

that the adverse possession had continued after the severance beyond the fifteen (15) year requirement and title as to the surface ripened in favor of the heirs of Henry Davidson.

The plaintiffs presented to this Court the cases of Hellier Coal & Coke Co. v. Bowling, Ky., 272 S.W.2d 651 (1954) and Wallace v. Neal, 227 Ky. 30, 11 S.W.2d 1002 (1929) holding that adverse possession of the surface started at any time before the severance of minerals will perfect title to both the surface and minerals, even if the minerals are severed prior to the 15 year requirement for adverse possession, so long as the adverse possession continues for the required 15 year period. At the hearing on September 1, 1999 the defendants were unable to refute this case law. Accordingly this Court finds that the above referenced cases are controlling in this matter.

Another issue brought before the Court was whether the Court had previously found that the plaintiffs had established continuous adverse possession for fifteen (15) years or longer, beginning with 1926. Although perhaps not specifically stated within the original Findings of Fact, Conclusions of Law, and Judgment, this Court had, and does, find that beginning with 1926 the plaintiffs have established continuous adverse possession for a period longer than the required fifteen (15) years.

Lastly the issue of damages were addressed. It is the finding of this Court that the heirs of Henry Davidson are entitled to recover damages based upon an innocent trespass. The Court finds that the encroachment upon the Davidson property to be at 29.28% and that they are entitled to recover this percentage of \$81,133.21, representing the 1/8th royalty paid, or \$23,755.80 through 1998. Howard v. Kingmont Oil Co., Ky.App., 729 S.W.2d 183 (1987). Petroleum Exploration Corporation v. Hensley, Ky., 284 S.W.2d 828 (1955). The heirs of Henry Davidson are further entitled to receive, beginning with January, 1999 and thereafter, 29.28% of the 1/8th royalty for all natural gas produced and marketed.