

COMMONWEALTH OF KENTUCKY
LESLIE CIRCUIT COURT
CIVIL ACTION FILE NO. 91-CI-176

Sept 49
D. M. [unclear] CLERK
D. M. [unclear] S.C.

JAMES E. DAVIDSON,
ET AL.,

PLAINTIFFS

VS: **ORDER AMENDING AND ALTERING JUDGMENT,
 VACATING IN PART
 and SUPPLEMENTAL JUDGMENT**

THE WISER OIL COMPANY;
ET AL.,

DEFENDANTS

On June 14, 1999 this Court entered its Findings of Fact, Conclusions of Law, and Judgment in this action. Thereafter the plaintiff's timely filed their Motion to Alter, Amend and Vacate said Judgment. The parties have filed memorandum as well as supplemental memorandums in support of their respective positions.

On September 1, 1999 this matter was called for final hearing on plaintiff's motion. At the call of the case there were present counsel for plaintiffs, counsel for defendant The Wisser Oil Company, and counsel for defendants Rouge Steel Company and Fordson Coal Company.

The primary issued considered by the Court was the legal effect, as to minerals, of adverse possession of the surface of a tract of land, such adverse possession beginning prior to the severance of the minerals, but where the statutorily required fifteen (15) years had not yet elapsed at the time of the severance.

In the original Judgment this court found that adverse possession began in 1926 and the mineral severance was in 1940. Based upon such findings this Court adjudged as a matter of law that since the plaintiffs had only 14 years of adverse possession prior to the mineral severance they could not hold the minerals by their adverse possession. This was notwithstanding that the Court also found