parties with a copy of this letter as well as providing a copy to Special Referee John DuBose.

With kind regards, I am

CALLISON TIGHE & ROBINSON, LLC



Kathleen McDaniel

cc: Special Referee John DuBose
B. Michael Brackett, Esquire
M. Scott Rankin, Esquire
Mary Louise Robinson

232 S.C. 367

Supreme Court of South Carolina.

The SOUTH CAROLINA NATIONAL BANK,
Greenville, South Carolina, Appellant,

v.

C. D. GUEST et al., of whom The State
Bank and Trust Company, is, Respondent.

No. 17393. | Feb. 24, 1958.

Action involving the priority of chattel mortgages on an automobile. Judgment for the respondent in the County Court of Greenville County, W. B. McGowan J., and the plaintiff appeals. The Supreme Court, Taylor, J., held that mortgage of defendant bank was entitled to priority over the mortgage of plaintiff bank.

Order affirmed.

West Headnotes (3)

[1] Chattel Mortgages

⚡ Effect in General

It is equitable that any risk incurred by one failing to protect himself by promptly recording his chattel mortgage should fall upon him who fails to act promptly rather than upon another who can rely upon the record for his protection. Code 1952, § 60-101.

1 Cases that cite this headnote

[2] Chattel Mortgages

⚡ Delay in Recording, and Recording in Wrong Place

Where mortgage of plaintiff bank on automobile was first in point of time of execution and recordation but was not of record at time of execution of mortgage to defendant bank on same automobile, and the latter acted in good faith and without notice of the mortgage of plaintiff bank, mortgage of defendant bank was entitled

to priority over the mortgage of plaintiff bank. Code 1952, § 60-101.

2 Cases that cite this headnote

[3] Time

⚡ Fractions of Day

The term "date" embraces the whole day and fractions thereof are not considered in computation of time, but an exception to such rule arises when it becomes necessary to determine the right of rival lien claimants.

1 Cases that cite this headnote

Attorneys and Law Firms

****216 *368** Rainey, Fant, Brawley & Horton,
Younts & Spence, Greenville, for appellant.

Grier, McDonald, Todd, Burns & Bradford,
Greenwood, for respondent.

Opinion

***369** TAYLOR, Justice.

The question presented in this appeal involves the priority of one of two chattel mortgages, one held by Appellant, South Carolina National Bank of Greenville, South Carolina, and the other by Respondent, The Bank of Greenwood, South Carolina.

The facts are not in dispute. C. D. Guest, a resident of Greenville County, somewhere between 9 a. m. and 1 p. m. on January 5, 1955, procured a loan of \$3,000 from said Greenville Bank and by way of security executed a chattel mortgage upon a certain Chrysler automobile. Later, on the same day, at some time after 3 p. m., the said C. D. Guest borrowed \$3,515.24 from the Ninety Six Branch of the Greenwood Bank upon the same vehicle, representing that it was free of liens.

The Greenville Bank recorded its mortgage in the Office of the Register of Mesne Conveyances for Greenville County on January 7, 1955, at 9:17 a. m. Thereafter, on the same day, the Greenwood Bank

likewise did so at 10:00 a. m. Thus, it is seen that while the Greenville mortgage was first in point of time of execution and recordation, it was not of record at the time of the execution of the Greenwood mortgage. There is no contention but that the Greenwood Bank acted in good faith and without notice of the Greenville mortgage.

*370 The controlling consideration is the force and effect to be given the applicable Recording Act of 1925, 34 Statutes at Large 85, now appearing as Section 60-101, Code of Laws of South Carolina, 1952:

“ * * * all mortgages or instruments in writing in the nature of a mortgage of any property, real or personal, * * * and generally all instruments in writing required by law to be recorded in the office of the register of mesne conveyances or clerk of court in those counties where the office of register of mesne conveyances has been abolished or in the office of the Secretary of State delivered or executed on or after August 1, 1934, except assignments and satisfactions of conditional sale contracts securing the purchase money of motor vehicles or refrigerators, shall be valid so as to affect the rights of subsequent creditors (whether lien creditors or simple contract creditors) or purchasers for valuable consideration without notice **217 only from the day and hour when they are recorded in the office of the register of mesne conveyances or clerk of court of the county in which the property affected is situated, in the case of real estate or in the case of personal property, in which the owner of such property resides, if he resides within the State, or, if he resides without the State the county in which such personal property is situated at the time of the delivery or execution of such deed or instrument.’

‘A study of the development of the Recordation Acts (Sec. 8875 of the Code) shows that they were an outgrowth of efforts to protect ‘subsequent purchasers and creditors’ from ‘secret liens’. These are the true key words to any proper study and application of the principles. Such study shows (and it is undisputed) that at the common law, a mortgage, deed or other instrument, although not recorded, was good not only between the parties but against the world. This led to difficult situations and to hardships when thereafter innocent purchasers and mortgagees were involved.

In other words, the evil of such secret transfers and secret liens *371 became evident, and resulted in the equitable doctrine of ‘subsequent purchaser for value without notice’ as well as the development of the Recording Acts.

‘Therefore, the important point is that the common law doctrine as to the validity of a paper such as that of the plaintiff is applicable here except insofar as it is limited if at all by the terms of the Recording Act. By its terms, however, the Act (Sec. 8875) merely places a limitation upon such validity insofar as it affects the rights of subsequent purchasers of creditors without notice. * * *’ Goodrich Silvertown Inc., v. Rogers, 189 S.C. 101, 200 S.E. 91, 93.

An exhaustive review of the various Recording Acts throughout the country is found in Patton on Titles beginning at page 33. There they are classified into three groups:

- (1) Those which give priority to the instrument first recorded, whether prior or subsequent to another.
- (2) Those which invalidate an instrument as against subsequent ones acquired in good faith before its recordation.
- (3) Those which give protection to a subsequent paper as against a prior one, provided it is first to be recorded.

Our Act falls within the second group as do approximately two thirds of those of the other States. The author, citing numerous authorities, observes:

‘Under this type of Act here considered the earlier purchaser can protect himself from a subsequent purchaser who is without notice of his rights only by recording his conveyance before the latter conflicting interest occurs. A later recording will not affect the rights of a subsequent purchaser even though prior to the recordation of the conveyance to the latter. And as distinguished from the Acts considered in the ensuing section (referring to the third classification, insertion

added) the protection to the subsequent purchaser without notice exists regardless of when he records or whether he ever records his own conveyance.'

*372 In this connection, see also *Turpin v. Sudduth*, 53 S.C. 295, 31 S.E. 245, 306; and the annotation contained in L.R.A. (1916D), page 244.

[1] The present Act provides no grace period for recording; therefore, the instrument should be recorded promptly upon execution to assure its validity against subsequent liens. For a mortgagee not to do so renders him liable to the risk of a mortgage being displaced by a subsequent lien fastening upon the property before its registration. While we are concerned here with construction of a statute, it is equitable that any risk incurred by one failing to protect himself by promptly recording his mortgage should fall upon him who fails to act **218 promptly rather than upon another who can only rely upon the record for his protection, *Epps v. McCallum Realty Company*, 139 S.C. 481, 138 S.E. 297.

The oft cited case of *King v. Fraser*, 23 S.C. 543, was cited by both Appellant and Respondent as authority for their respective positions; however, we are of opinion that the reasoning in that case supports an affirmance of the case at bar. For a review of the Recording Acts from 1843 through 1914, see *In re Sylecau Mfg. Co., D.C.*, 17 F.2d 503, 506, all of which beginning with and subsequent to the 1876 Act, place subsequent creditors and subsequent purchasers in the same category and are referred to as 'subsequent creditors and purchasers.'

[2] In *King v. Fraser*, *supra*, the question was whether a mortgagee, whose mortgage had not been recorded within the prescribed time but was afterwards recorded, took precedence over the general unsecured creditors of the mortgagor; and it was held that the

mortgage had priority over all the unsecured creditors, including those whose debts were contracted between the date of the execution of the mortgage and the date of its record, but that it was otherwise as to creditors who had acquired a lien subsequent to the execution of the mortgage but prior to *373 its record, as well as to purchasers without notice who had acquired title after the mortgage was executed but before it was recorded. See also the recent case of *Goodwin v. Harrison*, 231 S.C. 243, 98 S.E.2d 255.

[3] Appellant also takes the position that, inasmuch as the two mortgages were executed on the same date, the transactions are to be construed as having transpired simultaneously, in that the term 'date' embraces the whole day and fractions thereof are not considered in computation of time, 52 Am.Jur. 338. An exception to this rule, however, arises when it becomes necessary to determine the rights of rival lien claimants. *Carroll v. Cash Mills*, 125 S.C. 332, 118 S.E. 290; 33 Am.Jur. 437; 52 Am.Jur. 341; *Ex parte Stagg*, 1 Nott & McC., 405, 10 S.C.L. 405. Here, in order to establish priority of its mortgage over that of Appellant it was necessary that Respondent show that it had become a lien creditor subsequent to, and without notice of, Appellant's mortgage transaction, as well as prior to the recording of Appellant's mortgage. The case is thus within the exception before mentioned.

For the foregoing reasons, we are of opinion that the mortgage of the Bank of Greenwood has priority over the mortgage held by the South Carolina National Bank of Greenville; that all exceptions should be dismissed and the Order appealed from affirmed; and It Is So Ordered. Affirmed.

STUKES, C. J., and OXNER, LEGGE and MOSS, JJ., concur.

Parallel Citations

102 S.E.2d 215

79 S.C. 263
Supreme Court of South Carolina.

HOLT
v.
SETTLEMAYER et al.

March 2, 1908.

Certiorari by D. J. Holt to compel W. L. Settlemyer and others, as the executive committee and board of canvassers of the Gaffney Democratic primary, to declare him the Democratic nominee for alderman. Writ granted.

The following is a copy of the petition:

"To the honorable, the Chief Justice, and Associate Justices, composing the Supreme Court of the state of South Carolina, the petition of your petitioner directed to the said Supreme Court in the exercise of its original jurisdiction respectfully shows:

"(1) That your petitioner and the respondents hereinabove named are citizens and qualified voters resident of the town of Gaffney, S. C.

"(2) That in December, 1907, at a mass meeting of the citizens and voters of said town, it was determined to hold a primary election on the 7th day of January, 1908, for the purpose of nominating candidates for the various offices, as mayor and aldermen in said town, to be the nominees in the general election to be held for said offices in March, 1908.

"(3) That at said mass meeting a set of rules and regulations for said primary election were adopted, a copy of which is hereto attached and made a part of this petition, and the respondents herein, with the exception of W. L. Settlemyer, were elected as an executive committee, whose duties, among other things, were to provide for the carrying out of said election, to receive the pledges of candidates, receive from them the assessments levied, to count the ballots officially, and declare the results of the said primary, naming the nominees thereof, etc.

"(4) Section 6 of said rules provided that all candidates should five days before such first primary file a pledge with the chairman of said executive committee, the

substance of which is set out in said section, and that candidates for the office of alderman should pay an assessment of \$2, and said section further provides-which is the only forfeiture or penalty mentioned in said rules-that the votes of any candidate who fails to pay said assessment shall not be counted.

"(5) That your petitioner and the respondent, W. L. Settlemyer, both were candidates for the office of alderman in Ward 1 of the town of Gaffney, in which ward, as in all others, only the candidates for mayor and the candidate for alderman in that particular ward were to be voted for.

"(6) That on the 2d day of January, 1908, your petitioner, believing that he was in time, offered to file his pledge and pay his assessment as provided for by said rules, and, after some discussion with the chairman and secretary of said executive committee as to whether he was in time, his pledge was accepted, the same being written out for him by the said secretary or under his direction, and the assessment of \$2 was paid by your petitioner, and accepted by the committee or its chairman and secretary.

"(7) Thereafter, and before said primary was held, at the instance of some person or persons, the said executive committee held a meeting at which it was determined by them that your petitioner had not filed his pledge in time, and was not, therefore, entitled to have his name printed on the tickets to be used at such primary, said meeting being held without notice to your petitioner, and without giving him an opportunity to be heard.

"(8) That ballots were prepared for said Ward 1 which did not have your petitioner's name thereon, but nevertheless your petitioner did not withdraw his candidacy, but continued thereon, and on the day of the primary election, to wit, the 7th day of January, 1908, there were cast for your petitioner for the said office of alderman 29 legal ballots, *660 while your petitioner's opponent, W. L. Settlemyer, received only 12 legal ballots, by which your petitioner received a clear majority of legal ballots for said office over his opponent of 17 ballots; that the ballots cast for your petitioner were written by the electors on the face of the ballots prepared by the said committee by writing the name of your petitioner thereon, and scratching the name of his opponent, W. L. Settlemyer, and were

therefore legal as prescribed by the said rules of the said primary election.

"(9) That said executive committee met on the 13th day of January, 1908, for the purpose of canvassing said votes and declaring the results, and, upon the invitation of said committee, your petitioner's attorney was invited to show the said committee why they should not adhere to their said former ruling, and refuse to count the ballots cast for your petitioner, whereupon your petitioner's attorney demanded that the ballots cast for your petitioner be counted for him, and that he be declared to be the nominee for the office of alderman for said Ward 1.

"(10) Thereupon petitioner and his attorney retired, and the said committee canvassed the votes from said ward, and ruled against your petitioner's claim, and declared the respondent, W. L. Settlemeyer, to be the duly elected nominee of said primary in Ward 1, over the protest of your petitioner, and notwithstanding that there were in said box from Ward 1, 29 legal ballots for your petitioner, and only 12 legal ballots for the said W. L. Settlemeyer, and in the face of the fact apparent that your petitioner obtained a majority of 17 ballots over his opponent, and should therefore have been declared to be the duly nominated candidate for alderman from said ward.

"(11) That the result of the action of said committee is to prevent your petitioner from being a candidate for election in the general election, and to deprive him of the office to which he would be elected, and to deprive him of the honors and emoluments of said office.

"(12) That your petitioner is informed and believes that he has no redress from the wrongful action of said committee except through the intervention of this court, or some other court, but that the time being so short, and as no other court convenes in this county until about the 1st of March, 1908, your petitioner would be prejudiced by such delay if he be entitled to be declared the nominee of said primary; and your petitioner further is informed and believes that he has complied with the rules as herein set out, but that, if he did not, the enforcement of said rules could be and were waived accepting his pledge and the assessment; and, further, that said rules are adopted for the orderly carrying out of such election, and that there was no reasonable excuse for a decision by the committee that

he be barred, as neither they nor the respondent, W. L. Settlemeyer, suffered any prejudice or inconvenience, nor would the primary have been interfered with in any way by petitioner's candidacy, as ample time remained after the filing of said pledge to prepare the ballots and other election machinery.

"(13) That your petitioner is informed and believes that the action of said committee in barring petitioner was based upon a technical construction of the rule that your petitioner had not filed his pledge five days before such first primary, and for no other reason.

"Wherefore your petitioner prays that the respondents, the committee named above, be required to show cause before this honorable court why your petitioner should not be declared to be the duly elected nominee for Ward 1 instead of the respondent, W. L. Settlemeyer, or for such orders or relief as from the foregoing facts may be deemed proper by this court.

"January 13, 1908.

"_____, Attorney for Petitioner.

"State of South Carolina, County of Cherokee.

"Personally appeared D. J. Holt, the petitioner herein, who, being duly sworn, says that the facts set out in the foregoing petition are true of his knowledge, except as to matters set out therein on information and belief, and, as to such matters, he believes it to be true.

"_____, Petitioner.

"Sworn to before me this ____ day of January, 1908.
_____. [Seal.]"

West Headnotes (1)

[1] Time

⚡ Excluding First or Last Day

The rule of a political party that candidates for nominations should file a pledge with the chairman of an executive committee five days before a primary election to be held on January 7th, and should pay an assessment, was complied with by filing the pledge with and paying

the assessment to the chairman of the committee on January 2d.

1 Cases that cite this headnote

Attorneys and Law Firms

W. S. Hall, for petitioner.

J. C. Otts, for respondents.

Opinion

PER CURIAM.

On hearing the petition, affidavits, and demurrer herein, it is considered by the court that the

Democratic executive committee of the town of Gaffney committed error of law in deciding under the rules of the party the petitioner had not filed his pledge and paid his assessments within the time required by said rule, and was not entitled to be a candidate in the primary election, and to have the votes cast for him therein counted.

It is therefore ordered and adjudged that the petitioner D. J. Holt is entitled to be declared the Democratic nominee for alderman in Ward 1, for the town of Gaffney at the municipal election to be held in said town on the 3d day of March, 1908.

Parallel Citations

60 S.E. 659

2 Tread. 631
Constitutional Court of
Appeals of South Carolina.

MARY BUIST, Adm'x of
Rev. GEORGE BUIST,
v.
WILLIAM B. MITCHELL,
Ex'r of JOHN MITCHELL.

January Term, 1814.

West Headnotes (1)

[1] Time
⇒ Notices and Process

Process

⇒ Time for Service

It is sufficient if process be served 15 days before the sitting of the court, including the first day on which the court sits, and excluding the day on which process is served.

Cases that cite this headnote

Opinion

*631 NOTT, J.

The act of 1799, enacts that all judicial process shall be made returnable to the clerk of the court, fifteen days next before the sitting of the said court; and the question now is, whether the act means fifteen days exclusive of the day on which it is returnable, and of the first day of the court, or whether one day may be inclusive. The presiding judge on this circuit was of opinion, that one of the days might be inclusive, and decided accordingly; and a motion is now made to reverse that decision. I am of opinion, the decision was correct; it was conformable to the usual rule of construction in similar cases both in England and this state, and consistent with the practice that has always prevailed under that act. I am, therefore, of opinion that the motion ought to be discharged.

SMITH, J.

The copy writ was left at defendant's residence on the 19th of October, and the court sat on the 3rd November, making but fourteen days, exclusive of the day on which the writ was served, and the first day of court. The defendant's motion was to vacate the service of the writ for irregularity, *632 not being returned fifteen days next before the sitting of the court. It appears to me to admit of great doubt whether the construction contended for by the defendant, is not the correct one; but the authority in *Sellon*, p. 406. will warrant a different construction; and as it is more a question of practice than of substantial justice, it is perhaps the best course to say, that the sitting day of court is to be considered as one of the fifteen: Therefore, I must be against the motion.

GRIMKE, J.

The question in this case is, whether the day on which the process is served and is returnable, shall be both excluded in counting the fifteen days before the return day; for if so, then there will be in this case, but fourteen days intervening between the day of service and the day of the return. The rule of law is, that there are no fractional parts of a day, so that if process be served before twelve o'clock at night, it shall be accounted served on that day to which the twenty hours belong. If then the day on which the writ be served, is to be accounted as one of the fifteen days, it will be in time, as it will be fifteen days next before the sitting of the court to which it is returnable. In B. R. the 4 or 8 days allowed for pleading are, one inclusive; and the other exclusive; but in C. B. both are inclusive. 1 *Sellon*, 293. The time to plead under a judge's order, is reckoned inclusive of the day of the date of the order, but exclusive of the day on which it expires: so that an order for a week's time to plead, *633 obtained on a Saturday expires on the morning of the following Saturday; and in C. B. the plaintiff may sign judgment in the afternoon of that day. *Sellon*, 311.

Again; as to the mode of reckoning the days, the day of giving the notice is reckoned exclusive, and the sitting or commission day inclusive. *Sellon*, 407. By which, it appears that according to the practice of the English

courts, their mode of computation includes always one of the days; and in *C. B.* which is the court that, by our law, we are directed to follow in our proceedings, that both days are included in the case mentioned above; so that, if a rule to plead be given on the 7th, it is out on the 10th, and judgment may be signed on the 11th. Reasoning, therefore, from analogy, I should be of opinion that one of the days on which the process is served or returned, should be counted. But the terms of our act, requiring that it should be fifteen days next before the sitting, precludes the return day from being counted in that number. I am, therefore, of opinion,

that the day on which the process was served, must be counted as one of the fifteen days before the sitting of the court, and that the service in this case was regular; the motion must, therefore, be discharged.

COLCOCK, J. concurred.

Parallel Citations

3 Brev. 485, 5 S.C.L. 485, 7 S.C.L. 631, 1814 WL 484
(S.C.Const.App.)

378 S.C. 107
Supreme Court of South Carolina.

TOWN OF SUMMERVILLE, Appellant,

v.

CITY OF NORTH
CHARLESTON, Respondent.

No. 26492. | Heard April 2,
2008. | Decided May 19, 2008.

Synopsis

Background: Two municipalities brought actions against each other, seeking annexation of the same tract of land. Cases were consolidated. The Circuit Court, Dorchester County, James C. Williams, Jr., J., granted the second municipality's motion for summary judgment. First municipality appealed.

[Holding:] The Supreme Court, Pleicones, J., held that first municipality failed to wait statutorily-required 30 days after notice of hearing and date of the annexation, when it published notice on April 28 and enacted ordinance on May 27.

Affirmed.

West Headnotes (4)

[1] Appeal and Error

↔ Extent of Review Dependent on
Nature of Decision Appealed from

When reviewing a grant of summary judgment, an appellate court applies the same standard used by the trial court.

2 Cases that cite this headnote

[2] Appeal and Error

↔ Cases Triable in Appellate Court

Determining the proper interpretation of a statute is a question of law, and the

Supreme Court reviews questions of law de novo.

22 Cases that cite this headnote

[3] Municipal Corporations

↔ Ordinances Annexing or Detaching Territory

Municipality failed to wait until 30 days had lapsed, between date it published notice of hearing on annexation and date of enactment of annexation ordinance, as required by statute, when it published its notice on April 28 and enacted ordinance on May 27. Code 1976, § 5-3-150; § 15-29-10 (2005).

Cases that cite this headnote

[4] Time

↔ Days

Where a time prescription mentions only the passage of a number of days, a "day" means a calendar day, beginning and ending at midnight.

Cases that cite this headnote

Attorneys and Law Firms

****40** Jack M. Scoville, Jr., of Georgetown, for Appellant.

Derk Van Raalte and J. Brady Hair, both of North Charleston, for Respondent.

Opinion

****41** Justice PLEICONES.

***108** This is a direct appeal from a grant of partial summary judgment to the City of North Charleston. The issue on appeal is whether the Town of Summerville complied with a statute which requires the publication of notice not less than ***109** thirty days prior to acting on a petition to annex real property. Because the Town of Summerville did not comply with the statute, we affirm.

FACTS

This is an annexation dispute between neighboring municipalities. At some point in 2005, both the Town of Summerville and the City of North Charleston desired to annex a portion of real property known as the Barry Tract. In April 2005, Summerville enacted an ordinance declaring the Barry Tract annexed. Believing Summerville's annexation to be invalid, North Charleston enacted its annexation ordinance in June 2005. The municipalities sued each other, and the cases were consolidated for trial.

The record reflects that both municipalities utilized the annexation procedure set forth in S.C.Code Ann. § 5-3-150 (2004), which originates with a petition initiated by the owners of the property sought to be annexed. The statute provides that annexation is complete upon the enactment of an ordinance and requires the annexing municipality to publish notice of a public hearing "not less than thirty days before acting on an annexation petition...." *Id.* North Charleston moved for summary judgment on the question whether thirty days elapsed between April 28, 2005, the date Summerville published notice of its hearing, and May 27, 2005, the date Summerville enacted its annexation ordinance. The trial court held that thirty days had not elapsed in this period, and Summerville appealed. We certified the appeal from the court of appeals pursuant to Rule 204(b), SCACR.

ISSUE

Did the trial court err in holding that less than thirty days elapsed between April 28, 2005, and May 27, 2005?

STANDARD OF REVIEW

[1] [2] When reviewing a grant of summary judgment, an appellate court applies the same standard used by the trial court. *Lanham v. Blue Cross and Blue Shield of S.C., Inc.*, 349 S.C. 356, 361, 563 S.E.2d 331, 333 (2002). A grant of summary judgment is proper when there is no genuine issue as to any material fact and the moving party is entitled

to judgment as a matter of law. Rule 56(c), SCRCP; *Tupper v. Dorchester County*, 326 S.C. 318, 325, 487 S.E.2d 187, 191 (1997). Determining the proper interpretation of a statute is a question of law, and this Court reviews questions of law de novo. *Catavba Indian Tribe v. State*, 372 S.C. 519, 524, 642 S.E.2d 751, 753 (2007).

ANALYSIS

[3] Summerville argues that under a plausible construction of the annexation statute at issue, a "day" can be measured by the lapse of twenty-four hours from a relevant time. Put in terms of the statute at issue, Summerville argues that § 5-3-150 requires that a municipality publish notice of a public hearing not less than thirty twenty-four hour periods prior to acting on an annexation petition. Summerville argues that it enacted its annexation ordinance at 5:30 p.m., May 27, and that counting the days that elapsed by twenty-four hour periods, the twenty-ninth day prior to its enacting the ordinance ended at 5:30 p.m., April 28, 2005. Summerville therefore posits that if the notification in the newspaper occurred at 5:00 a.m. the morning of April 28, it occurred midway through the thirtieth day and complied with the annexation statute's notice requirement. We disagree.

Summerville's argument fails on its own terms. Assuming that the lapse of thirty sequential twenty-four hour periods provides the measuring stick, 5:30 p.m., May 27, and 5:00 a.m., April 28, are separated by 29 days, 12 hours, and 30 minutes. Converting thirty days to a number of hours of required notice, the statute would then mandate that notice be published "not less than [720 hours] before acting on an annexation petition...." *Id.* In this case, publication and action were separated by 708 hours, 30 minutes. As a quantitative reality, this is less than thirty days.¹

¹ Summerville attempts to draw a distinction between a requirement of "not less than thirty days" and a fictional requirement of "at least thirty days," but this distinction suffers from a similar flaw. If a brief filed in court must be not less than four pages in length, a three and one-half page brief would not suffice.

*111 In fact, S.C.Code Ann. § 15-29-10 (2005) provides a specific method for computing time for publication of notices. The statute provides that "[t]he time for publication of legal notices shall be computed so as to exclude the first day of publication and include the day on which the act or event, of which notice is given, is to happen or which completes the full period required for publication." *Id.* Using this method, April 28, the day of publication, is excluded. Counting forward, May 27 is twenty-nine days from the publication of the notice. Thus, using the statutory counting method for legal notices, we conclude that Summerville did not comply with the relevant public notice requirement in this case.

The parties offer additional arguments on alternative methods of counting time, but those arguments are largely inconsequential. North Charleston posits that Summerville's argument fails even under its own ordinance dealing with computation of time. While North Charleston is correct, it is clear that a local ordinance cannot, absent some authorization or directive, control how time is computed under a state statute. Similarly, this Court's rules contain procedures for computing time, *see* Rule 6, SCRPC and Rule 234, SCACR, and while these rules unquestionably apply in their respective spheres, they are neither dispositive nor are they helpful in answering the question at hand. In this case, a statute requires that published notice precede a public meeting by a specific time period, and a separate statute specifically explains how time is to be computed for the publication of legal notices.

Summerville's more basic argument about how a "day" is defined is not supported by our precedent. We have held that "[t]he word 'day,' in its common acceptation, means a civil day of twenty-four hours, beginning and ending at midnight," *Corwin v. Comptroller Gen.*, 6 S.C. 390, 399 (1875), and that "[f]ractions of days are not recognized in our laws." *Williams v. Halford*, 64 S.C. 396, 402, 42 S.E. 187, 189 (1902). *Corwin* interprets the word "day" in the context of the South Carolina Constitution's requirement that the Governor veto and return a bill or resolution within three days (Sundays excepted) or the bill shall become law,² and *Williams* dealt with the predecessor *112 to Rule 6(a), SCRPC's rule on computation of time, found in the 1893 Code of Civil Procedure at § 407. These cases instruct that where a time requirement does not

speak in terms of specific hour periods, the Court will not interpret a day to mean anything other than a calendar day. *See also Cleveland v. Calvert*, 54 S.C. 83, 86, 31 S.E. 871, 872 (1899) (applying § 421 of the 1893 Code, the predecessor of the current publication statute, and concluding that notice appearing twenty-one days prior to action complied with statutory requirement of three weeks' notice). We adhere to this pronouncement, and note that where the legislature desires for the passage of a specific number of hours to precede an action, it has shown a propensity for writing precisely such a requirement. *See, e.g.*, S.C.Code Ann. § 5-15-130 (2004) (containing a notice requirement of specific hours).

2 The requirement is now five days. *See* S.C. Const. Art. IV, § 21.

[4] The fact that there are multiple rules for computing time is not all together surprising. As far back as the 1870 Code, South Carolina's statutory law contained separate rules for computing time periods spelled out in procedural rules and time periods for the publication of legal notices. *See* 1870 Code of Civ. Pro. §§ 421, 422. Accordingly, old civil procedure cases relied on the version of the procedural rule then in effect, and old publication cases pulled from the applicable publication rule. All of this simply means that the method for computing time in a particular case may be prescribed by statute, court rule, local ordinance, or some other authority, and the answer we supply today is that where a time prescription mentions only **43 the passage of a number of days, a "day" means a calendar day, beginning and ending at midnight.

CONCLUSION

We hold that summary judgment was properly granted in favor of the City of North Charleston on the question whether less than thirty days elapsed between April 28, 2005, the date Summerville published notice of its hearing, and May 27, 2005, the date Summerville enacted its annexation ordinance. The order of the circuit court is

AFFIRMED.

Town of Summerville v. City of North Charleston, 378 S.C. 107 (2008)

662 S.E.2d 40

TOAL, C.J., MOORE, WALLER and BEATTY, JJ.,
concur.

Parallel Citations

662 S.E.2d 40

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67 S.C. 296

Supreme Court of South Carolina.

WILLIAMS et al.

v.

HALFORD et al.

Aug. 4, 1903.

Appeal from Common Pleas Circuit Court of Colleton County; James J. Izlar, Special Judge.

Action by Julia Williams and J. H. Williams against J. R. Halford et al. From decree for plaintiffs, defendants appeal. Reversed.

West Headnotes (2)

[1] Time

⚙ Notices and Process

Under Code, § 2881 (See Code 1942, § 706), requiring that reasonable notice, not less than 10 days, must be given in writing by party proposing to take a deposition *de bene esse*, notice served on the tenth, to take testimony on the twentieth, is insufficient.

3 Cases that cite this headnote

[2] Trial

⚙ Issues to Be Submitted

A wife and child sued under Code, § 2368 (See Code 1942, § 8695), providing that if any citizen of the state shall convey by deed to his mistress or bastard child, he having a lawful wife and child living, property for the benefit of such mistress or child, such conveyance shall be void as to the lawful wife and child for such amount as shall exceed one-fourth of his estate, and defendants set up a paramount title by denial of the allegations of the complaint that their title was derived by gift, and also set up an independent title by adverse possession. Held, that the issue should be

submitted to the jury, by whose finding the court would be bound.

1 Cases that cite this headnote

Attorneys and Law Firms

*207 Howell & Gruber, for appellants. Griffin & Padgett, for respondents.

Opinion

GARY, A. J.

This action was brought under section 2368 of the Code of Laws, which is as follows: "If any person who is an inhabitant of this state, or who has any estate herein, shall have already begotten, or shall hereafter beget, any bastard child, or shall live in adultery with a woman, the said person having a wife or lawful children of his own living, and shall give, or settle, or convey, either in trust or by direct conveyance, by deed of conveyance, by deed of gift, legacy, devise, or by any other ways or means whatsoever, for the use and benefit of the said woman with whom he lives in adultery, or of his bastard child or children, any larger or greater proportion of the real value of his estate, real or personal, after payment of his debts, than one-fourth part thereof, such deed of gift, conveyance, legacy or devise, made or hereafter to be made, shall be null and void, in favor of wife and legitimate children, for so much of the amount or value thereof as shall or may exceed such fourth part of his real and personal estate." The complaint alleges that the plaintiffs are the widow and son of James J. Williams, alias Halford, and that the defendants J. R. Halford, Harriet Turner, and Laura Abbot, are the illegitimate children of the said James J. Williams, alias Halford, begotten of Jane Crosby, after his marriage with Julia Williams. That Jane Crosby, alias Halford, died in 1894, and James J. Williams in 1896. That in 1871 James J. Williams conveyed certain real and personal property described in the fourth paragraph of the complaint to Jane Crosby, in trust for his children by the said Jane Crosby; and that the said personal property, with its increase, was in the possession of Jane Crosby at the time of her death, but belonged to James J. Williams. That in 188_ James J. Williams caused the said Jane Crosby to sell

certain lands therein mentioned to S. M. J. Carter; that the funds arising from such sale were supplemented by the personal funds of James J. Williams, and were reinvested in the purchase of certain lands therein described. That in 1892 James J. Williams, without consideration, conveyed to Jane Crosby all his real and personal estate of whatever kind soever. That in 1881 Jane Crosby conveyed certain of the property hereinbefore mentioned to her children by James J. Williams. That since the decease of James J. Williams the children born of Jane Crosby as aforesaid, for and in consideration of \$100, conveyed to the defendant J. W. Halford certain of the property described in the complaint.

The 10th, 11th, 12th, and 13th paragraphs of the complaint are as follows:

"(10) That all property, both real and personal, in possession of the said Jane Crosby, alias Jane Halford, at her decease, of whatsoever kind or description, was conveyed to her by the said James J. Williams, alias James J. Halford, and Miner Carter, was, and is, in fact, the personal earnings and property of him, the said James J. Williams, alias James J. Halford, and was conveyed to her, the said Jane Crosby, alias Jane Halford, while they were living together in adultery, and she to her children, all of which was illegal, null, and void; which said deeds and conveyances were made for the express purpose of evading section 1887 of the Revised Statutes of South Carolina.

(11) That the said James R. Halford, B. F. Halford, J. W. Halford, Harriet Turner, and Laura Abbott have been receiving the rents and profits of said estate property, and have disposed of and wasted the personal property of said estate of the value of \$800, more than one-fourth of the value of said estate.

(12) That the plaintiff Julia Williams is entitled to one undivided third part of three-^{*208} fourths of said estate, and J. H. Williams to two-thirds of three-fourths thereof.

(13) That J. E. Halford, B. F. Halford, J. W. Halford, Laura Abbott, and Harriet Turner were entitled to one-fifth each of one-fourth of the entire estate."

The defendants J. R. Halford, B. F. Halford, and Laura Abbott answered the complaint as follows:

"First, for a first defense: (1) That they deny each and every allegation in the said complaint contained, and allege that they and their codefendants, Harriet Turner and J. W. Halford, are the exclusive owners of all the lands mentioned and described in the complaint.

Second, for a second defense: (1) That neither the plaintiffs nor their ancestors, nor predecessors nor grantors, were seised or possessed of the premises described in the complaint within 10 years last past before the commencement of this action. (2) That these defendants' ancestress, Jane Halford, under whom they claim, entered into possession of the premises described in the complaint under claim of title, exclusive of any other right, founding such claim upon a written instrument as being a conveyance of the premises in question, and there has been a continued occupation and possession by the said Jane Halford of the premises included in this instrument under such claim for more than 10 years past before the commencement of this action and before the death of the said Jane Halford." The third paragraph alleges the erection of certain improvements therein described.

His honor the presiding judge submitted the following issues to the jury, to which the answers are attached, to wit: "(1) Are the defendants the exclusive owners of all the lands mentioned in the complaint? Answer. Yes. (2) Did James J. Williams intermarry with one Julia Albrighton, in the state of Florida, in 1852? Answer. Yes. (3) Is J. H. Williams, the plaintiff herein, the legal son of said marriage? Answer. Yes. (4) Are both the said Julia Williams, the wife, and J. H. Williams, the son, now alive? Answer. Yes. (5) Did the said James J. Williams afterwards leave the state of Florida, come to the state of South Carolina, change his name to J. J. Halford, and while his wife, Julia, was alive, contract a second marriage with one Jane Crosby, and cohabit with her until his death? Answer. Yes. (6) Are the defendants the fruit of the marriage entered into between James J. Halford and Jane Crosby? Answer. Yes. (7) Did the said James J. Halford during his lifetime make the conveyances of his property as mentioned and set forth in the complaint herein? Answer. Yes. (8) Did the said Jane Halford, on the 6th January, 1881, in consideration of natural love and

affection, convey the lot or parcel of land described in paragraph five (5) of the complaint to her children? Answer. Yes. (9) Was the 200- acre tract mentioned in paragraph 4 of the complaint, and conveyed with other property by James J. Halford to Jane Halford in trust for the children of the said James J. and Jane Halford, sold at the instance of James J. Halford, and the proceeds reinvested in the purchase of that certain lot of land in the town of Walterboro? Answer. No."

In commenting on these issues, his honor the presiding judge instructed the jury as follows: "The question here of legal title is raised by the pleadings, and must go to the jury, according to the rule established by our courts. Yet this does not prevent the court from submitting other issues to the jury for determination along with the question of title. And, while you may find for the defendants on the question of legal title, you may find such facts which would enable the court, when the cause comes up for hearing on the equity side of the court, to do justice among the parties, and in that court resort to the process of partition, if necessary to obtain the proper results. The issues which you must determine upon the pleadings, including legal title to the premises in question, are stated in the issues which I have submitted to you. The answer of the jury to these questions is necessary to determine the rights of the parties, and to secure to them, respectively, their rights on the equity side of the court. Now, while under the strict principles of the law, so far as the legal title is concerned, you may, if you find the other facts outside of the legal title to be true, not be able to find the legal title in the plaintiffs, and be compelled to find for the defendants, or, in other words, while you may be compelled to say, in answer to the issue of title raised, that it is in the defendants, still this finding would not be inconsistent with your other findings of fact. For under the law the legal title may be in the illegitimate child or children, yet the lawful wife or child or children might, by reason of a violation of the act, still have such an interest or right in the property over the one-fourth part thereof as would in equity be preserved and secured on them."

The circuit judge refused a motion for a new trial as to the finding of the jury upon the issue of title. The cause was then called on calendar No. 2. After considering the testimony, the circuit judge rendered his decree, which concludes as follows: "It is therefore ordered

and adjudged that it be and hereby is referred to the master of Colleton county to take testimony and report to this court the value of the several tracts or parcels of land conveyed by J. J. Williams, alias J. J. Halford, and by Miner Carter, to Jane Crosby, alias Jane Halford, at the time the same came into her possession; also the value of all the personal property transferred by said deeds, or any or either of them, and which passed into the possession of the said Jane Crosby, alias Jane Halford, thereunder for the benefit of herself and children, whether the said real and personal property was conveyed in *209 trust or otherwise; also the indebtedness of the said J. J. Williams, alias J. J. Halford, at the time of making, or causing to be made, any of the deeds of conveyance in question; also the rents and profits of the real estate so conveyed since the death of the said J. J. Williams, alias J. J. Halford, over and above all permanent improvements enhancing the value thereof and all taxes paid thereon by the defendant. And that said master do further report, under the principles herein announced, whether the amount of said real and personal property exceeded one-fourth of the clear value of the property, real and personal, at the time of the conveyances, or any or either of them, were made by the said J. J. Williams, alias J. J. Halford, and the amount of the excess over and above the one-fourth thereof. And it is further ordered and adjudged that the defendants have ten days from the hearing of said report, or any exceptions thereto and order therein, to elect whether or not they will pay the sum, if any, ordered by the court in excess of one-fourth to be paid to the plaintiffs and retain the property; and, if the defendants shall fail or refuse to elect within the time aforesaid, the plaintiffs have leave to apply to this court for a writ or writs of partition to enforce their rights under this decree, in order that a proper and necessary result in the said cause may be obtained; but in case the said report and order therein shall be that the value of the property in question does not exceed one-fourth in value of the clear value of the said property, after deducting the amount of the indebtedness of the said J. J. Williams, alias J. J. Halford, after the payment of all his just debts at the time of the conveyances as aforesaid, then that the title of the defendants stands confirmed, and the complaint be dismissed. It is further ordered and adjudged that the parties have leave to apply for further orders in the cause, either in open court or at chambers, upon due notice upon the coming in of the master's report,

and that all questions as to the costs of said action be reserved until the order of the court is made on said report."

The appellants' exceptions are numerous, but, under the view which this court takes of the case, many of them present merely abstract questions, and therefore need not be considered.

We will first consider the question whether the presiding judge submitted the question of title to the jury in proper form under the pleadings in this case, or gave due effect to the finding of the jury. In order that the plaintiffs may be able to get relief by the assertion of their equitable rights under the statute hereinbefore mentioned, it is incumbent on them to establish the fact that the defendants derive their title from the father of the alleged bastards. But a bastard is allowed to purchase property even from his putative father, if it is founded upon valuable consideration. *King v. Johnson*, 2 Hill, Eq. 624. In the case just mentioned the court uses this language: "The obligations between parents and children are reciprocal. On the parent devolves the duty of maintaining, educating, and providing for the child; in return for which the child owes obedience and assistance during minority, and reverence and respect always; and it follows necessarily that, if in law either is absolved from those obligations, so also is the other. Now it is very clear that the putative father is not entitled in law to the custody of his natural child, in opposition to the claims of the mother, nor is he bound to provide for it further than is required by express enactments of the Legislature. 2 Kent's Com. (1st Ed.) 178. The child cannot inherit from the father, and the extent to which the father can provide for his illegitimate child is limited by the act above referred to. The father is not, therefore, entitled in law to the services of his natural child. It is said, however, that when the other assumes and discharges the duties of a parent, corresponding duties arise on the part of the natural child; and this is true so long as this relation exists. But these relations are merely conventional, and, being voluntary, may be dissolved at pleasure. Not so as to the relations between the father and his legitimate children. The obligations between them are imposed by law, and neither can be dissolved from them. The right of the putative father to the custody and services of his natural child must therefore arise out of contract, in which the parties are at liberty to

stipulate for themselves. There is certainly nothing in these relations to prevent the father from rewarding the child for its labor, or being its agent to invest the proceeds; on the contrary, in despite of the stern policy which alienates the bastard from his putative father, nature has bound them together by ties which cannot be severed; and it is impossible to resist the feeling that there is a moral duty imposed on the father to aid the child when he can do so without violating the law or doing wrong to others. I am well aware that there is much danger of abuse in the application of this principle, and that without great circumspection it will be made a cover for evading the act, but of its correctness there can be no question; and abuses may be guarded against by requiring clear and unequivocal evidence of the fairness and reasonableness of the transaction. Of this the present case may serve as an example; for it is apparent the defendant's testator was a mere drone in the hive, and that the land conveyed to the defendants is a very inadequate compensation for the long and faithful services of the defendants, out of the proceeds of which it was paid for."

The appellants denied the allegations of the complaint that their title was derived from James J. Williams as a gift, and likewise set up an independent title by adverse possession. This was sufficient to raise the question of paramount title, in the trial of which by the *210 jury the plaintiffs are required to be the actors. *Bank v. Peterkin*, 52 S. C. 236, 29 S. E. 546, 68 Am. St. Rep. 900. The presiding judge does not seem to have considered the issue of title as arising out of chancery, and that its submission to the jury was for the enlightenment of the conscience of the court; but it is evident he did regard the title upon which the appellants relied as sufficient to defeat the equitable rights of the plaintiffs under the statute in case it was established to the satisfaction of the jury. The question of title was not a legal issue arising out of chancery, the submission of which to the jury was for the enlightenment of the court's conscience. If the presiding judge, when he submitted to the jury the issue, "Are the defendants the exclusive owners of all the lands mentioned and described in the complaint?" meant "exclusive owners" as against the equity of the plaintiffs, then he should have regarded the verdict as sufficient to defeat the plaintiffs' equity; while, on the other hand, if he did not intend that the jury should find a verdict that would defeat the equitable rights of

the plaintiffs, he misconceived the scope of the issue of title raised by the pleadings. Upon the trial of the legal issue of title by the jury, it is incumbent upon the plaintiffs to introduce testimony tending to prove all the material requirements of the statute alleged in the complaint, in order to show that the title of the appellants is not paramount to their right to assert their equity under the statutes. The defendants may defeat the case as made by the plaintiffs' testimony either by the introduction of testimony directly contradicting it, or may show that valuable consideration was paid for the property, or that they have an independent title arising from any other facts. We desire, however, it should be distinctly understood that we do not undertake at this time to decide whether the defense of adverse possession is available or applicable in this case, as such question is not properly before us for consideration, and is therefore left open. This is a case in which the circuit court might find it advisable to direct the jury to find a special verdict as to the manner in which the appellants had title to the land under section 283 of the Code.

Having reached the conclusion that there should be a new trial upon the question of title, and that the pleadings raise a question of title in the appellants paramount to the claim of the plaintiffs, and which would therefore defeat it if sustained by the testimony, we do not deem it proper to decide any other question except that as to the time of serving notice to take testimony *de bene esse*. Notice to take the testimony of Julia Williams *de bene esse* was served on the defendants' attorneys on the 10th day of November, 1902, and the testimony was taken on the 20th day of November, 1902. Section 2881 of the Code of Laws requires that "reasonable notice, not less than

ten days, must first be given in writing by the party or his attorney proposing to take such deposition to the opposite party or his attorney of record." It will be observed that the notice required shall be not less than 10 days. This case comes within the principle announced in *Adkins v. Moore*, 43 S. C. 173, 20 S. E. 985, in which the court says: "The defendants were entitled to full twenty days from the time of service of the complaint till the day therein fixed for trial, and, as they were required to appear on the twentieth day from the service thereof, the time was shorter than that required by law." It is true, section 407 of the Code provides that "the time within which an act is to be done, as herein provided, shall be computed by excluding the first day and including the last," but this was not a case in which the defendants were required to act "within" 10 days. When such is the requirement, the party is in time if he acts on the tenth day, for that is "within" 10 days. If, however, the party is entitled to a notice of "not less than 10 days," he is not required to act until the expiration of 10 days, or, in other words, after 10 days. The notice in this case was not sufficient, unless "within" and "not less than" or "after" mean the same thing, which cannot be successfully contended.

It is the judgment of this court that the judgment of the circuit court be reversed, and that the case be remanded to that court for a new trial upon the issue of title, and for such further proceedings as may be necessary under the pleadings.

Parallel Citations

45 S.E. 207

STATE OF SOUTH CAROLINA)
) IN THE COURT OF COMMON PLEAS
COUNTY OF KERSHAW)

Albert H. Hough, Individually)
and as Personal Representative)
of the Estate of Harold W.)
Hough, and as Personal)
Representative of the Estate)
of Elizabeth P. Hough; George)
J. Hough and Angela Hough,)

Plaintiffs,)

vs.)

C/A #2011-CP-28-073

Richard Wesley Hough, Joel)
Pitts Hough, and Mary)
Louise Robinson,)

Defendants.)

 **ORIGINAL**

**SPECIAL REFEREE HEARING
BEFORE JOHN K. DUBOSE, III**

Tuesday, May 6, 2014
3:05 p.m. - 3:35 p.m.

The telephonic Special Referee Hearing, taken on behalf of the parties, on the 6th day of May, 2014, before Judy R. Urso, Certified Court Reporter and Notary Public in and for the State of South Carolina, pursuant to Notice of Deposition.

URSO COURT REPORTING
21 Surrey Court / Columbia, SC 29212
(803) 731-8585

APPEARANCES

B. Michael Brackett, Esquire
Moses & Brackett
Post Office Box 100261
Columbia, South Carolina 29202
Attorney for the Plaintiffs

Kathleen M. McDaniel, Esquire
Callison, Tighe & Robinson
Post Office Box 1390
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Attorney for the Defendant Richard Hough

Elizabeth Shields, Esquire
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Post Office Box 1445
Camden, South Carolina 29021
Attorney/Guardian for Joel Hough

ALSO PRESENT ON CONFERENCE CALL WERE: Albert Hough and
Angela Hough

EXHIBITS

No Exhibits were marked during this deposition.

STIPULATIONS

It is stipulated and agreed that this deposition is
being taken pursuant to the South Carolina Rules of Civil
Procedure.

HEARING

1

1 **MR. BRACKETT:** Since we're now on the record,
2 I would repeat for the record that notice was given
3 or at least telephone notice was given to Mary
4 Louise Robinson who is presently out of state. She
5 indicated that she would like to join the conference
6 call today. We gave her the contact information.
7 It is now by my calculation about 3:07, she has not
8 called in, and I have filed an affidavit. In any
9 event I have filed an Affidavit of Default because
10 Ms. Robinson has not filed or served any responsive
11 pleadings in the case. So having said that, I
12 would, just to repeat, Your Honor, for the record,
13 I, I would move that we go forward with the hearing
14 even though Ms. Robinson is not a party to this
15 call.

16 **SPECIAL REFEREE:** All right. I'll, I'll note
17 that for the record, I'm, I'm fine with that. and
18 I'll repeat what I stated prior to going on the
19 record that, that inasmuch as the last time I
20 reviewed the court files, she's not filed any
21 responsive pleadings to anything. I believe your,
22 your statement of the status of the case is correct,
23 that she is probably in default. Like I said, I
24 have not looked at the file in a few days, but if
25 she has filed her responsive pleadings at this

1 point, I'm sure you all will take that up with the
2 court in any event, but I, I'm fine proceeding, Mr.
3 Brackett, Ms. McDaniel, and I'll hear from you now
4 on your Motion to Disallow and Strike, Mr. Brackett.

5 **MR. BRACKETT:** Thank you, Your Honor. May it
6 please the court. This, this motion was filed in
7 response to a notice that was served by Defendant
8 Richard Hough on the last Friday, May the 2nd, at
9 approximately 4:00 p.m. It was a notice pursuant to
10 code section 15-61-25(a) that would give a party to
11 a partition case an opportunity to I guess express
12 an interest in purchasing the property rather than
13 having the property partitioned. I have on
14 behalf of the plaintiffs, I have moved to have that
15 notice stricken or disallowed as being untimely
16 served, and I have given the court previously a
17 memorandum of law, but it has to do, Your Honor, the
18 issue has to do with how, how the time computation
19 is made based upon the language of that statute, 15-
20 61-25(a), and it requires that the notice must be
21 delivered to the court no later than 10 days prior
22 to the date set for the trial of the case. The, the
23 no later than 10 days prior is the key phrase in
24 that statute. Now the general time computation rule
25 these days is found in Rule 6 of the Rules of Civil

1 Procedure, and it's a long-time rule of whenever
2 there's a period of time set out in the law, you
3 include one of the terminal dates, and you exclude
4 the other terminal date, and under the operation of
5 that rule, a time period between May, May 2nd and
6 May 12th would be found timely. But what we have
7 here is the statute that says no later than 10 days
8 prior, and that triggers what I would describe as an
9 exception to the general rule because that language
10 I submit requires 10 full, clear days between,
11 subsequent to the date of notice and prior to the
12 date of trial, and that means that the notice in the
13 case must have been served on May the 1st, the 24-
14 hour day of May the 1st, in order to, in order that
15 10 full, clear days would elapse prior to the trial
16 of the case. So the law that I cite is very
17 specific to statutory language that is similar to
18 the no later than 10 days language. The annotation
19 at 98 A.L.R.2d 1331 has a lot of different sections
20 to it. The two that are most relevant to this case
21 today would be Section 8A and 8B, and the annotation
22 says that the cases generally break down into two
23 groups, and the first group is that the language of
24 at least or not less than really does not change the
25 operation of the general rule of excluding one

1 terminal day and including the other. And then the
2 other group of cases says that language of that sort
3 implies that the period must contain the required
4 number of full and clear days otherwise that
5 language is rendered meaningless, and so then there
6 are plenty of cases that say that. I mean this is
7 not some just outlier sort of issue. There are
8 plenty of cases where states have said that that
9 sort of language takes, takes the computation out of
10 the general rule, and in that annotation, South
11 Carolina is identified as a jurisdiction that
12 applies the exception, and that exception primarily
13 comes from the case of Williams v. Halford, and I've
14 cited that case and I've given the court a copy of
15 it, and in that case the Supreme Court was
16 addressing the relationship of two code sections,
17 one of which was the general time computation
18 statute which was the 1903 version of Rule 6 that we
19 have today where you exclude the first day, include
20 the last day, and then it was comparing that or, or,
21 or relating that to the de bene esse deposition
22 statute which then was the, I guess the 1903 version
23 of Rule 32, and I'm sorry, Rule 27, I got, got it
24 backwards there, Rule 27, and it said that you can
25 take a de bene esse deposition, but you must give

1 not less than 10 days notice in writing, and in that
2 particular case, the notice, deposition notice, was
3 served on November the 10th for a deposition to be
4 taken on November 20th. That is oddly enough
5 exactly the same number of days between May 2nd and
6 May 12, and the court said that notwithstanding the
7 general time computation statute, the language of
8 the de bene esse statute trumped, if you will, the
9 general time computation because of the language in
10 it of not less than 10 days and that the inclusion
11 of that language meant that it was taken outside the
12 operation of the general computation of the statute.
13 Now that is still good law in this state. Now I
14 note that Ms. McDaniel has, has argued that Rule 6
15 has somehow now overruled or changed or rendered the
16 Williams opinion no longer effective, but I really
17 don't think that's the case because even in 1903
18 there was a general time computation statute and
19 there was a special time period statute for
20 depositions, and those were inconsistent with each
21 other, and the court said that the statute that
22 contained the language not less than was the statute
23 that controlled, and even today we have the, the
24 general time computation rule, it's not a statute,
25 but we have the rule, and then we have the statute

1 in the partition case that says not later than, and
2 it seems to me that the case we have today is almost
3 identical to the facts in the Williams case. And
4 that being, that being true, then there must be 10
5 full, clear days between the giving of the notice
6 and the start of the trial in order for the notice
7 to be effective under the statute. Now I cited the
8 Town of Summerville case just for the, just for the
9 legal principle that days are considered to be 24
10 hours from midnight to midnight unless the statute
11 or the rule dictates some other or provides for some
12 other measuring stick, and we don't have that in
13 this case, so if, if the language of the statute
14 requires 10 full, clear days, it requires 10 full,
15 clear days midnight, from midnight on day one, the
16 beginning of day one, until midnight at the end of
17 day 10. That's the reason the Town of Summerville
18 case was cited. Now I would notice, I would note
19 that the case is mentioned by Ms. McDaniel in her
20 memorandum. None of those cases, from my quick
21 review, are not less than or no later than cases.
22 They have different language in them, different
23 periods of time. They're not expressed in the what
24 I call the magic language in this case where the
25 period is, is to be not less than or no later than,

1 and so for that reason alone, these cases really
2 have no application, I think, to the, to the issue
3 now before the court. So I won't, I won't beat a
4 dead horse! You've got the memorandum there, and I
5 would ask that based upon that that this notice be
6 stricken or found to be ineffective and untimely,
7 whatever the language is you want to use, and that
8 the trial would, would commence next Monday. Thank
9 you.

10 **SPECIAL REFEREE:** Thank you, Mr. Brackett.
11 I'll hear from you now, Ms. McDaniel.

12 **MS. MCDANIEL:** Thank you, Your Honor, may it
13 please the court. Just beginning with the A.L.R.
14 reference that Mr. Brackett was discussing, in
15 looking at that I, I must take issue with his
16 characterization of it. Looking at Section 3-A, it
17 specifically says "In the absence of anything shown
18 in attention to count only clear or entire days, it
19 is generally held that in computing the time for
20 performance of an act or event, which must take
21 place a certain number of days before a future day,
22 one of the terminal days is included in the count
23 and the other is excluded." The following cases
24 have followed or recognized this rule expressly or
25 by necessary implication, and the annotations drawn

1 by the Williams v. Halford case which Mr. Brackett
2 addressed and it also includes the Holt and Buist
3 cases which I had included in my memorandum as I
4 would give you a brief to the background on both of
5 those cases. In the Holt case the citation is,
6 let's see, Holt v. Seidmeyer 79-SC-263-19-8(a), said
7 there was a provision in a county ordinances that if
8 you wanted to be on the ballot for an election, you
9 had to provide notice to the chairman of the
10 election committee five days before the election was
11 to be held, the primary election. The appellant
12 filed his notice on January 2nd. The election was
13 held on January 7th. The committee chairman
14 determined that the notice was untimely. However,
15 the Supreme Court determined that the notice had
16 been provided five days before the primary election,
17 so either, and this case is not clear which terminal
18 day was counted in that case, but it must have been
19 either the date of service or the date of the
20 election, so at least one of the terminal days was
21 counted, and it's highly unlikely that that notice
22 was provided on midnight of the morning of January
23 2nd. The second case is Buist v. Mitchell. This is
24 a significantly older case, 5-SCL-485 from 1814. In
25 that case the constitutional Court of Appeals

1 considered a statute requiring a return of service
2 15 days before the sitting of the court, and in that
3 case a defendant was served with a writ on October
4 19th. The court was to sit on November 3rd, and
5 again the date of service in that case was counted
6 such that October 19th date of service through
7 November 2nd, the day before the court would sit,
8 encompassed 15 days and service was timely. In this
9 case, the particular case that we're looking at
10 here, we've got the exact same situation. Counting
11 the day of service, which was May 2nd, we've got 10
12 days before May 12th. So counting day of service,
13 May 2nd, the 10th day is May 11th. In this case the
14 notice of an interest to purchase the property was
15 timely filed. The case of the Town of Summerville
16 that the plaintiffs cite is an abuse here. I
17 understand that they're citing it for the midnight-
18 to-midnight proposition, but in fact it supports the
19 defendants' case in this situation. In that case
20 the service was made on I believe it was April 28th,
21 well, actual publication of the Notice of Hearing
22 was on April 28th. The hearing on the annexation
23 matter was on May 27th, and in that case there was
24 no way for there to have been 30 days notice unless
25 both of the terminal days were counted, so the

1 Supreme Court held that 30 days had not been
2 there had not been proper 30 days notice. In our
3 case if you count one or the other of the terminal
4 days, there is the proper required notice, so the,
5 the facts of the situation in the Town of
6 Summerville versus our facts here are very
7 different. There's no way the Town of Summerville
8 that the publication of notice could have been
9 timely. In this case counting the day of service,
10 it, it was timely. And again the provisions where
11 it says the appellant was intending to argue that
12 the 24-hour period ran something other than midnight
13 to midnight, and of course the Supreme Court said
14 that a day is midnight to midnight. It's not for
15 any, it's not any 24-hour period. It is that
16 specific 24-hour period, a calendar day, and it is,
17 you know, a day. There are no fractions of days,
18 and what Mr. Brackett is trying to convince the
19 court of is that, that fractions of days count here,
20 that you have to have 100 percent of the days rather
21 than some portion of the day. So, you know, our
22 position that service at any time on May 2nd was
23 timely. Now because the statute says that you have
24 to inform the court, I understood that to mean that
25 the court needed to be informed of that before the

1 court closed, so that's why we filed the letter
2 before 5:00 o'clock on May 2nd, so you don't get any
3 points for being early, and you certainly don't get
4 any it's our position that filing at 4:57 is as
5 good as filing at midnight that morning. And
6 finally in looking at the Halford case, I do think
7 that Rule 6 has superceded the taking of
8 depositions, so that case I don't believe is
9 applicable here either. Your Honor, again to find
10 otherwise, to find that service on May 2nd was not
11 timely really concerns me for, you know, the bigger
12 picture of the practice of law. You know, that
13 understanding of almost every attorney that I know
14 of is that if you serve it on, at any time
15 essentially before midnight, if you get something in
16 the mail, if you serve it that day before midnight,
17 service is good and it is counted on that day, that
18 there's no requirement that it has to be a clear and
19 full day. I have never seen any indication that
20 that is the case law, or any statutory requirement,
21 and perhaps there may be something out there that
22 I've never run into, but I have never seen that
23 requirement applied to service in the Rules of Civil
24 Procedure or under any statutory Rules, Rules of
25 Service. So this is something that we filed and

1 served the notice on May 2nd. The hearing, the
2 trial is not until May 12th. We've got 10 days
3 prior to the trial.

4 MR. BRACKETT: Your Honor, if I may, if I may,
5 they don't have 10 days prior to the trial. They
6 have no later than 10 days prior to the trial. Ms.
7 McDaniel conveniently leaves out what is the central
8 language, the time computation language, of the
9 statute. The when she says absent with
10 indication to the contrary that full days are to be
11 counted, then you exclude one terminal day and
12 include the other. I don't disagree with that.
13 What the cases say is, is that by including language
14 such as no less than, or at least, or no later than,
15 that is an indication that full days are to be
16 counted, and that's what the cases that fall into
17 that category of cases, that's what they say. That
18 language was put in there for some reason, and if it
19 was meant to be within 10 days or just 10 days, if
20 general language was used, then I think Ms.
21 McDaniel's argument would carry the day, but the
22 language that's in the statute implies that you get
23 10 full days. I don't make that up. That's what
24 the case says. That's what Williams says. Now if I
25 look at the two cases that Ms. McDaniel spoke of,

1 the, let's see, the Holt case, there the rule said
2 that all candidates should file five days before the
3 first primary file a pledge, and I mean that was it.
4 Should file five days before, and I'm, I'm arguing that
5 had that statute said, had that rule said
6 should at least or no later than five days, you'd
7 get a different result. That case was construing
8 the law with respect to that language, not the
9 language we have in our statute now, and then the
10 Buist case, judicial process shall be made
11 returnable 15 days before the next sitting. All
12 right? Again that's not the language we're
13 construing in this case. All right? Had, had that
14 Judicial Process Act from 1814 said must be made
15 returnable not later than or not less than, you
16 could have that qualifying language, I argue that it
17 would have reached a different result, and so the,
18 the Williams case, even though it is a, even though
19 it related to deposition, it was about the amount of
20 notice that is required to be given prior to an
21 event depending upon the wording of the notice
22 statute. That's a, that's a very, very focused
23 issue, and that is the way that I have treated the
24 issue in my memorandum, and that is focusing on the
25 time computation language set out in the statute

1 which is different from the time computation rules
2 found in Rule 6. And our, our Supreme Court has
3 said when that happens, the, the special time
4 computation rule is the exception, and it gets
5 enforced, and it gets and so the court
6 basically in Williams said that the use of the
7 phrase not less than indicated a different
8 intention, so I believe, I believe it's untimely.

9 MS. MCDANIEL: I got to I, I really and
10 perhaps I'm just being obtuse, but I fail to see the
11 difference in not no later than a prior and five
12 days before. Both seem to me to be the same, mean
13 the same thing. I, I think that the case of Buist
14 and the Holt cases are absolutely applicable here
15 and that they would demonstrate that the service was
16 timely. Again I you know, this is Mr.
17 Brackett's argument is admirably technical, but to
18 read the language of the statute that way, I think
19 that sets a precedent of a, a very dangerous trap
20 for the unwary. This is a statute that I don't know
21 that it has really been adjudicated ever. It's a
22 relatively new statute, with provisions, and in all
23 honestly I believe it was set up originally to
24 address problems with heirs' property, and to
25 imagine that the Legislature intended folks who are,

1 you know, who own heirs' property be able to parse
2 the words this closely, you know, I find that rather
3 unreasonable, and I think that the fairer, more
4 reasonable reading is that no later than 10 days
5 before means that. You serve it on day one, 10
6 days, then the day of the filing is May 11th, you
7 have served it timely.

8 **MR. BRACKETT:** Your Honor, I would point out
9 two, two sentences from a couple of these cases. In
10 the Williams case toward the very end of the
11 opinion, the court wrote "The notice in this case
12 was not sufficient unless the term within, or the
13 term not less than, or the term after mean the same
14 thing which cannot be successfully contended."
15 Language has consequences, and the Legislature chose
16 the language they did, and all we can do, as a judge
17 trying to construe it and as a lawyer trying to give
18 legal advice to my client, is to rely on the
19 language of the statute. Then if you look at Judge
20 Pleicones' opinion in the Town of Summerville case,
21 where in footnote one he talked about the
22 whether there's some distinction between not less
23 than 30 days and at least 30 days, and he said if a
24 brief filed in court must not be less than four
25 pages in length, a three and one-half page brief

1 would not suffice. So if a notice period has to be
2 not less than 10 days, nine and a half days will not
3 suffice. Thank you.

4 MS. MCDANIEL: Your Honor, I think I've made
5 my point here..

6 SPECIAL REFEREE: All right. Thank you Ms.
7 McDaniel. Anything from the Joel Hough camp?

8 MS. SHIELDS: No, Your Honor.

9 SPECIAL REFEREE: Thank you. As evidenced by
10 you all's memoranda of law and your arguments here
11 for the last 35 minutes, this is a somewhat nuanced
12 technical argument. Ms. McDaniel, I got your memo
13 shortly before the hearing. It's my practice to go
14 back and read the entirety of these cases myself,
15 especially in an issue with where admittedly
16 somewhat nuance and there's some obvious
17 disagreement here. I'm going to get you all a
18 decision possible tomorrow. I understand we're up
19 against our trial date, and you all need some
20 definitive answer on this, but I'm going to have to
21 take a, a closer look at it considering the
22 testimony you've provided, the analysis you've
23 provided of each other's cases and how they do or
24 don't apply. I'll parse through this and inasmuch
25 as I've got a trial tomorrow afternoon, you'll all

1 have a decision tomorrow morning. All right?

2 MR. BRACKETT: Okay. That would be fine,
3 Judge.

4 SPECIAL REFEREE: All right.

5 MS. MCDANIEL: Thank you, Your Honor.

6 SPECIAL REFEREE: Thank you.

7 MS. SHIELDS: Thank you, Your Honor.

8 MR. BRACKETT: Thanks.

9

10 (The hearing concluded at 3:35 a.m.)

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CERTIFICATE

This is to certify that the foregoing transcript of a hearing before the Special Referee, consisting of seventeen (17) pages, is a true and correct transcript of the testimony given at said hearing; said hearing was reported by the method of voice writer with backup.

I further certify that I am neither employed by nor related to any of the parties in this matter or their counsel; nor do I have any interest, financial or otherwise, in the outcome of same.

IN WITNESS WHEREOF, I have hereunto set my hand and seal this 19th day of May, 2014.



Judy R. Urso
Certified Court Reporter

Notary Public for South Carolina
My Commission Expires: 1-24-21

DuBose-Robinson, PC

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March 18, 2014

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RE: Albert Hough, et al. vs. Richard Hough, et al.
Civil Action No. 2011-CP-28-0073

To All Parties Named Above:

Please find enclosed a **Notice of Trial** in the above-referenced matter. The trial is scheduled to commence at 9:00 a.m. on Monday May 12, 2014, at Kershaw County Courthouse, Courtroom 102, 1121 Broad Street, Camden, South Carolina.

Sincerely,

DuBOSE-ROBINSON, PC

John K. DuBose, III
Special Referee

JKDIII/dlf
Enclosure

STATE OF SOUTH CAROLINA
COUNTY OF KERSHAW

IN THE COURT OF COMMON PLEAS
FIFTH JUDICIAL CIRCUIT
Case No.: 2011-CP-28-00073

Albert H. Hough, individually, and as
Personal Representative of the Estate of
Harold W. Hough and as Personal
Representative of the Estate of
Elizabeth P. Hough; George J. Hough and
Angela Hough,

Plaintiffs,

v.

Richard Wesley Hough, Joel Pitts
Hough and Mary Louise Robinson,

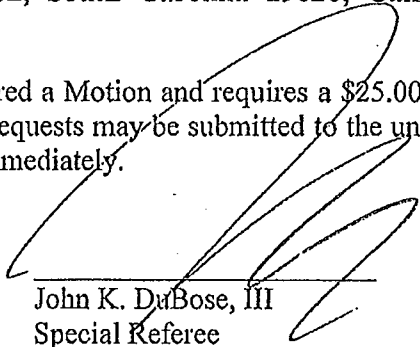
Defendants.

**AMENDED
NOTICE OF TRIAL**

TO ALL PARTIES ABOVE NAMED:

PLEASE TAKE NOTICE that the above referenced case has been scheduled for trial beginning on the 12th day of May, 2014, at 9:00 a.m., at Kershaw County Courthouse, Courtroom 102, 1121 Broad Street, Camden, South Carolina 29020, Camden, South Carolina 29020.

Any request for a continuance is considered a Motion and requires a \$25.00 Motion fee, which must be paid at the time of the request. Requests may be submitted to the undersigned. If your case is settled, please notify us in writing immediately.


John K. DuBose, III
Special Referee

March 18, 2014

Camden, South Carolina

STATE OF SOUTH CAROLINA

IN THE COURT OF COMMON PLEAS

COUNTY OF KERSHAW

2011-CP-28-073

Albert H. Hough, individually and
as Personal Representative of the Estate
of Harold W. Hough and as Personal
Representative of the Estate of Elizabeth
P. Hough; George J. Hough and
Angela Hough,

Plaintiffs,

v.

Richard Wesley Hough, Joel Pitts
Hough, and Mary Louise Robinson,

Defendants.

AFFIDAVIT OF DEFAULT

FILED FOR RECORD
2014 MAY -5 AM 11:25
JOYCE MC DONALD
CLERK OF COURT
KERSHAW COUNTY, S.C.

Personally appeared before me, B. Michael Brackett, who, being duly sworn, states that:

- 1) I am the attorney for the Plaintiff in the above captioned proceeding;
- 2) The Summons and Amended Complaint were served on Defendant Mary Louise Robinson on July 3, 2012 as shown by the Acceptance of Service of filed of record herein;
- 3) More than thirty (30) days have elapsed since the service of the Summons and Amended Complaint, exclusive of the date of service, and no answer, motion, or notice of appearance has been served on me or my predecessor as required by the Summons;
- 4) Defendant Mary Louise Robinson is not a member of the military service;
- 5) Defendant Mary Louise Robinson is in default.

SWORN to before me this

2nd day of May, 2014

Pinda T. Ahernett
Notary Public for South Carolina

My commission expires: 11-14-18

B. Michael Brackett

B. Michael Brackett

Moses & Brackett, PC

P.O. Box 100261

Columbia, SC 29202

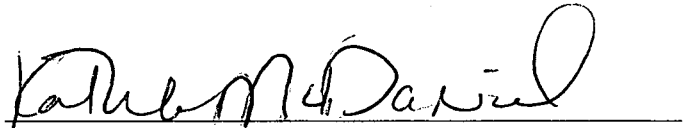
803-461-2312

Attorney for Plaintiffs.

Certificate of Counsel

The undersigned hereby certifies that the Record on Appeal contains all material proposed to be included by any of the parties and not any other material.

March 30, 2015



Kathleen M. McDaniel
CALLISON TIGHE & ROBINSON, LLC
P.O. Box 1390
Columbia, South Carolina 29202
Tel. (803) 404-6900
Fax. (803) 404-6902
kathleenmcdaniel@callisontighe.com
Attorney for Appellant

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APR 15 2015

SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

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APR 15 2015

SC Court of Appeals

APPEAL FROM KERSHAW COUNTY
Court of Common Pleas

John K. DuBose, III, Special Referee

Case No. 2011-CP-28-0073

Albert H. Hough, individually, and as Personal Representative
of the Estate of Harold W. Hough and as Personal Representative
of the Estate of Elizabeth P. Hough; George J. Hough; and
Angela Hough, ... Plaintiffs/Respondents

v.

Richard Wesley Hough, Joel Pitts Hough and
Mary Louise Robinson, ... Defendants

Of whom

Richard Wesley Hough is Appellant

And of whom

Joel Pitts Hough and
Mary Louise Robinson are Respondents.

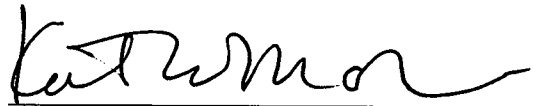
PROOF OF SERVICE

I certify that I have served the Final Brief and Final Reply Brief on Respondents, Joel Pitts Hough, and Mary Louise Robinson by depositing a copy of it in the United States Mail, postage prepaid, on April 15, 2015 and addressed as follows:

B. Michael Brackett, Esquire
Moses & Brackett, PC
Post Office Box 100261
Columbia, SC 29202
Attorney for Respondents

M. Scott Rankin, Esquire
Post Office Box 1445
Camden, SC 29021
Attorney and Guardian ad Litem for Joel Hough

Mary Louise Robinson
1100 Gunter circle
West Columbia, SC 29169
Pro se



Kathleen M. McDaniel
CALLISON TIGHE & ROBINSON, LLC
Post Office Box 1390
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Telephone: (803) 404-6900
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kathleenmcdaniel@callisontighe.com

April 15, 2015

Attorney for Appellant

RECEIVED

MAR 30 2015

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

SC Court of Appeals

APPEAL FROM KERSHAW COUNTY
Court of Common Pleas
John K. DuBose, III, Special Referee

Civil Action No. 2011-CP-28-0073
Appellate Case No. 2014-001012

Albert H. Hough, individually, and as Personal Representative
of the Estate of Harold W. Hough and as Person Representative
of the Estate of Elizabeth P. Hough; George J. Hough; and
Angela Hough,.....Plaintiffs/Respondents

v.

Richard Wesley Hough, Joel Pitts Hough and
Mary Louise Robinson,.....Defendants,

Of whom

Richard Wesley Hough is.....Appellant,

And of whom

Joel Pitts Hough and
Mary Louise Robinson are.....Respondents.

PROOF OF SERVICE

I certify that I have served the Record of Appeal of the Appellant on the following
parties by causing a copy of the Record on Appeal to be served at the addresses shown
below:

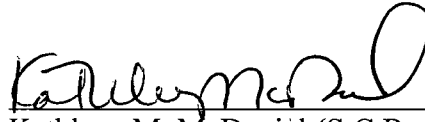
(Via Hand-Delivery)
B. Michael Brackett, Esquire
Moses & Brackett, PC
1333 Main Street, Suite 650
Columbia, SC 29201

(Via U.S. Mail)

Mary Louise Robinson
1100 Gunter Circle
West Columbia, SC 29169

(Via U.S. Mail)

M. Scott Rankin, Esquire
Post Office Box 1445
Camden, SC 29021



Kathleen M. McDaniel (S.C.Bar No. 74826)
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ATTORNEY FOR APPELLANT

March 30, 2015
Columbia, South Carolina