

THE STATE OF SOUTH CAROLINA

In the Court of Appeals

Appellate Case No. 2019-001750

Case No. 2019-CP-23-02093

APPEAL FROM GREENVILLE COUNTY

COMMON PLEAS

Edward W. Miller, Judge

William Barry Chisholm..... Appellant,

v.

Guadalupe Juariz..... Respondent.

FINAL BRIEF OF APPELLANT

William B. Chisholm
Pro Se
220 Riverside Drive
Greenville, South Carolina 29605
(864) 884 - 1497

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Fairview Austin Summary Court
205 North Maple Street, Suite 4
Simpsonville, SC 29681
864-963-3457

April 12, 2019

William Chisholm

Re: Civil Case 2018CV2310201966 & 2018CV2310201811

Dear Mr. Chisholm:

We received your request for the tapes of your cases held on March 13, 2019 after much searching it appears that the recording device that was used had lost power and deleted all cases for that day.

We are sorry for any inconvenience this may have caused.

Sincerely,

Judge Dean Ford

STATE OF SOUTH CAROLINA
COUNTY OF GREENVILLE

IN THE COURT OF COMMON PLEAS

WILLIAM B. CHISHOLM,)
)
 APPELLANT,)
)
 -VS-)
)
 GUADALUPE JUAREZ,)
)
 RESPONDENT.)
 _____)

2019-CP-23-02093

TRANSCRIPT OF RECORD

OCTOBER 4, 2019
GREENVILLE, SOUTH CAROLINA

BEFORE:

THE HONORABLE EDWARD W. MILLER

APPEARANCES:

ATTORNEYS FOR APPELLANT:

PRO SE

ATTORNEY FOR RESPONDENT:

PRO SE

SUSAN W. HUDGINS
CIRCUIT COURT REPORTER

1 **THE COURT:** Okay. What you want to tell me?

2 **MR. CHISHOLM:** I didn't hear you, sir.

3 **THE COURT:** Who's the appellant? Mr. Chisholm?

4 **MR. CHISHOLM:** Yes.

5 **THE COURT:** Okay. What do you want to tell me?

6 **MR. CHISHOLM:** I hired Mr. -- let me see what his name
7 is.

8 **THE COURT:** Trim All.

9 **MR. CHISHOLM:** Mr. Juarez.

10 **MR. JUAREZ:** Juarez.

11 **MR. CHISHOLM:** Juarez.

12 **THE COURT:** Okay.

13 **MR. CHISHOLM:** I hired Mr. Juarez to cut down a tree in
14 my back yard.

15 **THE COURT:** Okay.

16 **MR. CHISHOLM:** He said it would take a bucket truck to
17 take the tree down, and I agreed with him. And I could not
18 be there on the Thursday when he said that he was going to
19 have it taken down. I had a commitment to be in Charlotte
20 that day.

21 **THE COURT:** Okay.

22 **MR. CHISHOLM:** I don't believe he showed up that day.
23 He had someone else come to cut the tree down. They did not
24 use a bucket truck. And the tree fell on my boat and
25 damaged my boat. I have pictures here for you if you would

1 like to look at them.

2 (Pause)

3 **THE COURT:** Go ahead. What else you -- I don't want to
4 look at the pictures just yet. What is it you're asking
5 for? You won at the lower level. You got a judgment and
6 you were paid at the lower level. So why are you
7 complaining? That's what we're here about.

8 **MR. CHISHOLM:** The boat is worth about ten to twelve
9 thousand dollars. I got three hundred and something dollars
10 at the lower level.

11 **THE COURT:** Five hundred.

12 **MR. CHISHOLM:** Three hundred.

13 **MR. JUAREZ:** Five hundred.

14 **THE COURT:** The record shows five hundred dollars at
15 the lower level.

16 **MR. CHISHOLM:** The record needs to be corrected.

17 **MR. JUAREZ:** Gave a check for five hundred.

18 **THE COURT:** Okay. All right. Go ahead, Mr. Chisholm.

19 **MR. CHISHOLM:** I want my money for the boat that's
20 damaged about ten to twelve thousand dollars. I have a used
21 boat -- which would tell the price of the boat, the value of
22 the boat.

23 At the lower level the judge looked up an NADA price.
24 That's the National Association ---

25 **THE COURT:** I'm familiar with that. Go ahead.

1 **MR. CHISHOLM:** --- Automobile Dealers.

2 **THE COURT:** Uh-huh (affirmative).

3 **MR. CHISHOLM:** They're not exactly what I would
4 consider qualified to specify the price of boats.

5 He cut the tree -- he had someone cut the tree down.
6 The tree fell on my boat. It ruined it.

7 **THE COURT:** So -- okay. What are you asking for?

8 **MR. CHISHOLM:** I think nine thousand dollars is the
9 most I can get, isn't it? I have prices figured up on this
10 if you want me to add them up.

11 (Pause)

12 **THE COURT:** You presented all this to Magistrate Ford,
13 is that correct?

14 **MR. CHISHOLM:** Not exactly. I didn't get to present
15 much in magistrate court.

16 **THE COURT:** You had a hearing, correct?

17 **MR. CHISHOLM:** Sir?

18 **THE COURT:** Did you have a hearing in front of Judge
19 Ford?

20 **MR. CHISHOLM:** There was a hearing, yes, sir.

21 **THE COURT:** All right.

22 **MR. CHISHOLM:** He wouldn't let me talk.

23 **THE COURT:** I don't see that in your appeal.

24 **MR. CHISHOLM:** Well, I'm telling you now.

25 **THE COURT:** Well. Okay, you're telling me, but that's

1 inappropriate for me to consider since it's not been
2 included as one of your grounds for appeal.

3 **MR. CHISHOLM:** I did not get to present my photographs
4 to him. I did not get to present -- well, I did present the
5 cost of the boat, the value of the boat.

6 **THE COURT:** Okay.

7 **MR. CHISHOLM:** But he didn't look at it. I did not get
8 to present my estimates on what it would take to repair the
9 boat.

10 **THE COURT:** Okay.

11 **MR. CHISHOLM:** I didn't get to say anything.

12 **THE COURT:** And you still won the case and got five
13 hundred dollars.

14 **MR. CHISHOLM:** Three hundred.

15 **THE COURT:** Well, something's in error here. All
16 right. Yes, sir. Anything?

17 **MR. JUAREZ:** The other judge listened like you
18 listened, and he see everything.

19 **THE COURT:** And, sir, you are?

20 **MR. JUAREZ:** Guadalupe Juarez.

21 **THE COURT:** Okay.

22 **MR. JUAREZ:** And if you don't understand my English,
23 that's why I got him here to interpret. My English is not
24 too good sometimes.

25 **THE COURT:** Okay.

1 **MR. JUAREZ:** But how I got to do his work, these trees
2 fell in his neighbor's house -- in the neighbor's house, his
3 trees. So I come and then look at tree work for her
4 neighbor. And when he was there he tell me to come and take
5 this tree, so I did.

6 I didn't make no damage. And I didn't touch his boat.
7 And it's his boat. If he got pictures, if you'd like to see
8 the pictures, how it was and how it is right now, the boats
9 and what condition they are, and that just grow out in
10 trees. So I didn't make no damage.

11 And that judge, the other judge, he see that he was no
12 -- no damage. And I got pictures. I didn't do no damage
13 ---

14 **THE COURT:** So the judge looked at the pictures, is
15 that ---

16 **MR. JUAREZ:** Yes, sir. Yes, sir.

17 **THE COURT:** Okay. And who gave the pictures to the
18 judge?

19 **MR. JUAREZ:** I did. I got pictures in here if you'll
20 like to see it. How he showed the pictures he got and how
21 the boats they are -- how they are and what condition they
22 are.

23 **THE COURT:** Okay.

24 **MR. JUAREZ:** And I didn't make no damage, sir. No.

25 **THE COURT:** And you paid him ---

1 **MR. JUAREZ:** And he paid me. I mean, after I finished
2 he paid me. And later on I come -- I was in the street and
3 he asked me if I got insurance, he was going to sue me
4 because I make damage to his boat. And this is about four
5 years ago.

6 **THE COURT:** Okay. All right. Anything else? Mr.
7 Chisholm.

8 **MR. CHISHOLM:** I agreed that he would have to have a
9 bucket truck to take down the tree. He did not use a bucket
10 truck. The way I know that is I have a pickup truck that's
11 been parked behind my gate for some 14 years. It has not
12 moved. My dog ate the wiring off of it.

13 **THE COURT:** Bad dog.

14 **MR. CHISHOLM:** He was a good dog. He just liked to
15 pick on me because I'd pick on him. And he also ate up the
16 gas line, too, but ---

17 **THE COURT:** Well, now that's a bad dog. That's a sick
18 dog.

19 **MR. CHISHOLM:** He was a fun-loving dog.

20 **THE COURT:** Yeah, yeah. Okay.

21 **MR. CHISHOLM:** But, anyway, the man -- the boat I
22 bought, I paid seventy-seven hundred and seventy-five
23 dollars for it.

24 **THE COURT:** And you want twelve thousand dollars for
25 damage?

1 MR. CHISHOLM: Let me finish.

2 THE COURT: Okay.

3 MR. CHISHOLM: I had to drive to Dover, Delaware to

4 pick the boat up. The boat was a liveaboard. There was a

5 guy living on it. He died. I bought the boat from his two

6 sons.

7 THE COURT: Okay.

8 MR. CHISHOLM: I hauled the boat back.

9 THE COURT: How long ago was that?

10 MR. CHISHOLM: About 16 years ago.

11 THE COURT: Sixteen. That's before the truck got

12 parked.

13 MR. CHISHOLM: Sir? The truck wasn't eaten up at that

14 time. That's right.

15 THE COURT: Okay.

16 MR. CHISHOLM: It was parked in the back yard. There

17 are trees in the back yard. It was not parked under a tree

18 that had limbs on it. It was in a little open space.

19 THE COURT: Okay.

20 MR. CHISHOLM: I bought another engine to go in the

21 boat. And I bought the paint to go on the boat. The boat

22 needs -- needed painting.

23 THE COURT: All right.

24 MR. CHISHOLM: I bought the paint, and I bought an

25 engine. I have not put the engine in.

Statement of Case

This began when I entered into a contract with Guadelope Juariz (Trim All Tree Service, LLC) to cut down one tree in my back yard.

Mr. Juariz looked at the tree in my back yard, and offered to do the work for \$ 1000.00. I accepted the price. It was a legal transaction. There was a price established for doing the work.

It was further agreed that Mr. Juariz that a bucket truck would have to be used to safely remove the tree. It was agreed that his company would use a bucket truck to safely remove the tree as it was approximately 110 feet tall. This brought up a problem that I had an old pick-up truck parked at the only access to the back yard. It had not been cranked in approximately 14 years , my dog got mad at me because I would not take him for a ride and chewed the rubber gas line in half, and also chewed off all the electrical wiring he could get to. Mr Juariz told me that he had a small vehicle that could move the if I had a key to the truck. I agreed to put the key into the truck and left it for Mr. Juariz to use. The key would only unlock the steering column and unlock the transmission . I put the key in the ignition switch, left both of the doors open. The next morning I left for a previously scheduled meeting in North Carolina.

Upon arrival back at home, the tree cutters had already left, and walking out my back door, I immediately noticed that the safety railing was damaged and the access way, the interlaces horizontal boards to below deck were missing. In looking around , I could view more damage. My boat was trashed.

It soon became apparent to me that they HAD NEVER MOVED MY TRUCK , it further became apparent that they had tried to cut down the tree without using the bucket truck, as had been previously been agreed upon. It further became apparent to me

that the tree had landed upon my sailboat, a 28 foot Columbia, weight 7000lbs, approximate value, \$ 10,000.00.

This felled tree had an impact of 14.57 tons, traveling at 65 miles per hour.

The photographs that follow indicate the damage to my boat , and the events that occurred when my boat was damaged.

There was quite a bit of discussion as to the unkept nature of my back yard. I spent the last 10 years of my career working for Areva , at the Savannah River Site, mostly working 10 hours a day , six days a week on the MOX Project. Upon ending my working career, although having never had high blood pressure or high cholesterol , I have four strokes. This is why I have left my back yard unattended, it is enclosed by a 6 foot high, vision proof fence.

BUC

USED BOAT PRICE GUIDE

1905-1983 MODELS

**Statistically Authenticated
Current Market Prices for ...
OUTBOARDS • INBOARDS • SAILBOATS
OUTDRIVES • POWERBOATS
HOUSEBOATS • CUSTOM BOATS
with Area, Condition and Equipment Scales
and a Complete Cross Referenced Index**

CHEVRO





Smiling Faces. Beautiful Places.

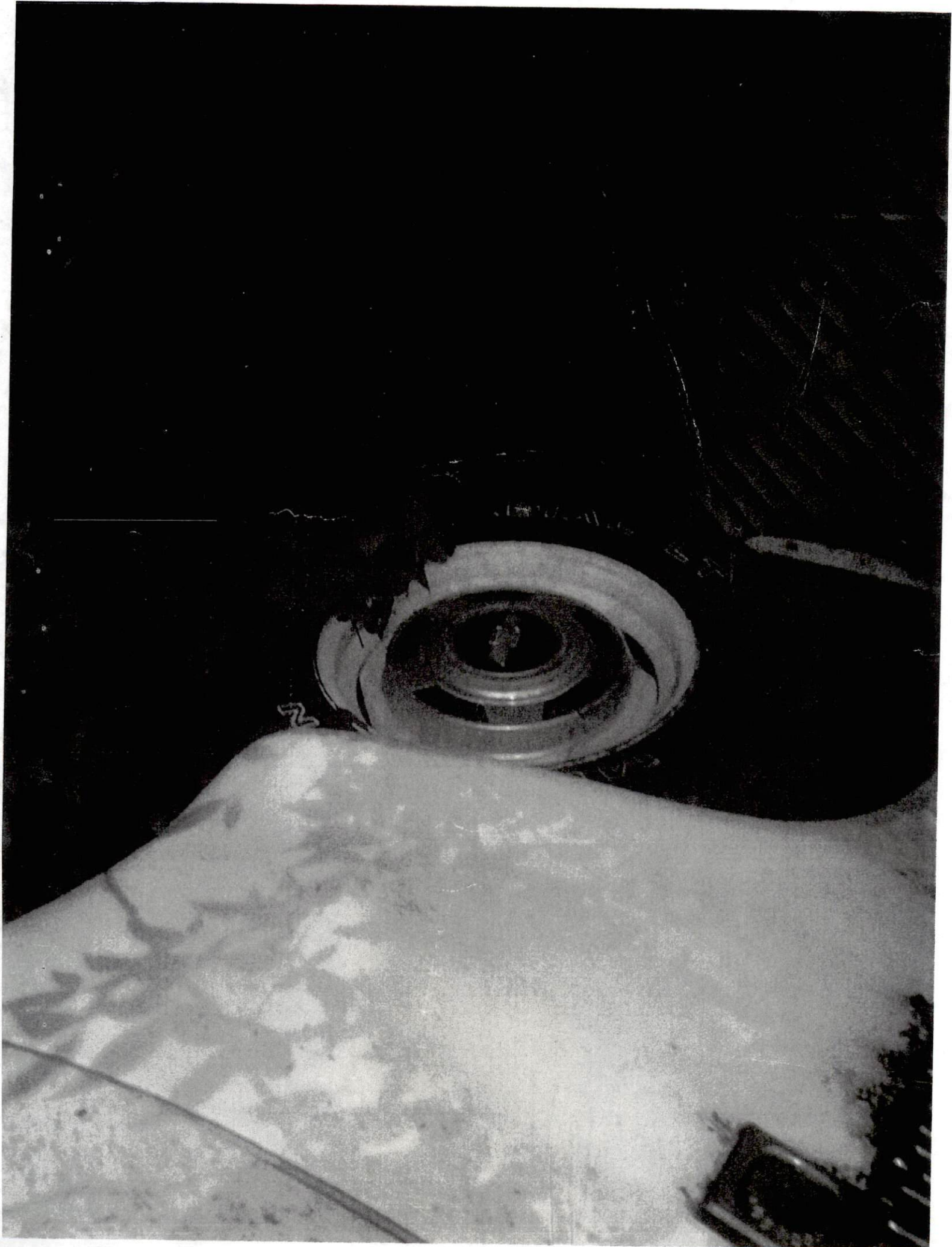
165 LZT

South Carolina

S.C. 04
2004

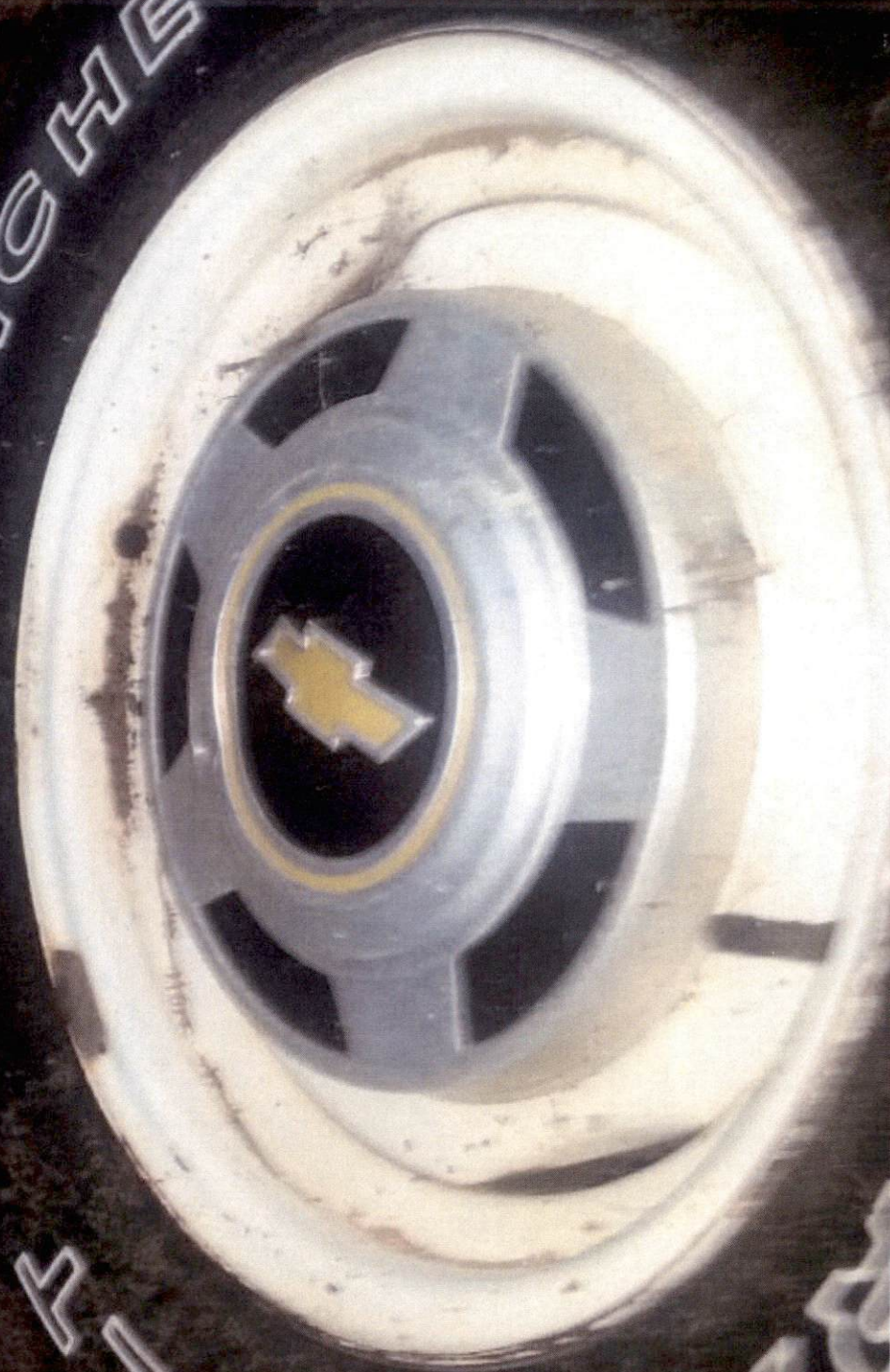








MICHELIN

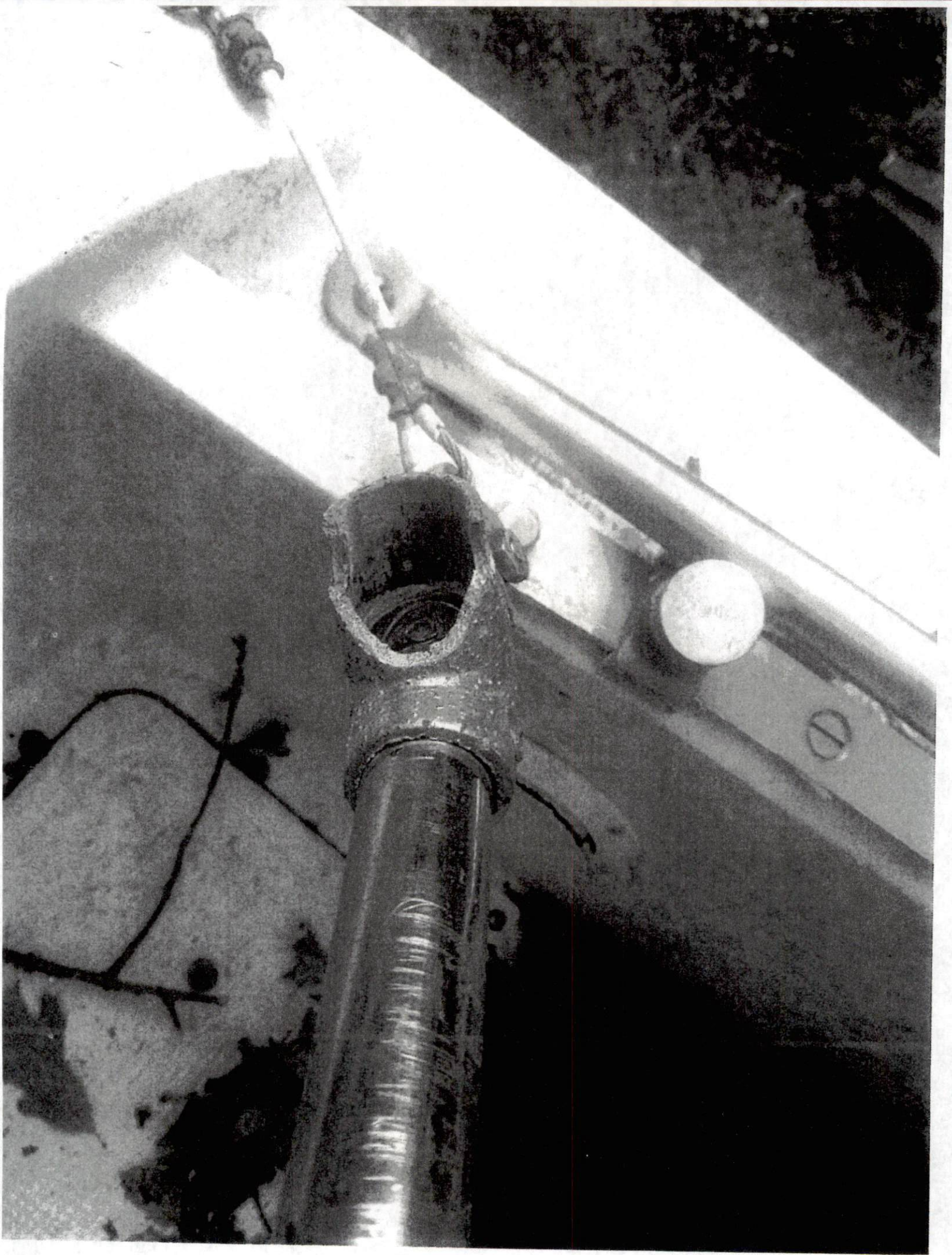


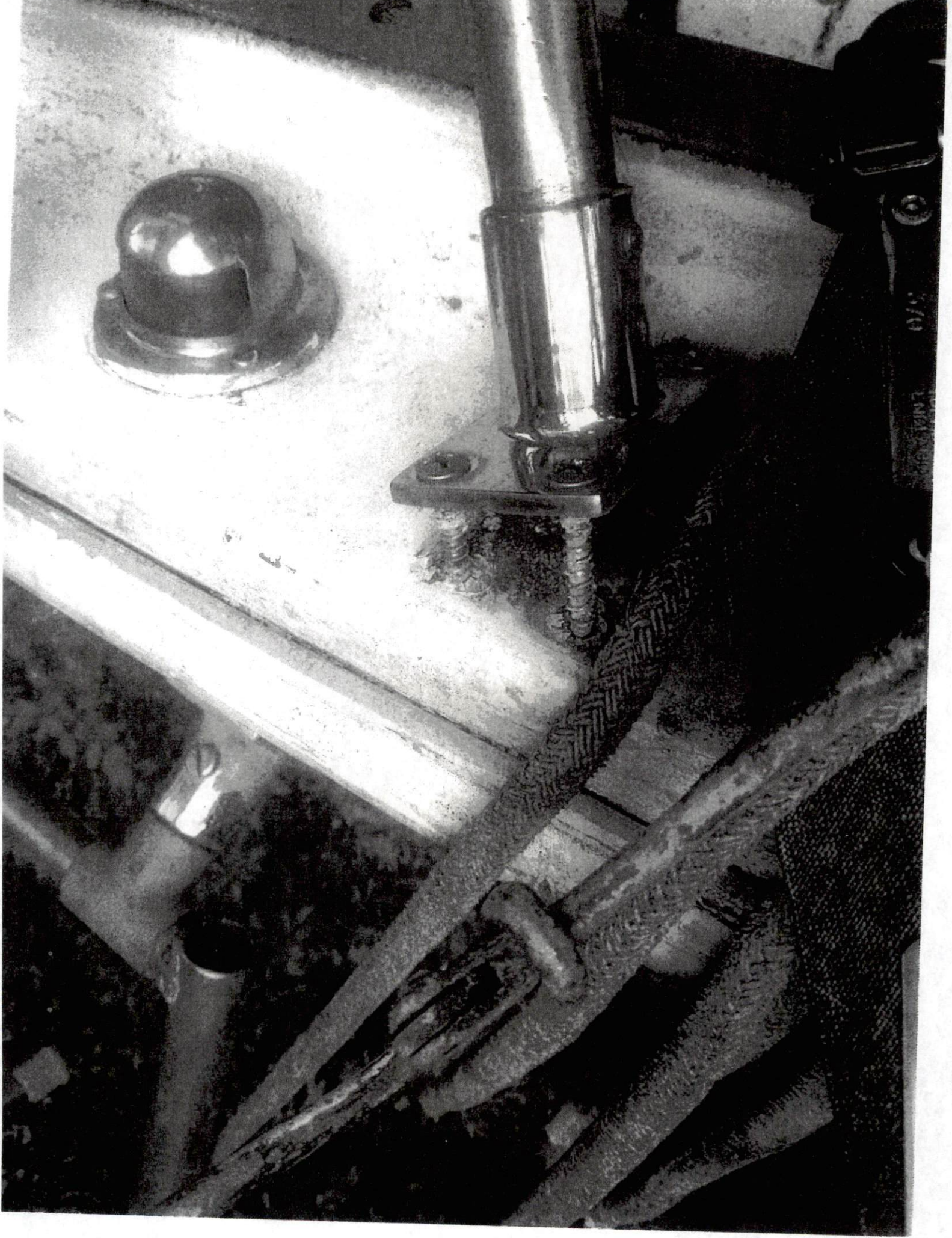
ABDIAL
TF

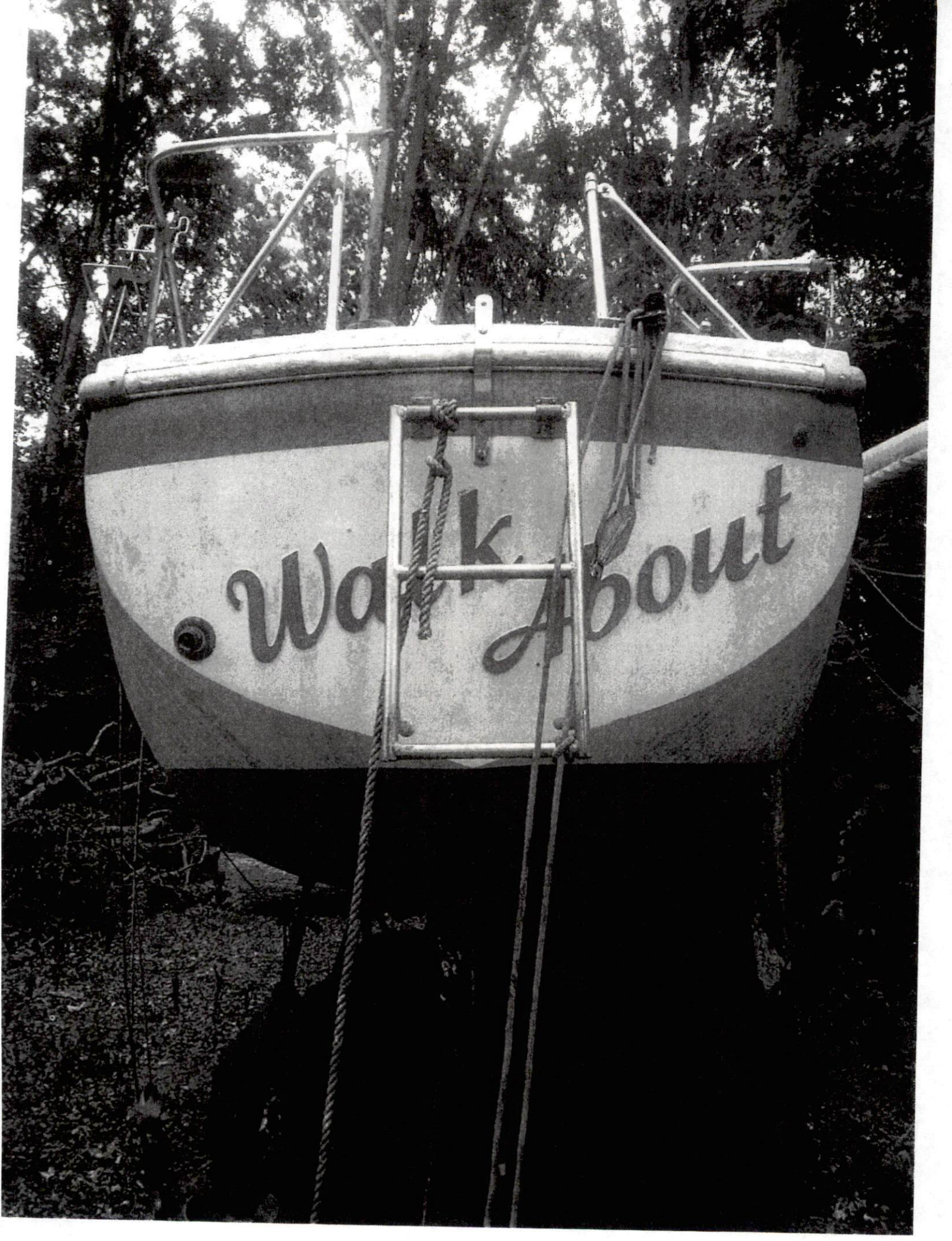
WHEELS





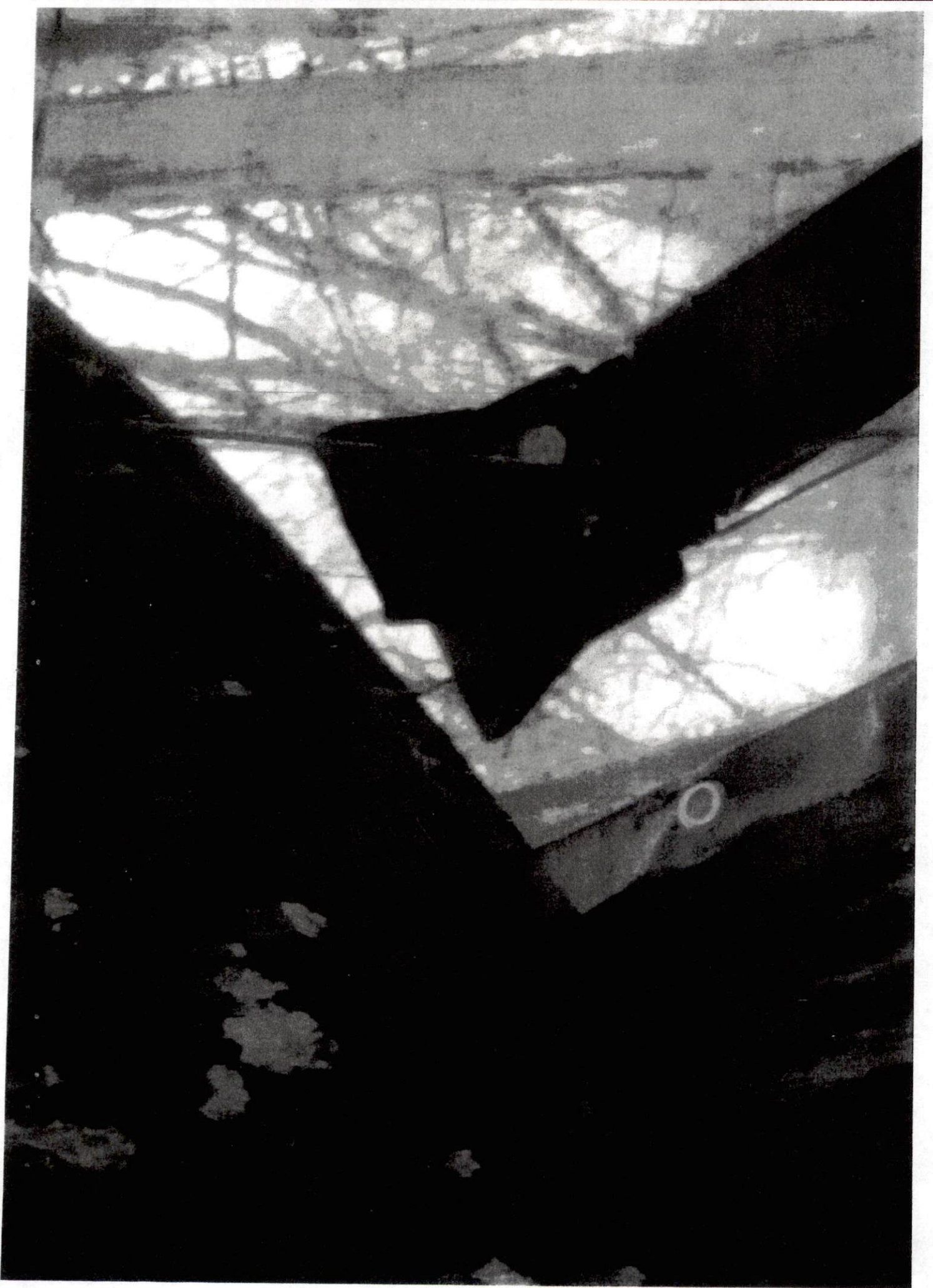






Walk About





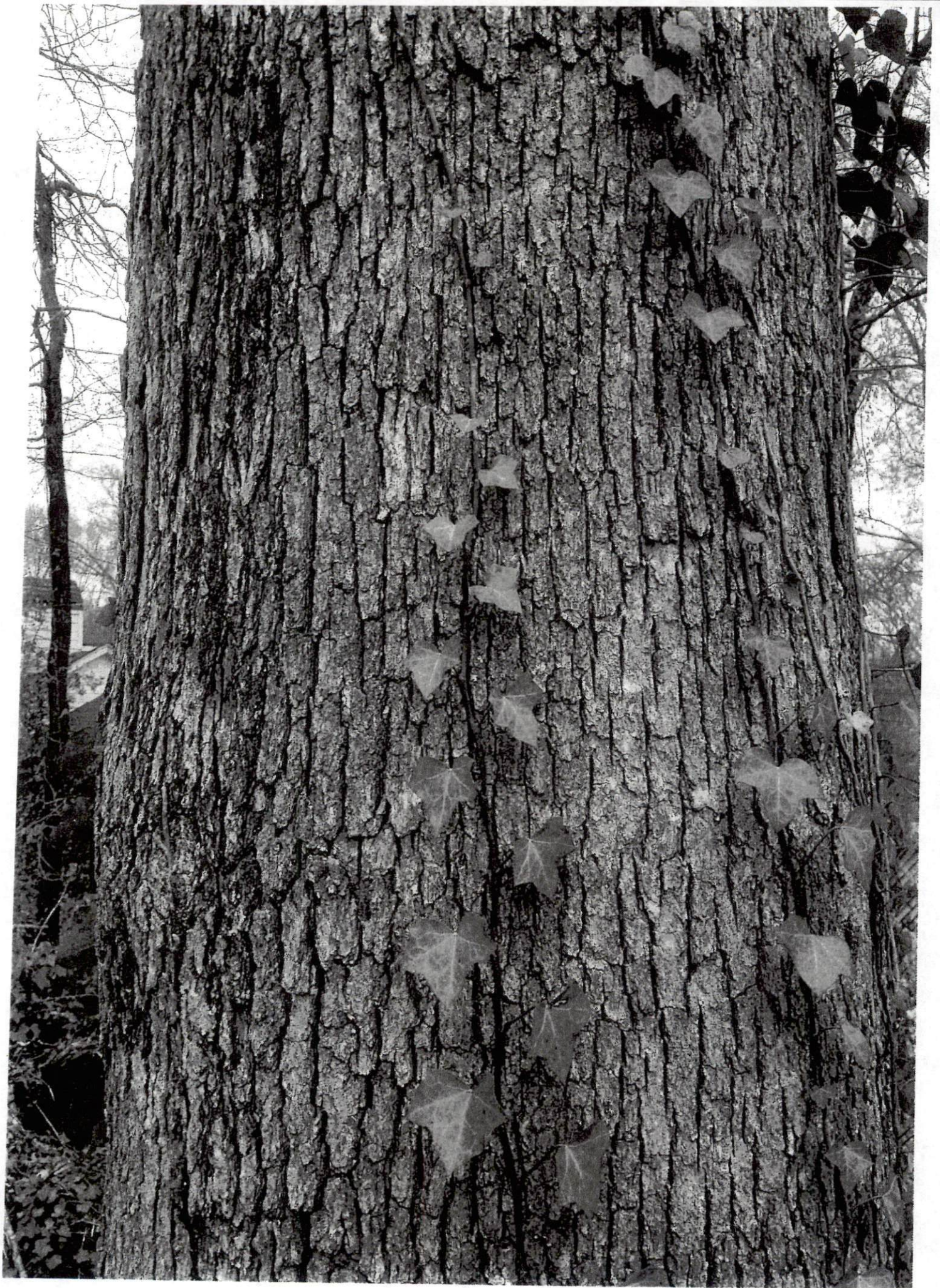


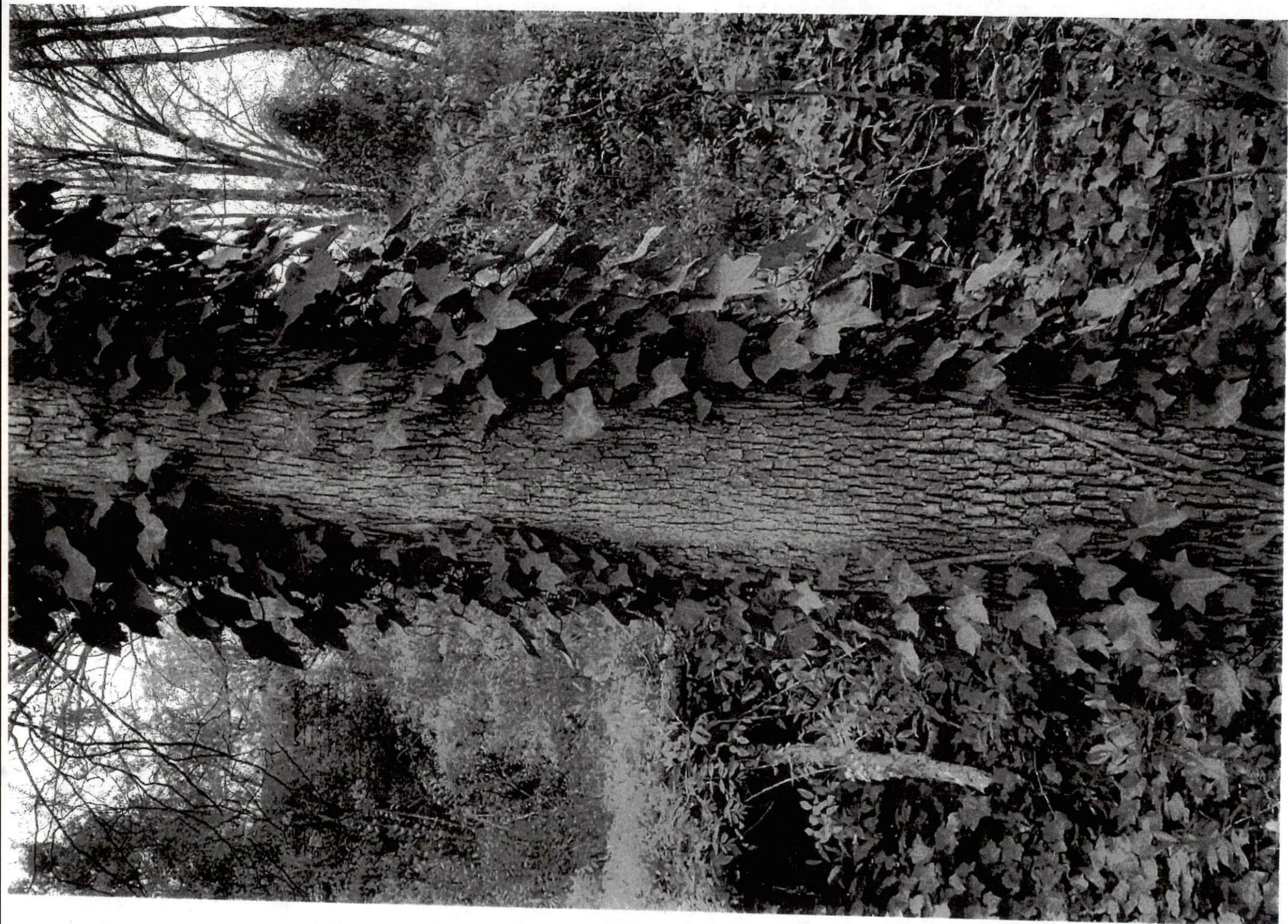


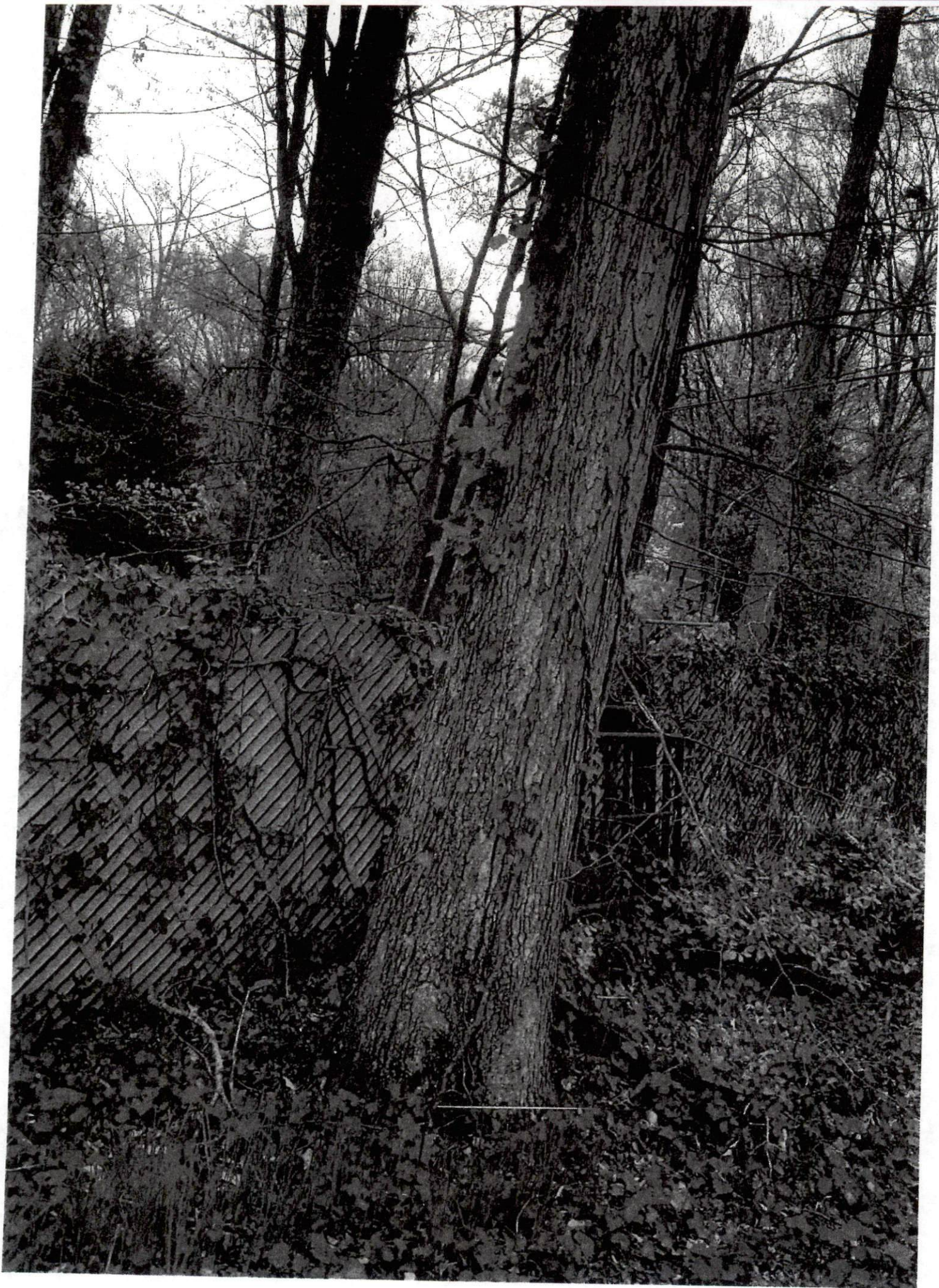


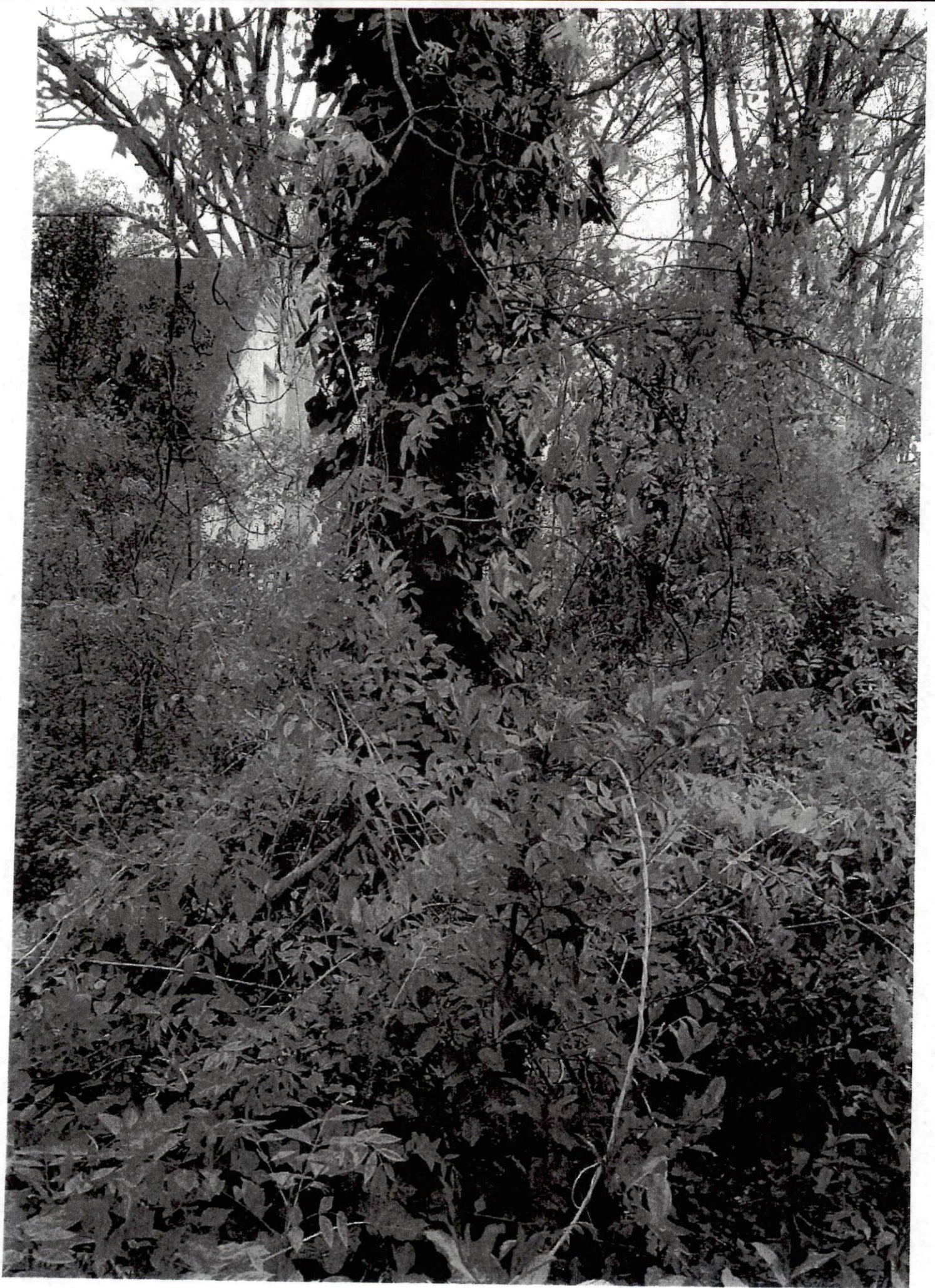
















Estimate of RAILS

$$4 \times 4 = 16 + 8$$

$$24 \text{ #} \times 27,00 = 648,00$$

~~ENTERWAY~~ ENTERWAY, RAILS - HARD ON
~~ENTERWAY~~

Handover =

$$32,99 \times 2 = 65,98 + TAX$$

730.58

NOTE:

ALL PRICES, EXCEPT LABOR,
LUMBER AND USED MAST ARE
FROM WEST MARINE

$$\text{mass} - 31.5' \times 550 = 1732.50$$

USED PAGE 2
MAST

Shm

250

1982.50

RADIO maintenance

69.00 + TAX

COAX

31.5

10

41.5 + 1.25 = 51.88

RADIO

299.99 + TX

1982.50

792.95

2775.45



LIFELINE - ^{917C} 289,99

S+ANC HILLS

By 72,99

~~ES~~
~~25~~
~~20~~
~~12~~
~~45~~

LAPAN - $10 \times 1.5 - 15 + 65 = 975.00$

WILE - $125 + \frac{2.60}{2.60} = 325$

397,99 - x1.1

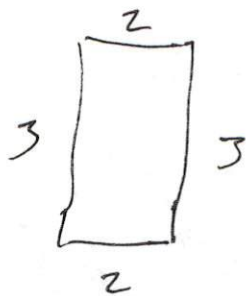
437.79

975.00 LANS

1412.79

COT NEW/OPEN

29



PAINT PETTIT

219.99 + Ty

TEMPERATURE

Roller 6.79 x 3

Brush 19.99 x 2

Cups 5.00

Cloth 329.00

Acetic 29.99

Paint Utens 15.99

Pillar 52.99

LABOR

10 x 4 x 65 =

~~694.11~~ + Ty

707.31

764.18	778.04
2400.00	2600.00
3364.18	<u>3378.04</u>

~~3635.98~~

3376.86

CALCULATIONS FOR DAMAGE TO BOAT

The calculations were prepared by William B. Chisholm , who was a Registered Professional Engineer , until retirement .

In the early 1970's , he was employed at Davis Mechanical Contractors, Inc. , as an estimator. DMC was considered the third largest mechanical contractor in the nation. I was there for about seven years. It was owned by F. Harold Gillespie. He later closed the company and retired. Later when Francis Freeman (Freeman Mechanical Contractors) died , his two daughters ask Harold to sell the company for them. Harold and Francis had been the best of friends for about forty years , Harold looked at the books and bought the company himself. He then hired me to work there as an estimator and it lasted about four years , until he sold that company also.

What I am saying is, I know how to estimate.

ESTIMATE OF COST

1. Entryway and Rails (Lumber }	\$ 648.00
2. Hardware	65.98
3. Used Mass	1982.50
4. Radio Antenna	74.52
5. Coax Cable	56.04
6. Radio	322.92
7. Lifeline	1492.79
8. Stanchions	586.00
9. Safety Wire	325.00
10. Paint	770.00
11. Labor	2600.00
	<hr/>
Total	\$ 8923.75

TRIM ALL TREE SERVICE, LLC
406 Fairview Church Road
Fountain Inn, SC 29644
(Tel): 864-862-230-3647

September 21, 2018

Judge in the Magistrate's Court
Fairview/Austin Summary Court
205 North Maple Street, Suite 4
Simpsonville, SC 29681

RE: Case Number 2018CV2310201966

Your Honor:

I am responding to the complaint brought against my company by Mr. William Chisholm for damages to his property.

While I and my crew were completing a job at Mr. Chisholm's neighbor's home, he approached me and asked would I also take down a tree on his property. There were boats located under the limbs of the tree, however, they had been there for a long time and had dead limbs on and around them.

A lift bucket truck was brought into the yard to tie off and secure the limbs to carefully remove the tree. During this process my crew did not damage his property. We were aware that the gates were very old, so they were moved to the side. We completed the work and Mr. Chisholm paid me for my services.

With regard to the attachments, there are no pictures of the damage to the gates or the sail boats; nor is there any invoices (only an estimate for the gate and a handwritten note regarding the mast).

I do speak to my crew in Spanish, our native language. It is much easier to explain a task or simple converse in your native language. It is never used to deliberately mislead or humiliate someone.

I do not believe my crew, or my equipment damaged any of his property. If this court decides otherwise, I will pay the amount due.

Sincerely,


Guadalupe Juarez